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Federal Register

Thursday
July 19, 1984

Selected Subjects

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Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Banks
Farm Credit Administration

Endangered and Threatened Species
Fish and Wildlife Service

Federal Home Loan Banks
Federal Home Loan Bank Board

Fisheries
National Oceanic and Atmospheric Administration

Food Labeling
Food and Drug Administration

Government Procurement
Environmental Protection Agency

Government Property Management
General Services Administration

Hunting
Fish and Wildlife Service

Irrigation
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Marine Safety
Coast Guard

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Rules and Regulations

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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 week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300, 335, 351, 430, 431, 451, 531, 532, 540, 551, and 771

Reduction in Force, Performance Management, and Fair Labor Standards Act; Publication of Special Supplement to Title 5 CFR, Parts 1 to 1199

CFR Correction

On October 25, 1983, the Office of Personnel Management published final rules pertaining to reductions in force, performance appraisal systems, and the applicability of the Fair Labor Standards Act to Federal employees (48 FR 49462–98). By Order dated December 30, 1983, District Judge Barrington Parker enjoined implementation of the regulations. (*National Treasury Employees Union* v. *Devine, C.A. No. 83–3322 (D.D.C.).*) In a decision issued on April 27, 1984, the United States Court of Appeals for the District of Columbia affirmed the order of the District Court. *National Treasury Employees Union* v. *Devine, No. 84–5009 (D.C. Cir.).*

The Office of Personnel Management published a document on May 21, 1984, (49 FR 21503) stating that the enjoined regulations published October 25, 1983, should not be applied and the corresponding provisions of the January 1, 1983, revision of Title 5 CFR should be used. The affected regulations in the 1984 revision of Title 5 are:

Section or part	CFR page(s)
Section 300.602	86
Section 335.104	142
Part 351	148–162
Part 430	202–207
Part 431	207–212
Part 451	215–218
Part 531	230–246
Part 532, Subpart H	265–266
Part 540	275–280
Section 551.102(h)	316
Section 551.201–551.209	316–319
Section 771.206(c)(3)	552

On May 30, 1984, the United States District Court for the District of Columbia ordered the publication of a Supplement to Title 5 containing the regulations published in the January 1, 1983, edition which remain in effect by virtue of H.J. Res. 413 and the court order (C.A. No. 84–1109 (D.D.C.)).

The Office of the Federal Register announces publication of this Supplement to the 1984 revision of Title 5 CFR, Parts 1 to 1199. In this Supplement, each of the affected regulations is preceded by a codification note that describes the precise CFR units (i.e., parts, subparts, sections or paragraphs) affected, provides the original Federal Register source citation of the replacement text, and lists the pages of the January 1, 1984 edition of Title 5 where the enjoined text appears.

Unless further extended by act of Congress, the text of regulations appearing in this special Supplement will expire on September 30, 1984, and the enjoined text published on October 25, 1983, will be effective on October 1, 1984.

The Supplement will be distributed by the Government Printing Office to every subscriber or purchaser who has already been sent the 1984 edition of Title 5, Parts 1 to 1199, without additional charge. In the future, this Supplement shall be distributed as a companion volume to the 1984 edition of Title 5, CFR, Parts 1 to 1199, at no additional charge to users.

BILLING CODE 1505-02-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the administrative rules and regulations to provide that handler assessments and late charges must be received in the offices of the California Olive Committee, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 30 days of the invoice date or the date on the notification. The addition of the postmark option is designed to improve marketing order operations.

EFFECTIVE DATE: July 19, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under the marketing agreement, as amended, and Order No. 932, as amended, regulating the handling of olives grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the California Olive Committee (hereinafter referred to as the "committee") and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

Section 932.39(c) provides that the committee, with the approval of the Secretary, may levy interest and/or late payment charges for assessments not paid to the committee by handlers within a prescribed period of time. Currently, § 932.139 requires that any assessments not received in the office of the committee within 30 days of the invoice date are subject to a five percent late payment charge and an interest charge. The rule also provides that the committee, upon receipt of a late payment, promptly notify the handler (by registered mail) of the late payment charge and interest charges due. If such late payment and interest charges are not received at the committee's office within 30 days of the date on the notification, the rule provides for additional late payment and interest charges to be levied on the unpaid amounts. This rule should be revised to

require that assessment and interest payments must be received in the committee's office, or the envelope containing the payment must be legibly postmarked by the U.S. Postal Service, within 30 days of the invoice date or the date on the notification. Several handlers have told the committee that the current regulations are difficult to comply with and plan for, given what they describe as unpredictable and sometimes tardy mail deliveries. In fact, it is understood some handlers have gone to the expense to hand-deliver their payments in order to avoid possible late charges. Thus, the acceptance of a legible postmark represents a requirement which will more equitably apply to all handlers, some of whom are located several hundred miles from the committee's office. In addition, the change would provide handlers a uniform basis for making any financial arrangements with respect to payments to the committee. However, to assure uniformity, the date contained in a postage meter stamp applied outside a U.S. Post Office shall not be considered a substitute for a legible U.S. Postal Service postmark.

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective date of this final rule until 30 days after publication in the Federal Register (5 U.S.C. 553) in that: (1) Handlers are aware of this action as proposed by the California Olive Committee, and require no advance notice to comply therewith; and (2) this action is a minor procedural change and relieves a restriction by granting all handlers additional time in which to pay program assessments.

List of Subjects in 7 CFR Part 932

Marketing agreement and orders, Olives, California.

PART 932—[AMENDED]

Therefore, § 932.139 is revised to read as follows:

§ 932.139 Late payment and interest charges.

(a) The committee shall impose a late payment charge on any handler whose assessment has not been received in the committee's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 30 days of the invoice date shown on the handler's assessment statement. The late payment charge shall be five percent of the unpaid balance.

(b) In addition to that specified in paragraph (a), the committee shall impose an interest charge on any handler whose assessment payment has not been received in the committee's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 30 days of the invoice date. The interest charge shall be the current commerical prime rate of the committee's bank plus two percent which shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 30 day payment period.

(c) The committee, upon receipt of a late payment equal to or greater than the assessment specified on the handler's assessment statement, shall promptly notify the handler (by registered mail) of any late payment charge and/or interest due as provided in paragraphs (a) and (b) of this section. If such charges are not paid, or the envelope containing payment is not legibly postmarked by the U.S. Postal Service, within 30 days of the date on such notification, late payment and interest charges as provided in paragraphs (a) and (b) of this section will accrue on the unpaid amount.

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

Dated: July 16, 1984.

William J. Doyle,

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

[FR Doc. 84-19149 Filed 7-18-84; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 531

[No. 84-368]

Loans to the Federal Savings and Loan Insurance Corporation

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Board is amending its policy statement regarding the terms of loans from the Federal Home Loan Banks to the Federal Savings and Loan Insurance Corporation in order to provide flexibility to the Federal Savings and Loan Insurance Corporation in the exercise of its default prevention and other insurance activities in the public interest.

EFFECTIVE DATE: July 18, 1984.

FOR FURTHER INFORMATION CONTACT: Robert H. Carpenter, Jr., Attorney, Office of General Counsel (202–377–7044), or Susan C. Evans, Senior Financial Analyst, Office of the District Banks (202–377–6658), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, section 125, 96 Stat. 1469, 1485, among other things, authorized the Federal Home Loan Banks ("Banks") to make loans to the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") upon certain prescribed terms. 12 U.S.C. 1431(k), 1725(d) (1982). Specifically, 12 U.S.C. 1725(d) (1982) requires that the rate of interest on such loans shall be no less than the Banks' marginal cost of funds shall and be adequately secured as determined by the Board. Section 531.1(b) of the Regulations for the Federal Home Loan Bank System, 12 CFR 531.1(b), provides that advances to members shall be offered within a range of rates established by the Board that is above the current replacement cost of Bank obligations of comparable maturities. Such range is established from time to time by the Board.

On February 18, 1983, the Board issued a policy statement regarding Bank loans to the FSLIC, which provided that the rates for such loans be equal to the rates on advances with comparable maturities that are offered to Bank members. 48 FR 8040 (1983) (to be codified at 12 CFR 531.2(b)(3)). In addition, the loans were to be made subject to existing prepayment policies and fees and commitment fees of the lending Bank. 48 FR 8041 (1983) (to be codified at 12 CFR 531.2(b)(4)).

The February 18, 1983, policy statement reflected the Board's view that loans to the FSLIC should be subject to the prescribed terms and conditions generally imposed on members receiving advances from a Bank. However, upon reconsideration, the Board recognizes that the structuring of loans to the FSLIC should also reflect the latter's position as a wholly-owned government corporation, exercising unique default prevention and insurance activities in the public interest. As such, the FSLIC should possess the flexibility to negotiate terms on Bank loans to recognize the specific circumstances of each case. The Board has therefore determined that, unless it otherwise provides, Bank loans to the FSLIC should bear interest at rates within the range provided in § 531.1(b), with the limitation that the rate of interest on such loans shall be no less than the marginal cost of funds, taking into account the maturities involved. In addition, the Board has determined that

existing prepayment policies and fees and commitment fees in connection with such loans should be optional rather than mandatory.

The Board finds that observance of the notice and comment procedures prescribed by 5 U.S.C. 553(b) (1982) and 12 CFR 508.12 and 508.13, and delay of the effective date pursuant to 5 U.S.C. 553(d) (1982) and 12 CFR 508.14, is unnecessary for the following reasons: (1) this policy statement is interpretative in that it states and clarifies the Board's interpretation of several provisions of the Garn-St Germain Depository Institutions Act of 1982; (2) it is in the public interest for this policy statement to take effect at the earliest feasible time to assist the Banks and the FSLIC in their efforts to aid failing thrift institutions; and (3) the changes relate to internal agency procedures regarding loans from the Banks to the FSLIC.

List of Subjects in 12 CFR Part 531

Federal home loan banks.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 531, Subchapter B, Chapter V of Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 531—STATEMENTS OF POLICY

Section 531.2(b) (3) and (4) is revised and (b) introductory test is set forth for the convenience of the reader as follows:

§ 531.2 Policy of Federal Savings and Loan Insurance Corporation—guaranteed advances and loans to the Federal Saving and Loan Insurance Corporation.

* * * * *

(b) *Loans to the Corporation.* After application by the Corporation to the Board and when directed to do so by the Board, the Federal Home Loan Bank(s) shall make loans to the Corporation. Any loan to the Corporation by the Banks or a Bank shall satisfy the following conditions as well as any other conditions that may be imposed by the Board.

* * * * *

(3) Except as otherwise provided by the Board, such loans shall bear interest at rates within the range provided for in § 531.1(b) of this part, provided that in all cases the rate of interest on such loans shall be no less than the marginal cost of funds, taking into account the maturities involved.

(4) Such loans may be subject to existing prepayment policies and fees and commitment fees of the Bank or Banks making the loans.

[Title I, Pub. L. No. 97-320, 96 Stat. 1469, amending 12 U.S.C. 1431, 1725; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464), secs. 403, 407, 48 Stat. 1257, 1269, as amended (12 U.S.C. 1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071]

Dated: July 12, 1984.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-19120 Filed 7-18-84; 8:45 am]

BILLING CODE 6720-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration ("FCA"), by its Federal Farm Credit Board ("Federal Board"), adopts and publishes amendments to its regulations concerning discount notes issued by the Farm Credit System ("System"). The amendments permits the System to issue consolidated Systemwide notes ("discount notes") in book-entry form or in definitive form under special circumstances where approved by the System Finance Committees or their subcommittees and approved and executed by the Governor of the FCA.

EFFECTIVE DATE: Thirty days from this publication date provided one or both Houses of Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

Michael C. Salapka, Marketing and Funding Division, (703) 883–4178

or

Kenneth L. Peoples, Office of the General Counsel, (703) 883–4020, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SUPPLEMENTARY INFORMATION: The amendments to the FCA regulations governing System funding and fiscal affairs are technical changes permitting the System to issue discount notes in book-entry form to conform to requirements of the Federal Reserve Bank for clearing such notes. The authority for the System to issue discount notes in definitive form is retained where determined appropriate. Finally, the System is now permitted to issue discount notes in $5,000 and $10,000 denominations. Due to the technical nature of these amendments the Federal Board has determined it unnecessary and not in the public interest to require notice and comment. Accordingly, these amendments shall become effective pursuant to § 5.13 of the Farm Credit Act of 1971, as amended, thirty days from this publication date provided one or both Houses of Congress are in session.

List of Subjects in 12 CFR Part 615

Agriculture, Banks, Banking, credit and rural areas.

PART 615—[AMENDED]

For the reasons set out in the preamble, 12 CFR Part 615 is amended to read as follows:

Subpart O—Issuance of Farm Credit Securities

* * * * *

1. Section 615.5451 is revised to read as follows:

§ 615.5451 Consolidated systemwide notes.

The 12 Federal land banks, the 12 Federal intermediate credit banks, and the 13 banks for cooperatives may issue consolidated Systemwide notes only in book-entry form, except as authorized under § 615.5453, in denominations of $5,000, $10,000, $50,000, $100,000, $500,000, $1,000,000, and $5,000,000.

2. Section 615.5453 is revised to read as follows:

§ 615.5453 Definitive bonds and notes.

Consolidated and consolidated Systemwide bonds and discount notes may be issued in definitive form as determined to be appropriate by the Finance Committees or their subcommittees and as approved and executed by the Governor of the Farm Credit Administration.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246, 2252))

C. T. Fredrickson,

Acting Governor.

[FR Doc. 84-19120 Filed 7-18-84; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24156; Amdt. No. 1273]

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches, Aviation safety, Standard instrument.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective August 30, 1984*

Eufaula, AL—Weedon Field, VOR/DME RWY 36, Orig.
Pompano Beach, FL—Pompano Beach Airpark, VOR RWY 14, Amdt. 8
Cordele, GA—Crisp County-Cordele, VOR/DME RWY 22, Amdt. 7
Lihue, HI—Lihue, VOR or TACAN RWY 35, Amdt. 1
Marshalltown, IA—Marshalltown Muni, VOR RWY 12, Amdt. 6
Marshalltown, IA—Marshalltown Muni, VOR RWY 30, Amdt. 6
Bastrop, LA—Morehouse Memorial, VOR/DME-A, Amdt. 6
Osage Beach, MO—Linn Creek-Grand Glaize Meml, VOR RWY 32, Amdt. 2
Rolla, MO—Rolla Downtown, VOR/DME-A, Amdt. 2
Beatrice, NE—Beatrice Muni, VOR RWY 13, Amdt. 12
Beatrice, NE—Beatrice Muni, VOR RWY 35, Amdt. 1
Crete, NE—Crete Muni, VOR/DME RWY 17, Amdt. 1
Crete, NE—Crete Muni, VOR/DME RWY 35, Amdt. 1
Liberty, NC—Causey, VOR RWY 2, Amdt. 3
Corry, PA—Lawrence, VOR RWY 32, Amdt. 2
Erie, PA—Erie Intl, VOR/DME RWY 24, Amdt. 10
Meadville, PA—Port Meadville, VOR RWY 7, Amdt. 5
Chesapeake, VA—Chesapeake Muni, VOR/DME RWY 23, Amdt. 2
Franklin, VA—Franklin Muni-John Beverly Rose, VOR RWY 9, Amdt. 12
Franklin, VA—Franklin Muni-John Beverly Rose, VOR/DME RWY 27, Amdt. 8
Stevens Point, WI—Stevens Point Muni, VOR RWY 3, Amdt. 10
Stevens Point, WI—Stevens Point Muni, VOR RWY 21, Amdt. 14
Stevens Point, WI—Stevens Point Muni, VOR RWY 30, Amdt. 13
Superior, WI—Richard I. Bong, VOR RWY 13, Amdt. 3
Superior, WI—Richard I. Bong, VOR/DME RWY 31, Amdt. 1

** * * Effective July 11, 1984*

Lihue, HI—Lihue, VOR-A, Amdt. 1

** * * Effective July 5, 1984*

Mansfield, MA—Mansfield Muni, VOR-A, Amdt. 13

Plymouth, MA—Plymouth Muni, VOR RWY 15, Amdt. 13

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective August 30, 1984*

Monterey, CA—Monterey Peninsula, LOC/DME RWY 28, Orig.
Great Bend, KS—Great Bend Muni, LOC RWY 35, Amdt. 2
Southern Pines, NC—Moore County, LOC RWY 5, Amdt. 3
Meadville, PA—Port Meadville, LOC RWY 25, Amdt. 1

** * * Effective July 5, 1984*

Norwood, MA—Norwood Memorial, LOC RWY 25, Amdt. 3

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective August 30, 1984*

Cordele, GA—Crisp County-Cordele, NDB RWY 9, Amdt. 1
Corning, IA—Corning Muni, NDB RWY 17, Amdt. 4
Marshalltown, IA—Marshalltown Muni, NDB RWY 12, Amdt. 5
Great Bend, KS—Great Bend Muni, NDB RWY 35, Orig.
Great Bend, KS—Great Bend Muni, NDB-A, Amdt. 2
Bastrop, LA—Morehouse Memorial, NDB RWY 34, Amdt. 3
Beatrice, NE—Beatrice Muni, NDB RWY 13, Amdt. 5
Crete, NE—Crete Muni, NDB RWY 17, Orig.
Crete, NE—Crete Muni, NDB RWY 35, Orig.
Burlington, NC—Burlington Muni, NDB RWY 6, Amdt. 2
Smithfield, NC—Johnston County, NDB RWY 21, Amdt. 3
Corry, PA—Lawrence, NDB RWY 14, Amdt. 2
Erie, PA—Erie Intl, NDB RWY 24, Amdt. 16
Wakefield, VA—Wakefield Muni, NDB RWY 20, Amdt. 3
Racine, WI—Horlick-Racine, NDB RWY 4, Amdt. 1
Superior, WI—Richard I. Bong, NDB RWY 31, Amdt. 1

** * * Effective July 9, 1984*

Rota Island, Mariana Is.—Rota International, NDB RWY 9, Amdt. 2
Rota Island, Mariana Is.—Rota International, NDB RWY 27, Amdt. 2

** * * Effective July 5, 1984*

Washington, DC—Washington National, NDB RWY 15, Amdt. 4
Washington, DC—Washington National, NDB RWY 36, Amdt. 7
Norwood, MA—Norwood Memorial, NDB RWY 35, Amdt. 3

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

** * * Effective August 30, 1984*

Lihue, HI—Lihue, ILS RWY 35, Amdt. 1
Erie, PA—Erie Intl, ILS RWY 24, Amdt. 6
Franklin, PA—Chess-Lamberton, ILS RWY 20, Amdt. 3
Norfolk, VA—Norfolk Intl, ILS RWY 5, Amdt. 21
Racine, WI—Horlick-Racine, ILS RWY 4, Amdt. 2

** * * Effective July 5, 1984*

Washington, DC—Washington National, ILS RWY 36, Amdt. 33

5. By amending § 97.31 RADAR SIAPs identified as follows:

** * * Effective August 30, 1984*

Destin, FL—Destin-Ft Walton Beach, RADAR-1, Amdt. 6
St Marys, GA—St Marys, RADAR-1, Orig.

** * * Effective July 5, 1984*

Washington, DC—Washington National, RADAR 1, Amdt. 23

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective August 30, 1984*

Cordele, GA—Crisp County-Cordele, RNAV RWY 9, Amdt. 2
Marshalltown, IA—Marshalltown Muni, RNAV RWY 30, Orig.

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, Jan. 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on July 13, 1984.

Kenneth S. Hunt,

Director of Flight Operations.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

[FR Doc. 84-19102 Filed 7-18-84; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 882

[Docket No. R-84-988; FR-1521]

Section 8 Existing Housing Program—Existing Housing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared in the Federal Register on June 28, 1984 (49 FR 26575) to eliminate an obsolete reference to a requirement for specification of "types of Existing Housing (e.g., elevator, non-elevator) likely to be utilized in the proposed project." The requirement for specification of bedroom distribution, and number of units for elderly, handicapped, or disabled families is separately stated in the rule, and no other specification of housing type is required in the application. Since FMRs are no longer separately determined for elevator/non-elevator units, other regulatory references related such determination were previously eliminated.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Existing Housing Division, Office of Elderly and Assisted Housing. (202) 755-5720.

Accordingly, the Department is correcting 24 CFR 882.204(a) as follows:

On page 26576, column three, amendment 4 is corrected to read as follows:

§ 882.204 [Corrected]

4. In § 882.204, paragraph (a)(1) is removed, and paragraphs (a)(2) to (a)(6) are redesignated paragraphs (a)(1) to (a)(5) respectively.

Dated: July 16, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-19006 Filed 7-18-84; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: This document announces a decision by the Secretary of the Interior concerning amendments to the State's permanent regulatory program submitted by the North Dakota Public Service Commission (PSC).

On February 2, 1984, the North Dakota PSC submitted to OSM amendments to its permanent regulatory program. The majority of the amendment package addresses auger mining. The State proposed a statutory amendment that includes auger mining as an acceptable method of mining in North Dakota. The PSC also proposed rules addressing permit application requirements for auger mining operations.

In addition, the State submitted two other statutory amendments. The first proposes a revised permit filing fee of five hundred dollars plus ten dollars for each acre included in the permit application. The second change proposes the creation of a reclamation research advisory committee. North Dakota also submitted to OSM a proposed regulation revision which deletes language citing specific effluent limitations and substitutes more generic requirements.

After considering all comments received and conducting a thorough review, the Secretary has determined that the program amendments submitted by the North Dakota PSC are consistent with the Federal permanent regulatory program with one exception.

The Federal rules at 30 CFR Part 934 which codify decisions concerning the North Dakota program are being amended to implement this decision.

EFFECTIVE DATE: July 19, 1984.

FOR FURTHER INFORMATION CONTACT: William Thomas, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendall Boulevard, Mills, Wyoming 82644.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the North Dakota program was approved by the Secretary of the Interior conditioned on the correction of 13 minor deficiencies. Information pertinent to the general background, revisions, and modifications and amendments to the proposed permanent program submission as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980 Federal Register (45 FR 82214), December 30, 1982 Federal Register (47 FR 58242), February 9, 1983 Federal Register (48 FR 5902), and the November 9, 1983 Federal Register (48 FR 51458).

II. Proposed Amendments

On February 2, 1984, the State of North Dakota submitted to OSM amendments to its permanent regulatory program. The majority of the proposed amendment package addresses auger mining. The State has proposed a statutory amendment that includes auger mining as an acceptable method of mining in North Dakota. The State also proposed rules addressing permit application requirements for auger mining operations.

In addition, the State submitted two other statutory amendments. The first proposes a revised permit filing fee of five hundred dollars plus ten dollars for each acre included in the permit application. The second proposes the creation of a reclamation research advisory committee and outlines the responsibilities and objectives of the proposed committee.

North Dakota also submitted to OSM a proposed program amendment addressing effluent limitations. The proposed amendment consists of a regulation revision in which North Dakota deletes language citing specific limitations for iron, total suspended solids and pH. In its place, North Dakota proposes to substitute language that requires discharges of water to comply with all applicable State laws and rules adopted by the North Dakota Department of Health.

On February 29, 1984, OSM published a notice in the Federal Register announcing receipt of the amendment, public comment period and opportunity for public hearing (49 FR 7406). The public comment period closed on March 30, 1984. A public hearing scheduled for March 26, 1984, was not held because no one expressed an interest in participating. Following the opportunity for a public hearing and the public comment period, OSM on May 7, 1984, sent a letter to the State which set forth OSM's tentative findings on the proposed amendment.

On May 23, 1984, North Dakota responded to OSM's letter indicating that it would submit material by July 1, 1985, in order to resolve the identified deficiencies. July 1, 1985 is significant because that is the date by which North Dakota must satisfy the two remaining original conditions on its approved permanent regulatory program.

III. Secretary's Findings

Set forth below, pursuant to 30 CFR 732.15 and 732.17 are the Secretary's findings concerning the program modifications submitted by North Dakota.

(a) The Secretary finds that the proposed revisions to the North Dakota Statute at section 38-14.1-13 and section 69-05.2-05-03 of the North Dakota regulations, increasing the permit application fee from 250 dollars to 500 dollars plus 10 dollars for each acre in the application is in accordance with section 507 of SMCRA and no less effective than the Federal regulations at 30 CFR 777.17

(b) The Secretary finds that the proposed revisions to North Dakota Statute at section 38-14.1-24 when read in conjunction with revised section 69-05.2-13-12(4) of the North Dakota regulations addressing general environmental protection performance standards associated with auger mining is in accordance with section 515 of SMCRA and no less effective than the requirements of 30 CFR Part 819.

(c) The Secretary finds that the proposed revision to section 38-14.1-02 of the North Dakota statute, defining "surface coal mining operations" is in accordance with the Federal definition at section 701 of SMCRA.

(d) The Secretary finds that the proposed revisions at sections 38-14.1-04.1 thru 38-14.1-04.3 of the North Dakota Statute which create a reclamation research advisory committee and outlines the responsibilities and objectives of the proposed committee is not inconsistent with any provisions of SMCRA or the Federal regulations.

(e) The Secretary finds that the proposed revisions at section 69-05.2-09-18 of the North Dakota regulations, which address permit applications, operations and reclamation plans for auger mining, is no less effective than the requirements at 30 CFR Part 810.

(f) The Secretary finds that section 69-05.2-13-12 of the North Dakota regulations, which addresses general performance standards for auger mining, is no less effective than the requirements of 30 CFR Part 819 with the exception of section 69-05.2-13-12(2).

This section addresses subsidence prevention or control for auger mining operations. The Federal regulations of 30 CFR 819.17 cross-reference subsidence protection requirements of 30 CFR 817.121 (a) and (c) relating to compensation to an owner of a structure or facility damaged by subsidence. The Secretary finds that section 69-05.2-13-12(2) does not contain comparable provisions addressing compensation to the owner of a structure or facility damaged by subsidence. Therefore, the Secretary finds that section 69-05.2-13-12(2) of the North Dakota regulations is less effective than 30 CFR 819.17

(g) The Secretary finds that the revisions of section 69-05.2-16-04 of the North Dakota regulations which address water quality standards and effluent limitations are no less than the requirements of 30 CFR 816.42. North Dakota deleted language which identified specific limitations for iron, total suspended solids and pH. In place of the effluent limitation table, North Dakota proposes to substitute language that requires discharges of water to comply with all applicable State laws and rules adopted by the North Dakota Department of Health. Section 61-28-04 of the North Dakota Department of Health regulations requires that the State adopt effluent and new source performance standards that at a minimum be as stringent as the standards adopted by the Federal government. Therefore, the Secretary finds that the effluent standards proposed by North Dakota at section 69-05.2-16-04 of its regulations are no less effective than the Federal effluent limitations as promulgated by the U.S. Environmental Protection Agency as set forth at 40 CFR Part 434. However, at section 69-05.2-16-04(1)(c)(2) of the North Dakota regulations, the State failed to delete a reference to the effluent limitation table identified in subchapter g of the same section. The reference to the table is incorrect in that the table was deleted by the revisions to section 69-05.2-16-04(1)(g) of the North Dakota regulations.

The Secretary assumes that this is an oversight and that it will be corrected expeditiously. When North Dakota corrects the incorrect reference, the State is requested to provide the Director of OSM with notification of the correction. This minor deficiency in no way impacts the effluent limitations as revised by the State or the Secretary's finding relating to the revised effluent limitation language.

IV Disposition of Comments

Pursuant to section 503(b) of SMCA and 30 CFR 732.17(h)(10)(i), comments were solicited from various Federal agencies on the proposed program amendments. Of those invited to comment, acknowledgements were received from the following Federal agencies: National Park Service, Bureau of Reclamation, Fish and Wildlife Service, Army Corps of Engineers, Mine Safety and Health Administration, Environmental Protection Agency, and the Department of Agriculture.

The Advisory Council on Historic Preservation expressed concern that subsidence or collapse of undermined lands would have adverse effects on historic and archeological values residing in the collapsed property.

The approved North Dakota program at proposed section 69-05.2-13-12 does not specifically address mitigation measures to be utilized in conjunction with auger mining. However, the North Dakota Statute at section 38-14.01-21(2) states that the North Dakota Public Service Commission's approval or modification of a permit application shall include consideration of the advice and technical assistance of the State Historical Board and other interested parties. This same issue was addressed in the December 15, 1980 Federal Register announcing conditional approval at Finding 4(d)(xvi). See 45 FR 82225. The Secretary in his finding determined that North Dakota provides for adequate coordination through State agencies. Therefore, the Secretary finds that North Dakota provisions for coordinating permitting activities with other involved agencies is no less effective than the permitting requirements at 30 CFR 733.12.

V. Additional Determination

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

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

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

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

List of Subjects in 30 CFR Part 934

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

Dated: July 12, 1984.

Garrey Carruthers,

Assistant Secretary, Land and Minerals Management.

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

PART 934—NORTH DAKOTA

Part 934 of Title 30 is amended as follows.

1. 30 CFR 934.11 is amended by adding a new paragraph (n) as follows:

§ 934.11 Conditions of state program approval.

* * * * *

(n) Termination of the approval found in § 934.10 will be initiated on July 1, 1985, unless North Dakota submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to address compensation to an owner of a structure or facility damaged by subsidence which is not less effective than the compensation provided by 30 CFR 819.17 and 817.121.

2. 30 CFR 934.15 is amended by a new paragraph (d) as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(d) The following amendments are approved effective July 19, 1984.

(1) Revision to the North Dakota Statute submitted February 2, 1984 amending section 38-14-1.13(1)(b) and repealing section 69-05.2-05-03 of the North Dakota regulations.

(2) Revision to the North Dakota Statute submitted February 2, 1984, amending section 38-14.1-24(1)(1).

(3) Revision to the North Dakota Statute submitted February 2, 1984, amending section 38-14.1-02(33)(a).

(4) Revision to the North Dakota Statute submitted February 2, 1984, adding sections 38-14.1-04.1, 38-14.1-04.2 and 38-14.1-04.3.

(5) Revisions to the North Dakota regulations submitted February 2, 1984,

adding a new section, 69–05.2–09–18.

(6) Revision to the North Dakota regulations submitted February 2, 1984, adding a new section, 69–05.2–13–12.1, 69–05.2–13–12.2, 69–05.2–13–12.3, 69–05.2–13–12.4, 69–05.2–13–12.5 and 69–05.2–13–12.6

(7) Revisions to the North Dakota regulations submitted February 2, 1984, repealing portions of section 69–05.2–16–04 and adding new language at section 69–05.2–16–04.

[FR Doc. 84–19154 Filed 7–18–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8–R, Amdt. No. 23]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Certified Clinical Social Workers

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule; correction.

SUMMARY: This document corrects the citations to 32 CFR Part 199 contained in the final rule implementing language in the Department of Defense Appropriation Act, 1983, Pub. L. 97–377 which authorizes CHAMPUS payments to certified clinical social workers who practice independent of physician referral and supervision. The final rule appeared at pages 7561 and 7562 in the Federal Register of Thursday, March 1, 1984 (49 FR 7561).

FOR FURTHER INFORMATION CONTACT: Reta M. Michak, Policy Branch, OCHAMPUS, telephone (303) 361–4019.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 84–5366 appearing on 7561 in the issue of March 1, 1984:

1. On page 7562 in the text and amendatory language for § 199.8 the paragraph defining clinical social workers is designated as paragraph (b)(36). The reference to the paragraph as (b)(36) should be removed as the definitions in section 199.8 are listed in alphabetical order with no specific designations.

2. On page 7562, the amendatory language to section 199.12 is corrected to read as follows:

"2. Section 199.12 is amended by adding a new paragraph (c)(3)(iii)(*f*), redesignating the existing paragraph (c)(3)(iii)(*f*) as paragraph (c)(3)(iii)(*g*), removing the existing paragraph (c)(3)(iii)(*f*)(*4*), and redesignating the existing paragraphs (c)(3)(iii)(*f*) (*5*) and (*6*) as paragraphs (c)(3)(iii)(*g*) (*4*) and (*5*)."

(10 U.S.C. 1079, 1086: 5 U.S.C. 301)

Dated: July 16, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84–19103 Filed 7–18–84; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 84–17]

Special Local Regulations; New Martinsville Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 127.0 to 130.0, OHIO RIVER. Marine events will be held on the dates of July 21 and 22, 1984, at NEW MARTINSVILLE, WEST VIRGINIA. These special local regulations are needed to provide for the safety of life and property on navigable waters during the events.

EFFECTIVE DATES: These regulations will be effective on the following dates; July 21 and 22, 1984.

FOR FURTHER INFORMATION CONTACT: CDR. R.B. Bower, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Ohio River between miles 127.0 and 130.0 during the "NEW MARTINSVILLE REGATTA", July 21 and 22, 1984. This event will consist of high speed outboard hydroplane races which could pose hazards to navigation in the area.

Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rulemaking has not been published for these regulations and they are being made effective less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The necessity to draft Special Regulations and provide a Coast Guard Patrol Commander were not evident until June 18, 1984, and there was insufficient time remaining to publish proposed rules in advance of the event, or to provide for a delayed effective date.

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, Project Officer, Boating Technical Branch, and LT. R.E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0216 to read as follows:

§ 100.35–0216 OHIO RIVER, miles 127.0 through 130.0

(a) *Regulated Area:* The area between Mile 127.0 and 130.0 Ohio River is designated the regatta area, and may be closed to commercial navigation or mooring during the following dates and (local) times:

July 21, 10:00 a.m. to 8:30 p.m.
July 22, 10:00 a.m. to 8:30 p.m.

The above times represent a guideline for possible intermittent river closures not to exeed THREE (3) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations:* Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be

operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(1) The Patrol Commander may be reached on Channel 16 (156.8MHZ) when necessary, by the call sign "COAST GUARD PATROL COMMANDER"

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operation conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemded necessary for the protection of life and property.

(g) This § 100.35–0216 will be effective on the following dates and times;

July 21, 10:00 a.m. to 8:30 p.m.
July 22, 10:00 a.m. to 8:30 p.m.

All times listed are local time.

(33 U.S.C. 407, 411, 1233–1236; 46 U.S.C. 2106–2107, 2302, 4308, 4311 (a) and (c), 49 U.S.C. 1655(b)(1), 33 CFR 100.35, 100.40, 100.50, 49 CFR 1.46(b), 1.46(n)(1))

Dated: July 6, 1984.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander.

[FR Doc. 84–19153 Filed 7–18–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD13 84–03]

Regatta; Gold Cup Unlimited Hydroplane Race; Establishment of Controlled Navigation Area

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation establishes an area of controlled navigation on the Columbia River at Kennewick, Washington, from July 24, 1984 until July 29, 1984. The area of controlled navigation is necessary due to the Gold Cup Unlimited Hydroplane Races scheduled for this time period as part of the Tri-Cities Water Follies. This rule intends to restrict the general navigation in the area for the safety of spectators and participants in this event.

EFFECTIVE DATE: This regulation is effective from July 24, 1984 until July 29, 1984.

FOR FURTHER INFORMATION CONTACT: LCDR Mark P. Troseth, Chief, Group Operations Department, 6767 N. Basin Ave., Portland, Oregon 97217, (503) 240–9317

SUPPLEMENTARY INFORMATION: On May 11, 1984, the Coast Guard published a proposed rule (Vol. 49, No. 102 pp. 21947–8) concerning this controlled navigation area. In the notice, interested persons were given until June 25, 1984 to submit comments. No comments were received. Thus, the controlled navigation area is published in this final rule without change to the proposed rule. Minor editorial changes were made in the final rule to improve the overall clarity of the final rule.

This final rule is being made effective in less than thirty days. The public was given until June 25, 1984 to comment on the Notice of Proposed Rulemaking and there is not sufficient time remaining before the event to allow a thirty day delayed effective date. This rule is necessary to safeguard life and property in the vicinity of the event from the hazards associated with the races. The races will commence on July 24, 1984 and therefore it is determined that good cause exists to make this rule effective in less than thirty days after publication under 5 U.S.C. 553(d).

Drafting Information

The principal persons involved in the drafting of this proposal are LTJG Kristin M. Quann, USCGR, Project Officer, CG Group Portland, and LT Aubrey W. Bogle, USCGR, Project Attorney, CCGD13 Legal Office.

Discussion of Regulation

Each year, the Tri-Cities Water Follies Association sponsors an unlimited hydroplane race on the Columbia River near Kennewick, Washington. The event draws a large number of spectators to the beaches and waters surrounding the race course. A sizeable portion of the spectators watch the event from numerous pleasure craft anchored near the race course. To promote the safety of both the spectators and the participants, a special navigation regulation providing Coast Guard personnel with the authority to control and coordinate general navigation in the waters surrounding the race course during the event is required.

Economic Assessment and Certification

This proposed regulation is considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.5). An economic evaluation of this notice has not been conducted since its impact is expected to be minimal. This regulation affects a short section of the Columbia River with only light commercial traffic and will be in effect for only five (5) days, two of those being Saturday and Sunday. On the days of time trials, 24 July to 29 July 1984, the Patrol Commander may allow general traffic to transit the area during the races' mid-day break. On race day, Sunday, 29 July 1984, all traffic will be excluded. This race is an annual event and similar regulations have been promulgated in the past. There has been no evidence brought to the attention of the Coast Guard of significant adverse economic effect from such past regulation. 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 Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended by adding § 100.35–1308 to read as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

§ 100.35–1308 1984 Gold Cup Unlimited Hydroplane Race.

(a) From July 24, 1984 through July 28, 1984, this regulation will be in effect from 0830 until 1900 Pacific Daylight Time. On July 29, 1984, this regulation will be in effect from 0830 until one hour after the conclusion of the last race.

(b) The Coast Guard will restrict general navigation and anchorage by this regulation during the hours it is in effect on the waters of the Columbia River from the western end of Hydro

Island to the western end of Clover Island at Kennewick, Washington.

(c) When deemed appropriate, the Coast Guard may establish a patrol consisting of active and auxiliary Coast Guard vessels in the area described in paragraph (b). The patrol shall be under the direction of a Coast Guard officer or petty officer designated as Coast Guard Patrol Commander. The Patrol Commander is empowered to forbid and control the movement of vessels in the area described in paragraph (b) of this section.

(d) The Patrol Commander may authorize vessels to be underway in the area described in paragraph (b) of this section during the hours this regulation is in effect. All vessels permitted to be underway in the controlled area shall do so only at speeds which will create minimum wake, seven (7) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(e) A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the order of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR Part 100.35)

Dated: July 12, 1984.

R.R. Garrett,

Captain, U.S. Coast Guard Commander, 13th CG District Acting.

[FR Doc. 84-19150 Filed 7-18-84; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP San Francisco Regulation 84-03]

Security Zone Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone around Pier 45 San Francisco which will be the scene of a major activity associated with the Democratic National Convention. The zone is needed to safeguard this waterfront facility and its occupants against injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 16 July 1984. It terminates on completion of the Democratic National Convention party at Pier 45.

FOR FURTHER INFORMATION CONTACT: LTJG William W. Whitson, Marine Safety Office San Francisco Bay (415) 437-3073.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed.

Drafting Information

The drafters of this regulation are LTJG William Whitson project officer for the Captain of the Port, and CDR W.K. Bissell, project attorney, Twelfth Coast Guard District Legal office.

Discussion of Regulation

The event requiring this regulation is planned to occur on 16 July 1984 when the Democratic National Convention hosts a party at Pier 45 on the San Francisco cityfront. The security of the democratic candidates, a past president and associated guests is a matter of national importance. A security zone around Pier 45 will provide the Captain of the Port San Francisco Bay, California with the authority necessary to help ensure the safety of the people assembled at this waterfront facility.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.T1203 to read as follows:

§ 165.T1203 Security Zone: San Francisco Bay.

(a) *Location.* The following area is a security zone: (1) A security zone is established around Pier 45 on the San Francisco cityfront on the north and east side for a distance of 100 yards. On the west side of Pier 45 the security zone extends out for 25 yards from the pier. The security zone will be enforced from 1700, 16 July 1984 until 0200, 17 July 1984 or until the completion of the event requiring this regulation.

(b) *Regulation:* (1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

(50 U.S.C. 191; E.O. 10173; and 33 CFR 6.04-6)

Dated: July 6, 1984.

K.F. Bishop, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 84-19151 Filed 7-18-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 1515; OAR-FRL-2633-8]

Approval and Promulgation of Missouri State Implementation Plan (SIP) for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action to approve the modeling and attainment date in the Missouri lead SIP

SUMMARY: On October 21, 1983 (48 FR 48982), EPA proposed to approve the attainment date and modeling portions of the Missouri lead SIP In an earlier action (April 27, 1981, 46 FR 23412), EPA had approved the Missouri lead SIP, except for these two items. Subsequent to the April 27, 1981, final rulemaking, the three primary lead smelters located in Missouri submitted a petition for reconsideration of EPA's partial disapproval. The petition was granted in part, and upon reconsidering the earlier action, EPA proposed to reverse the disapproval. This notice reviews the comments submitted on our proposal and takes final action to approve the attainment date and modeling in the Missouri lead SIP

EFFECTIVE DATE: August 20, 1984.

ADDRESSES: Copies of the Petition for Reconsideration, dated June 30, 1981, the Response to Petition for Reconsideration of Missouri Lead Plan and Notice of Policy Change Regarding Attainment Date for State Implementation Plans for Lead, the proposal to approve the Missouri lead SIP (for attainment date modeling), the public comments on the proposal, and a Technical Support Document which explains the rationale for EPA's final action in this notice are available for public review during normal business hours at the following locations:

Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106

Missouri Department of Natural Resources, 1101 Rear Southwest

Boulevard, Jefferson City, Missouri 65102

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

Public Information Reference Unit, Environmental Protection Agency (PM-211A), 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Dewayne E. Durst at (816) 374-3791, FTS 758-3791.

SUPPLEMENTARY INFORMATION: On September 2, 1980, Missouri submitted a lead SIP which was designed to provide for attainment and maintenance of the ambient air quality standards for lead in the state. After reviewing the plan, EPA proposed to approve all parts of the Missouri lead SIP, except two items which were identified as major deficiencies. These two items were: (1) the attainment date for meeting the lead standard, and (2) dispersion modeling at the three primary lead smelters in the state. Because the state did not correct the deficiencies, EPA disapproved these two portions of the Missouri lead SIP in the final rulemaking on April 27, 1981.

As a result of a petition for reconsideration, EPA reviewed the final action to disapprove the attainment date and modeling in the Missouri lead SIP. Based upon that review, EPA proposed to approve these two items on October 21, 1983. In a separate Federal Register notice EPA also proposed to disapprove the control strategy for a primary lead smelter in Missouri (48 FR 48981). EPA plans to complete action on that proposal at a later date.

Disapproval of the attainment date in the Missouri SIP resulted from the fact that the SIP did not follow EPA guidance concerning interpretation of the attainment date in sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA). The Missouri SIP stated that the attainment date would be three years from the date EPA approved their lead SIP (plus the 2 year extension). EPA's interpretation of the Act required a uniform national attainment date for all lead SIPs. Based on the statutory timetable for submission and approval of plans, EPA announced in the October 5, 1978, Federal Register (43 FR 46246) that all lead SIPs had to provide for attainment "no later than October of 1982" (or up to October 1984 with an approved extension).

After reexamining the issue, EPA concluded that Missouri's interpretation of the attainment date as contained in their lead SIP is correct, i.e., that attainment must occur no late than three years from actual date of plan approval (plus any approved extension period of up to 2 years).

In its 1980 submittal, the State of Missouri requested a two-year extension for attaining the lead standard in two areas of the state. These areas are in the vicinity of the St. Joe and AMAX smelters. EPA approved the request because it met the criteria for an attainment date extension under section 110(e) of the CAA. The full two year extension was granted because expeditious compliance schedules for the St. Joe and AMAX smelters contained in Missouri's SIP indicated that two years beyond the October 1982 uniform attainment date would be required to complete the control measures needed to meet the standard. Because EPA proposed to use Missouri's interpretation of attainment date, as a result of the Administrator's reconsideration, EPA determined that the full two year extension was not needed to install the controls contained in the SIP. Thus, EPA proposed to modify its approval of the extension request by granting an extension for attainment of the lead standard in the vicinity of the St. Joe and AMAX smelters until October 31, 1984.

Comments on Attainment Date and Two-Year Extension

Three commenters submitted comments on the proposal to approve the attainment date in the Missouri lead SIP. These comments were submitted by officials or representatives of the St. Joe Lead Company, AMAX, Inc., and the Missouri Department of Natural Resources. All three commenters agreed with EPA's proposal that the attainment date (without extension) should be three years from EPA approval of the SIP.

Two commenters disagreed with EPA's proposal to modify the two year extension request for the areas around the St. Joe and AMAX smelters. The Missouri Department of Natural Resources commented that the full two year extension period will be needed to install the controls and then to determine whether the air quality standards are actually met. The state pointed out that there were considerable uncertainty about the validity of the date used to develop the lead SIP, and thus, additional time is needed to determine whether the control strategies which are being implemented will provide for attainment of the standard.

The approved SIP contained consent orders for the St. Joe and AMAX primary smelters which required application of emission controls on what was considered an expeditious schedule. Based upon the best information which was available at the time the SIP was submitted, the control strategy included control measures which were estimated to provide for attainment of the primary air quality standard for lead. Because a substantial portion of the emission controls at the smelters was designed to reduce fugitive lead emissions and because the techniques for controlling fugitive emissions were not available at the time the SIP was submitted, EPA approved an attainment date extension.

The extension period which was originally granted for the area near the St. Joe smelter provided for attainment of the lead standard on the date of final compliance with the consent order. Under EPA's original interpretation of the attainment date, this meant that St. Joe needed the full two year extension for the area near St. Joe. Under the revised interpretation of attainment date, the SIP shows that the area near St. Joe only needs a six month extension to reach final compliance.

Under EPA's original interpretation of attainment date, EPA found that AMAX also needed the full two year extension. This was because the consent order for AMAX contained in the plan showed that the controls necessary to meet the standard would not be in place until two years beyond the October 1982 attainment date. The EPA originally granted the full two year extension for the area near AMAX. Under the revised interpretation of the attainment date, AMAX needs only a six month extension to complete installation of controls to meet the air quality standard.

Attainment date extensions can only be granted under section 110(e) of the Clean Air Act, for periods up to two years, if the Administrator determines that a source is unable to reach compliance within three years from the date of plan approval because the necessary technology or other alternatives are not available. EPA determined that the final compliance dates in the consent orders represented dates by which the necessary control technology would be available at St. Joe and AMAX to attain the air quality standards. This was the basis for originally granting the attainment date extension. None of the commenters submitted information demonstrating that the technology necessary for attainment will not be available and in place by October 31, 1984. Thus, the attainment date for the areas near the St. Joe and AMAX lead smelters is October 31, 1984.

EPA agrees with the Missouri Department of Natural Resources that time is needed to determine whether implementation of the approved control

strategies results in attainment of the standard. This evaluation process should be continuous during the period the control measures are being put in place. Based upon measured air quality data and estimates of the emissions reductions obtained from the various control measures which are completed, the state must make a determination whether the lead standards will be met. In fact, the Missouri lead SIP contains a procedure by which the state is committed to perform periodic attainment evaluations. Also, the major portions of the control strategies will have been implemented well before the attainment date, so there is no reason to wait until October 31, 1984, to initiate an evaluation of the adequacy of the control measures in the presently approved lead SIP

Another comment was submitted on behalf of the St. Joe Lead Company objecting to EPA's proposal to modify the two year extension. The comment stated that St. Joe entered the consent order with the State of Missouri with the understanding that a full two year extension would be granted. The commenter indicated that it would not have agreed to the consent order had it known that the full two year extension would not be granted.

As a minimum, St. Joe requests that EPA recognize the need for a year of monitoring, commencing after October 1984, to evaluate the success of the equipment installed pursuant to the consent order.

In responding to this comment, it is necessary to specifically describe the nature of the consent order which St. Joe entered with the State of Missouri. The order contains ten specific emission control measures, each concerning an identifiable lead source or group of sources. Each control measure has a required completion date. In addition, the text of the lead SIP provides data which quantifies the amount of lead emission reduction provided by each control measure.

Nine of the ten control measures at St. Joe were to be completed on or before April 30, 1982. These nine measures provide 97% of the lead emission reductions required by the consent order. Installation of equipment for the tenth measure was to be completed by April 27, 1984, with six additional months allowed for completing and placing the equipment in normal operation. In the comment letter, St. Joe stated they planned to meet all construction commitments in the consent order. It does not appear reasonable to wait until after October 1985 to determine the success of control equipment, most of which had been installed prior to April 30, 1982. In any event, as stated previously, a section 110(e) extension cannot be granted for the purpose of determining the adequacy of the control equipment.

EPA Action on Attainment Date

EPA approves the attainment date in the Missouri lead SIP as three years from the date of plan approval in areas without an extension, as is provided in section 110(a)(2)(A) of the Clean Air Act. Thus, the lead attainment date for most portions of the state is April 27, 1984. EPA is approving an extension of approximately six months for attainment of the lead standard in the vicinity of the St. Joe and AMAX smelters, until October 31, 1984. The attainment date for the urban areas of Missouri (St. Louis and Kansas City) will remain November 1, 1982, as is stated in the Missouri lead SIP.

Modeling

EPA regulations require that the attainment demonstrations for lead SIPs include atmospheric dispersion modeling for each area around certain major point sources of lead, 40 CFR 51.84. The Missouri lead SIP did not contain dispersion modeling for the three primary lead smelters in the State. Primary lead smelters are one of the categories for which the regulations require dispersion modeling.

The State attempted dispersion modeling for the areas around the two smelters where monitored violations occurred, but found that the modeling results did not correlate with measured air quality data. The test for correlation was not considered rigorous. However, because of limited air monitoring data and lack of detailed site specific meteorological and emission data, the State of Missouri concluded that any modeling which could be performed within the agreed upon timeframe for submission of the Missouri lead SIP would not produce reliable predictions of lead concentrations in the vicinity of the lead smelters. The State used the results of air monitoring to devise the control strategies for the lead smelters. Because the Missouri lead SIP did not utilize dispersion modeling to develop the control strategies for the lead smelters, EPA disapproved that portion of the SIP and required the State to submit dispersion modeling for the three primary smelters within twelve months after EPA's disapproval action (46 FR 23412).

The smelters petitioned EPA to reconsider the disapproval action. The petition was granted and upon reconsideration, EPA concluded that the State had used the most accurate methods available to it in performing the attainment demonstration for the two lead smelters. Consequently, EPA proposed to approve those demonstrations as satisfying 40 CFR 51.84. In making this determination, EPA relied on the intent of the regulation, which is to insure that states use the most reliable methods available in demonstrating attainment of the lead standard.

In EPA's opinion this approach is consistent with the Clean Air Act's strict schedule for the development and promulgation of initial implementation plans (e.g., nine months for state submission and four months for EPA review). On the other hand, the same approach does not apply to subsequent revisions to already promulgated implementation plans because the time for submission of such revisions is not subject to these statutory deadlines and more extensive site-specific meteorological, emission and monitoring data should be available. Thus, EPA will require that any subsequent SIP revisions be supported by atmospheric dispersion modeling.

Comments on Modeling

Two comments were received on EPA's proposal to approve the dispersion modeling portions of the lead SIP submitted by Missouri in 1980. The comments were submitted on behalf of the St. Joe and AMAX lead smelters in Missouri. Both comments supported EPA's proposed action to approve the modeling in the Missouri lead SIP.

However, both smelters commented that there were reasons other than lack of on-site meteorological data and fugitive emission data which caused unreliable modeling predictions. EPA agrees that there may have been other factors which contributed to problems with the modeling at the two smelters, but these two factors were specifically mentioned in the proposed rulemaking because they were identified by the State of Missouri.

It should be noted that ASARCO, Inc., initiated a modeling effort for their smelter near Glover, Missouri, after the 1981 disapproval. That project resulted in modeling results which were acceptable to ASARCO, the State of Missouri, and EPA as representative predictions of ambient lead levels in the vicinity of the ASARCO plant.

A comment by AMAX implied that EPA intended that modeling was to have been used to determine attainment of the lead standards. The modeling performed to meet 40 CFR 51.84 is actually intended to be used in developing the control strategy for

demonstrating attainment. That modeling, together with all other data described under Subpart E of 40 CFR Part 51, are designed to result in a control strategy which adequately demonstrates attainment of the Ambient Air Quality Standard for lead. Once adopted and approved by EPA, air monitors which are properly sited and operated are to be used to judge attainment of the standard. This is the intent of EPA's regulations for preparation of lead SIPs as well as the expressed intent of the Missouri lead SIP as approved by EPA.

A comment by St. Joe indicated that EPA recommended models cannot be used to accurately predict ambient lead concentrations in the vicinity of facilities such as their lead smelter in Herculaneum, Missouri. The reason for this is because the models cannot account for the complex terrain and building level emissions from the plant. While the accuracy of modeling predictions may vary considerably among types of sources and for various sites, EPA has not determined that modeling is inappropriate for any of the primary lead smelters in Missouri. The decision to approve the Missouri lead SIP for modeling does not mean that the modeling requirements of 40 CFR 51.84 are eliminated. The approval merely recognizes that Missouri used the most reliable information available in preparing the lead SIP submitted in 1980.

EPA Action on Modeling

EPA approves the dispersion modeling portions of the lead SIP submitted by Missouri in 1980 as meeting the requirements of 40 CFR 51.84.

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

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

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

Dated: July 13, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 Part 52, Subpart AA of the Code of Federal Regulations is amended as follows:

§ 52.1323 [Amended]

1. Section 52.1323 is amended by removing the last sentence at the end of the section which reads:

* * * The attainment date for attainment of the lead standard as stated in the Lead plan is disapproved.

[FR Doc. 84-19109 Filed 7-18-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

Air Programs; Section 107 Attainment Status Designations; Massachusetts; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error contained in a final rulemaking notice that appeared in the Federal Register of Wednesday, July 20, 1983 (48 FR 32983). This action is necessary to change the section 107 citation for Massachusetts.

FOR FURTHER INFORMATION CONTACT: Thomas F. Wholley, FTS 223-4862. (617) 223-4862.

Accordingly, the Environmental Protection Agency is correcting the FR Doc. [83-19575] by changing the section 107 citations from § 81.346 to § 81.322 on page 32984 of the Federal Register published on Wednesday, July 20, 1983.

Dated: July 13, 1984.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 84-19109 Filed 7-18-84; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-47

[FPMR Amendment H-144]

Transfers

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: This amendment to the regulations removes the requirement that GSA obtain OMB concurrence before transferring excess real property valued in excess of $1,000,000 where the requesting agency provides 100 percent reimbursement of the estimated fair market value of the requested property. This requirement is obviated by a recent amendment to the FPMR's which requires that Federal agencies be charged 100 percent reimbursement for excess real property transferred to them, with very limited exceptions. This change will allow GSA regional offices to proceed more expeditiously with transfers where full reimbursement is provided.

EFFECTIVE DATE: This regulation is effective July 19, 1984.

FOR FURTHER INFORMATION CONTACT: James H. Pitts, Office of Real Property, (202) 535-7067

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to a revision to § 101-47.203-7(f) published in the Federal Register on December 17, 1982, transfers will be based on a 100 percent reimbursement requirement and OMB must approve any exception to this requirement. Accordingly, separate OMB concurrence in transactions exceeding $1,000,000 or in unusual cases serves no useful purpose since it was based on an earlier rule under which reimbursement was discretionary. In view of the change to § 101-47.203-7(f), the requirement for obtaining OMB concurrence prescribed by § 101-47.203-7(c) is deleted and the reference to such concurrence contained in § 101-47.203-7(b) is removed.

List of Subjects in 41 CFR Part 101-47

Surplus government property, Government property management.

Accordingly, 41 CFR Part 101-47 is amended as follows:

Subpart 101-47.2—Utilization of Excess Real Property

Section 101-47.203-7 is amended by revising paragraph (b) and removing and reserving paragraph (c) as follows:

§ 101-47.203-7 Transfers.

(a) * * *

(b) Upon determination by GSA that a transfer of the property requested is in the best interest of the Government and that the requesting agency is the appropriate agency to hold the property, the transfer may be made among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia.

(c) [Reserved]

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: November 22, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84-19067 Filed 7-18-84; 8:45 am]

BILLING CODE 6820-96-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 81

[FCC 84-257]

Coordination of Shore Based Radionavigation Stations With the U.S. Coast Guard

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document requires applicants for shore based radionavigation stations in the Maritime Services to coordinate with the U.S. Coast Guard prior to submitting their applications to the Commission. This action is taken in response to a request by the U.S. Coast Guard. It is intended to protect the safety of life and property at sea by avoiding the possibility of confusion between any charted and uncharted navigation aids.

EFFECTIVE DATE: September 28, 1984.

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

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, (202) 632-7175.

List of Subjects in 47 CFR Part 81

Marine safety.

Order

In the matter of amendment of Part 81 of the rules concerning coordination of shore based radionavigation stations with the U.S. Coast Guard.

Adopted: June 4, 1984.

Released: June 29, 1984.

By the Commission.

1. Shore based radionavigation stations operated to provide information to aid in the movement of ships are classified as private aids to navigation. The U.S. Coast Guard, in a letter dated February 29, 1984, requested the Commission to amend the rules to require that applicants coordinate with the Coast Guard prior to submitting an application for a shore based radionavigation station. This coordination process would permit the Coast Guard to fulfill its statutory responsibility to ensure such private marine radionavigation aids do not pose a hazard to navigation.[1] Prior coordination by the applicant with the Coast Guard would allow prompt and efficient processing of the subject applications.

2. For the reasons summarized above, we are amending the rules to add a new § 81.403 to require coordination with the U.S. Coast Guard prior to the filing of an application for a shore based radionavigation station. Additionally, we specifically noted in the rules that stations used only for surveillance and not operated as an aid to navigation are considered to be radiolocation stations which do *not* require prior coordination with the Coast Guard. For example, stations utilizing radar equipment only to locate vessels near oil platforms or in harbor areas would be licensed as radiolocation stations rather than radionavigation stations. No prior coordination with the Coast Guard is required for such radiolocation stations which make up the bulk of private shore based radar facilities.[2]

3. Authority for this action 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). Since this amendment make a minor change which is likely to be noncontroversial, we find good cause to dispense with the public notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B).

4. Accordingly, It is ordered, that Part 81 of the Commission's rules is amended as set forth in the attached Appendix effective September 28, 1984.

5. For further information regarding matters covered in this document, contact Maureen Cesaitis at (202) 632-7175.

Federal Communications Commission.

William J. Tricarico.

Secretary.

Appendix

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

New § 81.403 is added to read as follows:

§ 81.403 Special conditions.

(a) Shore based radionavigation stations operated to provide information to aid in the movement of any ship are considered to be private aids to navigation. Prior to submitting an application for such a radionavigation station, an applicant must obtain written permission from the Commandant, U.S. Coast Guard, Washington, D.C. 20593 (attention Marine Radio Policy Branch, G-TPP-3). Documentation of the Coast Guard approval must be submitted with the application.

(b) Shore based radiolocation stations used for surveillance, such as locating vessels near oil platforms or in harbor areas, do not require prior Coast Guard approval.

[FR Doc. 84-19068 Filed 7-18-84; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1527 and 1552

[EPAAR Temp. Reg. 1; OA-FRL-2632-8]

Rights in Data and Copyrights Under EPA Contracts

AGENCY: Environmental Protection Agency.

ACTION: Temporary regulation.

SUMMARY: This EPA Acquisition Regulation (EPAAR) Temporary Regulation establishes policies and procedures under EPA contracts for rights in data and copyrights, and requirements for data. This action is necessary since the Federal Acquisition Regulation, which was effective on April 1, 1984, did not include regulatory coverage of rights in data and

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[1] See 14 U.S.C. 18.

[2] In an Order adopted April 27, 1983 (FCC 83-203, 47 FR 23432) a requirement for applicants for radionavigation stations to coordinate with the Coast Guard was removed. This action was taken based on a letter from the Coast Guard indicating that it no longer considered it necessary to approve such facilities. However, in the letter of February 29, 1984, the Coast Guard stated that it only meant to eliminate coordination of a certain type of application, i.e., applications for radiolocation stations, not all applications for private radionavigation aids.

copyrights. Regulatory coverage of these subjects in the FAR is not expected until after July 15, 1984. The intended effect of this action is to establish contractual rights and obligations between EPA and its contractors with respect to data and copyrights.

DATES: Effective date: July 15, 1984. Expiration date: July 14, 1986. Comments due: September 15, 1984.

ADDRESSES: Comments may be mailed to Edward Murphy, Procurement and Contracts Management Division (PM-214), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward Murphy, Policy Section, Tel: (202) 382-5034.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

In accordance with the memorandum from David Stockman, Director, Office of Management and Budget, to Donald Sowle, Administrator, Office of Federal Procurement Policy, and Christopher DeMuth, Administrator, Information and Regulatory Affairs, dated October 4, 1982, this rule is exempt from the provisions of Executive Order 12291.

Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. The EPA certifies that this rule will not have a significant impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2030-0012.

List of Subjects in 48 CFR Parts 1527 and 1552

Government procurement, Patents, data and copyrights.

(Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c))

Dated: July 11, 1984.

Kenneth Dawsey,

Acting Director, Office of Administration.

1. 48 CFR Part 1527 is revised to read as follows:

PART 1527—PATENTS, DATA, AND COPYRIGHTS

Subpart 1527.70—Rights in Data and Copyrights

Sec.
1527.7000 Scope of subpart.
1527.7001 Definitions.
1527.7002 Policy.
1527.7003 Procedures.
1527.7004 Acquisition of data.
1527.7005 Solicitation provisions and contract clauses.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1527.70—Rights in Data and Copyrights

1527.7000 Scope of subpart.

This subpart sets forth policies, procedures, and instructions with respect to—

(a) Rights in data and copyrights, and

(b) requirements for data.

1527.7001 Definitions.

"Computer software," as used in this subpart, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidential to contract administration, such as contract cost analysis or any financial, business and management information required for contract administration purposes.

"Form, fit, and function data," as used in this subpart, means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited rights," as used in this subpart, means the rights of the Government in limited-rights data, as set forth in a Limited Rights Notice if included in the data rights clause of the contract.

"Limited-rights data," as used in this subpart, means data that embodies trade secrets or is commercial or financial and confidential or privileged, to the extent that such data pertains to items, components or processes developed at private expense, including minor modifications thereof. (Contracting Officers may, with the concurrence of the Project Officer, use the following alternate definition: "Limited-rights data," as used in this subpart, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.)

"Restricted computer software," as used in this subpart, means computer software developed at private expense and that is a trade secret, or is commercial or financial and confidential or privileged, or is published copyrighted computer software.

"Restricted rights," as used in this subpart, means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

"Unlimited rights," as used in this subpart, means the right of the Government, without additional cost to the Government, to use, disclose reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

1527.7002 Policy.

It is necessary for EPA, in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts. Such data may be required to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of its activities; ensure appropriate utilization of the results of research, development, and demonstration activities; and meet other programmatic and statutory requirements, including regulatory activities. At the same time, EPA recognizes that its Contractors may have a property right or other valid economic interest in certain data resulting from private investment, and that protection from unauthorized use and disclosure of this data is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the Contractor's commercial position, and maintain EPA's ability to obtain access to or use of such data. The protection of this data by EPA is necessary to encourage qualified Contractors to participate in EPA programs and apply innovative concepts to such programs. The specific procedures and prescriptions for use of solicitation provisions and contract clauses set forth below are framed in light of the above considerations to strike a balance between EPA's needs and the Contractor's property rights and economic interests.

1527.7003 Procedures.

(a) *General.* All contracts that require data be produced, furnished, or acquired must contain terms that delineate the respective rights and obligations of the Government and the Contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from formal advertising that require only existing data (other than limited-rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule, the data rights clause at 1552.227-71, Rights in Data—General, is to be used for this purpose. However, certain types of contracts, the particular subject matter of a contract, or the intended use of the data, may require the use of other clauses or no clause at all, as discussed in paragraphs (c) and (d) of this section.

(b) *Basic Rights in Data Clause.* (1) *Summary.* The clause at 1552.227-71, Rights in Data—General, is structured to strike a balance between EPA's needs in carrying out its mission and programs and the Contractor's needs to protect property rights and valid economic interests in certain data arising out of private investment. This clause enables the Contractor to protect from unauthorized use and disclosure data that qualifies as limited-rights data or restricted computer software (see paragraph (b)(2) of this section for an alternate definition of limited-rights data). This clause also specifically delineates the categories or types of data that the Government is to acquire with limited rights (see paragraph (b)(3) of this section). The Contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to the Government; or when EPA has a need to obtain delivery of limited-rights data or restricted computer software, by delivering such data with limited rights or restricted rights with authorized notices on the data. (See paragraphs (b)(4) and (b)(5) of this section.) In addition, this clause enables Contractors to establish and/or maintain copyright protection for data first produced and/or delivered under the contract, subject to certain license rights in the Government. (See paragraph (b)(6) of this section.) This clause also includes procedures that apply when EPA questions whether notices on data are authorized (see paragraph (b)(7) of this section) or when a Contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (b)(8) of this section); addresses the Contractor's right to release, publish or use certain data involved in contract performance (see paragraph (b)(9) of this section); and provides for the possibility for the Government to inspect certain data at the Contractor's facility (see paragraph (b)(10) of this section).

(2) *Alternate definition of limited-rights data.* In the clause at 1552.227-71, Rights in Data—General, in order for data to qualify as limited-rights data, in addition to being data that either embodies a trade secret or is data that is commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, where appropriate and with the concurrence of the Project Officer, a Contracting Officer may determine to use in the clause the alternate definition for limited-rights data that does not require that such data pertain to items, components, or processes developed at private expense; but rather that the data that either embodies a trade secret or is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, this alternate definition may be used where the principal purpose of a contract does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or any anticipated follow-on contracts relating to the same subject matter). Other examples include contracts for market research and surveys, economic forecasts, socio-economic reports, educational material, health and safety information, management analysis, and related matters. This alternate definition of limited-rights data may be used, where appropriate, by using the clause with its Alternate I.

(3) *Unlimited-rights data.* Under the clause at 1552.227-71, Rights in Data—General, the Government acquires unlimited rights in the following data except as provided in paragraph (b)(6) of this section for copyrighted data.

(i) Data first produced in the performance of a contract;

(ii) Form, fit, and function data delivered under a contract;

(iii) Data (except as may be included with restricted computer software) that constitutes manuals or instructional and/or training material delivered under a contract; and

(iv) All other data delivered under the contract unless such data qualifies as limited-rights data or restricted computer software.

If any of the foregoing data is published copyrighted data, the Government acquires it under a copyright license as set forth in paragraph (b)(6) of this section rather than with limited rights or restricted rights.

(4) *Protection of limited-rights data.* (i) The Contractor may protect data (other than unlimited rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1552.227-71, Rights in Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if the Government specifies the delivery of the data, by delivering such data with limitations on its use and disclosure. These two modes of protection afforded the Contractor (i.e., withhold or deliver with limited rights) are provided for in paragraph (g) of the clause at 1552.227-71, Rights in Data—General. Paragraph (g)(1) of this clause allows the Contractor to withhold limited-rights data and provide form, fit, and function data in lieu thereof. Paragraph (g)(2) to this clause enables the Government selectively to obtain the delivery of withheld or withholdable data with limited rights. The limitations on the Government's right to use and disclose limited-rights data are set forth in a "Limited Rights Notice" that the Contractor is required to affix to such data. The specific limitations in the Notice are described in this section.

(ii) Limited-rights data delivered to the Government with the Limited Rights Notice contained in paragraph (g)(2) of the clause will not, without permission of the Contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain limited purposes as set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The specific purposes for which the Government may disclose limited-rights data are specified below and appear in the Limited Rights Notice of paragraph (g)(2) of the clause. The Contracting Officer may revise the purposes for disclosing limited-rights data appearing in the clause and as set forth in this section when such revisions are consistent with the Government's needs.

(A) Use by support service Contractors.

(B) Evaluation by nongovernment evaluators.

(C) Use by other contractors participating in the Government's

program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by such Government.

(iii) As an aid in identifying which, if any, of the data under the contract will qualify as limited-rights data, the provision at 1552.227-70, Notification of Limited-Rights Data and Restricted Computer Software, shall be included in any solicitation containing the clause at 1552.227-71, Rights in Data—General.

(5) *Protection of restricted computer software.* (i) If computer software qualifies as restricted computer software, the clause at 1552.227-71, Rights in Data—General, permits the Contractor to protect such software by either withholding it from delivery and providing form, fit, and function data in lieu thereof; or if the Government specifies delivery of the software, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The two modes of protection afforded the Contractor (i.e., withhold or deliver with restricted rights) are provided for in paragraph (g) of the clause at 1552.227-71, Rights in Data—General. If restricted computer software is needed for use in or with more than one computer, the Contracting Officer shall specify in the contract schedule the number of computers on which the software will be used. The restrictions on the Government's right to use, disclose, and reproduce restricted computer software are set forth in a "Restricted Rights Notice" that the Contractor is required to affix to such computer software. When restricted computer software delivered with such Notice is published copyrighted computer software, it is acquired with a restricted copyright license, and without disclosure prohibitions, as also set forth in the Notice. The specific restrictions in the Notice are set forth in paragraph (b)(5)(ii) of this section.

(ii) Restricted computer software delivered with the Restricted Rights Notice of paragraph (g)(3) of the clause at 1552.227-71, Rights in Data—General, will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be:

(A) Used, or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(B) Used, or copied for use in or with a backup computer if the computer or computers for which it is acquired is inoperative;

(C) Reproduced for safekeeping (archives) or backup purposes;

(D) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights; and

(E) Disclosed and reproduced by support Contractors or their subcontractors, subject to the same restrictions under which the Government acquired the software.

(iii) The restricted rights set forth in paragraph (b)(5)(ii) of this section are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of paragraph (g)(3) of the clause. However, the Contracting Officer may revise the Restricted Rights Notice of paragraph (g)(3) of the clause to specify either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of paragraph (g)(3) of the clause are to be expressly stated in the contract; or, with approval of the Contracting Officer, in a collateral agreement incorporated in and made part of the contract. (See paragraph (d)(2) of this section.)

(iv) As an aid in identifying which, if any, of the computer software under the contract will qualify as restricted computer software, the provision at 1552.227-70, Notification of Limited-Rights Data and Restricted Computer Software, shall be included in any solicitation containing the clause at 1552.227-71, Rights in Data—General.

(6) *Copyright data.* (i) *Data first produced in the performance of a contract.* (A) In order to enhance the transfer or dissemination of information produced at Government expense, Contractors are permitted, by paragraph (c)(1) of the clause at 1552.227-71, Rights in Data—General, to establish claim of copyright to scientific and technical articles based on or derived from work performed under the contract and published in academic, professional, or technical journals. However, permission may be granted to establish claim to copyright in all other data in accordance with the procedures set forth below.

(B) Usually permission for a Contractor to establish claim to copyright for data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data. The request for permission must be in writing, and may be made either at the time of contracting or subsequently during contract performance. It should identify the data involved or furnish a copy of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. Examples of cases when it may not be in the Government's best interests to grant the request are:

(*1*) The data consists of a report that represents the official views of the Agency or that the Agency is required by statute to prepare;

(*2*) The data is intended primarily for internal use by the Government;

(*3*) The data is of the type that the Agency itself distributes to the public under an established program; or

(*4*) If it is deemed inappropriate to provide the Contractor with an essentially exclusive commercial publishing right.

(C) Whenever a Contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the Government normally is granted a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in paragraph (c)(1) of the clause at 1552.227-71, Rights in Data—General.

(ii) *Data not first produced in the performance of a contract.* (A) Contractors are not to incorporate in data delivered under contract any data not first produced under the contract with the copyright notice of 17 U.S.C. 401 or 402 without either:

(*1*) Acquiring for, or granting to the Government and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data; or

(*2*) Obtaining permission from the Contracting Officer to do otherwise.

However, if computer software not first produced under contract is delivered with the copyright notice of 17 U.S.C. 401 or 402, the Government's license will be as set forth in paragraph (g)(3) of the

clause at 1552.227-71, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(B) Contractors delivering data with an authorized limited rights or restricted rights notice and a copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws." If this statement is omitted, the Contractor may be afforded an opportunity to add it in accordance with paragraph (b)(8) of this section. Otherwise, data delivered with a copyright notice of 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable license rights set forth in paragraph (b)(6)(ii) of this section, without disclosure limitations or restrictions.

(C) If Contractor action causes limited-rights or restricted rights data to be published with copyright notice after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the Contractor should advise the Government and request that a copyright notice be placed on the data, and acknowledge that the applicable copyright license set forth in paragraph (b)(6)(ii) of this section applies.

(7) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1552.227-71, Rights in Data—General, the right to either return to the Contractor data containing markings not authorized by that clause, or to cancel or ignore such markings. However, markings will not be cancelled or ignored without making written inquiry of the Contractor and affording the Contractor at least 30 days to substantiate the propriety of the markings. The Contracting Officer will also give the Contractor notice of any determination made based on any response by the Contractor. Any such determination to cancel or ignore the markings shall be a final decision under the Contract Disputes Act. Failure of the Contractor to respond to the Contracting Officer's inquiry within the time afforded may, however, result in Government action to cancel or ignore the markings. The Agency reserves the right to modify the above procedures when implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(8) *Omitted or incorrect notices.* (i) Data delivered under a contract containing the clause at 1552.227-71, Rights in Data—General, without a limited rights notice or restricted rights notice, or without a copyright notice, shall be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure or use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may within 6 months (or a longer period approved by the Contracting Officer for good cause shown) request permission of the Contracting Officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to so permit if the Contractor—

(A) Identifies the data for which a notice is to be added or corrected;

(B) Demonstrates that the omission of the proposed notice was inadvertent;

(C) Establishes that use of the proposed notice is authorized; and

(D) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(ii) The Contracting Officer may also (A) permit correction at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (B) correct any incorrect notices.

(9) *Release, publication and use of data.* (i) In the clause at 1552.227-71, Rights in Data—General, paragraph (d) provides that Contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced or specifically used in the performance of a contract; however, to the extent the Contractor receives or is given access to data that is necessary for the performance of the contract and the data contains restrictive markings, the Contractor agrees to treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(ii) Contracting Officers may, on a case-by-case basis, place further limitations or restrictions on the Contractor's right to use, release to others, reproduce, distribute or publish any data first produced in the performance of the contract.

(iii) The provisions of paragraph (b)(9) (i) and (ii) of this section are subject to the EPA Order entitled "Publication Review Procedure" and to the clause at 1552.237-70, Contract Publication Review Procedure.

(10) *Inspection of data at the Contractor's facility.* The Government obtains the right to inspect data at the Contractor's facility as provided in paragraph (j) of the clause at 1552.227-71, Rights in Data—General. The data subject to inspection may be data withheld or withholdable under paragraph (g)(1) of the clause, or any data specifically used in the performance of the contract. Such inspection may be made by the Contracting Officer or other Federal Government employee for the purpose of verifying a Contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised at all reasonable times up to 3 years after acceptance of all items to be delivered under the contract. The Contracting Officer may specify in the contract schedule, data items that are not subject to inspection under paragraph (j).

(c) *Production of special works.* (1) The clause at 1552.227-72, Rights in Data—Special Works, applies to contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. This clause shall be used in contracts for:

(i) The production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(ii) Histories of the Agency, or units thereof;

(iii) Works pertaining to recruiting, morale, training, or career guidance;

(iv) Surveys of Government establishments;

(v) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(vi) The compilation of reports, studies, surveys, or similar documents which are intended for use in connection with Agency regulatory and/or enforcement activities and that do not involve research, development, or experimental work performed by the Contractor;

(vii) The collection of data containing personally identifiable information such

that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(viii) Investigatory reports; or

(ix) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the Contractor), the early release of which could prejudice follow-on-acquisition activities or Agency regulatory and/or enforcement activities.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(d) *Acquisition of existing data other than limited-rights data.* (1) *Existing audiovisual and similar works.* The clause at 1552.227-73, Rights in Data—Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are:

(i) means of exhibition or transmission,

(ii) time,

(iii) type of audience, and

(iv) geographical location.

If the contract requires that works of the type indicated above are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form) the clause at 1552.227-72, Rights in Data—Special Works, is to be used. (See 1527.7003(c).)

(2) *Separate acquisition of existing computer software.* (i) If the contract is for the separate acquisition of existing computer software, no specific contract clause contained in this subpart need be used. However, the contract must specifically address the Government's rights to use, disclose, and reproduce the software and must contain terms obtaining sufficient rights for the Government to fulfill the needs for which the software is being acquired. The restricted rights set forth in paragraph (b)(5) of this section should be used as a guide and are usually the minimum the Government should accept. If the computer software is to be acquired with unlimited rights, the contract must also so state. In addition, the contract must adequately describe the computer programs and/or data bases, the form (tapes, punch cards, disc pack, and the like), and all the necessary documentation pertaining thereto. If the acquisition is by lease or license, the disposition of the computer software (by returning to the vendor or destroying) at the end of the term of the lease or license must be addressed. Also, the Contractor must reveal at the time of contracting any conditions on tapes, discs, or the like which limit use or access thereto, including built-in timer mechanisms and/or "self-destruct" devices.

(ii) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, such agreement shall be reviewed to assure that it is consistent with paragraph (d)(2)(i) of this section. Caution should be exercised in accepting a vendor's terms and conditions since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract and the contract terms shall take precedence over the vendor's standard commercial agreement, and the contract shall state this order of precedence.

(iii) If a prime Contractor under a contract containing the clause at 1552.227-71, Rights in Data—General, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to the Government, the Contracting Officer may approve any additions to, or limitations on the restricted rights in the Restricted Rights Notice of paragraph (g)(3) of the clause in a collateral agreement incorporated in and made part of the contract. (See also 1527.7003(b)(5).)

(3) *Other existing works.* (i) Except for existing audiovisual and similar works pursuant to paragraph (d)(1) of this section, and existing computer software pursuant to paragraph (d)(2) of this section, no clause contained in this subpart need be included in (A) contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items) unless reproduction rights of such items are to be obtained; or (B) contracts resulting from formal advertising that require only existing data to be delivered unless reproduction rights for such data (other than limited-rights data) are to be obtained. If reproduction rights are to be obtained, such rights must be specifically set forth in the contract.

§ 1527.7004 Acquisition of data

(a) *General.* (1) It is important to recognize and maintain the conceptual distinction between contract terms whose purpose is to identify the data required for delivery to, or made available to, the Government (i.e., data requirements); and those contract terms whose purpose is to define the respective rights of the Government and the Contractor in such data (i.e., data rights). This section relates to data requirements; 1527.7003 to the data rights.

(2) It is EPA's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements are subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the Contractor, efforts should be made to keep the contract data requirements to a minimum.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the Contractor in the handling of the data, shall be specified in the contract.

(b) *Additional data requirements.* Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be possible or appropriate to ascertain all the data requirements at the time of contracting, the clause at 1552.227-74, Additional Data Requirements, is provided to enable the subsequent ordering by the Government of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. Data may be ordered under this clause at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under the contract. The Contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the Contractor may be relieved of retention requirements for specified data items by the Contracting Officer at any time during the retention period required by

the clause. Any data ordered under the clause will be subject to the rights in data clause in the contract.

1527.7005 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the provision at 1552.227-70, Notification of Limited-Rights Data and Restricted Computer Software, in any solicitation containing the clause at 1552.227-71, Rights in Data—General. (See 1527.7003(b) (4) and (5).)

(b)(1) The Contracting Officer shall insert the clause at 1552.227-71, Rights in Data—General (see 1527.7003(b)), in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 1527.7003(c), but the clause at 1552.227-71, Rights in Data—General, shall be included in the contract and made applicable to data other than special works, as appropriate;

(ii) For the separate acquisition of existing works, as described in 1527.7003(d);

(iii) For a Small Business Innovative Research (SBIR) contract (see paragraph (h) of this section);

(iv) To be performed outside the United States, its possessions, and Puerto Rico, in which case the Contracting Officer, in conjunction with the patent attorney and the Project officer, shall develop a clause suitable for the particular acquisition;

(v) For architect-engineer services or construction work, in which case the Contracting Officer, in conjunction with the patent attorney and the Project Officer, shall develop a clause suitable for the particular acquisition. However, the clause at 1552.227-71, Rights in Data—General, may be included in the contract and made applicable to data pertaining to other than architect-engineer services and construction work;

(vi) For the operation of a Government-owned facility to perform research, development or production work, in which case the Contracting Officer, in conjuction with the patent attorney and the Project Officer, shall develop a clause suitable for the particular acquisition.

(2) If a Contracting Officer determines, in accordance with 1527.7003(b)(2), to adopt the alternate definition of "Limited-Rights Data" in paragraph (a) of the clause, the clause shall be used with its Alternate I.

(c) The Contracting Officer shall insert the clause at 1552.227-72, Rights in Data—Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Acquisitions to which this clause applies are identified in 1527.7003(c). The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released or reproduced by the Contractor for other than contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired.

(d) The Contracting Officer shall insert the clause at 1552.227-73, Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 1527.7003(d)(1). The contract may set forth limitations consistent with the purposes for which the work is being acquired. The clause at 1552.227-72, Rights in Data—Special Works, shall be used if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(e) The Contracting Officer shall insert the clause at 1552.227-74, Additional Data Requirements, in all solicitations and contracts (except those using small purchase procedures) containing one of the rights in data clauses at 1552.227 The Contracting Officer may permit the Contractor to identify data the Contractor does not wish to deliver, and may specifically exclude in the contract any requirement that such data be delivered under a rights in data clause or ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data.

(f) While no specific clause of this subpart need be included in contracts for the separate acquisition of existing computer software, the Contracting Officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 1527.7003(d)(2).

(g) While no specific clause of this subpart need be included in contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items) (see 1527.7003(d)(3)), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1527.7003(d)(3).)

(h) The Contracting Officer shall insert the clause at 1552.227-75, Rights in Data Developed under Small Business Innovative Research (SBIR) Contracts, in SBIR solicitations and contracts.

2. Part 1552, Table of Contents, is amended by revising the entry for 1552.227-70 and by adding entries for 1552.227-71, 1552.227-72, 1552.227-73, 1552.227-74, and 1552.227-75 to read as follows:

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

1552.227-70 Notification of limited-rights data and restricted computer software.
1552.227-71 Rights in data—General.
1552.227-72 Rights in data—Special works.
1552.227-73 Rights in data—Existing works.
1552.227-74 Additional data requirements.
1552.227-75 Rights in data developed under Small Business Innovative Research (SBIR) Contracts.

* * * * *

3. Subpart 1552.2 is amended by revising section 1552.227-70 and by adding sections 1552.227-71, 1552.227-72, 1552.227-73, 1552.227-74, and 1552.227-75 to read as follows:

1552.227-70 Notification of limited-rights data and restricted computer software.

As prescribed in 1527.7005(a), insert the following provision in solicitations:

Notification of Limited Rights Data and Restricted Computer Software (Apr 1984)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known requirements for data (as defined in the EPA Acquisition Regulation at 1527.7001). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause (EPA Acquisition Regulation, 1552.227-74), if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause (EPA Acquisition Regulation, 1552.227-71) that is to be included in this contract. Under this clause a Contractor may withhold from delivery data that qualifies as limited-rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. This clause also authorized the Government to require delivery of limited-rights data or restricted computer software that has been withheld or would otherwise be withholdable. In addition, this clause

provides the Government with the right to inspect such data at the Contractor's facility.

(b) The offeror's response to this solicitation shall, to the extent feasible, either state that none of the data qualifies as limited-rights data or restricted computer software, or identify which of the data qualifies as limited-rights data or restricted computer software. Any identification of limited-rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(c) If this acquisition is solely for existing computer software and/or data bases, any resulting contract must contain provisions which cover the Government's right to use the software and, at the least, it should normally contain the rights set forth at EPA Acquisition Regulation 1527.7003(b)(5). Consult EPA Acquisition Regulation 1527.7003(d)(2) for further guidance. EPA will consider for incorporation in the contract a vendor's own license or other conditions provided they are not inconsistent with 1527.7003(b)(5) of 1527.7003(d)(2).

(End of provision)

Approved by the Office of Management and Budget under control number 2030-0012).

1552.227-71 Rights in data—general.

As prescribed in 1527.7005(b), insert the following clause in solicitations and contracts:

Rights in Data—General (Apr 1984)

(a) *Definitions.* "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analysis or financial, business, and management information required for contract administration purposes.

"Form, fit, and function data," as used in this clause, means data describing, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited rights," as used in this clause, means the rights of the Government in limited-rights data as set forth in the Limited Rights Notice of paragraph (g)(2) of this clause.

"Limited-rights data," as used in this clause, means data that embodies trade secrets or is commercial or financial and confidential or privileged, but only to the extent that the data pertains to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret, or is commercial or financial data which is confidential or privileged, or is published copyrighted computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g)(3) of this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

"Unlimited rights," as used in this clause, means the right of the Government, without additional cost to the Government, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitutes manuals or instructional and/or training material, and

(iv) All other data delivered under this contract unless provided otherwise for limited-rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use that data which is limited-rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights or restricted rights notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause.

(c)(1) *Data first produced in the performance of this contract.* Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish claim to copyright subsisting in scientific and technical articles based on or derived from data first produced in the performance of this contract and published in academic, technical, or professional journals. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract in accordance with EPA Acquisition Regulation 1527.7003(b)(6). When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgment of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) *Data not first produced in the performance of this contract.* The Contract or shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided, however, that if such data is computer software the Government shall acquire a copyright license as set forth in paragraph (g)(3) of this clause or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.* (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, subject, however, to the clause at 1552.237-70, Contract Publication Review Procedure and the copyright provisions of paragraphs (c)(1) and (c)(2) of this clause.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contains restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in paragraphs (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, the Contracting Officer may either return the data to the Contractor, or cancel or ignore the markings. However, markings will not be cancelled or ignored unless—

(i) The Contracting Officer makes written inquiry to the Contractor concerning the propriety of the markings, providing the Contractor 30 days to respond; and

(ii) The Contractor fails to respond within the 30 day period (or a longer time approved by the Contracting Officer for good cause shown), or the Contractor's response fails to substantiate the propriety of the markings.

(2) The Contracting Officer shall consider the Contractor's response, if any, and determine whether the markings shall be cancelled or ignored. The Contracting Officer shall furnish written notice to the Contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(3) The Environmental Protection Agency reserves the right to modify the above procedures when implementing the Freedom

of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (g) of this clause, or without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited-rights data and restricted computer software.* (1) When data other than that listed in paragraphs (b)(1) (i), (ii), and (iii) of this clause is specified to be delivered under this contract and qualifies as either limited-rights data or restricted computer software the Contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. As a condition to this withholding the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited-rights data that is formatted as a computer data base for delivery to the Government is to be treated as limited-rights data and not restricted computer software.

(2) Notwithstanding paragraph (g)(1) of this clause, this contract may identify and specify the delivery of limited-rights data, or the Contracting Officer may, at any time during contract performance and for a period of 3 years after acceptance of all items to be delivered under this contract, require by written request the delivery of limited-rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

Limited Rights Notice (Apr 1984)

(a) This data is submitted with limited rights under Government contract No. —— (subcontract ——, if appropriate). It may be reproduced and used by the Government with the express limitation that it will not, without permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose this data outside the Government for the following purposes, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use by support service Contractors.

(2) Evaluation by nongovernment evaluators.

(3) Use by other Contractors participating in the Government's program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(4) Emergency repair or overhaul work.

(5) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by such government.

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

(3)(i) Notwithstanding paragraph (g)(1) of this clause, this contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may, at any time during contract performance and for a period of 3 years after acceptance of all items to be delivered under this contract, require by written request the delivery of restricted computer software that has been withheld. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) above, in accordance with the Notice:

Restricted Rights Notice (Apr 1984)

(a) This computer software is submitted with restricted rights under Government contract No. —— (and subcontract ——, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided below or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer may be transferred;

(2) Used with a backup computer if the computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(5) Disclosed and reproduced for use by support Contractors or their subcontractors in accordance with paragraphs (b) (1) through (4) of this notice, provided the Government makes such disclosure subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication or disclosure of this computer software are to be expressly stated in the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part."

(End of Notice)

(ii) Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice (Short Form) (Apr 1984)

Use, reproduction, or disclosure is subject to restrictions set forth in contract No. —— (and subcontract ——, if appropriate) with —— (name of Contractor and subcontractor).

(End of notice)

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or other Federal Government employee may, at all reasonable times up to 3 years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld under paragraph (g)(1) of this clause, or any data specifically used in the performance of this contract, for the purpose of evaluating work performance or verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data.

(End of clause)

Alternate I (Apr 1984). As prescribed in 1527.7005(b)(2), substitute the following definition for "Limited Rights Data" in paragraph (a) of the clause:

"Limited-rights data," as used in this clause, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

(Approved by the Office of Management and Budget under control number 2030-0012.)

§ 1552.227-72 Rights in data—special works.

As prescribed in 1527.7005(c), insert the following clause in solicitations and contracts:

Rights in Data—Special Works (Apr 1984)

(a) *Definitions*

"Data," as used in this clause, means recorded information regardless of form or medium on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analyses or financial, business, and management information required for contract administration purposes.

"Unlimited rights," as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.* (i) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without the prior written permission of the Contracting Officer. When claim to copyright is made the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 to such data when delivered to the Government, and include that notice as well as acknowledgment of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(ii) If the Government desires to obtain ownership of copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of a claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor release, reproduce, distribute or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* (1) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

1552.227-73 Rights in data—existing works.

As prescribed in 1527.7005(d), insert the following clause in solicitations and contracts:

Rights in Data—Existing Works (Apr 1984)

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract, or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction, and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

1552.227-74 Additional data requirements.

As prescribed in 1527.7005(e), insert the following clause in solicitations and contracts (except those using small purchase procedures):

Additional Data Requirements (Apr 1984)

(a) In addition to the data (as defined in the rights in data clause included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The rights in data clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data which is specifically identified in this contract as not subject to this clause.

(c) When data is to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

(End of clause)

(Approved by the Office of Management and Budget under control number 2030-0012.)

1552.227-75 Rights in data developed under Small Business Innovative Research (SBIR) contracts.

As prescribed in 1527.7005(h), insert the following clause in Small Business Innovative Research solicitations and contracts:

Rights in Data Developed Under Small Business Innovative Research (SBIR) Contracts (Apr 1984)

All rights to data, including computer software, developed under the terms of this contract shall remain with the Contractor, except that the Government shall have the limited right to use such data, including computer software, for Government purposes and shall not have the right to release such data or software outside the Government without permission of the Contractor for a period of two years from completion of the project under which the data or software was generated. However, effective at the conclusion of the two-year period, the Government shall retain a royalty free license for Government use of any data or software delivered under this contract, even if it is patented or copyrighted.

(End of clause)

[FR Doc. 84-18956 Filed 7-18-84; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Dyssodia tephroleuca (Ashy Dogweed) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Dyssodia tephroleuca* (ashy dogweed), to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. Historically, this plant was known from two counties in Texas. As of 1979, it was known to occur only on 1 acre in Zapata County, Texas. It is a relict species found in an area with other relict grassland plants. The continued existence of this species is endangered by overgrazing, possible further loss of habitat by roadside blading and brush clearing, and by possible collecting or vandalism. This action implements the protection provided by the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is August 20, 1984.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Region 2, Office of Endangered Species, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Dr. Jim Johnson, Region 2 Endangered Species coordinator (see **ADDRESSES** above) (505/766-3972, FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Dyssodia tephroleuca was first collected by E. L. Clover in 1932, and described by S. F. Blake in 1934. *Dyssodia tephroleuca* (ashy dogweed) was historically known from two populations in southwestern Texas. Only one of these populations is known to exist at the present time. Approximately 1,300 individuals occur in this population, which is located in Zapata County, Texas (Turner, 1980).

Dyssodia tephroleuca is a perennial herb with stiff erect stems up to 30 centimeters in height (Correll and Johnston, 1970). The leaves are linear and covered with soft, woolly, ashy-white hairs. Crushed leaves emit a pungent odor. The flower heads (both ray and disk florets) are yellow to bright yellow and about 2.5 centimeters in diameter. In poorer habitats or under physiological stress, individuals are shorter, have fewer and smaller flowers, and have a less dense covering of hairs. Flowering is from March to May, depending on rainfall. The plants occur in fine, sandy-loam soils in open areas of a grassland-shrub community. The dominant genera in the area are *Castela, Cordia, Prosopis, Microrhamnus, Leucophyllum, Cercidium,* and *Yucca.*

The continued existence of this plant is primarily threatened by further reduction of its only known extant population. This population is mainly on private land but also lies partially on State highway right-of-way. Overgrazing and habitat loss due to grazing, chaining, plowing, or other habitat modifications could threaten *Dyssodia tephroleuca.* Taking and vandalism of this plant are also very real threats as this plant occurs along a major north-south highway.

Past Federal governmental actions affecting this plant began with section 12 of the Endangered Species Act of 1973 which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the Federal Register (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (section 4(b)(3)(A) now and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, Federal Register publication. *Dyssodia tephroleuca* was included in the July 1, 1975, Notice of Review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, Federal Register publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals which had expired (44 FR 70796). *Dyssodia tephroleuca* was included in category 1 of a revised list of plants under review for threatened or endangered classification in the December 15, 1980, Federal Register (42 FR 82480). Category 1 includes those taxa for which the Service presently has sufficient biological information to support their being listed as endangered or threatened species. The Service published a proposed rule to list *Dyssodia tephroleuca* as an endangered species on July 22, 1983 (48 FR 33501).

Summary of Comments and Recommendations

In the July 22, 1983, proposed rule (48 FR 33501) and associated notifications, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in *The Monitor* in McAllen, Texas, on August 23, 1983, which invited general public comment. A total of five written comments were received, one each from the National Park Service, the U.S. Soil Conservation Service, the Texas Parks and Wildlife Department, the International Union for the Conservation of Nature and Natural Resources, and a professional botanist. No public hearing was requested or held.

The Texas Parks and Wildlife Department submitted comments in support of the proposal. They also pointed out that under Chapter 88 of the Texas Parks and Wildlife Code, any Texas plant which is placed on the Federal list as endangered is also required to be added to the Texas State list of endangered species. Thus, this rule will provide both State and Federal protection for *Dyssodia tephroleuca.*

Support for this proposal was also given by the U.S. Soil Conservation Service and by Mr. Harold Beaty, a professional botanist and the leader of the Texas Plant Recovery Team. Neither the National Park Service nor the International Union for the Conservation of Nature and Natural Resources had any substantive comments on the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Dyssodia tephroleuca* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Dyssodia tephroleuca* Blake (ashy dogweed) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Dyssodia tephroleuca was historically known to occur in two counties in southwestern Texas. Today it is known to exist at only one site in Zapata County. It occurs with other relict grassland species and is subject to heavy grazing pressure. At present, the most immediate threat to the range of this species is from clearing more land for grazing and cultivation.

Currently, approximately 1,300 individuals of this species are known to exist. Approximately 300 plants occur on the west side of the highway, on the State highway right-of-way, and on adjacent private ranchland. On the east side of the highway is a larger group, estimated at 500–1,000 plants. These are on private ranchland in a brushy area currently used for grazing and deer hunting. Adjacent land to the east has been chained recently and no *Dyssodia tephroleuca* were observed in this area. Protection plans need to be developed so that roadside maintenance is done in a way compatible with the continued existence of the *Dyssodia* located on the highway right-of-way.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

It it believed that the disclosure of the one specific locality of *Dyssodia tephroleuca* would further endanger the species continued existence. Taking and vandalism of this easily accessible roadside plant could result if attention were focused on it by the designation of critical habitat.

C. Disease or Predation

In the past, grazing has severely reduced the habitat of this plant. Undisturbed climax grassland now persists in southwestern Texas only as scattered remnants.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Texas currently has no law protecting *Dyssodia tephroleuca*. However, once the species is added to the Federal list of endangered species, Chapter 88 of the Texas Parks and Wildlife Code requires that it also be added to the Texas list of endangered species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The species biology of *Dyssodia tephroleuca* is not well understood, but there is evidence of poor reproductive capability as seedlings and newly established plants appear to be absent. The limited number of individuals in the one existing population make the species vulnerable to natural factors which could lead to its extinction. Natural successional changes in the grassland-shrub mosaic, microclimatic parameters, degree of success in reproductive mechanisms, and identity of pollinators are but a few of the unknown aspects of the species biology that need to be studied before the reasons for the decline can be understood and hopefully reversed.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Dyssodia tephroleuca* as endangered. Endangered as opposed to threatened status is appropriate because of the severely limited range of the species and the resulting vulnerability to any disturbance of its habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Dyssodia tephroleuca* due to its very restricted geographical distribution and its easy accessibility. Listing of a plant species as endangered publicizes its rarity and hence can make it attractive to collectors of rare plants and researchers, as well as vandals. Publication of critical habitat maps in the Federal Register is required when critical habitat is designated. Since the only site known to exist for this species is bisected by a major highway, publication of such maps would greatly increase the possibility of taking or vandalism of the plants. Because these plants are located on non-Federal lands, such actions would not be prohibited by the Endangered Species Act. Therefore, it would not be prudent to bring further attention to the one site where this species occurs via critical habitat designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29330; June 29, 1983). Section 7(A)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with the Service. The impact of section 7 on this species would probably be minimal as there are no known Federal lands, activities, or involvement in the area where *Dyssodia tephroleuca* occurs.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Dyssodia tephroleuca* all trade prohibitions of section 9(a)(2) of the Act, as implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to

import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commerce in *Dyssodia tephroleuca* is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since this plant is not common in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This new prohibition would now apply to *Dyssodia tephroleuca* if populations were found on Federal lands. No such populations are known to exist on Federal lands at present. Permits for exceptions to this prohibition are available through Section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903). It is anticipated that few taking permits for the species will ever be requested.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

Blake, S.F. 1935. New Asteraceae. Journal of the Washington Academy of Sciences 25:320-321

Correll, D.S., and M.C. Johnston. 1970. Manual of the Vascular Plants of Texas. Texas Research Foundation, Renner, Texas. xiii + 1881 pp.

Turner, B.L. 1980. Status Report: *Dyssodia tephroleuca* Blake. Prepared for the Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 5 pp.

Authors

The authors of this rule are Ms. Sandra Limerick and Ms. Rosemary H. Carey, Endangered Species staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, NM 87103. Status information was provided by Dr. B. L. Turner, University of Texas, Austin, Texas.

Ms. E. LaVerne Smith of the Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal regulations, is amended as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, under Asteraceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
ASTERACEAE—Aster family:						
Dyssodia tephroleuca	Ashy dogweed	U.S.A. (TX)	E	NA	NA	NA

Dated: July 3, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-19093 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Cereus robinii (Key Tree-Cactus) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines *Cereus robinii* (Key tree-cactus) to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. *Cereus robinii* occurs in the Florida Keys and in Cuba, where its range and population numbers have been drastically reduced. The remaining five U.S. populations, three of which occur on privately owned land, are endangered by the continuing urbanization of the Keys and by horticultural exploitation. This rule will provide *Cereus robinii* with the protection of the Endangered Species Act of 1973, as amended. The Service will initiate recovery efforts for this species.

DATES: The effective date of this rule is August 20, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours (7:00 a.m.-4:30 p.m.) at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207

FOR FURTHER INFORMATION CONTACT: Mr. David Wesley, Field Supervisor at the above address (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Cereus robinii, a member of the cactus family or Cactaceae, consists of two varieties, *Cereus robinii* var. *robinii* and *Cereus robinii* var. *deeringii*. Both varieties are covered by this final rule. *Cereus robinii* was originally described as *Pilocereus robinii* by the French botanist Lemaire in 1864, based on specimens from Cuba. Other names which have been applied to this species include *Cephalocereus keyensis*, based on material from Key West, Florida (Britton and Rose, 1909), and *Cephalocereus deeringii*, based on a plant from Lower Matecumbe Key, Florida (Small, 1917). Benson (1969) considered these taxa to be conspecific with *Pilocereus robinii* Lemaire, which he transferred to the genus *Cereus*. He considered *Cephalocereus deeringii* Small to represent a variety of *Cereus robinii*. *Cereus robinii* var. *robinii* has now been reduced to a few locations in the Florida Keys and Cuba, while *Cereus robinii* var. *deeringii* has not been seen for many years and is probably extinct.

Cereus robinii is the largest of the native Florida cacti. Its erect, branched stems reach heights of 8 meter (25 feet). The succulent stems are cylindrical, spiny, and light or bluish-green, and measure 7–10 centimeters (2.5–3 inches) in diameter. The attractive flowers, which open in the late afternoon or evening, are 5–6 centimeters (2–2.5 inches) long and vary from white to green or purplish. The fruit is a dark red berry which measures 3–5 centimeters (1–2 inches) in diameter. *Cereus robinii* is the only native Florida cactus that stands erect at maturity and is considered a tree. This unique cactus occurs in rocky hammocks of the Florida Keys and Cuba. Early botanists described *Cereus robinii* as locally abundant. However, the plant communities in which *Cereus robinii* occurs have largely disappeared from the Keys and Cuba due to development and urbanization, and today *Cereus robinii* is near extinction. Of the five remaining populations in the keys, three occur on privately owned land and are very vulnerable due to the continuing urbanization of the Florida Keys.

Previous Federal protective actions began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4 of the Act, and of its intention thereby to review the status of the plant taxa named within. On June 10, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to section 4 of the Act. This list of plants was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register notice. *Cereus robinii* was included in all three of these documents. General comments on the 1976 proposal were summarized in an April 26, 1978, Federal Register publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal along with four other proposals that had expired (44 FR 70796). The Service reproposed *Cereus robinii* to be an endangered species on July 29, 1983 (48 FR 34493).

Summary of Comments and Recommendations

In the July 29, 1983, proposed rule (48 FR 34493) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices published in the Miami Herald on August 21, 1983, the Key West Citizen on August 23, 1983, and the Marathon Keynoter on September 1, 1983, invited general public comment. Ten comment letters were received and are discussed below.

The Florida Department of Agriculture and Consumer Services pointed out the endangered state of the tree-cactus and the need to protect it. The U.S. Army Corps of Engineers acknowledged that additional protection will be extended to the species and section 7 consultation procedures will be implemented in order to protect this valuable resource. The Florida Game and Fresh Water Fish Commission supported the proposal. In addition, the Florida Department of Natural Resources (Division of Parks and Recreation) expressed concern about poaching, and strongly recommended that the locations of the extant populations not be published. As pointed out in the proposal, critical habitat is not designated for this reason. The International Union for the Conservation of Nature and Natural Resources (Conservation Monitoring Centre) and a private individual commented on the vulnerability of this species in Cuba. Several individuals suggested that the Service work with landowners that have Key tree-cactus as well as other endangered species, in order to reduce or eliminate impacts. In the past, the Service has attempted to work with developers, either through other Federal agencies or privately, to protect listed species; this policy will continue. Another private group pointed out that most of the remaining populations are located on only one key. One commentor inquired as to why critical habitat is not being designated which is explained in the critical habitat section of this rule.

No negative or adverse comments were received and no public hearing was requested or held.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Cereus robinii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cereus robinii* (Lemaire) Benson (Key tree-cactus) are as follow:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Historically, *Cereus robinii* was known from at least 11 sites in the Florida Keys and also from two sites in Cuba. Today, only five sites remain in the Florida Keys, a reduction of almost 60 percent. Twelve areas of suitable habitat within the historical range of *Cereus robinii* in Florida were searched in June 1979, but *Cereus robinii* was relocated in only four of these areas (Austin, 1980). One of these sites, on Layton's Hammock, was visited again in August 1979, and most of the hammock and its vegetation had been bulldozed. Part of the hammock

containing the cacti was turned into a borrow pit several feet deep (Austin, 1980). The plants on this site were presumed extirpated, but were rediscovered in 1982.

A fifth site was discovered on private property in 1982. One of the historical sites for *Cereus robinii* was Key West, Florida. Small (1917) described this cactus as being abundant on Key West at one time, but being on the verge of extermination due to the destruction of the hardwood hammocks for firewood and for building sites. It was apparently extirpated by land clearing for a military base during World War II, and today, no specimens can be located there. Only two of the five sites where this species still occurs today are protected, one site located on land administered by the U.S. Fish and Wildlife Service (National Key Deer Refuge), and the other on land administered by the State of Florida, Department of Natural Resources (Long Key State Park). The plants on privately owned land are especially vulnerable to destruction through the continuing development of the Keys.

The past destruction of hardwood hammock habitat has reduced *Cereus robinii* to a very vulnerable level, and its future is now uncertain. The Florida Keys still are undergoing rapid residential and recreational development. This has resulted not only in the loss of populations of the cacti discussed in this rule, but also of the entire hardwood hammock habitats where they once grew.

In Cuba, *Cereus robinii* has suffered a similar plight. Housing and recreational development have destroyed a large percentage of the species' habitat. *Cereus robinii* is now considered endangered throughout its range by the International Union for the Conservation of Nature and Natural Resources (Lucas and Synge, 1978).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Cereus robinii is an attractive species with high horticultural potential. The horticultural value of these cacti as landscape ornamentals, and the consequent exploitation, has been mentioned by many authors (Lucas and Synge, 1978; Little, 1975; Austin, 1980). Like many other species of cacti, *Cereus robinii* is vulnerable to over-collection due to the activities of some collectors, hobbyists, and societies. *Cereus robinii* could potentially be extirpated from its remaining sites by such activities. Since three of the populations occur on privately owned land, control of taking of these attractive plants is a special problem. Even on public lands, the enforcement of taking prohibitions has been found to be difficult. Observation of one population of *Cereus robinii* showed evidence of vandalism in the form of cut-off branches and carved initials on the branches (Austin, 1980).

C. Disease or Predation

Not applicable to this species.

D. The Inadequacy of Existing Regulatory Mechanisms

Cereus robinii is listed as endangered under Florida law, offering it some protection from taking, intrastate transport, and selling. However, this protection does not protect its habitat and, by itself, will probably not be adequate to prevent the species' further decline. The collection of plants is also prohibited on State parks and on National Wildlife Refuges, but these prohibitions are difficult to enforce. All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which regulates export of this plant, but does not regulate interstate trade or habitat destruction. The Endangered Species Act would offer additional protection for the species, through section 7, interagency cooperation, and through section 9, which prohibits taking with intent to reduce to possession on Federal lands.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Restriction to specialized habitats and geographically limited range tend to intensify adverse effects upon the populations of any rare plant. This is certainly true for *Cereus robinii*, and is increased by the large amount of destruction that has already taken place. The small remaining populations of *Cereus robinii* are also threatened by natural factors, such as hurricanes. Small (1917) describes the destruction and damage of a population due to windthrow after a hurricane passed over the Keys. The growth habit of *Cereus robinii* makes it particularly vulnerable to this natural phenomenon. The reduction of the natural vegetation of coastal Florida and the Keys has reduced the natural buffering capacity to storm effects, increasing the vulnerability of the remaining cacti.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Cereus robinii* as endangered. The precarious status of the few remaining colonies of this pecies place it in imminent danger of extinction throughout its range. The reason for not designating critical habitat for *Cereus robinii* is discussed under the following section. A decision to take no action would exclude *Cereus robinii* from needed protection available under the Endangered Species Act. Therefore, no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Cereus robinii* at this time. As discussed under factor B in the "Summary of Factors Affecting the Species," *Cereus robinii* is threatened by taking, an activity not regulated by the Endangered Species Act with respect to plants, except on Federal lands when removal and reduction to possession is involved. Publication of critical habitat descriptions would make this species even more vulnerable.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and taking prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the Federal agency must enter into consultation with the Service. Except for the management of the

service's Key Deer National Wildlife Refuge, no Federal involvement with *Cereus robinii* is currently known.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Cereus robinii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the U.S. to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibition activities involving endangered species under certain circumstances. *Cereus robinii* is already on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export. International and interstate commercial trade in this species is minimal or nonexistent. It is anticipated that few trade permits would ever be sought or issued since these cacti are not common in the wild or in cultivation.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to *Cereus robinii*, which occurs on land under Federal jurisdiction (U.S. Fish and Wildlife Service, Key Deer National Wildlife Refuge) in Monroe County, Florida. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. Requests for copies of the regulations on plants, and inquires regarding them, may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

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Ward, D.B. 1979. Rare and endangered biota of Florida: Vol. 5—Plants. University Presses of Florida, Gainsville, FL

Author

The primary author of this final rule is Mr. Donald T. Palmer, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following in alphabetical order under Cactaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cactaceae—Cactus family:						
Cereus robinii	Key tree-cactus	U.S.A. (FL), Cuba	E		NA	NA

Dated: July 3, 1984.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-19091 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Selecting Open Season Dates for Hunting Migratory Game Birds in Alaska, Puerto Rico and the Virgin Islands for the 1984–85 Season

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e. the outside limits for dates and times when shooting may begin and end, and the number of birds that may be taken and possessed) from which wildlife conservation agency officials in Alaska, Puerto Rico and the Virgin Islands may select season dates for hunting certain migratory birds during the 1984–85 season. Selected season dates will then be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) for publication in the Federal Register as amendments to §§ 20.101 and 20.102 of 50 CFR Part 20.

DATES: Effective on July 19, 1984. Season selections due from Alaska, Puerto Rico and the Virgin Islands by July 27, 1984.

ADDRESS: Season selections from Alaska, Puerto Rico and the Virgin Islands are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Public documents may be inspected in the Service's Office of Migratory Bird Management, Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John P Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202, 254–3207).

SUPPLEMENTARY INFORMATION: On March 23, 1984, the Service published for public comment in the Federal Register (49 FR 11120) a proposal to amend 50 CFR Part 20, with a comment period ending June 21, 1984. That document dealt with the establishment of seasons, limits and shooting hours for migratory game birds under §§ 20.101 through 20.107 of Subpart K of 50 CFR Part 20, including frameworks for Alaska, Puerto Rico and the Virgin Islands. A supplemental proposed rulemaking appeared in the Federal Register on June 13, 1984 (49 FR 24417) and another on July 9, 1984 (49 FR 28026). The July 9, document contained no information relevant to Alaska, Puerto Rico and the Virgin Islands. This final rulemaking is the fourth in a series of proposed and final rulemaking documents for migratory bird hunting regulations and deals specifically with final frameworks for the 1984–85 season from which wildlife conservation agency officials in Alaska, Puerto Rico and the Virgin Islands may select season dates for hunting certain migratory game birds. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Public Hearing

A public hearing was held in Washington, D.C., on June 21, 1984, as announced in the Federal Register dated March 23, 1984 (48 FR 11120). The public was invited to participate in the hearing and/or submit written statements.

Presentations at Public Hearing

Dr. James C. Bartonek, Pacific Flyway Representative for the Service, discussed the status of five populations of Pacific Flyway geese that nest in Alaska and are declining in numbers, i.e., dusky Canada geese, cackling Canada geese, Pacific Flyway Population of white-fronted geese, Pacific brant and emperor geese. Excessive harvests by sport and subsistence hunters are the probable cause for the declines in four of these populations. The objectives for reducing the harvest of these geese throughout the Pacific Flyway during the 1984–85 season were described.

Comments Received at Public Hearing

Ms. Jennifer Lewis, representing the Humane Society of the United States (HSUS) and the World Society for the Protection of Animals (WSPA), first expressed HSUS's concern with the annual killing, solely for sport or recreation, of migratory birds and noted the Society's commitment to development of a new ethic which places a primary value on the humane treatment and welfare of wildlife. She then expressed the joint concern of HSUS and WSPA that proposed regulations inadequately protect resident species of Puerto Rican waterfowl and recommended the Service close the season on all waterfowl in the Commonwealth to shield resident species which are actively nesting and rearing young during this period. Ms. Lewis noted that several species of resident waterfowl have declined since the late 1950's and early 1960's; that the lack of information of year-by-year population and kill data for resident or wintering waterfowl complicates the development of responsible hunting frameworks; that no justification existed for the institution of a split season in 1983–84; that the impact of two opening dates on native waterfowl was not given proper consideration and that there is a lack of effective law enforcement of migratory bird regulations. She urged the Service to work with the Puerto Rico Department of Natural Resources (DNR) to initiate population studies, upgrade law enforcement efforts and implement existing proposals for the preservation of wetland habitats.

Concerning the management of columbid species in Puerto Rico, Ms. Lewis stated that the Service implements seasons without reliable population and harvest data and that substantial enforcement problems exist. She recommended that the Service close the seasons on all columbid species until adequate data can be obtained and analyzed so that proper management decisions can be made, and work with the DNR to improve their law enforcement efforts.

Response. Concerns by WSPA regarding the management of migratory waterfowl in Puerto Rico have been previously detailed in the June 13, 1984, Federal Register (49 FR 24422). Hunting regulations in Puerto Rico include restrictive measures for certain migrant and resident waterfowl (see 49 FR 11133, March 23, 1984). The season on coots will be closed during 1984–85 to provide protection for the Caribbean coot (*Fulica caribaea*). The proper management of migratory waterfowl wintering in Puerto Rico and the protection of resident species which breed during the proposed season dates warrant further evaluation. A review of the population status and breeding chronology of resident waterfowl species in Puerto Rico will be initiated in cooperation with the Puerto Rico DNR.

Hunting seasons on threatened species of columbids are presently closed. There is no information to indicate that the species presently hunted in Puerto Rico are being adversely affected by hunting. The Service and the Puerto Rico DNR intend to initiate migratory bird censuses and waterfowl harvest surveys in the Commonwealth. The enforcement of migratory bird regulations in Puerto Rico and the Virgin Islands will be assessed with the view of seeking improvements where necessary.

Written Comments Received

Interested persons were given until June 21, 1984, to comment on the March 23 proposed rulemaking. They were also

invited to participate in the June 21 public hearing. Since responding to comments in the June 13, 1984, Federal Register (49 FR 24422), two additional comments were received on the proposed regulations frameworks for Alaska, Puerto Rico and the Virgin Islands.

In the March 23, 1984, Federal Register (49 FR 11130), the Service noted the substantial declines in populations of dusky Canada geese, Pacific Flyway white/fronted geese, cackling Canada geese and Pacific brant, and the need for harvest restrictions on these populations. The Service proposed to not open the season on cackling Canada geese, insofar as practical considering management objectives for other subspecies of Canada geese, and to further restrict the harvest of the Pacific Flyway Population white-fronted geese throughout their range in the United States. Decisions were deferred regarding dusky Canada geese and Pacific brant pending additional information and recommendations from the Pacific Flyway Council. By letter of April 19, 1984, the Pacific Flyway Council, at the request of the Alaska Department of Fish and Game, recommended that frameworks for migratory bird seasons in Alaska remain unchanged, except that the State would impose restrictions to: (1) Eliminate the harvest of cackling Canada geese, insofar as practical, and (2) in conjunction with the other States, reduce by 50% the harvests of both the Pacific Flyway Population white-fronted geese and Pacific brant.

By telegram of June 20, 1984, the Alaska Department of Fish and Game additionally recommended that the limits on emperor geese be reduced from 6 in the daily bag and 12 in possession to 4 and 8, respectively. The State noted that an anticipated influx of oil and gas exploration workers into a primary sport-harvest area for emperors could further impact the declining population.

Response. The Service concurs with the recommendations of the Pacific Flyway Council to retain present frameworks for migratory bird hunting seasons in Alaska, except limits on emperor geese with be reduced. Alaska has previously exercised its prerogative to be more restrictive than frameworks permit, and those more restrictive regulations will be published in the Federal Register.

The Service concurs with the recommendations of the Alaska Department of Fish and Game regarding the reduced limits on emperor geese. This framework change does not impact other States within the Pacific Flyway because emperor geese are found mainly within Alaska and to a lesser degree in the U.S.S.R. The Service notes that surveys of emperor geese suggest nearly a 50% decrease in numbers over the past 20 years and that emperors comprise an increasingly greater percentage of the goose harvests by subsistence hunters on the Yukon-Kuskokwim Delta.

The Puerto Rico Department of Natural Resources (DNR), by letter dated June 15, 1984, requested that the hunting season be closed to the harvest of coots, i.e., American coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*), during 1984–85. The DNR indicated that Caribbean coots cannot be distinguished from American coots in field hunting situations and no more than 200 Caribbean coots may remain in Puerto Rico.

Response. The Service concurs with the recommendation and the requested provision is included in the following framework.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these documents are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act." and " by taking such action necessary to insure that any action authorized, funded, or carried out . . is not likely to jeopardize the continued existence of such endangered and threatened species or result in the destruction or modification of habitat of such species which is determined to be critical."

The Service initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On July 5, 1984, Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Examples of such consideration include closures of designated areas in Puerto Rico for the Puerto Rican plain pigeon (*Columba inornata wetmorei*) and the Puerto Rican parrot (*Amazona vittata*), and in Alaska for the Aleutian Canada goose (*Branta canadensis leucopareia*).

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the Federal Register datd March 23, 1984 (at 49 FR 11124) the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Memorandum of Law

In the Federal Register dated March 23, 1984 (at 49 FR 11125) the Service stated that it planned to publish its Memorandum of Law for the 1984–85 migratory bird hunting regulations with its first final rulemaking.

Memorandum of Law. Section 4 of Executive Order 12291 requires that certain determinations be made before any final major rule may be approved. Section 4(a) specifies that the regulation must be clearly within the authority of law and consistent with congressional intent, and that a memorandum of law be provided to support that determination. Also, the agency must state that the factual conclusions upon which the law is based have substantial support in the agency record and that

full attention has been given to public comments in general, and to comments of persons directly affected by the rule in particular.

The development of the annual migratory bird hunting regulations is provided for under Section 3 of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–711). Such regulations have been promulgated annually since 1918. They appear in 50 CFR Part 20, Subpart K. Congressional support for the development of these rules and ancillary activities involved in their development are reflected in the U.S. Fish and Wildlife Service's budget. Among these activities are biological surveys, hunter activity and harvest surveys, research investigations, law enforcement, and adminstrative costs associated with the development and publication of the proposed and final rules. Many other Service activities, such as the acquisition and management of habitats for migratory birds, indirectly assist in maintaining the migratory bird resource at levels which allow reasonable sport hunting harvest.

In developing its annual hunting rules for 1984–85, the Service has published three proposed rules for public comment and conducted one public hearing to facilitate public input into the rulemaking process. Five additional proposed and final rulemakings, and another public hearing, are included in the remaining schedule for establishing the annual hunting regulations for 1984–85. Dozens of public comments summarized and responded to in Federal Register listed in the preamble of this document describe the Service's consideration of the impacts of its proposed rules on the public. Many of these comments originated from affected State conservation agencies, while others were submitted by the affected public. In general, the comments strongly supported the Service's initial or supplementary regulatory proposals. Comments which do not support proposed Service action have been adequately addressed. Additional public comments are invited and will be addressed in subsequent Federal Register documents. The complete administrative record, including copies of public comments, is available for inspection at the Office of Migratory Bird Management.

Consequently, the Department has determined that it has fulfilled requirements of Section 4 of Executive Order 12291 and the Migratory Bird Treaty Act in developing the 1984–85 migratory bird hunting regulations which are adequately supported by the Service's records.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed rulemaking was published March 23, 1984, the Service established what it believed was the longest period possible for public comment. In doing this, the Service recognized that at the period's close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the governments of Alaska, Puerto Rico, and the Virgin Islands would have insufficient time to select their season dates, shooting hours, and limits; to communicate those selections to the Service; and finally establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and special closures, from which officials of the Alaska Department of Fish and Game, Puerto Rico Department of Natural Resources, and the Virgin Islands Department of Conservation and Cultural Affairs may select open season dates. Upon receipt of season selections from Alaska, Puerto Rico and Virgin Islands officials, the Service will publish in the Federal Register final rulemaking amending 50 CFR 20.101 and 20.102 to reflect seasons, limits, and shooting hours for these areas for the 1984–85 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, take effect immediately upon publication.

Authorship

The primary author of this proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of John P Rogers, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1984–1985

Outside Dates: Between September 1, 1984, and January 26, 1985, Alaska may select seasons on waterfowl, snipe and cranes, subject to the following limitations:

Shooting hours: One-half hour before sunrise to sunset daily.

Hunting Seasons

Ducks, geese and brant—107 consecutive days in the Pribilof and Aleutian Islands, except Unimak Island; 107 days in the Kodiak (State game management unit 8) area and the season may be split without penalty; 107 consecutive days in the remainder of Alaska, including Unimak Island. Exception: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be white-fronted or Canada geese, singly or in the aggregate of these species. In addition to the basic limit, there is a daily bag limit of 4 and a possession limit of 8 Emperor geese.

Brant—A daily bag limit of 4 and a possession limit of 8.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 2 and a possession limit of 4.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1984–85

Shooting hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1984, and January 15, 1985, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Puerto Rican plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is known to be present in the above locale in small numbers and which is presently listed as an endangered species under the Endangered Species Act of 1973.

Ducks, Coots, Gallinules and Snipe

Outside Dates: Between November 5, 1984, and February 28, 1985, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common gallinules, and common snipe. The season may be split into two segments.

Daily Bag and Possession Limits

Ducks—Not to exceed 4 daily or 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e. common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

Common gallinules—Not to exceed 6 daily and 12 in possession, except that the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Closed Areas: No open season for ducks, gallinules, and snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1984–85

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1984, and January 15, 1985, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Ground dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red necked pigeon, scaled pigeon.

Ducks

Outside Dates: Between December 1, 1984, and January 31, 1985, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (Oxyura dominica).

Dated: June 28, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-19115 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 49, No. 140
Thursday, July 19, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 77P-0146]

Label Designation of Ingredients in Cheese and Cheese Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the food regulations for label designation of ingredients in cheese and cheese products to permit (1) microbial cultures to be declared as "cheese cultures" and (2) enzymes of animal, plant, or microbial origin to be declared as "enzymes." FDA is proposing these changes in order to simplify and standardize nomenclature for cultures and enzymes which appear in ingredient lists on cheese and cheese products. FDA is also responding to two requests for advisory opinions on whether enzymes used in the production of cheese and cheese products are processing aids within the provisions of § 101.100(a)(3)(ii)(*ec*) (21 CFR 101.100(a)(3)(ii)(*c*)) and thereby exempt from ingredient listing requirements.

DATE: Written comments by September 17, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0175.

SUPPLEMENTARY INFORMATION: FDA has received two requests for advisory opinions on whether enzymes used in the production of cheese and cheese products are processing aids within the provisions of § 101.100(a) (3)(ii) (*c*). These provisions define processing aids as substances that are added to a food for their technical or functional effect in the processing, but are present in the finished food at insignificant levels and do not have any technical of functional effect in that food. Such processing aids are exempt from ingredient listing requirements.

One request for advisory opinion was contained in a petition from the National Cheese Institute, Inc. (NCI) (Docket No. 77P-0146), concerning standardization of nomenclature for cultures and enzymes used in the production of cheese and emulsifiers used in the production of processed cheese, cheese food, cheese spread, and related food. The NCI petition maintained that all enzymes used in cheese making could be considered processing aids because:

(1) Enzymes added to milk are basically protein,

(2) The amounts used do not, in and of themselves, significantly alter the composition of resulting cheese, and

(3) An insignificant fraction of the added active enzymes is present in the finished cheese and even this fraction becomes inactive.

The Milk Industry Foundation (MIF) submitted a similar request for an advisory opinion (Docket No. 78A-0089). However, the MIF request was more specific in that it addressed only those enzymes used in the manufacture of cottage cheese dry curd. MIF stated that these enzymes function during the process of milk coagulation by improving the texture of the curd, increasing the ability of each curd cube to maintain the desired shape and form, enhancing whey expulsion during cooking of the curd, and permitting the curd to be cut at a slightly higher pH, thus resulting in a sweeter, or less acidic curd. Although these enzymes significantly improve cottage cheese dry curd processing, they are completely inactivated during cooking and have no residual effect on the finished dry curd. MIF advised:

> A typical milk coagulant usage level by the cottage cheese industry is the addition of 0.3 fl. oz. of an active coagulant such as rennet per 1000 gallons of skim milk—i.e., and initial level of rennet or other milk coagulant of approximately 2 ppm. During the "setting" step of curd formation approximately 70% of the active coagulant becomes resident in the whey fraction, and the coagulant remaining in the curd at this point in the manufacturing procedure is approximately 30% of the original amount added. Subsequent to setting the milk, curd cutting, cooking, multiple curd washings and draining steps effectively result in near complete removal of the coagulant.

FDA has been persuaded that when rennet and other milk-clotting enzymes are used in the manufacture of cottage cheese dry curd, the enzymes serve a technical or functional effect in the manufacture of the curd, but serve no such effect in the finished cottage cheese dry curd. In view of the fact that the MIF data indicate that these enzymes are present in the finished cottage cheese dry curd at insignificant levels, the agency advises that they are processing aids in this situation. As a result, these enzymes are not required to be included in ingredient lists for cottage cheese dry curd or for products produced therefrom (e.g., cottage cheese and lowfat cottage cheese).

Although enzymes are processing aids for the manufacture of cottage cheese dry curd, they are not processing aids for the manufacture of all cheeses. In some cheeses (e.g., cheddar, swiss, etc.), enzymes remain active in the finished cheese functioning as an integral part of its physical attributes by enhancing body, flavor, and aroma. Because such functional effects are contrary to provisions of § 101.100(a)(3)(ii)(*c*) pertaining to the finished food, FDA advises that, as a general rule, enzymes used in the manufacture of cheese are not processing aids. Of course, firms may request the agency's opinion on whether specific enzymes are processing aids in specific cases. All requests should substantiate that FDA could appropriately classify such enzymes as processing aids. Data should be submitted to show that the enzymes serve a technical of functional effect in the manufacture of the cheese, but not in the finished cheese. The data should establish that the enzymes have been inactivated when the cheese is in a finished condition. The data should also establish that the enzymes are present in the finished cheese at insignificant levels.

The NCI petition requested that § 101.4(b) be amended by adding a new subparagraph to permit all safe and suitable enzymes of animal, plant, or microbial origin used in the production of cheese to be declared as "enzymes" provided FDA does not consider these enzymes to be processing aids within

the meaning of § 101.100(a)(3)(ii). The petitioner stated:

> The enzymes used in the making of cheese are extracted from animal stomachs or derived from the controlled fermentation of certain molds and bacteria. These enzyme sources may be blended (and usually are) in such manner to produce desired cheese characteristics. The cheese industry consists of several hundred cheese factories making cheese for less than a hundred packagers of cheese. It would be impractical for the individual packer to have on hand all label variations which may at one time or another describe the enzyme or combination of enzymes used by the hundreds of cheesemakers in making the many different cheese varieties from milk with inherent seasonal variations.

FDA believes that the petitioner presented reasonable grounds for permitting enzymes used in the production of cheese to be declared in the list of ingredients as "enzymes." The agency recognizes that when cheese manufacturers are forced to maintain numerous label stocks, the cost of such maintenance can be considerable and such cost is passed on to consumers. This cost cannot be justified in view of the agency's belief that information of specific enzyme names is not significant to consumers. Since 1973, some cheese standards have permitted enzymes to be declared by the word "enzymes" and the agency has included such permission in subsequent revisions of other cheese standards. For example, in the September 19, 1978 Federal Register (43 FR 42135), FDA proposed certain revisions for nine cheese standards of identity. Each of the proposed revisions would have permitted enzymes to be declared by the word "enzymes." FDA did not receive any comments concerning this term on the proposed revisions, and this permission was retained in the final rule which was published in the January 21, 1983 Federal Register (48 FR 2736). Also, in the January 21, 1983 Federal Register (48 FR 2779), FDA proposed revisions in nine additional cheese standards. The same enzyme provisions were included in these proposed revisions. Consequently, FDA is proposing to add new paragraph (b)(22) to § 101.4 to permit all safe and suitable enzymes used in the production of cheese to be declared in the list of ingredients as "enzymes."

If proposed paragraph (b)(22) is published as a final rule, all safe and suitable enzymes of animal, plant, or microbial origin which are used in the production of cheese and cheese products may be declared by the word "enzymes." As a result, it would no longer be necessary for cheese standards to specifically address the generic term "enzymes" for purposes of label declaration. Standards already addressing this term will not be affected if paragraph (b)(22) is promulgated as a final rule. However, the specific provisions addressing label declaration of enzymes would then be a repetition of paragraph (b)(22). Because such duplication should not create any significant problems, FDA has no plans for immediate revision of appropriate cheese standards if this regulation is promulgated as a final rule. The duplication could more efficiently be removed by amending the standards when they are being revised for other more significant reasons. Of course, proposed revisions of cheese standards containing enyzme labeling provisions will not be affected by this proposal as it is possible that the enzyme provisions in proposed paragraph (b)(22) will not necessarily be promulgated as a final rule.

The NCI petition also requested that § 101.4(b)(5) be revised to read:

> Microbial cultures may be declared as "cheese cultures" or by the word "cultured" followed by the name of the substrate, e.g., "made from cultured milk."

At the present time, § 101.4(b)(5) already permits bacterial cultures to be declared by the word "cultured," followed by the name of the substrate (e.g., "made from cultured skim milk or cultured buttermilk"). However, there are no provisions for terms such as "cheese cultures." NCI asserted that such a term would be easily understood and pointed out that some cheese standards already permit cheese cultures to be declared in this manner.

FDA agrees that the term "cheese cultures" is easy to understand and acknowledge that since 1973 some cheese standards have permited bacterial cultures to be declared by this term. FDA is not aware of any consumer dissatisfaction with the term "cheese cultures" in these cases. The agency does not believe that consumer problems will be created if all cheeses are permitted to use this term. FDA pointed out, however, that NCI requested that this term apply to microbial cultures, not bacterial cultures. The term microbial cultures, which is broader than the term bacterial cultures, includes molds as well as bacteria. FDA agrees that the term microbial, rather than bacterial, is more appropriate for cheese cultures because cheese cultures often include mold as well as bacteria.

Accordingly, FDA proposes to permit microbial cheese cultures to be declared as "cheese cultures." The agency proposes to permit this declaration by adding new paragraph (b)(21) to § 101.4 rather than by revising § 101.4(b)(5) because paragraph (b)(5) applies to all foods and pertains only to bacterial cultures. NCI has not substantiated that all foods need an exemption for microbial cultures.

In addition, NCI requested that § 101.4(b) be amended by adding a new paragraph to permit all emulsifying agents which are the sodium salts of phosphoric acids to be declared in the ingredient statement as "sodium phosphate." The petitioner asserted that these salts hydrolyze to the phosphate monomer upon addition to the cheese mixture in the cooker and that it is impractical to maintain an inventory of labels with all of the combinations of permitted sodium phosphate emulsifiers. The petitioner contended that the proposed amendment would furnish the consumer with information relative to the nature of the emulsifier used and permit the processor to make a more uniform product.

FDA disagrees that emulsifying agents which are the sodium salts of phosphoric acids should be declared as "sodium phosphate" and declines to propose such an amendment. Although FDA is aware that in some cases complete hydrolyzation of these salts may occur, the agency is also aware that the extent of hydrolyzation varies with the types of salt and the manufacturing conditions. Often these processes are quite complex and only partial hydrolysis takes place during manufacture of the processed cheese. Consequently, the consumer may purchase processed cheese containing the sodium salts of phosphoric acids in their unhydrolyzed form. Also, one of the emulsifying agents listed in the petition contains aluminum as well as sodium and phosphate.

FDA advises that, pending the issuance of a final regulation ruling on this proposal, the agency will not initiate regulatory action against any food product on the basis of improper ingredient declaration of enzymes, provided such ingredient declarations are in accordance with this proposal.

FDA proposes that the effective date of any final regulation that may be based on this proposal be the date of publication of the final regulation in the Federal Register. Because the regulation would relieve a requirement by providing for alternative labeling, good cause exists to make it effective on the date of publication.

In accordance with Executive Order 12291, FDA has analyzed the economic effects of this proposal, and the agency has determined that the final rule if

promulgated, will not be a major rule as defined by that Order. The basis for this determination is that, for cheese and cheese products, this proposed rule provides alternative nomenclature for declaration of microbial cultures and enzymes in ingredient lists without imposition of additional labeling requirements. Manufacturers should therefore not be required to change existing labels, and they may be provided with greater flexibility on listing mandatory information on new labels. No increase in manufacturers' labeling costs is therefore expected.

In accordance with the Regulatory Flexibility Act, FDA has considered the effect that this proposal would have on small entities, including small businesses and has determined that the effect of this proposal is to exempt cheese and cheese products containing microbial cultures and enzymes from certain labeling requirements, thus potentially reducing labeling costs. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

The agency has determined pursuant to 21 CFR 25.24(d)(13) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 101

Food labeling, Misbranding, Nutrition labeling, Warning statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 403, 701(a), 52 Stat. 1047–1048 as amended, 1055 (21 U.S.C. 343, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 101 be amended in § 101.4 by adding new paragraphs (b)(21) and (b)(22) to read as follows:

PART 101—FOOD LABELING

§ 101.4 Food; designation of ingredients.

* * * * *

(b) * * *

(21) Microbial cultures used in the production of cheese and cheese products may be declared as "cheese cultures."

(22) All safe and suitable enzymes of animal, plant, or microbial origin which are used in the production of cheese and cheese products, may be declared by the word "enzymes."

* * * * *

Interested persons may, on or before September 17, 1984 submit to the Docket Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-19061 Filed 7-18-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 177

San Carlos Indian Irrigation Project, Arizona; Revision of Power Rates

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs proposes to revise two of the three rate schedules which establish the charges for electric power and energy provided by the San Carlos Indian Irrigation Project. An analysis of the financial condition of the Power Division Indicates that a rate adjustment is *required* to assure sound management and operation of the power system.

DATE: Comments must be received on or before September 17, 1984.

ADDRESS: Written comments should be directed to the Phoenix Area Office, Bureau of Indian Affairs, P.O. Box 7007, Phoenix, AZ 85001.

FOR FURTHER INFORMATION CONTACT: Ralph Esquerra, Acting Project Engineer, San Carlos Indian Irrigation Project, P.O. Box 250, Coolidge, AZ 85228. Telephone (602) 723-5439.

SUPPLEMENTARY INFORMATION: The projected operating revenues for fiscal year 1984 are $12,153,438 and the projected operating expenses are $12,915,870; this leaves a deficit of $762,432. To eliminate this deficit and to *provide* for increased costs of labor, materials and equipment, the Project power rates must be appropriately adjusted to generate the required additional revenues.

A study performed by the Project indicates that revenues derived from the sale of energy under the existing rate schedules are not sufficient to cover the cost of service provided to the power customers; therefore; it is proposed that the existing; *Residential* (single and three-phase service to residences and small, non-commercial users) and *General* (single and three-phase service for all purposes except residences and small, non-commercial users) rate schedules be adjusted to more accurately reflect the cost of providing service. If effected, power bills for service under the Residential and General rate schedules will increase overall by an amount of 12.4%.

This notice is published in exercise of rulemaking authority delegated to the Deputy Assistant Secretary—Indian Affairs (Operations) by the Secretary of the Interior in 209 DM 8 and redelegated to Area Directors in 10 BIAM 3.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule.

The principal author of this document is Ralph Esquerra, San Carlos Irrigation Project, P.O. Box 250, Coolidge, AZ (602) 723-5439.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The Following proposed rate schedules were developed, based on San Carlos Irrigation Project's existing rate schedules, as of January 1984. The final proposed rate schedules will be based on existing Project rate schedules in effect on the approval date of this increase.

List of Subjects in 25 CFR Part 177

Electric power, Indians—lands, Irrigation.

PART 177—[AMENDED]

It is proposed to amend Part 177, Subchapter H, Chapter 1 of Title 25 of the Code of Federal Regulations as follows:

1. The authority for Part 177 is as follows:

Authority: Sec. 5, 43 Stat. 476, 45 Stat. 210, 211; 5 U.S.C. 301

2. Section 177.51 is amended by revising paragraphs (b) and (c) to read as follows:

§ 177.51 Rate Schedule No. 1—Residential Rate.

* * * * *

(b) *Monthly Rate.*

(1) $10.74 minimum which includes the first 50 kilowatt-hours.

(2) 11.7 cents per kilowatt-hour for the next 100 kilowatt hours.

(3) 7.5 cents per kilowatt-hour for the next 350 kilowatt-hours.

(4) 6.3 cents per kilowatt-hour for all additional kilowatt-hours.

(c) *Minimum Bill.* The minimum bill shall be $10.74 per month except when a higher minimum bill is stipulated in the contract.

* * * * *

3. Section 177.52 is amended by revising paragraphs (b) and (c) to read as follows:

§ 177.52 Rate Schedule No. 2—General Rate.

* * * * *

(b) *Monthly Rate.*

(1) $13.87 minimum which includes the first 50 kilowatt-hours.

(2) 16.8 cents per kilowatt-hour for the next 350 kilowatt-hours.

(3) 9.9 cents per kilowatt-hour for the next 600 kilowatt-hours.

(4) 7.6 cents per kilowatt-hour for the next 9,000 kilowatt hours.

(5) When use is 10,000 kilowatt-hours or more: First 10,000 kilowatt-hours $843.07

(6) Additional kilowatt-hours at 6.17 cents per kilowatt-hour, less a credit of 0.9 cent per kilowatt-hour for each kilowatt-hour above 200 times the billing demand (50 KW minimum).

(c) *Minimum Bill.* The minimum bill shall be $3.06 per month per kilowatt of billing demand, except where the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill shall not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month equal to twelve times the highest monthly minimum computed for the same twelve-month period. However, no monthly billing shall be less than $13.87

* * * * *

J. Bart Graves,

Acting Phoenix Area Director.

[FR Doc. 84-19069 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[OW-FRL-2634-3]

National Pollution Discharge Elimination System Regulations; Denial of Petition for Rulemaking

AGENCY: Environmental Protection Agency.

ACTION: Denial of petition for rulemaking.

SUMMARY: On November 15, 1983, the National Food Processors Association (NFPA) filed a petition requesting EPA to initiate a rulemaking to revise 40 CFR 122.7 to provide confidential treatment for certain information in an application for a National Pollutant Discharge Elimination System (NPDES) permit which they assert is trade secret and confidential business information. The Agency has denied the petition. The Agency's decision appears below.

FOR FURTHER INFORMATION CONTACT: David Greenburg, Permits Division (EN-336), 401 M St., SW., Washington, D.C. 20460, (202) 426-4793.

SUPPLEMENTARY INFORMATION: EPA has established a public record for this decision which is available for inspection by contacting the person named above. This record includes the petition submitted by NFPA as well as the materials cited below, including relevant regulatory provisions, the 1978 Class Determination pertaining to confidentiality made by the EPA General Counsel and relevant legislative history.

The decision of the Agency appearing below was sent to NFPA.

Response to Petition of the National Food Processors Association for Rulemaking on the NPDES Confidentiality Provisions

In the matter of National Food Processors Association, Washington, D.C.

The Agency has been petitioned to initiate a rulemaking to revise 40 CFR 122.7. For the reasons set out below, the petition is denied.

I. Introduction

On November 15, 1983, the National Food Processors Association (NFPA) filed a petition under the Administrative Procedure Act, 5 U.S.C. 553(e). NFPA requested that EPA begin a rulemaking procedure to revise 40 CFR 122.7, which contains regulations governing the public disclosure of information contained in applications for permits issued under the National Pollutant Discharge Elimination System (NPDES). NFPA wanted EPA to modify 40 CFR 122.7 so as to provide confidential treatment for trade secret and confidential business information contained in an application for an NPDES permit.

The provisions contained at 40 CFR 122.7 are based upon EPA's interpretation of the requirements of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, (CWA), and resulted from an extensive rulemaking proceeding. See 44 FR 32892, 45 FR 33318-33319. All significant comments raised during that proceeding were reviewed and considered at that time. In its petition, NFPA has provided EPA with no new information as to why the confidentiality provision should be changed. The arguments that petitioner raises have been previously considered and rejected by the Agency. The existing regulation is based upon a plain reading of the statute and is necessary to provide meaningful public participation in the permitting process. Additionally, NFPA provided no examples of harm to itself or its members resulting from the existing regulation. Therefore, since EPA has been provided with no reasons to initiate a rulemaking to reconsider the substance of 40 CFR 122.7, the petition is denied. Nonetheless, because of the public interest in the subject of the petition, a detailed explanation of the Agency's position and a response to NFPA's argument is set forth below.

II. Background

The Federal Water Pollution Control Act Amendments of 1972 (FWPCA, now the CWA) contain the two statutory provisions which are the focus of NFPA's petition. These provisions are sections 308 and 402(j), (33 U.S.C. 1318 and 1342(j) respectively).

The Act contained both broad goals and specific provisions to ensure extensive and effective public participation in the permitting process.[1] The Act encouraged this policy by generally providing public access to all information, including all effluent data, permits and permit applications. In addition, the Act provided confidential protection for certain information if a discharger could demonstrate that disclosure of the information would divulge trade secrets. However, even this exception was limited. *See* CWA sections 308(b), 402(j).

To implement the requirements of the Act, regulations setting up the NPDES

[1] See, in addition to section 402(j) and 308, CWA sections 101(e), 402(b)(3).

program were promulgated in 1972 and 1973. 37 FR 28390, 38 FR 13528. The issues of public access to information and confidential treatment of trade secrets were covered in §§ 124.35 of the 1972 regulations and 125.35 of the 1973 regulations. In 1977, Congress passed the Clean Water Act (CWA), amending FWPCA, but made no change to either the public access or trade secret provisions.

In March, 1978, in response to requests from EPA's Regional offices, the EPA General Counsel issued Class Determination I-78 on the confidentiality of NPDES Permit applications. This determination stated that section 402(j) of the CWA required that NPDES permit applications be made available to the public notwithstanding the fact that some of the information contained in them would otherwise be treated as confidential. This decision was based on a comparative analysis of sections 402(j) and 308 of the CWA and the relevant legislative history.

In August, 1978 EPA proposed revisions to the NPDES regulations, including a new section, 40 CFR 124.131, which specifically implemented the Class Determination. 40 FR 37078. After considering the public comments received, EPA promulgated the revisions, including § 124.131, in final form on June 7, 1979. 44 FR 32854.

The format of the confidentiality regulation has since been revised (*see* 45 FR 33290, 48 FR 14146), but its substance has remained unchanged. It is now found at 40 CFR 122.7 (b) and (c). Those provisions provide as follows:

(b) Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee;

(2) Permit applications, permits and effluent data.

(c) Information required by NPDES application forms provided by the Director * * * may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

III. Denial of NFPA's Petition To Commence Rulemaking To Revise the Confidentiality Provisions of 40 CFR 122.7

NFPA's petition requests the Agency to commence rulemaking to revise the public disclosure provisions of 40 CFR 122.7 It relies on two central arguments to support its request. First, NFPA argues that section 308 of the CWA overrides section 402(j) of the Act. Second, NFPA argues that Congress intended that the NPDES program incorporate the Refuse Act of 1899 into the Federal Water Pollution Control Amendments of 1972, with no indication that there should be any change in the Refuse Act provisions for confidential treatment of all trade secrets except those concerning effluent data.

1. The Relationship Between Sections 308 and 402(j) of the CWA

NFPA's initial argument rests upon the relationship between sections 308 and 402(j) of the CWA. The CWA at sections 308 provides that in carrying out the objectives of the Act, the Administrator shall require the owner or operator of any point source to maintain records and make certain reports. Section 308 references section 402 along with other sections of the CWA. The statute further provides that any records, reports or other information obtained under this authority shall be available to the public. The statute creates a limited exception to the general requirement of public availability of these documents. Upon a satisfactory showing to the Administrator that any of the records, reports or information to which the Administrator has access would, if made public, divulge methods or processes entitled to protection as trade secrets, the Administrator shall consider such record, report or information to be confidential. However, effluent data may never be considered confidential.

NFPA relies upon section 308 in claiming that trade secrets contained in NPDES permit applications are entitled to confidential treatment. However, a reading of section 402 shows that such a conclusion is a misinterpretation of statutory language and intent.

Section 402 of the CWA is entitled "National Pollution Discharge Elimination System", and contains the statutory foundation for the NPDES program. Among its provisions is section 402(j), which explicitly provides that *"A copy of each permit application and each permit issued under this Section shall be available to the public.* (emphasis added)." This language means that section 402(j) constitutes an exception to the confidentiality provisions of section 308 notwithstanding that some of the information contained therein otherwise be treated as confidential.

EPA's longstanding and consistent policy to deny confidential treatment to NPDES applications has been based not only on the plain language of section 402(j) but also on the legislative intent and histroy of the CWA, which emphasize the importance of meaningful public participation.

The nature of the NPDES program requires that permit application information be made public. There is no other way for members of the public to comment meaningfully on draft permits, or indeed to have full faith in the integrity of the permit process. For example, NFPA cites production levels as the kind of information it would seek to keep secret. However, the many cases in which an applicable effluent guideline is based upon production data particularly indicate the public need for all permit application data. Production-based guidelines are tied to production data; thus it is essential for the public to have access to a discharger's production data in order to be able to judge the reasonableness of a given effluent limitation and be able to meaningfully comment upon it.

A specific example will illustrate the public reliance on application information. Consider a citizen wishing to comment on a draft permit for a cherry canning plant which is upriver from his home. To review the plant's pollutant discharge requirements, he obtains the draft permit. He sees that the facility would be allowed to discharge 250 lbs. of total suspended solids (TSS) per day and wishes to check this against EPA's guidelines for the Food Processing Industry. First, he must ascertain the allowable EPA allocation of TSS, which is given in the guideline as "X pounds per 1000 barrels of sweet cherries processed" or as "Y pounds per 1000 barrels of sour cherries processed." To determine the appropriate effluent limitation for the permit, he then must multiply this allocation by the number of thousands of barrels of each type of cherry processed at the plant. Without the production information the citizen cannot review the limits and must blindly accept the plant's or EPA's determination that the permit meets all applicable standards. Thus, denying the public access to production data would substantially reduce the public's role in the permit process.

Another example of the importance of application information is where a facility is engaged in more than one industrial process. In such cases, it is important for the public to have access to the general details of plant operations in the form of flow diagrams and block diagrams in order to evaluate permits based on the best professional judgment of a permit writer, and because the nature of plant operations will determine whether specific guidelines and subcategories within a guideline are applicable to the discharger.

Despite the strong policy reasons for EPA's current regulation, NFPA's petition is devoid of any practical reasons to support a revision of the regulation. Although this EPA policy has

been in effect for nearly six years, there has been no showing of harm suffered as a result of this policy, either by NFPA or others.

Beyond the practical and policy reasons supporting the existing regulation, an examination of the Act and its history shows that Congress, in addition to including the specific language of 402(j), had a pervasive concern for ensuring public involvement in the Clean Water program. Section 101(e) of the CWA states that:

> Public participation in the development, revision and enforcement of any regulation, standard, effluent limitation, plan or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the State, shall develop and publish regulations specifying minimum guidelines for public participation in such processes. 33 U.S.C. 1251(e).

Furthermore, section 402(b)(3) of the CWA provides that in reviewing State requests for NPDES program authorizations the Administrator shall determine that the State has the authority

> To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application. 33 U.S.C. 1342(b)(3).

The Senate Committee on Public Works, in discussing the public's role stated that "[a]n essential element in any control program involving the nation's waters is public participation. The public must have a genuine opportunity to speak on the issue of protection of its waters." 2 Legislative History of the Water Pollution Control Act of 1972 at 1490 [hereinafter "Leg. Hist."] As a result, the Committee established requirements to provide public access to all relevent information surrounding a discharge source and the requirements placed on it, including "placing the permit and conditions thereto in a place of public access." 2 Leg. Hist. 1490. Sections 101, 308 and 402 of the CWA embody Congress' mandate for the widest possible public participation in the Clean Water Act programs. Section 308(b) creates a narrow exception to that broad policy, but that exception is restricted by section 402(j), which requires that in no case shall permit applications be withheld from the public.

It is also clear that Congress was aware of the impact of section 402(j) at the time the FWPCA amendments were passed. It was specifically brought to the attention of Congress by EPA. In December 1971, EPA Administrator Ruckelshaus sent a letter to the Chairman of the House Public Works Committee containing the Agency's comments on the legislation that was to become the 1972 Amendments to FWPCA. The Administrator stated that "[it] would seem appropriate to accord the same degree of confidentiality to permit application data as is accorded by [section 308] to information obtained by inspections and reports." 1 Leg. Hist. 855. Despite the Administrator's specific statement drawing Congressional attention to the issue, Congress left section 402(j) untouched.

NFPA argues that since Congress did not take any action in response to the Administrator's remarks, Congress must have assumed that NPDES permits and applications already came under the confidentiality protections of section 308(b). However, at no point in the legislative history is there any evidence that Congress thought the Administrator's assumption was erroneous. Instead, it appears clear that Congress deliberately chose to treat the information covered by section 402(j) differently from other information covered by section 308.

This mandate for broad public participation has been supported by judicial interpretation. *Citizens for A Better Environment* v. *EPA*, 596 F.2d 720 (7th Cir. 1979). In that opinion the court invalidated the Administrator's approval of the Illinois NPDES permit program on the grounds that EPA had failed to promulgate guidelines for public participation in State enforcement actions. Citing the plain meaning of section 101(e) of the CWA, along with its legislative history, the court held that the Administrator has a duty to establish state program guidelines to insure that there is public participation in the enforcement of these programs. Similarly, access to permit application data, in addition to being necessary for public participation in the permitting process, is an essential prerequisite for meaningful public participation in the enforcement process as well.

NFPA also contends that EPA's interpretation of sections 402(j) and 308(b) renders section 308's reference to section 402 meaningful and, thus, is disfavored. *See* Sands, 2A Statutes and Statutory Construction § 46.06 (4th ed. 1973). In fact, under EPA's interpretation, section 308's reference to section 402 remains meaningful. Section 308 provides EPA with the authority to carry out numerous information-gathering activities, including many section 402 activities, in addition to the permit *application* process. Examples of such activities include the monitoring and reporting activities that are conducted under the NPDES program. *See* 40 CFR 122.21, 122.41 and 122.48. Section 308, despite its limitation by section 402(j), remains applicable to other section 402 activities as a grant of authority for information gathering and as a restraint upon the public disclosure of confidential information gathered outside of permit applications.

In fact, NFPA's suggested interpretation would violate the canon of meaningful construction. If the confidentiality provision of section 308 were to control NPDES permits and applications, section 402(j) would be meaningless since it would grant no greater opportunity for public disclosure and participation than that already contained in section 308.

A further principle of statutory construction that applies here is that the more specific provision of a statute will control a more general provision. *Baltimore Bank* v. *State Tax Commission of Maryland*, 297 U.S. 209 (1936), *Anderson* v. *Mills*, 664 F.2d 600, 604 (6th Cir. 1981). The specific statutory provision will govern even if the general provision, standing alone, would govern the same subject. *Fourco Glass Co.* v. *Transmirra*, 353 U.S. 222, 228–9 (1957). Thus, section 402(j), which specifically requires public access to permit application data is controlling; there is no need to resort to the more general language of section 308. *Anderson* v. *Mills*, *supra* at 605.

Denying confidential treatment to trade secrets contained in NPDES permits and applications is a longstanding policy. In 1978, the Agency's General Counsel issued Class Determination I–78. This opinion, now in effect for six years, concludes that section 402(j) requires that NPDES permits and permit applications be made public notwithstanding the fact that some of the information contained in them would otherwise be treated as confidential. The public reviewed and commented on this requirement when it was proposed for incorporation in the NPDES regulations in 1978. Neither NFPA nor anyone else challenged this portion of the final regulations when they were promulgated in 1979.

2. The Relationship of the NPDES Program to the Refuse Act of 1899

NFPA's second claim is that Congress intended that the NPDES program incorporate the Refuse Act of 1899 into the Federal Water Pollution Control Act Amendments of 1972, without changing the Refuse Act provision for confidential

treatment of all trade secrets other than effluent data.

The Refuse Act permit program did serve as a basis for the NPDES program. However, the legislative history makes it clear that the NPDES was not intended as a wholesale incorporation of the Refuse Act permit program. As Senator Muskie stated during discussion of the FWPCA in 1972, the Refuse Act as drafted in 1899 was clearly not aimed at controlling water pollution. *See* 2 Leg. Hist. 1366. Rather, the Refuse Act was originally intended to ensure the navigability of the nation's waterways. The CWA and NPDES were designed to improve upon the Refuse Act permit program, not just re-enact it.

One essential improvement in the NPDES program was a greatly enhanced role for public participation. Another change was the shift to a permit system based upon technology based controls rather than upon ambient standards. 2 Leg. Hist. 1488. As discussed above, this change in focus made certain business information an essential element of the permitting process. Thus, its public availability became necessary for meaningful public comment.

NFPA relies upon legislative history that refers to "the integration of the Refuse Act permit program into the [1972 Amendments]." 2 Leg. Hist. 1490. However, petitioner quotes that reference out of context. In the preceding paragraph, the Senate Committee discusses the importance of public participation and the establishment of requirements ensuring that the information surrounding a discharge source and the limitations placed on the source be made public. 2 Leg. Hist. 1490. This reference encompasses the requirements of section 402(j).

It is clear that although the NPDES program incorporated the Refuse Act permit program into the CWA, it was not an indiscriminate incorporation. Rather, the basic concept of a permit program for dischargers was incorporated, with a wide variety of modifications to the program to meet modern goals and circumstances. Among the most important of these was the greatly increased importance of public participation. Furthermore, rather than retain the confidentiality procedures of the Refuse Act, Congress specifically created section 402(j). Thus, NFPA's argument that the NPDES program was intended to merely incorporate the Refuse Act's confidentiality provisions is not credible.

V Conclusion

The NFPA would have EPA ignore the language of section 402(j), deny important permit application information to the public, reverse longstanding Agency policy and revise regulations that emerged unchallenged from a full and extensive rulemaking process. It makes this request without providing any new information or any indication of any real or potential harm to its members in the many years this policy has been in effect. The Agency sees no reason to initiate rulemaking on this regulation, and the NFPA petition is therefore denied.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

Dated: July 11, 1984.

Henry Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84-19111 Filed 7-18-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 50

[AD-FRL-2633-6]

National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Notice of additions to rulemaking docket.

SUMMARY: Today's notice is to advise the public that additional materials have been incorporated into the rulemaking docket (Docket No. A-82-37) for the proposed revisions to the national ambient air quality standards for particulate matter (49 FR 10408, March 20, 1984). Specifically, all materials contained in the standard review docket (Docket No. A-79-29) and the criteria revision docket (Docket No. ECAO-CD-79-1) have been incorporated by reference into the rulemaking docket. In addition, certain materials that were inadvertently omitted at the time of proposal have been added to the rulemaking docket. This action is intended to moot any question regarding EPA's compliance with a consent agreement entered into by EPA and the American Iron and Steel Institute (AISI) in 1980.

ADDRESSES: Dockets No. A-82-37, No. A-79-29, and No. ECAO-CD-79-1 are located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, DC. The dockets may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Haines, Strategies and Air Standards Division, Office of Air Quality Planning and Standards, U.S., Environmental Protection Agency, MD-12, Research Triangle Park, NC 27711. The telephone number is: 919-541-5531 (FTS 629-5531).

SUPPLEMENTARY INFORMATION: On March 20, 1984, EPA proposed revisions to the national ambient air quality standards for particulate matter (49 FR 10408). As part of the proposal, EPA announced the establishment of a rulemaking docket (Docket No. A-82-37) as required by section 307(d) of the Clean Air Act, and that the most relevant portions of the standard review docket (Docket No. A-79-29) and the docket established for the criteria document revision (Docket No. ECAO-CD-79-1) had been incorporated into the rulemaking docket (49 FR 10411). In general, EPA selected as relevant for the rulemaking docket the materials from the earlier dockets upon which EPA had relied in proposing revisions to the standards. EPA also incorporated many documents submitted by interested parties and considered but not relied on by EPA in the proposal. The proposal notice added that the balance of the standard review and criteria revision dockets would continue to be available at EPA for public reference.

In an April 17, 1984 letter to the U.S. Department of Justice (Docket No. A-82-37, IV-D-19), attorneys representing the American Iron and Steel Institute (AISI) expressed concern that a separate rulemaking docket incorporating only such portions of the standard review docket and the criteria revision docket as EPA deemed most relevant violated the consent order entered into by EPA on August 2, 1980, in *AISI et al.* v. *Costle*, C.A. No. 80-766B (W.D. Pa. 1980). At the request of the Justice Department, EPA reviewed the rulemaking docket to determine whether all materials called for by the consent order were entered. During this review EPA found that it was substantially in compliance, but discovered that some materials that it had intended to include had been inadvertently omitted. The omitted materials now have been added to the rulemaking docket.

Regarding the concerns expressed in AISI's letter, EPA does not agree that

the consent order requires inclusion of "all" relevant materials from the earlier dockets in the rulemaking docket. However, to avoid any potential questions about omission of any such materials from the rulemaking docket, EPA has now incorporated, by reference, all materials contained in the standard review docket (Docket No. A-79-29) and the criteria revision docket (Docket No. ECAO-CD-79-1) into the rulemaking docket (Docket No. A-82-37).

Dated: July 12, 1984.

Sheldon Meyers,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84-19110 Filed 7-18-84; 8:45 am]

BILLING CODE 6560-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 83-066]

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to amend 46 CFR Part 67 by adding a provision for redocumenting a vessel sold at sea. A regulation covering this was removed from Part 67 in 1982. Since then, a number of questions concerning the proper procedure for redocumenting a vessel sold at sea have been directed to the Coast Guard. Including these procedures in the regulations will reduce the need for individual inquiries.

DATES: Comments must be received on or before September 17, 1984.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/24), (CGD 83-066), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered and will be available for inspection or copying at the Marine Safety Council (G-CMC/24), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426-1477 between the hours of 7 a.m. and 5 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert R. Meeks (Staff Attorney), Office of Merchant Marine Safety, (202) 426-1492, or (202) 426-1493. Normal office hours are between 7 a.m. and 5 p.m. Monday through Friday, except holidays.

Drafting Information

The principal person involved in drafting this proposal are Lieutenant Commander Robert R. Meeks (Staff Attorney), Office of Merchant Marine Safety; and Lieutenant Commander William B. Short (Project Attorney), Office of the Chief Counsel.

SUPPLEMENTARY INFORMATION:

Comments Invited

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the name and address of the person making them, and identify this notice (CGD 83-066). Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but the Coast Guard will evaluate the need for public hearings based on the comments received in response to the NPRM.

Background

The Coast Guard has found that redocumentation of a vessel which is sold while at sea occurs often enough that a regulation describing the procedure is needed. A section dealing with this was removed from 46 CFR Part 67 when the vessel documentation regulations were revised in June 1982. The Coast Guard felt this type of transaction could be handled on an individual case basis without a published procedure. However, the number of inquiries concerning sales at sea since the revised vessel documentation regulations were published indicates that approach is impractical.

Although the proposed regulation is exempt from requirements pertaining to notice and comment because it is concerned with internal agency procedures, the Coast Guard is interested in receiving comments from anyone who feels they might be affected by the proposed regulation as well as those with suggestions for improving it.

Regulatory Evaluation

This proposed regulation has been reviewed under the provisions of Executive Order 12291 and determined not to be a major rule. It is considered non-significant within the guidelines of the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 22, 1980). A determination has been made that the expected impact of the proposed regulation is so minimal that a full evaluation is unnecessary. This determination is based on the fact that the regulation merely publishes internal agency procedures already in use but not in existing regulations. It is certified in accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164) that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 67

Vessels, Documentation.

PART 67—[AMENDED]

Proposed Regulatory Change

In consideration of the foregoing, the Coast Guard proposes to amend 46 CFR Part 67 as follows:

1. The authority citation for Part 67 reads as follows:

Authority: 46 U.S.C. 12113, 12115, 12103, 12120, 12121; 65 Stat. 290 (31 U.S.C. 483a); 41 Stat. 1002, 80 Stat. 795 (46 U.S.C. 927); 41 Stat. 1006 (46 U.S.C. 933); 94 Stat. 978 (42 U.S.C. 9101).

2. In Subpart 67.27, a new § 67.27-7 is added to read as follows:

§ 67.27-7 Application to redocument vessel sold at sea.

(a) A documented vessel which is sold or transferred while the vessel is at sea, and which remains eligible for documentation, may be documented anew while still at sea by applying at the port of documentation designated as the vessel's home port by the new owner or owners in accordance with the requirements of Subpart 67.13. A marine document is issued upon compliance with all applicable requirements, however any requirement for presentation of marking evidence is waived until the vessel reaches its first port of call.

(b) A new certificate of documentation reflecting the necessary changes is prepared by the documentation officer and forwarded for delivery at the vessel's next port of call. If the port of call is in the United States, the certificate of documentation is forwarded to the nearest documentation office. If the port of call is in a foreign country, the certificate of documentation is forwarded to the nearest American Consulate. The new certificate of documentation is released only upon presentation of the old certificate of documentation and a properly executed marking certificate, if remarking is required.

Dated: July 16, 1984.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 84-19152 Filed 7-18-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 676

King Crab Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council has submitted the fishery management plan for the King Crab Fishery of the Bering Sea and Aleutian Islands Area (FMP) for review by the Secretary of Commerce. Comments are invited from the public on this amendment and any other documents made available.

DATE: Comments will be accepted until September 28, 1984.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802.

Copies of the FMP, the final environmental impact statement, and the regulatory impact review/initial regulatory flexibility analysis are available upon request from the North Pacific Fishery Management Council (Council), P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, Fishery Biologist, Kodiak Field Office, National Marine Fisheries Service, 907-486-4791.

SUPPLEMENTARY INFORMATION: This FMP was prepared under the provisions of the Magnuson Fishery Conservation and Management Act.

This FMP proposes measures for managing the commercial king crab fishery in the Bering Sea and Aleutian Islands Area. The receipt date for this plan is July 16, 1984. Proposed regulations for this FMP are scheduled to be published within 30 days.

List of Subjects in 50 CFR Part 676

Fisheries.

Dated: July 16, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 84-19142 Filed 7-16-84; 4:52 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 140
Thursday, July 19, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

President's Commission on Industrial Competitiveness

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of meetings.

SUMMARY: This notice announces the forthcoming meetings of the President's Commission on Industrial Competitiveness (Commission). The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

DATES: On July 27, 1984, from 10:00 a.m. until 2:00 p.m., at #1 Boston Place, 15th Floor (Washington Street and Court), Boston, Massachusetts, a special conference of the Commission will be held to discuss "Entrepreneurship and Its Impact on America's Economy."

On August 1, 1984, from 10:00 a.m. until 3:30 p.m. at Morgan Guaranty Trust Company of New York, 15 Broad Street, New York, New York, the four subcommittees of the Commission will meet on the following issues:

Committee on Research, Development and Manufacturing will receive a presentation on manufacturing technologies, and address issues on the protection of intellectual property rights.

Committee on International Trade and Marketing will address issues on export controls, antitrust and trade remedies.

Committee on Human Resources will address issues on employee ownership, worker retraining and committee work plans for the remainder of calendar year 1984.

Committee on Capital Resources will discuss the outline for a draft report on the nature of competitive problems affecting capital formation; characteristics of tax restructuring to improve competitiveness through greater neutrality; and the relationship of foreign exchange and capital resource issues.

August 2, 1984, from 9:00 a.m. until 1:00 p.m., at Morgan Guaranty Trust Company of New York, 15 Broad Street, New York, New York, the full Commission will meet to discuss specific recommendations forwarded by the subcommittees.

Public Participation: The meetings will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, NW., Washington, DC 20503, telephone: 202-395-4527

Dated: July 16, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84-19139 Filed 7-18-84; 8:45 am]
BILLING CODE 3510-18-M

Minority Business Development Agency

Request for Applications; Virgin Islands

AGENCY: Minority Business Development Agency, Commerce.

Subject: Minority Business Development Program, Request for Applications.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its competitive Minority Business Development Center (MBDC) Program to operate a MBDC for a 12-month period from November 1, 1984 to October 31, 1985 in the Virgin Islands area. The total cost for the MBDC will be $200,000 which will consist of a maximum of $150,000 Federal funds and a minimum of $50,000 non-Federal funds (which can be a combination of cash, in-kind contribution and fees for service). The award number for this MBDC is 02-10-85001-01.

The funding instrument for the MBDC will be a cooperative agreement and is open to all individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients in areas related to the establishment and operation of business. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit through which and for information and assistance to and about minority businesses are funneled.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 12-month period with a two-year noncompeting continuation option. MBDCs shall be required to contribute at least 25% of the total program costs through non-Federal funds during each of the two option years. The noncompeting continuation application kit will be sent to an MBDC (who is performing at a satisfactory level or better) approximately 120 days prior to the last day of the initial award period. The MBDC should fill out and mail the continuation application to their appropriate MBDA regional office. After receipt of the continuation application kit by MBDA, the MBDC's option will be reviewed and awarded each year at the direction of MBDA based on its needs, availability of funds and the applicant's satisfactory performance.

Closing date: The closing date for applications is August 10, 1984. Applications must be postmarked on or before August 10, 1984.

ADDRESS: New York Regional Office; Minority Business Development Agency, U.S. Department of Commerce, 26 Federal Plaza, Room 3720, New York, New York 10278, (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director, New York Regional Office.

SUPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11,800 Minority Business Development (Catalog of Federal Domestic Assistance)

Gina Sanchez,

Regional Director.

[FR Doc. 84-19071 Filed 7-18-84; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Sanctuaries

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the New Jersey and Washington Coastal Management Programs. Section 312 of the Coastal Zone Management Act of 1972, as amended, requires a continuing review of the performance of each coastal state with respect to the implementation of its federally approved Coastal Management Program. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)-(I) of the Coastal Zone Management Act.

A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 12, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84-19080 Filed 7-18-84; 8:45 am]

BILLING CODE 3510-08-M

Intent To Evaluate Performance; Coastal Management Programs; MD, et al.

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Maryland Coastal Management Program (CMP); Connecticut CMP; South Carolina CMP; New Hampshire CMP; New York CMP; Maine CMP; and Washington National Estuarine Sanctuary (Padilla Bay) through December 1984. These reviews will be conducted pursuant to Section 312 of the Coastal Zone Management Act (CZMA) which requires a continuing review of the performance of the states with respect to coastal management, and their adherence to the terms of financial assistance awards funded under the CZMA. Coastal zone management is funded under Section 306, and the National Estuarine Sanctuary Program is authorized by Section 315, CZMA. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. A subsequent notice will be place in the Federal Register announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven St., NW., Washington, D.C. 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 12, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84-19079 Filed 7-18-84; 8:45 am]

BILLING CODE 3510-03-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing New Import Limits for Certain Wool Apparel Products Produced or Manufactured in Hungary

July 16, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has reissued the directive published below to the Commissioner of Customs to be effective on July 20, 1984. For further information contact Gordana Slijepcevic, International Trade Specialist (202) 377-4212.

Background

In consultations held January 23-24, 1984, the Governments of the United States and the Hungarian People's Republic agreed to amend their Bilateral Wool Textile Agreement of February 15 and 25, 1983 to include specific limits for wool coats in Category 435 and women's, girls' and infants' trousers, slacks and shorts in Category 448, produced or manufactured in Hungary and exported to the United States. In the case of Category 435 the specific limit is 10,563 dozen for goods exported during the thirteen-month period which began on December 1, 1983 and extends through December 31, 1984. For Category 448 the specific limit is 19,000 dozen for goods exported during the twelve-month period which began on January 1, 1984. The directive to the Commissioner of Customs which follows this notice reissues a previous directive dated March 23, 1984 (See 49 FR 11857) which referred incorrectly to a new specific limit for Category 438 instead of Category 448. Its purpose is to cancel the limit of 19,000 dozen established improperly for Category 438 and replace it with the agreed limit of 19,000 dozen for Category 448.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397) and June 28, 1984 (49 FR 26622).

Supplementary information: On December 16, 1983 a letter dated December 13, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the Federal Register (48 FR 55891) which established limits for certain categories of wool apparel products, produced or manufactured in Hungary and exported during the year which began on January 1, 1984. The letter published below amends the letter of December 13, 1983 to include limits for wool apparel products in Categories 435 and 448 during the designated restraint periods.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

July 16, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive cancels and supersedes the directive of March 23, 1984. The directive amends, but does not cancel, the letter of December 13, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of wool textile products, produced or manufactured in Hungary.

Effective on July 20, 1984, the directive of December 13, 1983 is hereby amended to include the following restraint limits for wool textile products in Categories 435 and 448, exported during the indicated periods:

Category	Restraint limit[1]	Period
435	10,563	Dec. 1, 1983 to Dec. 31, 1984.
448	19,000	Jan. 1, 1984 to Dec. 31, 1984.

[1]The limits have not been adjusted to reflect any imports exported after November 30, 1983 (Cat. 435) and December 31, 1983 (Cat. 448).

Wool textile products in Categories 435 and 448 which have been exported to the United States prior to December 1, 1983 in the case of Category 435 and prior to January 1, 1984 in the case of Category 448 shall not be subject to this directive.

Wool textile products in Categories 435 and 448 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397) and June 28, 1984 (49 FR 26622).

The action taken with respect to the Government of the Hungarian People's Republic and with respect to imports of wool textile products from Hungary has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-19133 Filed 7-18-84; 8:45 am]

BILLING CODE 3510-DR-M

Increasing the Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products From Thailand

July 16, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 20, 1984. For further information contact Diana Bass, International Trade Specialist (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983 between the Governments of the United States and Thailand provides, among other things, for the carryover of shortfalls in certain categories from the previous agreement year (carryover) and for the borrowing of yardage from the succeeding year's level (carryforward) with the amount used being deducted from the level in the succeeding year. At the request of the Government of Thailand, increases for carryover and carryforward are being applied to the restraint limits previously established for textile and apparel products in Categories 319, 331, 334/335, 338/339, 340, 341, 347/348, 445/446, 604, 613, 634/635, 641, and 645/646, produced or manufactured in Thailand and exported during the agreement year which began on January 1, 1984. (See 48 FR 55309).

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397) and June 28, 1984 (49 FR 26622).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 16, 1984.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 7, 1983 which prohibited entry into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during 1984.

Effective on July 20, 1984, the directive of December 7, 1983 is hereby further amended to include adjusted restraint levels for the following categories:[1]

Category	Adjusted 12-month restraint limit[1]
319	7,053,600 square yards.
331	516,225 dozen pairs.
334/335	64,524 dozen.
338/339	639,209 dozen.
340	123,335 dozen.
341	130,217 dozen.
347/348	220,501 dozen.
445/446	16,600 dozen.
604	823,620 pounds.
613	16,178,250 square yards.
634/635	450,834 dozen.
641	191,043 dozen.
645/646	88,787 dozen.

[1]The restraint limits have not been adjusted to reflect any imports exported after December 31, 1983.

The actions taken with respect to the Government of Thailand and with respect to imports of cotton, wool and man-made fiber textiles and textile products from Thailand have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

[1]According to the terms of the bilateral agreement of July 27 and August 8, 1983, under certain specified conditions any non-apparel specific limit or sublimit may be exceeded by not more than 7 percent, provided that the amount of the increase is compensated for by an equal square yard equivalent decrease in another specific limit in the same group; (2) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-19127 Filed 7-18-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Ad Hoc Committee on the Assessment of Hazardous Materials and Toxic Wastes Management Issues; Meeting

July 10, 1984.

the USAF Scientific Advisory Board Ad Hoc Committee on the Assessment of Hazardous Materials and Toxic Wastes Management Issues will meet August 30-31, 1984 at the Pentagon, Room 5D1014. The meeting will begin at 8:00 a.m. and end at 5:00 p.m. on the 30th, and 8:00 a.m. until 12:00 Noon on the 31st.

The meeting will be open to the public.

The purpose of the meeting will be to review management and engineering and scientific matters relating to the Assessment of Hazardous Materials and Toxic Wastes Management Issues.

For further information, contact the Scientific Advisory Board Secretariat at 202/697-8404.

Harry C. Waters,

Alternate Air Force, Federal Register Liaison Officer.

[FR Doc. 84-19070 Filed 7-18-84; 8:45 am]

BILLING CODE 3910-01-M

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Performance Review Board

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice of membership of the Defense Logistics Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Logistics Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Logistics Agency.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, Virginia 22314 (202) 274-6049 or 274-6035.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names of the executives who have been appointed to serve as members of the Performance Review Board. They will serve a one-year renewable term effective upon publication of this notice.

Mr. William V Gorden
Mr. Robert G. Bordley
Mr. Anthony W. Hudson

Anthony W. Hudson,

Staff Director, Personnel.

[FR Doc. 84-19036 Filed 7-18-84; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research

Rehabilitation Research and Training Center; Notice for Transmittal of Applications for Fiscal Year 1984

AGENCY: Department of Education.

ACTION: Application notice for transmittal of applications for a Research and Training Center for Fiscal Year 1984.

Applications are invited for a new Rehabilitation Research and Training Center on improving rehabilitation services for seriously emotionally disturbed children.

Authority for this program is contained in Section 204(b)(1) of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 and Pub. L. 98-122 (29 U.S.C. 762(b)(1)).

Closing Date for Transmittal of Applications: Applications for grant awards must be received by August 20, 1984.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: The National Institute of Handicapped Research (NIHR) is authorized to support research and related activities under several program authorities. The funding priority identified in this Notice covers research and related activities to be conducted through a Rehabilitation Research and Training Center (RTC). Awards are made under this program to States and public or private agencies and organizations including institutions of higher education. NIHR is permitted to make awards for periods up to 60 months. It is the intention of NIHR to provide financial assistance to the successful applicant through a grant.

On March 12, 1984, the Secretary published in the Federal Register (49 FR 9329) a list of final funding priorities for NIHR for fiscal year 1984. Also published in this issue of the Federal Register was a Notice of Transmittal of Applications setting April 30 as the due date for applications. Five applications were received for the Research and Training Center (RTC) on rehabilitation services to seriously emotionally disturbed children; none of these applications was considered suitable for funding by NIHR. However, the Secretary believes that this remains an important priority area and thus is again requesting transmittal of applications from interested parties, including those

who submitted applications in the earlier competition. The successful applicant will be expected to respond to all of the requirements in this statement of the priority.

Research and Training Centers (RTCs) conduct coordinated and advanced programs of rehabilitation research, and provide training to rehabilitation personnel engaged in research or the provision of services. RTCs must be operated in collaboration with institutions of higher education and must be associated with a rehabilitation service program. Ideally each Center conducts a program of research, scientific evaluation, and training activities in an area which contributes substantially to the solution of problems in that area, advances the state-of-the-art, and becomes a recognized Center of excellence in a given subject area. Each Center is encouraged to develop practical applications for all of its research findings through a scientific evaluation process which tests and validates its findings, as well as related findings of other Centers. Center training programs generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as development of or contribution to undergraduate and graduate texts and curricula, in-service training, and continuing education.

The Secretary is now accepting applications for a Research and Training Center to accomplish the following activities.

Improved Services for Seriously Emotionally Disturbed Children. Seriously emotionally disturbed children and youth are one of the most underserved disabled populations. No locus of responsibility has been set for the timely delivery of needed services to this group within the community. Identification of this population and assessment of the needs of these youth are likely to be in the context of their conflicts with other service delivery systems such as education or corrections. Thus, youth whose behavior is not a problem in these systems are likely to have their serious emotional problems overlooked. Community mental health resources are focused on chronically mentally ill persons who, almost by definition, are adults. Community-based residential care for youth or services to support continued care in the family are lacking.

"The development of mental health resources for children in the United States has not been exemplary. While services for children in the community mental health centers have been mandated, few centers have provided the volume and continuum of programs necessary to meet children's mental health needs. In many centers, identifiable children's programs are not evident; and children and adolescents with serious mental health problems are being inadequately serviced." (Source: Task Panel Reports Submitted to President's Commission on Mental Health, Volume III, 1978.) Thus, it is believed that institutionalization in either mental health or correctional settings is likely to be overused for this population.

For that part of the population remaining in school, mandated services provided under Pub. L. 94–142 are likely to be the only available resource. In 1980–81, over 300,000 children aged 3–21 with a primary diagnosis of emotional disturbance were served under Pub. L. 94–142. Of these, less than half were served in regular classes and over 20 percent were served in special schools or in other environments outside the school system.

As the youth age beyond the limits of that law, there is no generally accepted system for delivery of services to meet their needs within the community setting. As reported by the Task Force, "Adolescence is a distinct and extremely vulnerable developmental stage. Yet, in terms of their mental health needs, adolescents are one of the most underserved population groups in the United States. Serious deficiencies exist in most areas, ranging from the availability of services to the state of research. The problem is further complicated by a lack of coordination between agencies at Federal, State, and local levels. Communication between welfare agencies, juvenile courts, and schools is frequently lacking, with little or no planning for the young person's immediate and longer term needs." (Source: *Ibid*) The need to plan for the transition of this group out of the educational system and into employment and community living situations is particularly acute.

Again, according to the Task Force, "In the area of applied research, emphasis should be given to evaluating the effectiveness of both traditional and innovative approaches to treatment and combinations of treatment." However, at present not enough is known about the location, characteristics, and unmet needs of this population to plan and implement an adequate treatment and service delivery system.

Thus, a Research and Training Center in this area is proposed which would:

- Analyze existing data on this population, supplemented as necessary, to define the population in terms of: numbers, ages, characteristics, residential status, school status, source of identification as emotionally disturbed, age of onset, point of intake into the service system, types of services received, unmet needs, and other relevant factors.
- Determine any variation in how seriously emotionally disturbed children fare in our system as they age, with particular attention to adolescence and to the time when they are no longer under the aegis of Pub. L. 94–142, with emphasis on vocational programs within special education and the transition to training and employment, including potential for early vocational rehabilitation service intervention.
- Determine what services are received at present from various sources.
- Identify exemplary service delivery models, including information on funding strategies and approaches to achieving linkages and coordinated services among various agencies, and "package" these models for demonstration and implementation.
- Develop new strategies for utilizing treatment modalities and delivering other services for those problems or groups for which suitable prototypes do not exist. Include specific focus on adolescence, school to work transitions, and services which support community living and maintenance of family care.
- Develop protocols and disseminate service models for use in other communities, train service providers, and provide technical assistance on program implementation.

Available Funds: The Secretary has reserved funds to award one grant for a new RTC in this priority area in an amount up to $500,000 per year for up to five years.

However, this Notice does not bind the U.S. Department of Education to fund any Center or project in this area, or to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages may be obtained by writing or calling the National Institute of Handicapped Research, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3070), Washington, D.C. 20202. (Attention: Carolyn Williams. Telephone (202) 732–1188. Deaf and hearing impaired individuals may call (202) 732–1198 for TTY service.)

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to

aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. (OMB Control Number 1820-0027)

Applicable Regulations: Regulations governing these programs include the following:

(a) Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, and 78; and

(b) Applicable NIHR regulations in 34 CFR Parts 350 and 352, and published in the Federal Register of September 10, 1981 (46 FR 45300) and modified in the Federal Register of March 12, 1984 (49 FR 9324).

Further Information: For further information, contact Ms. Noami Karp, National Institute of Handicapped Research, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3070), Washington, D.C. 20202. Telephone (202) 732-1196, TTY for deaf and hearing impaired individuals (202) 732-1198.

(29 U.S.C. 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: July 16, 1984

T.H. Bell,

Secretary of Education.

[FR Doc. 84-19231 Filed 7-18-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Proposed New Data Collection for Form EIA-858

AGENCY: Energy Information Administration, U.S. Department of Energy.

ACTION: Notice of proposed mandatory new Form EIA-858, "Uranium Industry Annual Survey" and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA) of the U.S. Department of Energy (DOE) is proposing a new Form EIA-858, "Uranium Industry Annual Survey." This form will collect data on domestic uranium exploration, reserves, production, mining, milling, and marketing. It will also collect financial data from every company engaged in any aspect of the above mentioned activities. After approval by the Office of Management and Budget (OMB) is obtained, the EIA will begin using the form in early calendar year 1985 to collect calendar year 1984 data.

Comments: To obtain additional information or copies of the proposed Form EIA-858, contact: Julia Oliver; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration; U.S. Department of Energy; Mail Stop 2F-021; EI-531; Washington, DC 20585; (202) 252-1676.

Background

The Form EIA-858 will be an annual form that collects data on uranium exploration, reserves, mining, production, milling, and marketing. It will also collect financial data from all companies engaged in any aspect of the above-mentioned activities. The form will collect information required by the DOE to perform its legislatively mandated function of monitoring the viability of the domestic uranium industry and to determine the prices of the DOE uranium sales and royalties. The statutory basis for this effort is the Atomic Energy Act of 1954 (Pub. L. 83-703), as amended (42 U.S.C. 2210b) and the Federal Energy Administration Act of 1974 (15 U.S.C. 790a). The data collected by the Form EIA-858 will be used in the publication of an annual report by the Secretary of Energy on the viability of the U.S. uranium industry. In addition, the data will be published as the *Uranium Industry Annual* for general statistical uses. This is a new publication being developed by the EIA and is intended to replace the *Statistical Data of the Uranium Industry* (GJO-100) formerly published by the Grand Junction Area Office of the U.S. Department of Energy, and two EIA publications: *The Survey of U.S. Uranium Marketing Activity* (DOE/EIA-0403) and the *Survey of U.S. Uranium Exploration Activity* (DOE/EIA-0402). The Form EIA-858 will collect data formerly compiled for the DOE by the Grand Junction Area Office on uranium reserves and will replace the following current EIA data collection forms: the Form EIA-491, "Survey of U.S. Uranium Marketing Activity;" the Form EIA-717, "Survey of U.S. Uranium Exploration Activity;" the Form EIA-851, "Domestic Uranium Mining Production Report" and the Form EIA-854, "U.S. Uranium Industry Financial Survey."

The Form EIA-858 consolidates questions from the above referenced forms into three basic sections: Section A—Uranium Raw Material Activities; Section B—Uranium Marketing Activities; and Section C—Uranium Industry Financial Status.

After the OMB approval is obtained, all U.S. utilities with planned or operating nuclear power plants and all companies engaged in domestic uranium commerce must complete and submit this form. A qualifying plant is any existing or planned nuclear fueled unit which generates electricity for sale commercially. A company is considered to be engaged in uranium commerce if it owns uranium bearing deposits, or if it explores for, develops, mines, produces, mills uranium (or otherwise engages in uranium beneficiation activities directed toward the production of uranium concentrate), or buys or sells uranium. Sections A and B of the Form EIA-858 must be submitted by the respondent within 4 weeks (30 days) of receipt of the form. The financial section of the Form EIA-858 must be submitted within 12 weeks (60 days) from receipt of the form.

The number of person-hours required to complete the Form EIA-858 is estimated to be 50 hours. Since this form will be filed for approximately 160 companies, the total industry burden is estimated to be 9,000 hours. From its information collection budget, the EIA will allocate 9,000 hours for collection of the 1984 data.

Request for Comments

Prospective respondents and other interested parties should comment on the proposed revision within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses: (As a potential respondent)

A. Are the instructions and definitions clear and sufficient?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. Are the requested data readily available from your company's existing records (especially the financial information on the "U.S. Uranium Industry Financial Status Survey")? If not, please indicate what data are not readily available and the level of effort required to make these data available.

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information. Since this is a consolidation of data collected on other forms, what is the net increase (decrease) in cost required?

F How many person-hours, including time for preparation and administrative review, will your company require to complete and submit a form? Since this

is a consolidation of data collected on other forms, what is the increase (decrease) in hours required?

G. How can the form be improved?

H. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency and the means of collection.

(As a potential user.)

A. When aggregated for publication in the *Uranium Industry Annual*, can you use the data indicated on the form?

B. For what purpose would you use these data? Be specific.

C. How could the form be improved to meet your specific data needs better?

D. Are there alternate sources of data and do you use them? What are their deficiencies?

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of this information.

Comments or summaries of comments submitted in response to this notice will be included in the request for the OMB approval of this survey form and will become a matter of public record.

Issued in Washington, DC, July 13, 1984.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 84-19112 Filed 7-18-84; 8:45 am]

BILLING CODE 6450-01-M

Manufacturing Energy Consumption Survey (MECS); Solicitation of Manufacturing Sites for Visits To Aid in Design and Development

AGENCY: Office of Energy Markets and End Use, Energy Information Administration, DOE.

ACTION: Notice of solicitation of participants for manufacturing site visits.

SUMMARY: This notice requests the participation of manufacturing establishments in Standard Industrial Classification (SIC) codes 20–39 as sites for visits by staff of the Energy Information Administration (EIS). The site visits are an important part of the developmental research leading to a Manufacturing Energy Consumption Survey (MECS). Since this series of visits is for development purposes only, no data will be collected from the test sites. Rather, the information resulting from these visits will provide guidance in the design and content of the eventual questionnaire.

Any written comments received in response to this notice will be available for public inspection at the Department of Energy (DOE) Freedom of Information Office. Pursuant to the provisions of 10 CFR 1004.11 (1983), any person submitting information 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. The DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

DATE: Responses to this notice should be made by August 31, 1984.

ADDRESSES: Written responses should be submitted to Mr. John L. Preston, Office of Energy Markets and End Use, Energy Information Administration, DOE, Room 1F-093, Forrestal Building, 1000 Independence Ave., SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: John L. Preston, (202)252-1128.

SUPPLEMENTARY INFORMATION: The EIA serves as the Government's primary source of energy statistics and provides information to the Executive Branch, Congress, State and local governments, industry, and the general public. EIA's mission is to ensure that accurate, timely and objective statistics on the Nation's energy position are available for use in private and public decisionmaking. In support of these responsibilities, the legislation which created the EIA provides for the collection of data on energy supply and demand. Therefore, the EIA is considering undertaking a MECS sometime in the first quarter of calendar year 1986. Present plans call for the energy consumption and related data to be collected by means of a national probability sample of less than 5 percent of the manufacturing establishments in SIC codes 20–39. Some potential data issues were generally described in an earlier Federal Register notice (49 FR 7188, February 27, 1984).

In designing this survey, a major goal of the EIA is to collect energy consumption information in sufficient detail to provide a valid and reliable statistical data base of manufacturing energy consumption and related issues and to do so in a manner which minimizes respondent burden. The use of a national probability sample which, overall, includes less than one manufacturing establishment out of 20, is a major step in this direction.

Significant reductions in burden can also be accomplished by utilizing a carefully designed questionnaire which addresses relevant energy-related concepts and does so in a manner which is consistent with the record-keeping systems of the respondents. Accomplishing this requires a full understanding of the data that are available to describe energy use in manufacturing establishments.

This understanding is best developed through visits to manufacturing sites in a range of geographic areas, SIC categories, and sizes. The EIA is planning to conduct such a series of site visits during the summer and fall of 1984. These visits will seve the following major purposes:

(1) Determine whether certain concepts which are often utilized in analyzing or assessing energy consumption in fact have any relevance to specific industries; and if so, how they can best be defined and measured. These concepts include, but are not limited to, SIC categorization, value added/production value, energy end use categorization, capacity utilization, fuel-switching, conservation/conservation investment, cogeneration, and embodied energy.

(2) Identify the energy-related date that are routinely collected at the establishment level, the data that are not collected but are readily obtainable, and the data that can only be estimated or are unknowable. Knowledge of establishment record-keeping systems can aid in designing the MECS to provide reliable data while minimizing respondent burden. An important issue is how to handle smaller establishments whose record keeping is not likely to be as comprehensive as those of larger corporations.

The EIA is currently developing a list of candidate manufacturing corporations which would be willing to provide a site for such a visit. It would be most helpful to the EIA is site visits include a tour of the manufacturing process operations as well as discussions with company representatives who are familiar with both building and manufacturing energy consumption. Manufacturing corporations interested in being considered for an EIA site visit can contact Mr. John L. Preston. Written comments submitted in response to this notice (excluding those comments DOE has determined are confidential) will become a matter of public record.

Issued in Washington, D.C. July 13, 1984.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 84-19109 Filed 7-13-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER84-530-000]

Alabama Power Co., Filing

July 13, 1984.

The filing Company submits the following:

Take notice that Alabama Power Company on July 2, 1984, tendered for filing an Agreement with The Utilities Board of the City of Sylacauga. The filing is for the new metering station at the City of Sylacauga. Service at this new metering station will replace the 44 KV service presently provided to the Utilities Board's #1, #2, #3, #4, #5 delivery points. This new metering station is located within the city limits of Sylacauga. This new service agreement provides for a capacity of 46,800 kVA at 44 KV under Rate Schedule MUN-1 and the applicable revisions thereto.

Copies of the filing were served upon The Utilities Board of the City of Sylacauga.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 30, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19044 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-522-000]

Arizona Public Service Co., Filing

July 13, 1984.

The filing Company submits the following:

Take notice that Arizona Public Service Company ("APS") on July 2, 1984 tendered for filing a Supplemental Agreement No. 3, ("Agreement") and an Eight Revised Exhibit A ("Exhibit A") to the Wholesale Power Supply Agreement between APS and the Bureau of Indian Affairs ("BIA") on behalf of the Colorado River Indian Irrigation Project ("CRIIP"). Exhibit A was executed by the parties on June 26, 1984.

Exhibit A provides for contract demand through 1988. Waiver is requested of the Notice Requirements under 18 CFR 35.11 so that Exhibit A may become effective on June 1, 1984, as provided for in the original Wholesale Power Supply Agreement with CRIIP

The Agreement provides for a one-time waiver of the notice requirement for contract demand changes in Exhibit A under the Wholesale Power Supply Agreement due to the unique circumstances of BIA's sale of a portion of CRIIP's distribution facilities to APS. The reduction in CRIIP's demand from 19.1mW to 4mW for the years 1984 through 1988 is accomplished in the Ninth Revised Exhibit A attached to the Agreement. Waiver is requested of the Notice Requirements under 18 CFR 35.11 so that this Agreement may become effective on the later of either August 1, 1984, or upon consummation of the sale in order that CRIIP may receive the benefit of its reduction in demand as soon as possible.

Copies of this filing were served upon the BIA for CRIIP, and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions of protests should be filed on or before July 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19045 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-523-000]

Arizona Public Service Co., Filing

July 13, 1984.

The filing Company submits the following:

Take notice that on July 2, 1984, Arizona Public Service Company ("APS") tendered for filing as an initial rate schedule, the Wholesale Power Agreement ("Agreement") between APS and Southern California Edison Company ("SCE").

This Agreement provides for the terms, conditions an rate for the sale and delivery of a small amount of power and energy not to exceed 2mW per each delivery point to SCE to be delivered on the Arizona side of the Colorado River in conjunction with the Bureau of Indian Affairs ("BIA") sale of distribution facilities located off the Colorado River Indian Reservation.

In order that the local customers are ensured of a continuing source of reliable electrical service, APS requests that this Agreement become effective on August 1, 1984, the date contemplated for initiation of service. To accomplish this, waiver is requested by APS of the notice requirements of 18 CFR 385.11.

Copies of this filing have been served upon SCE, to the BIA for the Colorado River Indian Irrigation Project, and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before July 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19046 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-518-000]

Central Hudson Gas & Electric Corp., Filing

July 13, 1984.

The filing Company submits the following:

Take notice that on June 28, 1984, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing its development of actual costs for 1983 related to transmission service provided from the Roseton Generating Plant to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) in accordance with

the provisions of its Rate Schedule FERC No. 42.

Central Hudson states the actual costs for 1983 amount to $1.3096 per Mw.-day to Con Edison and $4,4980 per Mw.-day to Niagara Mohawk and are the basis on which charges for 1984 have been estimated.

Central Hudson requests an effective date of January 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon Con Edison, Niagara Mohawk and the State of New York Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19047 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-519-000]

Central Hudson Gas and Electric Corp., Filing

July 13, 1984.

The filing Company submits the following:

Take notice that June 28, 1984, Central Hudson Gas and Electric Corporation (Central Hudson) tendered for filing its development of actual costs for 1983 related to subsection service provided to Consolidated Edison Company of New York. Inc. (Con Edison) in accordance with the Provisions of its Rate Schedule FERC No. 43.

Central Hudson indicates that the actual cost for 1983 amounted to $327,819 and will be the basis on which estimated charges for 1984 will be billed.

Central Hudson requests waiver of the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1984 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison and the State of New York Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19048 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-155-001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

July 13, 1984.

Take notice that on June 26, 1984, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-155-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia Transmission proposes to continue to transport natural gas on behalf of Columbus Bituminous Concrete Corporation (Columbus Bituminous) under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is explained that by notice issued January 11, 1984, pursuant to the prior notice and protest procedure set forth in 18 CFR 157.205 Columbia Transmission received authorization to transport up to 500 million Btu equivalent of natural gas per day through June 16, 1984, to Columbus Bituminous' Columbus, Ohio, plant.

Columbia Transmission proposes to continue the above-described transportation through June 30, 1985, on the same terms and conditions as the existing transportation authority.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19049 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-561-000]

Columbia Gas Transmission Corp.; Application

July 13, 1984.

Take notice that on July 10, 1984, Columbia Gas Transmission Corporation (Application), P.O. Box 1273, Charleston, West Virginia 25314, filed in Docket No. CP84-561-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Applicant to sell natural gas to its jurisdictional customers in accordance with the provisions of a special sales rate schedule, designated the Phase II Sales Rate Schedule, to be incorporated in Applicant's FERC Gas Tariff, Original Volume No. 1, for the period from August 9, 1984, through July 31, 1985, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant asserts that the proposed Phase II Sales Rate Schedule is designed to provide all of Applicant's jurisdictional sales customers with an alternative source of supply for utilization under Applicant's so-called Phase II Transportation Program, in lieu of purchasing such quantities from other sources. It is said that pursuant to this transportation service each customer was initially allocated a *pro rata* portion (Phase II entitlement) of an aggregate quantity of 40,000,000 dt (Phase II quantity) based upon each customer's proportion of Applicant's total wholesale physical deliveries, excluding deliveries under Rate Schedule SGES, for the twelve months ended March 31,

1983. Applicant states it has generally agreed to transport these supplies purchased by its customers, up to their Phase II entitlement, from sources other than Applicant, even though Applicant anticipates that all or virtually all Phase II transportation quantities will displace sales which would otherwise be made by Applicant.

Applicant claims it recognizes that certain customers may encounter difficulties in procuring economical direct purchase quantities for the Phase II Transportation Program and that small customers in particular may lack the resources required to avail themselves of the direct purchase opportunity; and, therefore, it is offering this Phase II Sales Rate Schedule as an alternative under Applicant's general Phase II commitment of the delivery of up to 40,000,000 dt of gas purchased by its customers from sources other than Applicant for unrestricted use. It is asserted that Applicant's customers may use the quantities of gas available under the Phase II Sales Rate Schedule for general system supplies or for other purposes.

It is contended that the proposed Phase II Sales Rate Schedule would not expand or extend the original Phase II Transportation Program or Applicant's one-time commitment under that program. Rather, it is claimed, the Phase II Sales Rate Schedule would be an alternative within that commitment intended to broaden the scope of supplies which could be taken under the program and to enhance the ability of Applicant's customers, especially small customers, to participate in the program in one form or another. The instant proposal, it is asserted, would enable a customer, consistent with the terms and conditions of Applicant's original Phase II Transportation Program, (i) to purchase its entire Phase II entitlement directly from Applicant, (ii) to purchase a portion of its Phase II entitlement directly from Applicant and a portion from other suppliers for transportation by Applicant, or (iii) to purchase its entire Phase II entitlement from other suppliers for transportation by Applicant.

Applicant states it is operating on a least-cost purchase policy consistent with contractual and operational constraints. It is asserted this policy is being implemented by establishing a core gas supply below which it is not feasible to purchase, such as (i) the contract minimums specified in Applicant's gas purchase contracts with Southwest producers (except where other contractual or operational circumstances require purchases at higher levels) and (ii) the minimum volumes that Applicant must purchase from its pipeline suppliers to serve requirements which cannot be served from other sources. It is stated that additional purchases above this core gas supply would then be made strictly on a least-cost basis.

Applicant states that the projected additional purchases for the month of August 1984, *i.e.*, purchases in excess of Applicant's core gas supply, as reflected in its June 1984 operational balance, include approximately 4,500,000 Mcf of Southwest producer purchases at a projected average cost per contract of $2.59, or less, per dt. Applicant asserts that if the Phase II Sales Service proposed herein is authorized, it would be able to make additional incremental purchases from its pipeline and producer suppliers at prices ranging up to $2.95 per dt during August 1984 to supply the Phase II sales market. Applicant states that it and its customers are already paying, or would pay, the fixed costs associated with pipeline supplies below minimum bill levels. It is further asserted that the Phase II Sales Service provides a means for Applicant's customers to purchase relatively inexpensive gas, such as these incremental pipeline supplies, without having to take the initiative to seek out and secure supplies from other sources.

Applicant states that although the proposed Phase II Sales Rate Schedule and the proposed Incentive Sales (IS) Rate Schedule are premised on Applicant's least-cost purchase policy and its available incremental least-cost supply, the two rate schedules are distinct, free-standing proposals. Moreover, it is explained, the Phase II Sales Rate Schedule has priority over the IS rate schedule in regard to the available least-cost incremental supplies and, consequently, in regard to sales. It is asserted that this priority recognizes that Applicant made its Phase II transportation commitment in the spring of 1983, approximately one year before the inception and announcement of the IS rate schedule and that all of Applicant's customers have an allocated share of the aggregate Phase II quantities. Applicant further proposes that quantities delivered pursuant to the Phase II Sales Rate Schedule would likewise count toward satisfaction of a customer's IS base level requirement.

Applicant proposes that its Phase II Sales Rate Schedule operate in the following manner:

A. The Phase II Sales Rate Schedule would be available to all of Applicant's jurisdiction sales customers, to the extent they desire to purchase from Applicant any portion of their specified entitlement of the 40,000,000 dt of aggregate Phase II quantities, in lieu of purchasing such quantities from other sources for ultimate transportation and delivery by Applicant.

B. It is asserted that all of Applicant's customers would be eligible to purchase quantities from Applicant under the Phase II Sales Rate Schedule. However, it is stated that the sum of a customer's Phase II sales quantities and Phase II transportation quantities would not be permitted to exceed 115 percent of one-twelfth of its entitlement.

C. Applicant proposes that the Phase II Sales Rate Schedule become effective on August 9, 1984, and terminate on July 31, 1985.

D. Applicant asserts that supplies for the Phase II Sales Rate Schedule would be purchased by Applicant on an incremental least-cost basis from sources available to Applicant's market, to the extent such supplies are not first purchased by Applicant for its general system supply. Applicant states that, through October 1984, it may make certain incremental purchases from Transcontinental Gas Pipe Line Corporation at an incremental price which exceeds the incremental price of the available least-cost supply, if required to comply with the minimum bill waiver provisions of the settlement agreement in Docket Nos. RP83-11-000 and RP83-30-000.

E. Applicant asserts that the price for service rendered under the Phase II Sales Rate Schedule for customers purchasing under Rate Schedules CDS or G would be a fully compensatory rate of $3.5500 per dt. It is stated that for customers purchasing under Rate Schedule SGS, the initial price for service rendered under the Phase II Sales Rate Schedule would be $3.7131 per dt, which consists of the initial rate of $3.5500 per dt plus a demand charge component of $0.1631 per dt.

It is further stated that, since the proposed Phase II Sales Rate Schedule would operate through July 31, 1985, it may become necessary periodically to adjust the initial Phase II sales rates to reflect changes in supplier rates and other costs. Accordingly, Applicant proposes establishment of two benchmarks: (i) A benchmark incremental gas cost and (ii) a benchmark non-gas cost. Applicant assets that the utilization of these two cost benchmarks as a basis for subsequent adjustments to the Phase II sales rate is required to ensure that the effective Phase II sales rate would be compensatory throughout the term of this rate schedule.

Applicant states that it would periodically adjust the initial Phase II sales rates when either or both benchmark cost component changes at least 2.0 cents per dt.

The benchmark incremental gas cost would be $2.9500 per dt, which is said to be generally representative of the projected incremental cost of supplies that would be available to Applicant from its least-cost pipeline supplier through January 1985. Although certain incremental producer supplies may be available to Applicant at prices below $2.9500 per dt through January 1985, it is claimed that the relative uncertainty of the quantities and prices involved preclude the utilization of producer supplies as a reliable basis for the incremental gas cost benchmark. Accordingly, Applicant asserts if the incremental least-cost supply available for the Phase II Sales Program from Applicant's pipeline suppliers exceeds $2.9500 per dt by at least 2.0 cents per dt for a given month, the initial Phase II sales rate would be adjusted upward accordingly. Any subsequent reductions by at least 2.0 cents per dt in the cost of the incremental least-cost pipeline supply available would also be reflected, it is stated. The benchmark incremental non-gas cost would be the non-gas cost portion of Applicant's sales commodity rate, currently $0.5059 per dt; and any changes by at least 2.0 cents per dt in the non-gas cost portion of Applicant's sales commodity rate would be reflected by appropriate changes to the Phase II sales rate, it is further stated.

It is asserted that adjustments to the Phase II sales rate would be effectuated with an appropriate tariff filing by Applicant at least 10 days prior to its effective date. Applicant requests waivers, to the extent necessary, of the Commission's tariff filing regulations, 18 CFR 154.1, *et seq.*, in order to reflect timely such adjustments.

F. Applicant proposes that for all gas sold under the Phase II Sales Rate Schedule, it would credit to Account No. 191 the net of the Phase II sales revenue less the aggregate of (i) the incremental cost of gas, (ii) an allowance for fuel and line loss at the then effective percentage, currently 2.85 percent, (iii) the GRI Funding Unit, and (iv) amounts equivalent to the non-gas cost portion of Applicant's then effective sales commodity rate, currently $0.5059 per dt, and the non-gas cost portion of the then effective SGS demand charge component, currently $0.1631 per dt.

G. Applicant requests waivers, to the extent necessary, of the Commission's purchased gas adjustment (PGA) and related accounting regulations and the PGA provisions of its tariff for this program in order to treat revenues and expenses attributable to the Phase II Sales Rate Schedule Program outside of Applicant's regular PGA and Account No. 191 mechanism. Applicant proposes to remove the incremental variable purchased gas costs, inclusive of an allowance for fuel and line loss, and incremental revenue associated with the Phase II sevice from its total purchased gas costs and revenue for the purpose of calculating the monthly purchased gas cost deferrals to Account No. 191 under Applicant's PGA mechanism. To the extent increased incremental purchases are made for the Phase II service from its pipeline suppliers below minimum bill levels, Applicant proposes that the fixed-cost portion of the commodity rates for these pipeline suppliers remain as a current cost of gas in the regular Account No. 191 calculations where such unavoidable costs would be reflected notwithstanding the incremental Phase II purchases. Applicant proposes that in lieu of utilizing the regular PGA mechanism, it would file reports on a quarterly basis with the Commission detailing the source(s), quantities and incremental costs underlying the Phase II supply purchases and the customers, quantities and revenues associated with the Phase II sales. It is asserted that this report would detail the disposition of all Phase II sales revenue. It is further asserted that this detailed information would also be included in Applicant's regular PGA filings in support of any Phase II sales credits recorded in Account No. 191.

H. Applicant asserts that ten days prior to August 1, 1984, each customer would be required to furnish Applicant in writing with a projection of its monthly Phase II sales and transportation requirements through July 1985, segregated between quantities to be purchased under the Phase II Sales Rate Schedule and quantities to be transported pursuant to Phase II. It is stated that such projections of Phase II sales quantities would constitute a customer's firm commitment to purchase such monthly quantities from Applicant. Applicant proposes, however, to permit customers the opportunity to furnish updates of such monthly projections.

I. Applicant asserts that it would purchase incremental gas supplies for sale under this rate schedule after full recognition of regular system supply requirements but prior to, and in preference of, its incremental supply purchases for sales under its proposed Rate Schedule IS.

Applicant asserts that the sale of natural gas under the Phase II Sales Rate Schedule is required by the present and future public convenience and necessity to provide all customers with the opportunity to purchase a portion of their Phase II entitlement directly from Applicant. Applicant states that it currently has an economical supply of pipeline supplier gas available which if not taken would be lost to Applicant and its customers forever. It is asserted that the instant proposals would give a customer greater flexibility in determining how it wishes to take its Phase II quantities.

Applicant states that the Phase II sales rate fully complies with the Commission's criteria for special sales rates, as it does not shift costs among customers and does not require non-participants to assume a greater share of capacity costs.

Applicant states that the proposed rate schedule is not limited to only those jurisdictional customers with end-users possessing alternative fuel capability. It is stated that Phase II gas purchased directly from Applicant would be available for customers' unrestricted use.

Applicant states that its proposal would provide another opportunity for market signals in its service territory to be transmitted directly to its suppliers. It is asserted that the Phase II Sales Service would provide an incentive for Applicant's relatively high-cost producers to reduce their prices to Applicant to the applicable incremental supply cost under its least-cost purchase policy in order to increase their sales to applicant.

Applicant asserts that because Phase II sales would be incremental sales that Applicant otherwise would not anticipate making under its regular firm sales rate schedules, the pipeline suppliers making incremental sales to Applicant under the Phase II Sales Program, as well as their other customers, would directly benefit because of such pipeline suppliers' increased recovery of costs and diminution of minimum bill and/or take-or-pay exposures.

Applicant further asserts that the Phase II Sales Program would not divert system supplies from the originally intended end-users, because the Phase II supplies are on-system supplies, which were originally secured by Applicant for its customers' requirements, in displacement of off-system supplies.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the

requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19050 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-521-000]

Commonwealth Electric Co., et al; Filing

July 13, 1984.

The filing Company submits the following:

Take notice that on July 2, 1984, Commonwealth Electric Company ("Commonwealth") tendered for filing on behalf of itself, Montaup Electric Company, and Boston Edison Company supplemental data pertaining to their applicable gross investments, combined Federal income and francise tax rates, and local tax rates for rates for twelve month period ending December 31, 1982. Commonwealth states that this supplemental data is submitted pursuant to a letter order of the Federal Power Commission's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1972 through 1982.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, Northeast Utilities and Massachusetts Department of Public Utilities.

Any person desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19051 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-531-000]

Delmarva Power & Light Co., Filing

July 13, 1984.

The filing Company submits the following:

Take notice that Delmarva Power & Light Company, on July 2, 1984, tendered for filing a First Revised Leaf No. 4 of Section I—General of the Rules and Regulations of its FERC Electric Tariff Volume No. 11. The revision would permit payments by wire transfer on the day of, rather than prior to, the next meter reading date. Delmarva has requested an effective date of August 1, 1984.

The reason for the revision is to accommodate the request of one of Delmarva's wholesale electric customers; the revisions would be available to all such customers.

Copies of the filing were served on each of Delmarva's wholesale electric service customers, the Delaware Public Service Commission, the Maryland Public Service Commission and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19052 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-520-000]

Florida Power and Light Co., Filing

July 13, 1984.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on June 29, 1984, tendered for filing: (1) A "Contract for Interchange Service Between Florida Power & Light Company and Seminole Electric Cooperative, Inc.; (2) a supplementary Agreement Number One to Contract for Interchange Service Between Florida Power and Light Company and Seminole Electric Cooperative, Inc., and (3) Cost Support Schedules C-S, F-S, and G-S (together with Cost Support Schedule F-S Supplements). The Contract and Supplementary Agreement to Contract have been executed by both parties.

FPL respectfully requests that the proposed Contract, Supplementary Agreement Number One to Contract, and Cost Support Schedules C-S, F-S, and G-S (together with Cost Support Schedule F-S Supplements) be made effective July 1, 1984 and therefore requests waiver of the Commission's notice requirement. According to FPL, a copy of this filing was served upon Seminole Electric Cooperative, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19053 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

National Fuel Gas Supply Corp., et al., Extension Reports

[Docket Nos. ST80-142-002, et al.]

July 13, 1984.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline. A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before August 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST80-142-002 [1]	National Fuel Gas Supply Corp., 10 Lafayette Square, Buffalo, NY 14203	Kano Gas Co	06-28-84	B	01-21-84
ST81-12-002	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	Consumers Power Co	06-23-84	B	10-03-84
ST81-29-002	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	Austell Natural Gas System, *et al*	06-26-84	B	09-29-84
ST81-43-002	Rocky Mountain Natural Gas Co., Inc. 1600 Sherman St., Denver, CO 80203	Northern Natural Gas Co	06-25-84	C	09-20-84
ST81-45-002	Houston Pipe Line Co., 1200 Travis, Box 1188, Houston, TX 77001	United Gas Pipe Line Co	06-28-84	C	10-02-84
ST81-46-002	Oasis Pipe Line Co., 1200 Travis, Box 1188, Houston, TX 77001	United Gas Pipe Line Co	06-28-84	C	10-02-84
ST81-63-002	Houston Pipe Line Co., 1200 Travis, Box 1188, Houston, TX 77001	Transcontinental Gas Pipe Line Corp	06-29-84	C	10-09-84
ST81-64-002	Oasis Pipe Line Co., 1200 Travis, Box 1188, Houston, TX 77001	Transcontinental Gas Pipe Line Corp	06-29-84	C	10-09-84
ST81-95-002	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Transcontinental Gas Pipe Line Corp	06-21-84	C	11-05-84
ST81-430-002	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Panhandle Eastern Pipe Line Co	06-28-84	C	08-15-84
ST82-405-001 [1]	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77002	Bridgeline Gas Distribution Co	06-21-84	B	08-05-84
ST82-468-001 [1]	Valero Interstate Transmission Co., P.O. Box 1569, San Antonio, TX 78296	United Gas Pipeline Co	06-21-84	G	09-16-84
ST82-496-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Channel Industries Gas Co	06-25-84	B	09-29-84
ST83-5-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Columbia Gas Transmission Corp	06-25-84	G	10-01-84
ST83-11-001	Houston Pipe Line Co., 1200 Travis, Box 1188, Houston, TX 77001	Natural Gas Pipeline Co. of America	06-22-84	C	09-27-84
ST83-33-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Louisiana Intrastate Gas Corp	06-22-84	B	09-23-84
ST83-35-001 [1]	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Texas Gas Transmission Corp	06-22-84	G	08-13-84
ST83-73-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Entex, Inc	06-29-84	B	10-01-84
ST83-126-001 [1]	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	South Jersey Exploration Co., *et al*	06-29-84	B	09-09-84
ST84-921-001	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Mississippi River Transmission Corp	06-28-84	D	10-01-84

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 84-19054 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-492-000]

Northwest Pipeline Corp., Request Under Blanket Authorization

July 13, 1984.

Take notice that on June 15, 1984, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No CP84-492-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Northwest proposes to construct and operate certain natural gas facilities and to reallocate natural gas service for Cascade Natural Gas Company (Cascade), an existing customer of Northwest, under the authorization issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to construct and operate the Green Circle Farm meter station and to reallocate part of its existing delivery obligation to Cascade to the new meter station in order to provide natural gas service to Cascade. The Green Circle Meter Station, it is said, would be located in Benton County, Washington. Northwest states that the volumes of natural gas proposed to be delivered to Cascade for resale would be within the certificated volumes which Northwest is authorized to sell and deliver to Cascade pursuant to Northwest's presently effective ODL-1 Rate Schedule. Cascade, it is said, has requested a reallocation of natural gas service currently being sold and delivered to Cascade under Northwest's ODL-1 Service Agreement in order to provide for firm natural gas service at the proposed Green Circle Meter Station. It is stated that 6,000 therms

would be transferred from the Longview-Kelso Meter Station to the Green Circle delivery point. It is said that no increase in the total daily contract demand which Northwest is authorized to sell and deliver is proposed nor would any such increase result from the authorizations sought herein. Cascade, it is said, would reimburse Northwest for all reasonable costs, exclusive of company labor, incurred in constructing the proposed meter station.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-19055 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST80-81-004, et al.]

Northwest Pipeline Corp., et al.; Extension Reports

July 13, 1984.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before August 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 Subpart	Effective date
ST80-81-004	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110	Pacific Gas and Electric Co	05-25-84	B	09-01-84
ST80-303-002 [1]	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Delhi Gas Pipeline Corp	05-24-84	B	09-15-84
ST80-324-002	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX	Mid Louisiana Gas Co	05-18-84	G	08-01-84
ST82-395-001 [1]	Riverway Gas Pipeline Co., P.O. Box 60252, New Orleans, LA 70160	Bridgeline Gas Distribution Co	05-23-84	C	09-05-84
ST82-416-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Channel Industries Gas Co	05-18-84	B	08-10-84
ST82-437-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Esperanza Transmission Co	05-25-84	B	09-28-84
ST82-447-001 [1]	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	El Paso Natural Gas Co	05-29-84	G	09-13-84
ST82-475-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Intratex Gas Co	05-29-84	B	09-03-84
ST82-483-001	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251.	United Gas Pipe Line Co	05-25-84	G	08-27-84
ST82-484-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	Entex, Inc	05-25-84	B	09-28-84

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 84-19056 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-528-000]

Public Service Company of Colorado; Filing

July 13, 1984.

The filing Company submits one following:

Take notice that Public Service Company of Colorado (Public Service) on July 2, 1984 tendered for filing a proposed change in its Contract for Interconnection and Transmission Service (Contract) with the United States Department of Energy, Western Area Power Administration (WAPA). Public Service states that the proposed change is a Supplemental Contract, designated Supplement No. 12, to Public Service's Contract with WAPA, dated May 9, 1962, on file with the Commission under Company's FERC Rate Schedule No. 7

Public Service states that the proposed Supplemental Contact is to allow for the enhancement of the overall area reliability of the Fort Collins area electrical system.

Public Service states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, N.E., Washington D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 30, 1984. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19057 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1894-010]

South Carolina Electric & Gas Co.; Application for Change in Land Rights

July 13, 1984.

Take notice that South Carolina Electric & Gas Company, Licensee for the Parr Project, FERC No. 1894, in Fairfield and Newberry Counties, South Carolina, filed on March 15, 1984, an application for authorization to transfer certain project lands back to the original owners.

The lands to be transferred are located within Fairfield County, South Carolina, adjacent to the Monticello Reservoir, and would consist of 7.04 acres. The lands have been found to be in excess of the lands needed for shoreline control pursuant to Article 48 of the license.

Correpsondence with the Licensee should be directed to: Peyton G. Bowman, Esquire, Brian J. McManus, Esquire, Reid & Preist, 1111 19th Street NW., Washington, D.C. 20036, and Randolph R. Mahan, Esquire, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions to Intervene

Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-19026 (1983). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before August 23, 1984.

Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Deputy Director, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19041 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-524-000]

Southern California Edison Co.; Filing

July 13, 1984.

Take notice that on July 2, 1984, Southern California Edison Company ("Edison") tendered for filing as initial rate schedules, a Wholesale Power Agreement ("Agreement") between APS and Southern California Edison Company ("Edison").

This Agreement provides for the terms, conditions and rates for the sale and delivery of a small amount of power and energy to APS to be delivered on the California side of the Colorado River.

Edison requests that this Agreement become effective on August 1, 1984, the date contemplated for initiation of service.

Copies of this filing have been served upon APS, the Bureau of Indian Affairs for the Colorado River Indian Irrigation Project, and the California Public Utilities Commission.

Any person desiring to be heard or to protest said Agreement should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before July 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this Agreement are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19038 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-92-000]

Texas Eastern Transmission Corp.; Petition for Waiver of Tariff and Filing of Stipulation and Agreement

July 13, 1984.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 19, 1984 tendered for filing a Petition for Waiver of Tariff Provisions and a Stipulation and Agreement which proposes to resolve a dispute with its sales customer, Equitable Gas Company (Equitable), arising over a minimum commodity bill.

Texas Eastern sells gas to Equitable pursuant to Texas Eastern's DCQ-C Rate Schedule and pursuant to a Service Agreement dated September 24, 1964, which provide that Equitable shall pay to Texas Eastern each month a minimum monthly bill consisting of a "Demand Charge plus a Minimum Commodity Charge equal to the applicable zone commodity rate plus any Purchased Gas Cost Adjustment multiplied by the number of days in said month multiplied by 75% of the Maximum Daily Quantity specified in the Service Agreement."

During the months of May and June 1982, Equitable's natural gas purchases from Texas Eastern were below minimum bill levels in amounts of 10,322 dekatherms and 33,684 dekatherms, respectively.

Following an exchange of information, Texas Eastern and Equitable have agreed in the proposed Stipulation and Agreement that such deficiencies were the result of operational oversight or

misunderstandings associated with interpretation of measuring equipment and were unintentional. Therefore, the Stipulation and Agreement provides for Texas Eastern and Equitable to compromise and resolve their dispute over such deficiencies under an arrangement whereby Texas Eastern will make available to Equitable during the twelve-month period following the date the settlement agreement is approved by the Commission the 44,006 dekatherm volume deficiency. Equitable agrees to purchase such volumes in addition to its existing obligations under Section 4 of Texas Eastern's DCQ-C Rate Schedule and under the remaining terms and conditions of its Service Agreement, and to pay Texas Eastern therefor the commodity charge provided in Texas Eastern's DCQ-C Rate Schedule in effect on the date of deliveries.

Texas Eastern requests that said Stipulation and Agreement be approved by the Commission and that applicable provisions of its FERC Gas Tariff be waived as necessary to permit said Stipulation and Agreement to take effect.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19042 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-527-000]

Union Electric Co., Filing

July 13, 1984.

The filing company submits the following:

Take notice that Union Electric Company, on July 2, 1984, tendered for filing Revision No. 9 dated June 22, 1984, to the Interconnection Agreement of February 18, 1972 between Central Illinois Public Service Company, Illinois Power Company and Union Electric Company.

Union Electric states the purpose of the Revision is to effect deletion of Original Exhibit A to the Interconnection Agreement and provide for revised reservation charges for Maintenance Power, Short Term Power and Short Term Non-Firm Power.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19043 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-538-000]

Indiana & Michigan Electric Co., Filing

July 16, 1984.

The filing Company submits the following:

Take notice that on July 12, 1984 Indiana & Michigan Electric Company (I&M) filed an application for a waiver, to the extent necessary, of the Commission's Rules and Regulations governing the Fuel Adjustment Clause, to permit I&M to utilize fuel cost levelization for fuel to be used at the Rockport Plant Unit No. 1, which is scheduled to commence commercial operation on or about December 1, 1984. I&M seeks authorization to reflect fuel cost levelization in the calculation of its existing fuel cost adjustment clauses commencing with the generation of test energy at the Rockport Plant Unit No. 1 which may begin as early as September 1, 1984. Therefore, I&M has asked for a waiver of the 60-day notice period and for Commission authorization of its proposal prior to September 1, 1984.

Copies of this filing have been sent to the Public Service Commission of Indiana, the Michigan Public Service Commission and each of I&M's wholesale customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-19178 Filed 7-18-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59159A; FRL-2633-7]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-56 and TME-84-57 The test marketing conditions are described below.

EFFECTIVE DATE: July 12, 1984.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-202, 401 M Street SW., Washington, D.C. 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import a new chemical substance for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test

marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-56 and TME-84-57. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, numbers of workers exposed to the new chemical, and the level and duration of exposure must not exceed those specified in the applications. All other conditions and restrictions described in the applications and this notice must be met.

TME 84-56

Date of Receipt: May 25, 1984.
Notice of Receipt: June 8, 1984 (49 FR 23916).
Applicant: E.I. du Pont de Nemours and Company, Inc.
Chemical: (S) 2-(2,4-dinitrophenyl) benzothiazoline.
Use: (G) Photographic film additive.
Production Volume: Confidential.
Number of Customer: Confidential.
Worker Exposure: Confidential
Test Marketing Period: 3 months.
Commencing on: July 12, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.

TME 84-57

Date of Receipt: May 25, 1984.
Notice of Receipt: June 8, 1984 (49 FR 23916).
Applicant: E.I. du Pont de Nemours and Company, Inc.
Chemical: (S) 2-4-dinitrobenzaldehyde.
Use: (S) Synthesis of 2-(2,4-dinitrophenyl) benzothiazoline.
Production Volume: Confidential.
Number of Customer: None.
Worker Exposure: Confidential.
Test Marketing Period: 3 months.
Commencing on: July 12, 1984.
Risk Assessment: 1No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: July 12, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-19103 Filed 7-18-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 12, 1984.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Act of 1980. Pub. L. 96-511.

Copies of the submission are available from Doris Peacock, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on this information collection should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

Title: Section 81.403, Special Conditions

Type of Review Requested: New collection

Respondents: Individuals, state or local governments, businesses (including small businesses), and non-profit institutions

Estimated Annual Burden: 2 Respondents; 16 Hours

This rule requires an applicant for a shore based radionavigation station to obtain written permission for the station from the Coast Guard before submitting an application to the Commission. Documentation of the Coast Guard approval must be submitted with the application.

William J. Tricarico,

Secretary, Federal Communications Commission.

[Doc. 19087 Filed 7-18-84; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group, Automated Regulatory Information Reporting Systems Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is given that the August 6-7, 1984 scheduled meeting of the Telecommunications Industry Advisory Group, Automated Regulatory Information Reporting Systems Subcommittee, has been rescheduled to August 7-8, 1984. The meeting will begin at 10:00 a.m. on the first day and at 9:00 a.m. on the second day. The meetings will be conducted at Bell Communications Research, Inc., 2101 L Street, NW (6th Floor), Washington, D.C., and will be open to the public. The agenda for each meeting is as follows:

I. General Administrative Matters
II. Discussion of Assignments
III. Other Business
IV. Presentation of Oral Statements
V. Adjournment.

With prior approval of the chairperson, Eve Kimble, oral statements, while not favored or encouraged, may be allowed if time permits and if the chairperson 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 Eve Kimble ((201) 699-6843) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-19089 Filed 7-18-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-715-DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Iowa (FEMA-715-DR), dated June 27, 1984, and related determinations.

DATE: July 13, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

SUPPLEMENTARY INFORMATION: In a letter of July 13, 1984, the President amended this major disaster as follows:

On June 27, 1984, I determined that the damage in certain areas of the State of Iowa resulting from severe storms, hail and tornadoes beginning on June 7, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I hereby amend my June 27, 1984, declaration of a major disaster for the State of Iowa by adding the following:

This declaration also includes damage in certain areas of the State of Iowa resulting from flooding beginning on June 7, 1984.

The Notice of a major disaster for the State of Iowa dated June 27, 1984, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 27, 1984:

Fremont and Pottawattamie Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-19098 Filed 7-18-84; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-714-DR]

Amendment to Notice of a Major-Disaster Declaration; Kansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Kansas (FEMA-714-DR), dated June 22, 1984, and related determinations.

DATE: July 12, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated June 22, 1984, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 22, 1984:

Brown and Pottawatomie Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-19096 Filed 7-18-84; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-716-DR]

Amendment to Notice of a Major-Disaster Declaration; Nebraska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Nebraska (FEMA-716-DR), dated July 3, 1984, and related determinations.

DATE: July 13, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0501.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nebraska, dated July 3, 1984, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 3, 1984:

Washington County for Individual Assistance.

Douglas County as an adjacent county for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 84-19097 Filed 7-18-84; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interest parties may submit comments on each 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 are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.. 223-010615.

Title: Los Angeles Marine Terminal Agreement.

Parties:

The City of Los Angeles (City)

American President Lines (APL)

Synopsis: This agreement provides that the City will grant the use of a pipeline right-of-way for the construction, maintenance and operation of a subsurface pipeline for the purpose of transporting bunkering fuel to APL vessels at Parcel No. 5, Berths 120-126, at the Port of Los Angeles. The terms and conditions set forth in Agreement No. T-3938, as amended, shall be incorporated into the instant agreement. The term of the agreement shall commence on the day it is acted upon by the Commission, and it shall terminate on December 31, 2001. The parties have requested a shortened Federal Maritime Commission review period as provided in section 6(3) of the Shipping Act of 1984.

Dated: July 13, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-19035 Filed 7-18-84; 8:45 am]

BILLING CODE 6730-01-M

Inactive Tariffs; Bureau of Tariffs; Intent To Cancel

The foreign commerce files of the Federal Maritime Commission contain numerous tariffs which have been classified as inactive due to (1) the absence of any tariff changes for a period of one year or longer; (2) the Commission staff's inability to contact the tariff filers at the addresses shown on the tariffs; or (3) the staff has been advised by the carrier or its agent that the tariffs no longer cover a common carrier service. The tariff publications of the following carriers fall into the inactive category:

A.A.C. International Freight Forwarders Co., Inc.	FMC-1.
Ace Lines Limited	FMC-1.
ACL Trading Co	FMC-2.
Action Container Co	FMC-1.
Albury's International Shipping, Inc	FMC-1.
Alfa Steamship Company	FMC-4.
Allied Transport Service	FMC-1.
Allround Forwarding Co., Inc	FMC-1.
American Container Line	FMC-1.
American Industrial Carriers, Inc	FMC-31 and 32.
American Pacific Shipping Co	FMC-1.
American Shipping Co., Inc	FMC-4 and 5.
The Americus Shipping Lines, Inc	FMC-1 and 2.
Aniara Lines, Inc	FMC-2.

Associated North American	FMC-1.
Associated Trade Development, Inc	FMC-1.
Bermuda Ocean Shipping Services Ltd	FMC-1.
Bailey Shipping Ltd	FMC-1.
J.E. Bernard & Co	FMC-10, 11, 12, 13 and 14.
Benedict Shipping International, Inc	FMC-1.
Bimini Conveyors, Ltd	FMC-3.
Blue Bay Shipping Corp	FMC-1.
B.W.I. Shippers & Movers, Ltd	FMC-1.
California Freight Specialists	FMC-1.
Cal-Latin Lines, Inc	FMC-1.
Cargo Lift, Inc	FMC-1.
Cargo International Freight Service Corp	FMC-1.
Carg-O-Matic Express, Inc	FMC-1 and 2.
Caribbean Container Services, Inc	FMC-1.
Caribbean Sea Carriers, Ltd	FMC-1.
Caribe Cargo Express, Inc	FMC-1.
C.C. Line	FMC-2.
Celadon Shipping Co., Inc	FMC-1.
Celtic Bulk Carriers	FMC-4 and 5.
Chalship Lines, Ltd	FMC-1.
Clipper Intermodal Lines	FMC-1 and 2.
Coloship Inc	FMC-1.
Combined Maritime (America) Container Line.	FMC-1.
Compagnie D'Affretement Et De Transport, S.A.	FMC-1.
Compagnie Nationale Haitienne De Navigation S.A.M.	FMC-1 and 2.
Compania Maritima Ecuatoriana Ciamare S.A.	FMC-1.
Consolidation Atlantic Transportation Lines, Inc. (C.A.T. Line).	FMC-4, 7, 8, 9, and 10.
Conveca, Inc	FMC-1.
Crown Overseas Forwarders	FMC-5.
CTO Lines, Inc	FMC-1, 2, 3, and 4.
Cylanco, S.A	FMC-3.
Damco-Baltimore, Inc	FMC-3.
Damco-Boston, Inc	FMC-5.
Dart Containerline	FMC-30.
Delval Transatlantic Service, Inc	FMC-2.
Dentzana Shipping Unlimited	FMC-1.
Diamond Shipping Ltd	FMC-1.
Dongsu Shipping Co., Ltd	FMC-1.
Eastern Car Liner, Ltd	FMC-1.
Eastern Container Lines, Ltd	FMC-3.
Egyptian National Line	FMC-3.
Emerald Lines, Inc	FMC-1.
Emery Ocean Freight	FMC-4.
Empacadora Del Norte S.A	FMC-2.
Euro-American Ocean Freight, Inc	FMC-1.
Euro-Baltic Line, Inc	FMC-1.
Euro-Con International of Georgia, Inc	FMC-1.
Euro-Con International of Pennsylvania, Inc.	FMC-1.
Euro-Con International, Inc	FMC-4.
Eurolines Spa	FMC-1.
European-Middle East Shipping	FMC-2.
F.A.K. Inc	FMC-1.
Far Eastern Shipping Company	FMC-9, 20, 23, 24, 25, 26, 27, 37, 39, 40 and 41.
The A.W. Fenton Co., Inc	FMC-1.
Finsec Export, Inc	FMC-1.
First International Shipping Co	FMC-1.
Flonac Line	FMC-1.
Forest Lines	FMC-12, 19 and 22.
Franco Express Lines, S.A	FMC-1 and 2.
Frank Hanna Shipping Service	FMC-1.
Frans Maas Container Services	FMC-1 and 2.
Freight-Base, Inc	FMC-1.
G.M.S. International Corp	FMC-2.
Galapagos Line S.A	FMC-1 and 7.
National Galleon Shipping Corp	FMC-66, 72, 74 and 75.
Gemini Shipping, Inc	FMC-1.
Genact Cargo Lines, Inc	FMC-1.
General Maritime Enterprise	FMC-1 and 2.
Golden Bear Trading Co., Inc	FMC-1.
Gulf Ports Shipping Company	FMC-1.
Hansen Intermodal Service Ltd	FMC-5.
Hellenic Lines, Ltd	FMC-1, 3, 4, 5, 7, 18, 28, 31, 32, 33, 34, 35, 36, 37; 39, 40, 42, 44, 45, 53, 54, 55 and 56.
Hoegh Lines	FMC-3, 12, 64 and 69.
Inovative Freighting, Inc	FMC-1.
Inter-American Moving Service, Inc	FMC-1.
Interconex, Inc	FMC-1.
Intermox Transport International, Inc	FMC-1.
Intercontinental Export Services, Inc	FMC-1.
International Navigation Services Corp	FMC-1.
Intra-Modal Systems Company	FMC-1.
Islander Freight & Supply, Ltd	FMC-1.
Islands Freight Transportation, Inc	FMC-1.
Italian Line	FMC-30.
I.W. Transport, Inc	FMC-1.
Japan Pacific Service	FMC-14.
Jeco Shipping Line International, N.V	FMC-1, 2 and 3.
JIF America, Inc	FMC-1.
Jugobred Group—Yugoslavia	FMC-1.
Kambara Kisen Company, Ltd	FMC-5.
Kenron Container Lines, Ltd	FMC-1.
Koplamar Line, Inc	FMC-1.
Kyowa Shipping Co., Ltd	FMC-4.
Latte Corporation	FMC-1.
Logistics Transport, Ltd	FMC-1.
Marine Overseas, Inc	FMC-1.
Marine Fleet, Inc	FMC-1.
Maritime Commercial Carriers, Ltd	FMC-1.
Maritime Company of the Philippines	FMC-19 and 20.
Mayan Lines	FMC-2.
Meridian Marine Lines	FMC-1.
Merit Container Express, Inc	FMC-1.
Meteor Lines	FMC-1.
Meteoro Express Corporation	FMC-1.
Michael Davis (Shipping) Inc	FMC-1.
Mid-Atlantic Lines	FMC-1.
Milne International	FMC-1.
Multi-Sea Maritime, Inc	FMC-1.
Nanica Line	FMC-27, 28 and 23.
The National Shipping Co. of Saudi Arabia.	FMC-4 and 5.
Naveras Atlanticas, Inc	FMC-1.
Navieras Caribe Ltd	FMC-1.
Navinsa, S.A	FMC-2.
Nauru Pacific Line	FMC-2.
Nautical Shipping Agencies, Inc	FMC-1.
Navier Continental S.A	FMC-1.
Negocios Amazonicos Peruanos, S.A	FMC-1.
Pacific Common Carrier Line	FMC-2.
Pan Africa Line, Inc	FMC-1.
Pelican Cargo Services, Inc	FMC-2.
Peninsula Express Line	FMC-1.
PAC Transport	FMC-1.
Pharaonic Shipping Company	FMC-2.
Pikes Arm Shipping Ltd	FMC-1.
P & O Lines	FMC-11.
Pracht Shipping	FMC-2.
Prexco Marine Lines	FMC-1.
Pro Cargo Services, Inc	FMC-1.
Radix Group International, Inc	FMC-1.
Rivergate Shipping Inc	FMC-1.
Rolland International (U.K.) Ltd	FMC-1.
Royal African Steamship & Navigation Co.	FMC-1.
Scan Pacific Line	FMC-2.
Scan Tropic Line, Ltd	FMC-1.
Scott Line, A.S	FMC-1.
Seal	FMC-1.
Sealax Container Lines	FMC-1.
Sea Freight Corp	FMC-1.
Sea Freight, Inc	FMC-1.
Sea Mar Consolidators Corp	FMC-1.
Seaply Carriers	FMC-1.
Sea Span International, Ltd	FMC-2.
Sea Star Line	FMC-2.
Seatrade Container Services, Inc	FMC-1.
Seatrado Transport, Inc	FMC-1.
Seatrade Welgrew, Inc	FMC-1.
Seatransport, Inc	FMC-1.
Seaward Ocean Lines, Ltd	FMC-2.
Texas Gulf Iberia Navigation Company	FMC-1.
Uiterwyk Lines, C.A	FMC-7, 8, 10, 11, 12, 13, 14, and 16.
Uiterwyk Lines (West Africa Ltd.)	FMC-3, 5, 6 and 8.
Xebec Maritime Corp	FMC-1.

Inactive tariffs reflect inaccurate information to the shipping public and serve no useful purpose in the Commission's files. Accordingly, the Commission proposes to cancel the above listed tariffs in the absence of a showing of good cause as to why they should not be cancelled.

Now, therefore it is ordered, that the above carriers advise the Director, Bureau of Tariffs at 1100 L Street, NW., Washington, D.C. 20573, in writing within 30 days after the publication of this Order in the Federal Register of any reason why the Commission should not cancel inactive tariffs;

It is further ordered, That a copy of this Order be sent by certified mail to the last known address of the carriers listed herein;

It is further ordered, That the tariffs of all carriers named herein not responding to this Order will be cancelled;

It is further ordered, That this notice be published in the Federal Register and a copy thereof filed with any tariff cancelled pursuant to this notice.

By the Commission pursuant to authority delegated by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Bureau of Tariffs.

[FR Doc. 84-19099 Filed 7-18-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Fleet Financial Group, Inc.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the appliciation will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in in writing on the question whether consummation of the proposal can "reasonably be expected

to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1984.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to engage through the following national bank subsidiaries in the acceptance of time and demand accounts; the making of consumer and residential mortgage loans and the offering of credit cards; the offering as agent of credit life, credit accident and health and involuntary unemployment insurance; and acting as an investment financial advisor in providing portfolio investment advice to customers: Fleet National Bank of Boca Raton, Boca Raton, Florida (serving Palm Beach and Broward counties); Fleet National Bank of Orlando, Orlando, Florida (serving Orange, Osceola, and Seminole counties); and Fleet National Bank of Tampa, Tampa, Florida (serving the Tampa-St. Petersburg metropolitan area); Fleet National Bank of Georgia, Atlanta, Georgia (serving Atlanta, Georgia); Fleet National Bank of Maryland, Silver Spring, Maryland (serving Washington, D.C.); Fleet National Bank of New Hampshire, Nashua, New Hampshire (serving Manchester-Nashua, New Hampshire); Fleet National Bank of New Jersey, Iselin, New Jersey (serving Union County, New Brunswick, and Perth Amboy-Sayreville, New Jersey); Fleet National Bank of North Carolina, Charlotte, North Carolina (serving Charlotte-Gastonia, North Carolina); Fleet National Bank of South Carolina, Columbia, South Carolina (serving Columbia, South Carolina); and Fleet National Bank of Virginia, Vienna, Virginia (serving Washington, D.C.).

Board of Governors of the Federal Reserve System, July 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-19104 Filed 7-18-84; 8:45 am]

BILLING CODE 6210-01-M

Mercantile Bancorp, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 10, 1984.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mercantile Bancorp, Inc.*, Moundsville, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Mercantile Banking and Trust Company, Moundsville, West Virginia.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Steet, Chicago, Illinois 60690:

1. *First Taylor County BanCorporation, Inc.*, Bedford, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of The Bedford National Bank, Bedford, Iowa.

2. *Missouri Valley Financial Services, Inc.*, Council Bluffs, Iowa; to become a bank holding company by acquiring 58.06 percent of the voting shares of Peoples State Bank, Missouri Valley, Iowa.

3. *SparBank, Incorporated*, McHenry, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of McHenry State Bank, McHenry Illinois.

4. *Union National Bancorp*, Liberty, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Union County National Bank of Liberty, Liberty, Indiana.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bancenter One Group, Inc.*, Ellisville, Missouri; to become a bank holding company by acquiring at least 50 percent of the voting shares of Bancenter One, Ellisville, Missouri.

D. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *NorBanc Group, Inc.*, Pine River, Minnesota; to acquire 94 percent of the voting shares of State Bank Boyd, Boyd, Minnesota.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice Priesident) 400 South Akard Street, Dallas, Texas 75222:

1. *Arlington Commonwealth Corporation*, Arlington, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Commonwealth Bank of Arlington, Arlington, Texas.

Board of Governors of the Federal Reserve System, July 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-19105 Filed 7-18-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; NIOSH/MSHA Testing and Certification of Air Purifying Respirators With End-Of-Service-Life Indicators

AGENCY: National Insititue for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of Acceptance of Applications for Approval of Air Purifying Respirators with End-of-Service-Life Indicators (ESLI).

SUMMARY: This notice announces that NIOSH will now accept applications for approval of gas and vapor air purifying

respirators with effective ESLI. In addition, this notice informs respirator manufacturers and users of the NIOSH requirements for approving air purifying respirators with either effective passive or active ESLI for use against gases and vapors with adequate warning properties or for use against gases and vapors with inadequate warning properties whenever there is a regulatory standard already permitting the use of air purifying respirators.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Bollinger, Assistant Chief, Testing and Certification Branch, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: (304) 291-4331 or FTS 923-4331.

SUPPLEMENTARY INFORMATION: The regulations governing chemical cartridge respirators state that NIOSH and the Mine Safety and Health Administration (MSHA) may, after a review of the effects on the wearer's health and safety, approve respirators for gases and vapors not specifically listed (Title 30, Code of Federal Regulations, Part 11 (30 CFR Part 11), Subpart L, § 11.150). Subpart I of 30 CFR Part 11 permits the use of "window indicators" for gas masks to warn the wearer when the canister will no longer remove a contaminant. Although indicators are not mentioned in Subpart L, "Chemical Cartridge Respirators," there is nothing in the regulations which explicitly prohibits their use. A NIOSH policy to allow ESLI on air purifying respirators for gases and vapors with adequate warning properties has already been established (letter dated June 18, 1975, to all respirator manufacturers from Dr. Elliott Harris, NIOSH).

When equipped with ESLI, chemical cartridge respirators could be used against gases and vapors with poor warning properties as authorized under Subpart L of 30 CFR Part 11 which states:

> Not for use against gases or vapors with poor warning properties (except where MSHA or Occupational Safety and Health Administration standards may permit such use for a specific gas or vapor * * * (30 CFR 11,150, footnote (7)).

Thus, air purifying respirators with ESLI could be approved for substances such as acrylonitrile since the Occupational Safety and Health Administration (OSHA) acrylonitrile standard permits the use of chemical cartridge respirators for the substance.

In addition, under the existing regulations, NIOSH can require "any additional requirements deemed necessary to establish the quality, effectiveness, and safety of any respirator used as protection against hazardous atmospheres" (30 CFR 11.63(c)). As a prerequisite for implementation of that provision, NIOSH must notify applicants in writing of these additional requirements (30 CFR 11.63(d)).

Many gases and vapors found in the workplace may not have adequate warning properties; in addition, the ability of humans to detect those warning properties is highly variable. As a result, NIOSH has been investigating alternate means of detection by the wearer. In 1976, NIOSH adopted its current policy which allows acceptance of applications for certification of air-purifying respirators for use against gases and vapors with poor warning properties not specifically listed in 30 CFR Part 11 only if the respirator is equipped with an active ESLI.

An active ESLI is defined as an indicator which invokes a spontaneous warning signal (e.g., flashing lights, ringing bells, etc.) which is automatic. An active indicator was required because the initiation of the warning device does not depend on any initiative of the respirator user. On the other hand, passive indicators, normally color change indicators, require monitoring by the wearer.

During the past several years, NIOSH has received expressions of concern from respirator manufacturers, regulatory agencies, worker groups, and general industry regarding NIOSH's policy of accepting only active ESLI for certification. In 1983, the issue arose twice. OSHA has requested that NIOSH start a certification program for mercury vapor respirators. Since mercury vapor does not have adequate warning properties, either an ESLI or appropriate administrative controls are necessary to ensure safe use of the respirator.

At the October 1983 Mine Health Research Advisory Committee (MHRAC) meeting, NIOSH presented a briefing document, "Consideration of Use of End-of-Service-Life Indicators in Respiratory Protective Devices," and requested that MHRAC provide recommendations to NIOSH regarding the appropriateness of using both active and passive ESLI and the appropriateness of the NIOSH draft evaluation criteria. MHRAC held a public meeting in Washington, D.C., on December 19, 1983, to solicit comments from interested parties. After reviewing public comments, MHRAC suggested some additions and modifications to the NIOSH-proposed evaluation criteria, and NIOSH incorporated those recommendations MHRAC also concluded that active and passive ESLI would be appropriate for use with respiratory protective devices if criteria were established for their certification which would assure that the user is not exposed to increased risk as a consequence of relying upon such ESLI.

NIOSH in now requiring that all applications for approval of gas and vapor respirators with ESLI include the following information:

Criteria for Certification of End-of-Service-Life Indicators

An applicant for certification of ESLI of use against substances with poor warning properties must provide NIOSH with the following information:

1. Data demonstrating that the ESLI is a reliable indicator of sorbent depletion (less than or equal to 90% of service life). The data shall include the results of a flow-temperature study at low and high temperatures, humidities, and contaminant concentrations which are reasonably representative of actual workplace conditions where it is anticipated that a given respirator will be used. A minimum of two contaminant levels must be utlized for each study, including the limit level (permissible exposure limit, threshold limit value, etc.) and the limit level times the assigned protection factor for the respirator type.

2. Data on desorption of any impregnating agents used in the indicator. The data shall include the results of a flow-temperature study at low and high temperatures and humidities which are reasonably representative of actual workplace conditions where it is anticipated that a given respirator will be used. Data shall be sufficient to demonstrate safe levels of desorbed agents.

3. Data on the effects of industrial interferences which are commonly found in workplaces where it is anticipated that a given respirator will be used. Data should be sufficient to show which interferences could impair the effectiveness of the indicator and the degree of impairment, and to show which substances will not affect the indicator.

4. Data on any reaction products produced in the reaction between the sorbent and the contaminant gases and vapors against which it is designed to protect, including the concentrations and toxicities of such products.

5. Data which predicts the storage life of the indicator. Simulated aging tests will be acceptable.

In addition to the foregoing, all *passive* ESLI shall meet the following criteria:

1. A passive ESLI shall be situated on the respirator so that it is readily visible to the wearer.

2. If the passive indicator utilizes color change, the change shall be detectable to people with physical impairments such as color blindness.

3. If the passive indicator utilizes color change, reference colors for the initial color of the indicator and the final (end point) color of the indicator shall be placed adjacent to the indicator.

All ESLI shall meet the following criteria:

1. The ESLI shall not interfere with the effectiveness of the face seal.

2. The ESLI shall not change the weight distribution of the respirator to the detriment of the facepiece fit.

3. The ESLI shall not interfere with required lines of sight.

4. Any ESLI that is permanently installed in the respirator facepiece shall withstand cleaning and a drop from a 6-foot height. Replaceable ESLI must be able to be easily removed and to withstand a drop from a 6-foot height.

5. A respirator with an ESLI shall still meet all other applicable requirements set forth in 30 CFR Part 11.

6. Any electrical components utilized in an ESLI shall conform to the provisions of the National Electrical Code and be "intrinsically safe." Where permissibility is required, the respirator shall meet the requirements for permissibility and intrinsic safety set forth in 30 CFR Part 18, Subpart D, § 18.82, "Permit to use experimental electrical face equipment in a gassy mine or tunnel." Also, the electrical system shall include an automatic warning mechanism that indicates a loss of power.

7 Effects of industrial interferences for substances which are commonly found in workplaces where it is anticipated that a given respirator will be used must be determined, and those substances which hinder ESLI performance shall be identified. Substances which are commonly found where the respirator will be used must be investigated. Data sufficient to indicate whether the performance is affected must be submitted to NIOSH.

Manufacturers of respirators equipped with ESLI shall label the respirator to make the user aware of use conditions that could cause false positive and negative ESLI responses.

8. The ESLI shall not create any hazard to the wearer's health or safety.

9. Consideration shall be given to the potential impact of common human physical impairments on the effectiveness of the ESLI.

Dated: July 10, 1984.

L. W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 84-19134 Filed 7-18-84; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 82D-0350]

General Principles of Process Validation; Current Good Manufacturing Practice Working Draft Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a working draft guideline entitled "Guideline on General Principles of Process Validation" (March 1984), which outlines general principles of process validation the agency views as acceptable parts of a process validation program for preparing human and animal drug products and medical devices. This notice is intended to inform interested persons of the availability of the working draft guideline, which was distributed at an open public meeting of the Device Good Manufacturing Practice Advisory Committee held on March 29, 1984.

DATE: Comments by October 17, 1984.

ADDRESS: Requests for a copy of the working draft guideline and written comments regarding the working draft guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT:

For Human and Animal Drug Products:
Clifford G. Broker, Center for Drugs and Biologics (HFN-323), Food and Drug Administration, #2 Nicholson Lane at Rockville Pike, Bethesda, MD 20852, 301-443-2789.

For Medical Devices:
Edward J. McDonnell, Center for Devices and Radiological Health (HFZ-330), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7122.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 29, 1983 (48 FR 13096), FDA issued a notice announcing the availability of a draft guideline entitled "Guideline on General Principles of Process Validation" (March 1983). The draft guideline was intended to inform interested persons of acceptable principles to facilitate compliance with the current good manufacturing practice (CGMP) regulations. The draft guideline was made available for public comment to provide the agency with views to be considered in its development of a final guideline. Interested persons were given until May 31, 1983, to comment on the draft guideline.

Based on a request for a general extension of the comment period by a foreign drug manufacturer, FDA issued a notice in the Federal Register of June 10, 1983 (48 FR 26889) extending the comment period for the draft guideline until July 31, 1983.

In a notice published in the Federal Register of February 22, 1984 (49 FR 6572), FDA announced that an open public meeting of the Device Good Manufacturing Practice Advisory Committee would be held on March 29 and 30, 1984, in Washington, DC. This notice also announced that the meeting agenda would include an open discussion of the March 1983 draft guideline. On March 29, 1984, during the open committee discussion portion of the meeting, an FDA speaker discussed the comments received on the March 1983 draft guideline and proposed revisions under consideration by the agency. Copies of a working draft of the March 1983 guideline that reflected the proposed revisions under consideration by the agency were provided to interested persons attending the public meeting.

To assure that the full range of issues related to the March 1983 draft guideline are addressed, FDA believes that the working draft guideline distributed at the public meeting should be made available to interested persons. Accordingly, FDA is announcing the availability of the working draft guideline: "Guideline on General Principles of Process Validation" (March 1984). FDA notes that because the March 1983 draft guideline is still undergoing review within FDA, any conclusions reflected in the March 1984 working draft do not necessarily represent a final agency position on any matter contained in the guideline.

The working draft guideline does not supersede the March 1983 draft guideline. Comments submitted in response to the Federal Register notice of March 29, 1983, are still under consideration by the agency. Additional comments may be submitted, if desired.

Requests for a single copy of the working draft guideline should be sent to the Dockets Management Branch (address above). Interested persons may submit written comments on the working draft guideline to the Dockets Management Branch by October 17,

1984. FDA will consider these comments in determining whether further amendments to, or revisions of, the March 1983 draft guideline are warranted. Comments should be in two copies (except that individuals may submit single copies), identified with the docket number found in brackets in the heading of this document. The working draft guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 11, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-19060 Filed 7-18-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83N-0308]

International Drug Scheduling; Convention on Psychotropic Substances; Stimulant and/or Hallucinogenic Drugs

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit additional data or comments concerning abuse potential, actual abuse, and medical usefulness and trafficking of 28 stimulant and/or hallucinogenic drugs. This information will be considered in preparing a further response from the United States to the World Health Organization (WHO) regarding abuse liability, actual abuse, and trafficking of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting information is required by law.

DATE: Comments by July 30, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances. Article 2 of the Convention on Psychotropic Substances provides that if WHO has information about a substance which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion. The Controlled Substances Act (CSA) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Convention on Psychotropic Substances that WHO has information that may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of the Department of Health and Human Services (DHHS). The Secretary of DHHS must then publish the notice in the Federal Register and provide opportunity for interested persons to submit comments to assist DHHS in preparing scientific and medical evaluations about the drug or substance.

On July 25, 1983, WHO requested the United States to submit data concerning the abuse potential, actual abuse, and medical usefulness of 30 stimulant and/or hallucinogenic drugs. FDA, on behalf of DHHS and the Secretary, published WHO's request in the Federal Register of September 13, 1983 (48 FR 41096) and provided an opportunity for public comment on the request.

The Secretary of DHHS has received the following additional notice from WHO on behelf of the Secretary-General:

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to draw attention to a request from the Director-General of the World Health Organization for additional assistance in obtaining data on the following twenty-eight substances:

Cathine (norpseudoephedrine)
Cathinone
Clobenzorex
Dimethoxyamphetamine
Dimethoxybromoamphetamine (DOB)
Ethylamphetamine
Fenbutrazate
Fencamfamin
Fenetylline
Fenproporex
Furfenorex
Levamfetamine
Levomethamphetamine
Mefenorex
Methoxyamphetamine (PMA)
Methylenedioxyamphetamine (MDA)
Morazone
Para-methoxyamphetamine
Pemoline
Propylhexedrine
Pyrovalerone
Trimethoxyamphetamine (TMA)
4-Bromo-2,5-dimethoxyphenethylamine
2,5-Dimethoxy-4-ethylamphetamine (DOET)
N,N-Dimethylamphetamine
N-Ethyl-3,4-methylenedioxyamphetamine (N-Ethyl-MDA)
5-Methoxy-3,4-methylenedioxyamphetamine (MMDA)
3,4-Methylenedioxymethamphetamine (MDMA)

By note NAR/CL.14/1983 of 25 July 1983 the Secretary-General had already requested information on these substances and the data received in response to that request was analysed and submitted to WHO. On the basis of a review of that data, the Director-General of WHO notified the Secretary-General that WHO was of the opinion that two of the substances (DOB and MDA) should be included in Schedule I of the Convention on Psychotropic Substances. The proposal to schedule the two substances was notified by the Secretary-General to all States Parties to the Convention by notes NAC/CL.6/1984 and NAR/CL.7/1984 of 12 and 13 June, respectively. At its thirty-first session, in February 1985, the Commission on Narcotic Drugs will decide what action, if any, should be taken with respect to that proposal to include DOB and MDA in Schedule I of the Convention [on] Psychotropic Substances. [These two WHO notifications will be the subject of future Federal Register notices.]

WHO has recently carried out a detailed examination of the procedure to be followed in the matter of reviewing substances for possible recommendation for scheduling under the international drug control treaties. New guidelines for the review procedure have been approved by the WHO Executive Board and the Director-General has decided to entrust responsibility for such review to the WHO Expert Committee on Drug Dependence.

The twenty-second Expert Committee on Drug Dependence, to be convened from 22 to 27 April 1985, will accordingly examine the 28 substances listed above to determine if any further proposals should be made concerning their possible control under the provisions of the Convention on Psychotropic Substances. In this connection, it would be appreciated if the Government would submit any additional data, it deems appropriate on any of the 28 substances. It would greatly assist the Secretary-General if such data were submitted on a substance-by-substance basis following the outline contained in the questionnaire attached to the present note as an annex.

In view of the fact that a report must be prepared for WHO on this subject, it would be appreciated if the information could be transmitted to the Secretary-General by 15 August 1984. Replies should be addressed to the attention of the Director of the Divison of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria.

UNITED NATIONS DIVISON OF NARCOTIC DRUGS

Vienna International Centre, A-1400 Vienna, Austria

Questionnaire for data collection for use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council

SUBSTANCE REPORTED ON: ———

1. Availability of the substance (registered, marketed, dispensed, etc).
2. National control measures applied to the substance as compared to measures applied to narcotic drugs or psychotropic substances (e.g. prescription requirements, licensing of manufacture and distribution, control of import and export, etc.).
3. Extent of abuse of the substance.
4. Degree of seriousness of the public health and social problems* associated with abuse of the substance.
5. Number of seizures of the substance in the illicit traffic during the previous three years and the quantities involved.
6. Identification of the substances as of local or foreign manufacture and indication of any commercial markings.
7. Existnce of clandestine laboratories manufacturing the substance.

Therefore, as required by section 201(d)(2)(A) of the Controlled Substances Act (21 U.S.C. 811(d)(2)(A)), FDA on behalf of DHHS invites interested persons to submit additional data or comments regarding the named 28 drugs. Information submitted in response to previous Federal Register notices need not be resumbitted. The current WHO notification deletes two of the drugs referred to in the September 13, 1983 notice: methoxymethylenedioxyamphetamine and para-oxyamphetamine. WHO has not provided a basis for the deletion.

In the September 13, 1983 notice, FDA discussed the then current marketing and domestic control status of each of the 30 drugs in the United States. There have been no changes concerning the status of any of the drugs.

Data and information received in response to this notice will be used to prepare supplemental scientific and medical information on these drugs in addition to that previously provided by the United States to WHO. (A copy of that information is on file in the Dockets Management Branch under this docket.) DHHS will forward that information to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend international control of any of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these durgs and could impose certain recordkeeping requirements on them.

Upon receipt of the information, DHHS wil not make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Rather, DHHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in 1985. Any DHHS position regarding international control of these drugs will be preceded by another Federal Register notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

Interested persons may, on or before July 30, 1984, submit to the Dockets Management Branch (address above) written comments regarding this action. This short comment period is necessary to assure that DHHS may, in a timely fashion, provide the requested comments and data. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should provide data and/or information in the format described in the WHO questionnaire for data collection found above. Comments are to be identifed with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 16, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-19191 Filed 7-17-84; 10:56 am]

BILLING CODE 4160-01-M

*Examples of pubic health and social problems are acute intoxication, accidents, work, absenteeism, mortality, behaviour problems, criminality, etc. For a thorough examination of the question please refer to the WHO publication entitled "Assessment of Public Health and Social Problems associated with the Use of Psychotropic Drugs" (No. 656 in the WHO Technical Report Series) and Chapter 7 of the WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances"

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently in pertinent part at 49 FR 15139, April 17, 1984) is amended to reflect the following changes within the National Eye Institute (NEI): (1) Republish without change the functional statements for program-level and above components; and (2) establish the Biometry and Epidemiology Program (HN-W4). These changes will show the correct standard Administrative Codes (SACs) for the Institute and its program, and more effectively align the organization with the activities of the program and provide proper visibility to a nationally prominent research program in epidemiological and biometrical investigations of visual disorders.

Sec. HN-B, Organization and Functions, is amended as follows: Under the heading *National Eye Institute (HN-W) [formerly (8E)],* delete the functional statements for the Institute and its programs in their entirety, and republish those functional statements to read as follows:

National Eye Institute (HN-W). Conducts, fosters, and supports research on the causes, natural history, prevention, diagnosis, and treatment of disorders of the eye and visual system, and in related fields (including rehabilitation) through: (1) Research performed in its own laboratories and through contracts; (2) a program of research grants and individual and institutional research training awards; (3) cooperative and collaboration with voluntary organizations and other institutions engaged in research and training in the special health problems of the blind; and (4) collection and dissemination of information on research and findings in these areas.

Intramural Research Program (HN-W2). (1) Plans and conducts the Institute's laboratory and clinical research program, which encompasses five major disease areas: retinal and choroidal diseases, corneal diseases, cataract, glaucoma, and sensory and motor disorders of vision, to ensure maximum utilization of available resources in the attainment of Institute objectives; (2) evaluates research efforts and establishes program priorities; (3) allocates funds, space, and personnel ceilings and integrates ongoing and new research activities into the program structure; (4) collaborates with other Insitute and NIH programs and maintains an awareness of national research efforts in program areas; and (5) provides advice to the Institute Director and staff on matters of scientific interest.

Extramural and Collaborative Program (HN-W3). (1) Plans and directs a program of grant and contract support for research and research training in five major disease areas: retinal and choroidal diseases, corneal diseases, cataract, glaucoma, and sensory and motor disorders of vision to ensure maximum utilization of available

resources in attainment of Institute objectives; (2) assesses need for research and research training in program areas; (3) determines program priorities and recommends funding levels for programs to be supported by grants; (4) determined priorities and allocates funds for research to be supported by contract; (5) collaborates with intramural program in the Institute and NIH-wide and maintains an awareness of national research efforts in program area; (6) prepares report and analyses to assist Institute staff and advisory groups in carrying out their responsibilities; and (7) consults with voluntary health organizations and with professional associations in identifying research needs and developing programs.

Biometry and Epidemiology Program (HN-W4). Conducts activities in statistical and epidemiological research, education, and consultation: (1) plans, develops, and carries out human population studies concerned with the causation, prevention, and treatment of eye disease and vision disorders, with emphasis on the major causes of visual impairment, including studies of incidence and prevalence in defined populations, prospective and retrospective studies of risk factors, natural history studies, clinical trials, genetic studies, and studies to evaluate diagnostic procedures; (2) carries out a program of education in biometric and epidemiolgic principles and methods for the vision research community consisting of courses, workshops, a fellowship program for ophthalmologists, publications, and consultation and collaboration on research; and (3) provides biometric and epidemiologic assistance, advice and collaboration to National Eye Institute intramural and extramural staff and to vision researchers elsewhere.

Dated: July 6, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 84-19140 Filed 7-18-84; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permits Issued for the Months of April, May, June 1984

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Federal Wildlife Permit Office, Box 3654, Arlington, VA 22203, telephone (703/235-1903) or by appearing in person at the Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 605, Arlington, VA, between the hours of 9:00 a.m. and 3:00 p.m. weekdays.

April 1984

International Animal Exchange, X584476—Apr 4
International Animal Exchange, X146429—Apr 6
International Animal Exchange, X147573—Apr 9
International Animal Exchange, X143995—Apr 9
Rio Grande Zoological Park, X116995—Apr 9
Knoxville Zoological Park, X583845—Apr 16
John Sutterlin, X586803—Apr 16
Arizona Zoological Society, X152418—Apr 18
Los Angeles Zoo, X591794—Apr 26
Miami Metrozoo, X584467—Apr 26
Peregrine Fund, Inc., X10863—Apr 26
Shelia Conant, X117053—Apr 27

May 1984

Gibbon & Gallinaceous Bird Center, X152469—May 1
Mammoth Cave National Park, X583847—May 1
Aryan Roest, X560090—May 2
Malcolm Hast, X583768—May 15
Western Ecological Services Co., X591791—May 15
Christopher Vaughan, X583767—May 17
Robert Brown, X560433—May 18
Zoological Society of San Diego, X153239—May 22
Rare Feline Breeding Center, X151975—May 22
Sea World, Inc., X10022—May 23
Los Angeles Zoo, X583938—May 23
Kern National Wildlife Refuge, X584452—May 24
Sony Bone, X1050AB—May 25
Savannah River Ecology Lab., X0212BM—May 25
Suncoast Seabird Sanctuary, X146852—May 29

June 1984

William Gruenerwald, X153274—Jun 5
Endangered Species Research & Breeding, X584115—Jun 8
National Zoological Park, X6133AB—Jun 8
Black Hills Reptile Gardens Inc., X560086—Jun 11
San Francisco Bay NWR, X5651AB—Jun 11
Zoological Society of San Diego, X560371—Jun 11
Los Angeles Zoo, X5120AB—Jun 11
Charles J. Puff, X9317—Jun 12
Patrick Redig/Univ. of Minn., X0674AB—Jun 12
Ecological Services/USFWS, X153277—Jun 14
Maebelle R. Perrone, X152378—Jun 15
US Army Corps of Engineers, X583601—Jun 15
Government of Guam/Dept. of Agriculture, X1371BM—Jun 15
Zoological Society of San Diego, X559681—Jun 18
Zoological Society of San Diego, X559675—Jun 18
Tulsa Zoological Park, X11389—Jun 18
Jacksonville Zoological Park, X583946—Jun 20
International Animal Exchange, X152432—Jun 21
Detroit Zoological Park, X560375—Jun 25

Dated: July 13, 1984.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-19094 Filed 7-13-84; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; International Animal Exhange et al; Receipt of Applications

The following applications have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: International Animal Exchange, Ferndale, MI—APP #1056BM

The applicant requests a permit to purchase in interstate commerce and export one male siamang (*Symphalangus syndactylus*) from Louisville Zoo, KY, to Seoul Grand Park Zoo, Korea, for enhancement of propagation.

Applicant: Duke University Primate Center, Durham, NC—APP #1624BM

The applicant requests a permit to import one additional female grey gentle lemur (*Hapalemur griseus*) from Madagascar for scientific research and

enhancement of propagation and survival.

Applicant: Duke University Primate Center, Durham, NC—APP #2055BM

The applicant requests a permit to import two male and two female red-bellied lemurs (*Lemur rubriventer*) from Madagascar for scientific research and enhancement of propagation and survival.

Applicant: Arizona-Sonora Desert Museum, Tucson, AZ—APP #2075BM

The applicant requests a permit to export one pair of margays (*Felis wiedii*) and one pair of ocelots (*Felis pardalis*) to the Centro Ecologico del Desierto, Hermosillo, Mexico, for enhancement of propagation and survival.

Applicant: Ron Oxley, Acton, CA—APP #2069BM

The applicant requests a permit to reexport and reimport captive-born gray wolves (*Canis lupus*) to and from West Vancouver, B.C. Canada and other countries for enhancement of survival. The wolves will be filmed for educating the public about the conservation needs of the wolves and other wildlife.

Applicant: Chehaw Wild Animal Park, Albany, GA—APP #0949BM

The applicant requests a permit to take 20 nuisance American alligators (*Alligator mississippiensis*) for enhancement of propagation. Collection will be done by GA Dept. of Natural Resources.

Applicant: New York Zoological Society, Bronx, NY—APP #586722

The applicant requests a permit to import two male and two female captive-born lion tailed macaques (*Macaca silenus*) from National Zoological Park, New Delhi, India, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 North Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: July 13, 1984.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-19095 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[Utah 51475]

Salt Lake District; Notice of Realty Action for Lands in Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This is a Notice of a competitive sale of 60.06 acres of public land in Tooele County, in accordance with existing law.

DATE: The date of the sale is September 19, 1984.

ADDRESS: Comments concerning the sale will be accepted for a period of 45 days from the date of this notice by the: District Manager, Salt Lake District, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, Pony Express Realty Specialist, (801) 524-5348.

SUPPLEMENTARY INFORMATION: The following described public land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) or FLPMA:

Legal description	Acreage	Appraised value of tract
T. 6 S., R. 7 W., SLB+M		
Section 3:		
Tract 1, lots 6, 17	5.02	$2,500
Tract 2, lots 7, 16	5.02	2,500
Tract 3, lots 8, 15	5.02	2,000
Tract 4, lots 9, 10	5.01	2,500
Tract 5, lots 11, 12	5.00	2,500
Tract 6, lots 13, 14	5.01	3,000
Tract 7, lots 22, 23	5.00	3,500
Tract 8, lots 21, 24	5.01	2,000
Tract 9, lots 30, 31	4.99	3,500
Tract 10, lots 29, 32	4.99	2,500
Tract 11, lots 35, 36	4.99	4,000
Tract 12, lots 33, 34	5.00	3,000

The subject public lands are interspersed with private lands and as such are difficult to manage. Also, the lands have the potential for rural residential development and would fulfill a need for additional home sites in the small community of Terra. This objective could not be achieved on other lands, nor do the public lands have more important public values than for community expansion.

The sale is consistent with the Bureau of Land Management's planning system and with Tooele County planning and zoning.

Terms and conditions applicable to the sale are:

1. The sale of these lands is subject to all valid existing rights.

2. Patents issued will be subject to a right-of-way reservation in each tract for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. Patents issued will be subject to a right-of-way reservation for each tract not to exceed 33 feet along tract boundaries for road and public utility corridors.

4. All minerals are reserved to the United States.

5. Tooele County will issue only one building permit per tract, including those tracts that are split into two parcels by Highway 199.

There is no culinary water system in Terra. Present residents receive their water from private wells.

The sale will be conducted by competitive sealed bid with no oral bidding. Bids may be made by a principal or duly qualified agent. Qualified bidders include: citizens of the United States 18 years of age or over; a corporation subject to the laws of any state or of the United States; a state, state instrumentality or political subdivision authorized to hold property; and any entities capable of holding lands or interests therein under the laws of the state within which the lands to be conveyed are located. Entities include but are not limited to associations, partnerships, and other legal entities.

All bids must conform to the following conditions:

1. All bids must be delivered to the Salt Lake District, Bureau of Land Management at the above address before the sale date, September 19, 1984.

2. Each bid must be contained in a sealed envelope, one bid per envelope. The envelope must be identified as a sealed bid in the lower left-hand corner and must display the tract number to which it applies as follows: "Bid for Public Sale, Serial U-51475, Tract ——, Tooele County."

3. Each bid must identify the name and address of the bidder and, if applicable, his or her agent's name and address.

4. Each bid must identify the tract number and the amount of the bid and must include all the lands in a tract. No bid will be accepted for less than the appraised fair market value of a tract.

5. A certified check, money order, bank draft or cashier's check made payable to the Bureau of Land Management for not less than 20 percent of the bid must be included with the bid.

6. Each bid must include a statement certifying that the bidder is a U.S. citizen, or that a business is under that the jurisdiction of a U.S. state.

7 The bid must be signed and dated by the bidder.

All bids will be opened on the sale date of September 19, 1984 at 1 p.m. at the BLM Salt Lake District Office Conference Room, 2370 South 2300 West, Salt Lake City, Utah. The highest bid over fair market value establishes the sale price and the apparent high bidder for each tract. If two or more envelopes are received containing valid bids of the same amount, the determination of which is to be considered the high bid will be by drawing. The apparent high bidder will be notified of such by certified mail. No preference right will be given to adjoining landowners.

The apparent high bidder must submit the remainder of his or her bid within 30 days of the sale. If the remainder of the bid price has not been received within 30 days from the apparent high bidder, the deposit will be forfeited and disposed of as othe receipts of sale. The tract will then be offered for sale to the next highest bidder in succession until the tract is sold. If a tract remains unsold, it will be offered for sale by sealed bid anytime after the original sale. The sealed bids will be opened at 7:45 a.m. on the first Monday of every month. This will continue until all parcels are sold or until the appraisal is no longer valid. All bids will be returned, accepted or rejected within 30 days of the sale date. Patents will be issued by mail.

The authorized officer may reject the highest qualified bid and release the bidder from his obligation and withdraw the tract for sale, if he determines that consummation of the sale would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered or restrained free and open bidding, or consummation of the sale would encourage or promote speculation in public lands.

Detailed information concerning the sale including the planning documents and environmental assessment is available for review at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Frank W. Snell,

Salt Lake District Manager.

[FR Doc. 84-18809 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-DQ-M

Amendment to Management Framework Plan Gunnison Basin Planning Unit; Montrose District, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with 43 CFR 1610.5-5, notice is hereby given that the Bureau of Land Management has amended the 1980 Gunnison Basin Management Framework Plan (MFP).

DATE: The effective date of this amendment is August 20, 1984. Protests must be received by that date, at the address below, to be considered prior to implementation.

ADDRESS: Send comments or requests for further information to: Terry A. Reed, Area Manager, Gunnison Basin Resource Area, Bureau of Land Management, 11 South Park Avenue, Montrose, Colorado 81401.

SUPPLEMENTARY INFORMATION: Prior to this amendment, motorized vehicle use throughout the Gunnison Basin Planning Area was restricted to designated roads through designation in the "Limited" category. In addition, five big game wintering areas totaling 167,000 acres were closed to all vehicle use from December 1 through March 31 each year. One exception to the areawide "Limited" designation was the Powderhorn Primitive Area; it was designated "Closed" to prohibit all motorized vehicle use in the area.

Under this amendment, such motorized off-road vehicle (ORV) use is allowed on most of the Resource Area through designation in the "Open" category, subject to the Conditions of Use set forth in 43 CFR Part 8341. Limited designations on three areas (Tomichi, Sapinero, and South Parlin Flats) totaling 89,000 acres were eliminated. Limited designations on two areas (McIntosh and Signal Peak) totaling 78,000 acres will be retained, but they will only be implemented when weather conditions warrant. At those times, the areas will be signed and the public informed through local news media releases. Access to private inholdings and corridor routes to National Forest lands will be allowed during the time these "Limited" designations are in effect. The Powderhorn Primitive Area will remain designated in the "Closed" category, disallowing all motorized vehicle use within its boundaries.

Dated: July 12, 1984.

Kannon Richards,

State Director.

[FR Doc. 84-19063 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-JB-M

Sale of Public Land; Colorado

AGENCY: Bureau of Land Management, Colorado, Interior.

ACTION: Notice of realty action, sale of public land in Garfield and Eagle Counties, Colorado.

SUMMARY: The following-described lands have 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. 1701, 1713) at the appraised fair market value.

SIXTH PRINCIPAL MERIDIAN, GARFIELD AND EAGLE COUNTIES, COLORADO

Parcel	Acres	County *	Serial No.	Legal description	Appraised value
35	40.00	G	C-33512	T. 7 S., R. 93 W., Sec. 24, NE¼NW¼	$10,000.00
107	15.65	E	C-33464	T. 4 S., R. 83 W., Sec. 27: lot 2	32,000.00
108	5.65	E	C-33465	T. 4 S., R. 83 W., Sec. 27: lot 3	4,200.00
110	100.00	E	C-33467	T. 4 S., R. 83 W., Sec. 31: NE¼NE¼; Sec. 32: N½NW¼,NW¼NE¼.	120,000.00
114	223.47	E	C-33467	T. 5 S., R. 83 W., Sec. 12: Lots 1, 8, 9, 10, 11, 12, 21, 22, and 23; Sec. 13: lot 3.	169,000.00
115	181.03	E	C-33468	T. 5 S., R. 83 W., Sec. 15: lot 10, SE¼SE¼; Sec. 14: lots 2, 3, and 4.	136,000.00
118	11.97	E	C-33470	T. 5 S., R. 84 W., Sec. 33: lots 2, 3, and 4	9,000.00
136	14.44	E	C-33471	T. 5 S., R. 83 W., Sec. 20: Lots 2, 3, 4, 5, and 6	10,800.00
201	4.97	E	C-33472	T. 6 S., R. 83 W., Sec. 17: lots 1 and 2	3,700.00
202	2.54	E	C-33473	T. 6 S., R. 83 W., Sec. 8: lot 1	1,900.00

* G—Garfield County. E—Eagle County.

These lands have not been used for and are not required for any federal purpose. The location and physical characteristics of the parcels make them difficult and uneconomical to manage as public land. Disposal would best serve the public interest. The disposal would be consistent with the Bureau's planning recommendations as approved in the Glenwood Springs Resource Management Plan, January 1984.

Sale Conditions

All minerals beneath the parcels, except those listed below as reservations, will also be offered for conveyance. The mineral interests being offered have no known mineral value. A bid on the parcels will also constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)). On the sale date, the bidders will be required to deposit an additional $50.00 nonrefundable filing fee and application for the conveyance of offered minerals pursuant to 43 CFR 2720.1-2(c).

The patents issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

On all parcels, the United States will reserve all or a portion of the leasable minerals in the lands subject to conveyance, including, without limitation, substances subject to disposition under the general mineral leasing laws and the Geothermal Steam Act. On parcels Number 118 and 136, locatable minerals will be reserved and subject to the general mining laws. Further information on the reservation of minerals to the United States will be included in the bidding instructions made available for all parcels.

Any patent issued for the following parcels will be subject to the terms and conditions of existing leases, permits or rights-of-way and mineral reservations:

Parcel and Reservation

35—Ditches and canals, Oil and Gas Lease No. C-33622, Leasable Minerals, Grazing Lease 8115 unless waived
107—Ditches and canals, Leasable Minerals, Grazing Lease 8710 unless waived
108—Ditches and canals, Leasable Minerals
110—Ditches and canals, Oil and Gas Lease No. C-38125, Leasable Minerals, Grazing Lease 8702 unless waived
114—Ditches and canals, Leasable Minerals, Grazing Lease 8716 unless waived
115—Ditches and canals, Leasable Minerals, Grazing Lease 8720 unless waived
118—Ditches and canals, Leasable and Locatable Minerals
136—Ditches and canals, Leasable and Locatable Minerals, Grazing Lease 8719 unless waived
201—Ditches and canals, Leasable Minerals, Right-of-way C-3911A
202—Ditches and canals, Leasable Minerals

As a condition of sale of parcels Number 35, 107, 110, 114, 115 and 136, the successful bidder will be required to enter into an agreement with the existing grazing user to preserve the user's right to graze livestock under the terms and conditions of the permit until expiration of the permit.

If sold, all parcels will be subject to Garfield or Eagle County zoning and regulations regarding use and development of the parcels.

Federal Law requires all bidders to be U.S. citizens, 18 years of age, or in the case of corporations, be authorized to own real estate in the state of Colorado.

Any parcels not sold on the date of sale will be advertised and reoffered as competitive sales at a later date.

Sale Dates and Procedures

Direct Noncompetitive Sales, the 28th day of September, 1984

Parcels Number 107, 108, 110 and 136 will be offered as direct noncompetitive sales to the adjacent landowners. Each will be identified as the sole designated bidder for each parcel and no other bids or bidders will be considered. The designated bidder will be required to submit payment of at least 20 percent of the fair market value by cash, certified or cashier check, or money order to the BLM at 50629 Highway 6 and 24, Glenwood Springs, Colorado on the *28th day of September, 1984.*

Modified Competitive Sales, the 28th day of September, 1984

Parcels Number 35, 114, 115, 118, 201 and 202 will be offered as modified competitive sales to the adjacent landowners. The adjacent landowners will be designated as the only acceptable bidders. The sales will be held at 1 p.m. on the *28th day of September, 1984* at the Bureau of Land Management, Glenwood Springs Resource Area Office, located at 50629 Highway 6 and 24 in Glenwood Springs, Colorado. The bidders will be required to submit payment of at least 20 percent of the bid price on the date of sale. Sealed bids for these parcels will be accepted until noon on the date of the sale. The sealed bids must be equal to or greater than the appraised fair market value listed above. Sealed bids will be opened at 1 p.m. Where identical high sealed bids are submitted, the successful bidder will be determined by a subsequent round of sealed bidding among the high bidders. Complete bidding instructions will be made available to the designated bidders prior to the date of sale.

Successful bidders must submit the balance of the appraised fair market value within 30 days of the sale date, payable in the same form at the same location. Failure to submit the remainder of the payment within 30 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forfeiture of the deposit. All unsuccessful sealed bids will be returned within 30 days of the sale.

Further Information and Public Comment

Additional information concerning this sale offering, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: July 11, 1984.

Wright Sheldon,

District Manager, Grand Junction District Office.

[FR Doc. 84-19062 Filed 7-18-84; 8:45 am]
BILLING CODE 4310-JB-M

[Serial Nos. I-1542, I-2835]

Idaho; Termination of Classification for Multiple-Use Management; Correction

In F.R. Doc. 84-630 filed May 9, 1984, appearing on page 19907 of the issue for May 10, 1984, the following correction should be made:

Bonneville County

T. 1 N., R. 36 E.,
Sec. 8, N½, N½S½, SE¼SE¼.

should read

T. 1 N., R. 36 E.,
Sec. 8, N½,N½S½, SE¼SE¼.

Dated: July 12, 1984.

Clair M. Whitlock,

State Director.

[FR Doc. 84-19073 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-GG-M

[M 61082]

Montana; Invitation; Coal Exploration License Application

Members of the public are hereby invited to participate with Baukol-Noonan, Inc. in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Oliver County, North Dakota:

T. 141 N., R. 84 W., 5th P.M.,
Sec. 2: Lots 3, 4, SW¼NW¼ ,
Sec. 10: N½NE¼, NE¼NW¼.

239.93 acres.

Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and Baukol-Noonan, Inc., P.O. Box 879, Minot, North Dakota 58702. Such written notice must refer to serial number M 61082 and be received no later than 30 calendar days after publication of this Notice in the Federal Register or 10 calendar days after the last publication of the Notice in the Center Republican, whichever is later. This Notice will be published for two consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan approved by the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at this address.

Dated: July 11, 1984.

George D. Mowat,

Acting Chief, Branch of Solid Minerals.

[FR Doc. 84-19074 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-DN-M

[M-59770]

Montana; Conveyance and Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of conveyance and order providing for opening of public lands in Carter County, Montana.

SUMMARY: This order will open the lands reconveyed in an exchange under the Act of October 21, 1976, et. seq., to the operation of the public land laws. No mineral estate was transferred or acquired in the exchange.

DATE: At 9:00 a.m. on August 17, 1984, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 206 of the Act of October 21, 1976, (43 U.S.C. 1716), the surface estate of the following described lands in Carter County were conveyed to the Arbuckle Ranch, Inc., Alzada, Montana.

Principal Meridian, Montana

T. 7 S., R. 60 E.,
Sec. 2, Lots 1, 2, 3, 4, S½N½ and SW¼;
Sec. 3, lot 3 and SE¼NW¼;
Sec. 11, SW¼NE¼, NW¼NW¼ and SE¼;
Sec. 12, NW¼SW¼;
Sec. 13, N½NE¼ and NE¼NW¼;
Sec. 20, all.
T. 7 S., R. 61 E.,
Sec. 8, E½SE¼;
Sec. 9, NW¼SW¼;
Sec. 17, N½NE¼, S½NW¼ and W½SE¼;
Sec. 18, N½ of lot 1 and N½NE¼NW¼.

Aggregating 1,994.00 acres.

In exchange for the above land, the United States acquired the surface estate only in the following described lands as all minerals are held by the United States:

Principal Meridian, Montana

T. 7 S., R. 59 E.,
Sec. 12, W½.
T. 7 S., R. 60 E.,
Sec. 7, lots 1, 2, 3, and 4, NW¼NE¼, S½NE¼ and SE¼.
Sec. 8, S½NW¼ and SW¼;
Sec. 18, lots 1, 2, 3, and 4;
Sec. 34, lots 3 and 4, N½SE¼;
Sec. 35, lot 1, S½NW¼ and N½SW¼.

Aggregating 1,552.60 acres.

The following described lands were conveyed to the United States with a reservation to the grantors, their successors and assigns, or to their predecessors, all right and title to all minerals:

Principal Meridian, Montana

T. 7 S., R. 59 E.,
Sec. 12, E½.
T. 7 S., R. 60 E.,
Sec. 18, W½E½, N½NE¼NE¼ and N½S½NE¼NE¼.

Aggregating 510.00 acres.

Dated: July 12, 1984.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 84-19075 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-DN-M

Colorado; Call for Expressions of Leasing Interest in Oil Shale in Piceance Creek Basin, Co.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final call for expressions of interest in additional prototype oil shale leasing.

SUMMARY: This call for expressions of interest in oil shale leasing is to reaffirm industry's interest in prototype leasing of tract C-11 and/or tract C-18—two tracts the Department of the Interior is considering offering for lease. These tracts are located in the Piceance Creek Basin, Colorado, and are described by legal subdivision under Supplementary Information in this notice. The responses received from this notice will be used to determine which tracts may be considered for possible competitive leasing and the scheduling of a potential lease sale.

DATE: Response to this notice should be submitted by August 31, 1984.

ADDRESS: Reponses should be sent to: State Director, Bureau of Land Management, 1037 20th Street, Denver, CO 80202.

Responses will be available for public review in the Public Room, first floor, at the above address, 10:00 a.m. to 4:00 p.m., Monday through Friday.

Proprietary data should not be submitted as part of this expression of leasing interest.

SUPPLEMENTARY INFORMATION: On February 18, 1982, the initial call for expressions of interest was published (see Federal Register/Vol. 47, No. 33, pp. 7334-5). Industry and the general public were asked to indicate their interest in additional Prototype oil shale leasing in the Piceance Basin. Based on the ten responses received, it was determined that two of the identified 18 tracts, C-11 and C-18, were to be considered in the Supplemental Environmental Impact Statement for the prototype Oil Shale Leasing program. The document was prepared and released January 1983.

The legal descriptions for the location of the two proposed tracts, C-11 and C-18, are listed below.

C-11

T. 1 S., R. 97 W., 6th P.M., Rio Blanco County, Colorado,

Sec. 29, lots 11 and 12
Sec. 30, lots 5 to 20, inclusive;
Sec. 31, lots 5 to 20, inclusive;
Sec. 32, lots 3, 4, 9, 10.
T. 2 S., R. 97 W., 6th P.M., Rio Blanco County, Colorado,
Sec. 5,, lots 7, 8, 13, 14;
Sec. 6, lots 8 to 23, inclusive;
Sec. 7, lots 5 to 8, inclusive;
Sec. 8, lots 4.
T. 1 S., R. 98 W., 6th P.M., Rio Blanco County, Colorado,
Sec. 34, lots 1 and 8;
Sec. 35, lots 1 to 16, inclusive;
Sec. 36, lots 1 to 16, inclusive.
T. 2 S., R. 98 W., 6th P.M., Rio Blanco County, Colorado,
Sec. 1, lots 21 to 36, inclusive;
Sec. 2, lots 14, lots 21 to 35 inclusive;
Sec. 3, lots 13 and 14;
Sec. 12, lots 11 and 12.

The area described contains 5,009.81 acres.

C-18

T. 1 S., R. 98 W., 6th P.M.,
Sec. 13: lots 9 to 24, inclusive;
Sec. 14: lots 5 and 9 to 23 inclusive;
Sec. 15: lots 1 to 13, inclusive;
Sec. 22: lots 1, 2, 3, 6 to 11, inclusive, 14, 15, and 16;
Sec. 23: lots 1 to 16, inclusive;
Sec. 24: lots 1 to 16, inclusive;
Sec. 25: lots 1 to 16, inclusive;
Sec. 26: lots 1 to 16, inclusive;
Sec. 27: lots 1, 2, 7, 8, 9, 10, 15, and 16.

The area described contains 4982.03 acres.

Several public meetings have been held to review the Supplemental EIS for the Prototype Oil Shale Leasing Program and to discuss the pros and cons of such proposed additional leasing.

The Regional Oil Shale Team (ROST) unanimously endorsed the offering of one tract, C-11, for proposed multimineral prototype oil shale leasing. The Governor of Colorado also has endorsed the proposal for offering one multimineral prototype oil shale lease.

The Final Supplemental Environmental Impact Statement for Prototype Oil Shale Leasing Program is available at the following Bureau of Land Management Offices:

Department of the Interior, Bureau of Land Management, Branch of Leasable Minerals, Room 3610, 18th & C Streets NW., Washington, D.C. 20240
Craig District Office, 455 Emerson Street, Craig, CO 81641
Colorado State Office, Public Room, 1037 20th Street, Denver, CO 80202
White River Resource Area, Post Office Box 928, Meeker, CO 81641.

FOR FURTHER INFORMATION CONTACT: F. Rhio Jackson, Bureau of Land Management (CO-921), 1037 20th Street, Denver, CO 80202, Phone 303-844-5236.

Kannon Richards,
State Director.

[FR Doc. 84-19072 Filed 7-18-84; 8:45 am]
BILLING CODE 4310-JB-M

Realty Action, Sale of Public Lands in Lemhi County and Custer County, ID

DATE AND ADDRESS: The sale offering will be held on Thursday, September 20, 1984, at 10:00 a.m. in the Salmon District Office, Box 430, Salmon, Idaho 83467

SUMMARY: Based on public supported land use plans the following described land has been examined and identified as suitable for disposal by public sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 stat. 2750, U.S.C. 1713), at no less than the appraised fair market value.

Sealed bids only will be accepted for each parcel offered for sale. Acceptable bids must be at the appraised value or higher.

Parcel	Legal description	Acres	Appraised fair market value
Lemhi County			
I-20381 Tract I-4(33)	T.16N., R.25E., Section 9: E½NE¼.	80.0	$12,000-
I-20382 Tract I-4(34)	T.16N., R.25E., Section 10: NW¼NW¼, SE¼SW¼.	80.0	12,000-
Custer County			
I-19635 I-4(27)	T.8N., R.22E., Section 6: Lot 9.	40.0	4,000-

The land when patented will be subject to the following reservations to the United States and conditions of the sale:

Reservations

1. Ditches and Canals (43 U.S.C. 945).
2. All leasable minerals, including oil & gas (43 U.S.C. 1719).
3. All valid and existing rights and reservations of record.

Sale parcels I-20381 and I-20382 are being offered at public auction subject to a preference bidding designation to allow Y Livestock Ranch (Richard Yount), Box 125, Leadore, Idaho 83464, to meet the highest bid based on adjacent landownership and historical use. Any party may submit a bid; however, Mr. Young will be provided a preference to match the highest bid within 30 days of the date of sale. If no bid is received from Mr. Young on September 20, 1984, his preference right will be waived and the parcel will be subject to the sale procedures as outlined below.

Sale parcel I-19635 will be offered for sale through *Competitive Bidding.*

We will offer any unsold parcel every Thursday at 10:00 a.m. through December 20, 1984. If no bids are received by December 20, 1984 this sale is cancelled.

Sale Procedures

Sealed bids must be received in this office no later than 10:00 a.m. September 20, 1984. Bids for less than the fair market value will not be accepted. A bid will constitute an application for conveyance of mineral interests of no known value. A $50.00 non-returnable filing fee for processing such conveyance, along with one fifth (20%) of the full bid price, must accompany each bid. Bids must be accompanied by a certified check, postal money order, or cashier's check made payable to the Bureau of Land Management. Bids will be rejected if accompanied by a personal check.

SUPPLEMENTARY INFORMATION: Detailed information concerning the sale terms and conditions, bidding instructions and procedures, appraisal and other details may be obtained by contacting Chuck Keller at the above address or by calling (208) 756-2201. For a period of 45 days from the date of this notice, interested parties may submit comments to the Salmon District Manager at the above address.

Dated: July 12, 1984.

Kenneth G. Walker,
District Manager.

[FR Doc. 84-19077 Filed 7-18-84; 8:45 am]
BILLING CODE 4310-GG-M

[W-82673]

Realty Action; Competitive Sale of Public Lands in Sweetwater County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive Sale of Land Parcels in Sweetwater County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land from sale if the

sale would not be consistent with FLPMA or other applicable law.

The planning document, environmental assessment/land report, and other information on Federal, State, and local contacts concerning the sale are available for review at the Bureau of Land Management, Big Sandy Resource Area Office. All bids and all requests for further information should be sent to BOM, Big Sandy Resource Area, P.O. Box 1170, Rock Springs, Wyoming 82902-1170 (Phone (307) 362-6422).

Parcels

The sale lots are located in Section 16, T. 19 N., R. 105 W., 6th P.M., Wyoming.

Lot No.	Acreage	Appraised value
1	41.74	$210,000
3	40.90	205,000
4	40.48	180,000
17	20.66	105,000

The lots are available for residential use and any development will require approval of both the City of Rock Springs and Sweetwater County. The mineral estate is owned by the State of Wyoming and is subject to Oil and Gas Lease No. 77-602 and Coal Lease No. 0-30637

Sale Procedures

1. The sale will be conducted by competitive bidding, and any qualified bidder may submit a bid. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in Wyoming, a State, State instrumentality, or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands or interest in Wyoming.

Sealed bidding is the only acceptable method of bidding. All bids must be received in the Big Sandy Resource Area Office by 11:00 a.m., MDT, on September 28, 1984. On September 28, 1984 at 2:00 p.m., MDT, the sealed bid envelopes will be opened and the high bid announced. If the parcel should not sell on this sale date, the land will be reoffered and bids may be submitted by 11:00 a.m. on the fourth (4th) Friday of each month (or the first work day following, if Friday is a holiday) beginning October 26, 1984. The land will remain available for sale for a period of six months or until withdrawn from sale, whichever occurs first. Sealed bid envelopes must be marked on the front lower left-hand corner with the words, "Public Land Sale, W-82673, Lot No. ——, Sweetwater County, Wyoming." All sealed bids must be accompanied by a payment of not less than one-fifth (⅕) of the total bid. Each bid and any final payment must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior, BLM. Failure to pay the remainder of the full price within 30 days of the sale will disqualify the apparent high bidder and the deposit will be forfeited and disposed of as other receipts of sale. If the apparent high bidder is disqualified, the next valid high bid will be accepted, or in the event only one bid is received and it is not a valid bid, the land will remain available for sale. If two (2) or more envelopes containing valid bids of the same amount are received, a drawing will be held to determine the high bid. The drawing will be held following the opening of the sealed bids. The high bidder will be notified in writing within 30 days whether or not the Bureau can accept the bid. All unsuccessful sealed bids will be returned within 30 days of the sale.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A reservation for ditches or canals by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. If the grazing permittee does not purchase the land or relinquish the grazing prefrence on Lots 1, 3, 4, and 17, the patent shall include the following statement:

"The patentee agrees to take the real estate subject to existing grazing use of the Rock Springs Grazing Association, holder of grazing authorization number 4693. The rights of the Rock Springs Grazing Association to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization number 4633 shall cease two years from the sale date. The patentee is entitled to receive annual grazing fees from the Rock Springs Grazing Association in an amount not to exceed that which would be authorized under Federal grazing fees published annually in the Federal Register."

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Rock Springs District Office, Box 1896, Rock Springs, Wyoming 82902. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: July 12, 1984.

Donald H. Sweep,

District Manager.

[FR Doc. 84-19078 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-22-M

Montana; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease M 56695, Powder River County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination, April 1, 1984.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Cynthia L. Embretson,

Chief, Fluids Adjudication Section.

[FR Doc. 84-19085 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-84-M

Public Land Sale; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action I-19972, I-19973, Direct Sale of Public Lands in Owyhee County, Idaho.

SUMMARY: The following described land has been examined, and through land use planning, has been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976. Fair market value will be available no less than 30 days prior to the sale date.

Boise Meridian, Idaho

T. 10 S., R. 4 W. (I-19972),
Sec. 32, W½NW¼.
Containing 80 acres.
T. 10 S., R. 4 W. (I-19973),
Sec. 32, E½NW¼.
Containing 80 acres.

The patent, when issued, will be subject to the following reservation to the United States.

1. Ditches and Canals

2. Oil and Gas

and will be subject to:

1. All valid existing rights and reservations of record.

2. Temporary continued grazing use for two years.

The land is hereby segregated from all appropriation under the public land laws including the mining laws until sold or March 26, 1985.

The lands of I-19972 are being offered by direct sale to PP&H Co. and the lands of I-19973 are being offered by direct sale to Glenns Ferry Grazing Association. Such offers are made because they are the existing users of each parcel.

The sale offering will not be held less than 60 days prior to the date of this Notice of Realty Action.

These offers for direct sale are valid only until September 25, 1984. If payment for the land is not made by September 25, 1984, we will offer for sale any unsold parcel by competitive bid the second and fourth Tuesday of each month until sold or until March 26, 1985.

On parcel(s) not sold by September 25, 1984, sealed bids will be accepted in the Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, after September 25, 1984.

The offer to purchase will include a $50.00 nonreturnable filing fee for processing the conveyance of mineral interests of no known value.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale terms and conditions, bidding procedures, and other details can be obtained by contacting Blackie Bruegman at the above address or by calling (208) 334-1582.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Boise District Manager at the above address.

Dated: July 13, 1984.

J. David Brunner,

Associate District Manager.

[FR Doc. 84-19064 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-GG-M

[ORE 03803, OR 20311, OR 20314, OR 20315, OR 20316, OR 20317, OR 22226]

Oregon Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that seven land withdrawals for the Deschutes Reclamation Project continue for an additional 100 years. The lands would remain closed to surface entry and mining but have been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

The Bureau of Reclamation proposes that the existing land withdrawals made by BLM Order of April 25, 1956, Secretarial Orders of January 7, 1914, February 13, 1936, July 11, 1938, February 17, 1939, and April 26, 1909, and Executive Order of May 9, 1936, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located within the Deschutes National Forest adjacent to Crescent and Crane Lakes and the Wickiup Reservoir approximately 28 to 55 miles southwest of Bend and aggregate 25,062.42 acres in Deschutes and Klamath Counties, Oregon.

The purpose of the withdrawals is to protect Crescent and Crane Lakes and the Wickiup Reservoir which are a part of the Deschutes Project. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals, will continue until such final determination is made.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-19063 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-33-M

[OR 36945 (WA) & OR 36946 (WA)]

Realty Action; Sale Public Land in Adams and Chelan County, WA

The following described land has been identified as suitable for 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:

Willamette Meridian, Washington

Parcel No.	Legal Description	Acreage	Value
OR 36945 (WA), Adams County:			
1...	T. 16 N., R. 37 E., Sec. 8, W½NW¼.	80.00	$4,000
2...	T. 17 N., R. 37 E., Sec. 30, NE¼SW¼.	40.00	$2,200
OR 36946 (WA), Chelan County:			
1...	T. 28 N., R. 22 E., Sec. 35, S½SW¼.	80.00	$32,800

The sale will be held on September 19, 1984, at the Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

These isolated parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another federal agency. There are no significant resource values which will be affected by this disposal. There is no legal access to these parcels. The sale is consistent with the BLM's planning for the land involved and the public interest would be served by offering this land for sale.

The patent issued will be subject to:

1. A reservation to the United States for ditches and canals (43 U.S.C. 945).

2. A reservation to the United States for all mineral rights (43 U.S.C. 1719).

3. All other easements, encumbrances, reservations, and restrictions of record.

Additionally, Parcel Nos. 1 & 2 of OR 36945 (WA), will be subject to the oil and gas leases OR 26813 (WA) and OR 26817 (WA) issued to Aeon Energy Company.

Also, Parcel No. 1 of OR 36946 (WA), will be subject to the transmission line right-of-way OR 11343 (WA) granted to Chelan County P.U.D. No. 1.

All parcels will be offered for sale by sealed bids only, using competitive bidding procedures (43 CFR 2711.3-1). No bid will be accepted for less than the

appraised value, and bids for a parcel must include all the land in the parcel. Federal law requires that individuals be 18 years of age or over and U.S. citizens, and corporations be subject to the laws of any State or of the United States.

Bids must be made by the principal or his duly qualified agent. Bids delivered or sent by mail must be received at the BLM, at the above address, before 10:00 a.m., September 19, 1984, to be considered. Each sealed bid must be accompanied by postal money order, bank draft, or cashier's check, made payable to the Bureau of Land Management for not less than one-fifth of the amount of each bid. The sealed envelope must be marked in the lower left-hand corner as follows: "Public Sale Bid Parcel No. —, Serial No. OR —— Sale held September 19, 1984."

If two or more envelopes are received containing valid bids of the same amount for the same parcel, the successful bid shall be determined by drawing. The highest qualifying sealed bid on each parcel will be the sale price. The successful bidder will be required to pay the remainder of the sale price within 30 days. Failure to submit the full sale price within 30 days shall cancel sale of the specific parcel and the bidder's deposit shall be forfeited. All unsuccessful bids will be returned.

If any of the parcels are not sold on September 19, 1984, they will remain available for sale on a continuing basis until removed from market. Bids will be solicited on these parcels at the BLM, Spokane District Office during regular business hours. All bids received will be opened the first Wednesday of each month, beginning on October 3, 1984. To be considered, bids must be received by 10:00 a.m. on the day of the bid opening.

Detailed information concerning the sale, including the planning documents, environmental assessment, land report, and fair market appraisal, is available for review at the BLM, at the above address.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the Spokane District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional committees and delegations 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 the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Date of issue: July 12, 1984.

Albert L. Martin,

Acting District Manager.

[FR Doc. 84-19092 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-33-M

[I, 20887]

Realty Action; Exchange of Public Lands for Private Lands all within Blaine County, ID

Correction

In FR Doc. 84–16550, beginning on page 25526 in the issue of Thursday, June 21, 1984, make the following correction on page 25527. In the first column, the second land description should read:

T. 1 N., R. 22 E.,

Boise Meridian, Blaine County, Idaho

Section 20: SW¼NE¼, E½E½NW¼.

Containing 80 acres.

BILLING CODE 1505-01-M

Bureau of Land Management

National Park Service

Draft Environmental Impact Statement on Conversion of Oil and Gas Leases to Combined Hydrocarbon Leases, Tar Sand Triangle, UT; Proposed Change to Henry Mountain Management Framework Plan, Utah; Public Meetings

AGENCY: National Park Service and Bureau of Land Management, Interior.

ACTION: Availabilty of Draft Environmental Impact Statement and Proposed Management Framework Plan Change; Notice of Public Meetings.

SUMMARY: Pursuant to section 102 (2)(c) of the Nation Environment Policy Act of 1969 (NEPA) the National Park Service (NPS) and the Bureau of Land Management (BLM), U.S. Department of the Interior, have jointly prepared a draft environmental impact statement (DEIS) for the proposed conversion of oil and gas leases to combined hydrocarbon leases in the Special Tar Sand Area know as the Tar Sand Triangle, Utah. Also, pursuant to 43 CFR Part 1610, the BLM proposes a change to the Henry Mountain Management Framework Plan (MFP) in the context of the DEIS.

The DEIS provides the Regional Director, NPS, and State Director, BLM, with environmental information needed for a decision on whether existing Federal oil and gas leases in Glen canyon National recreation Area and on adjacent BLM lands can be converted to combined hydrocarbon leases that would allow for the development of the tar sand resource. Before conversion of leases within Glen Canyon National Recreation Area can take place, section II of the Combined Hydrocarbon Leasing Act of 1981 and 43 CFR 3140.7 require that the Regional director of the NPS must make a finding of no resulting significant adverse impacts. A notice in the Federal Register of May 7, 1984, (49 FR 19438) announced a preliminary directive for making such a finding. The directive will establish definitions, procedures and criteria for making the significance finding.

The DEIS evaluates the applicants' proposals for converting eligible Federal leases within a 66,040-acre operating unit in Wayne and Garfield counties, Utah, and a four-phased plan for producing 30,000 barrels per day of bitumen. The development plan proposes extracting bitumen using in-situ steam injection, allowing for onsite upgrading, and transporting the upgraded product to market. The DEIS also evaluate alternatives that would reduce impacts through lowered development intensity, reduced acreages, and other mitigation measures and the no-action alternative of not converting any leases. The principal environmental consequences include impacts on air quality, recreational values, scenic resources, wilderness values, water resources, cultural resources, socioeconomics, soils, vegetation, noise, geology, topography, wildlife, and energy and minerals.

Notice is also given that portions of the Henry Mountain MFP are under consideration to be changed to reflect new information gathered in the Tar Sand Triangle lease conversion area located in Wayne and Garfield Counties.

The MFP revision will be in association with data analyzed in the Tar Sand Triangle EIS being prepared by the NPS and the BLM. Major plan amendment issues involved are wildlife, cultural resources, minerals and recreation.

Nonconformance with BLM land use management plans would be resolved through amendments to those plans. In as much as the NEPA process is a form of planning, land use conflicts would be adjusted by decisions made on the basis of this EIS.

Copies of the DEIS are available upon request to Mr. Robert B. Kasparek, Regional environmental Coordinator, National Park Service, P.O. Box 25287, 655 Parfet Street, Denver, colorado 80225, telephone (303) 234–4942; to Mr. Joel Pickelner at the National Park Service, Utah State Office, Room 2208,

125 South State Street, Salt Lake City, Utah, telephone (801) 524-4112; to Superintendent John Lancaster, Glen Canyon National Recreation Area, Page, Arizona 86040, telephone (601) 645-2471; to the Public Room, Bureau of Land Management, Utah State Office, 136 South Temple, Salt Lake City, Utah; to the District Manager, bureau of Land Management, 150 East 900 North, P.O. Box 768, Richfield, Utah 84701, telephone (801) 896-8221; or to the Area Manager, Bureau of Land Management, P.O. Box 99, Hanksville, Utah 84734, telephone (801) 542-3461.

Public reading copies will be available for review at the above addresses and at the following locations: Office of Public Affairs, NPS, 18th and C Streets, NW., Washington, D.C. 20240, telephone (202) 343-6843; and Office of the Superintendent, Canyonlands National Park, Moab, Utah.

Public hearing sessions have been scheduled to provide the opportunity for interested citizens to comment on the adequacy and content to the DEIS. The schedule is as follows:

Session 1: August 21, 1984 BLM Area Office, Hanksville, Utah—7:00 p.m.

Session 2: August 23, 1984, 13th Floor Conference Room, 7:00 p.m. University Club Building, 136 East South Temple, Salt Lake city, Utah—7:00 p.m.

Session 3: August 28, 1984, Foothills Ramada Inn, 6th and Simms Lakewood, Colorado—7:00 p.m.

Those wishing to request time to make comments prior to the date of the sessions should address such requests to the Regional Director, National Park Service, P.O. Box 25287, Denver, Colorado 80225, or telephone (303) 234-4942. Requests should be received by August 16, 1984. Individuals will be called on the speak in the order in which their written requests are received. Requests to speak may also be made at the time of each session and will be called after the advance requests. Oral comments will be limited to 10 minutes per individual. Written comments for the hearing record from those unable to attend and those wishing to supplement their oral presentation at the hearing should be sent to the above address within 90 days from the date of this notice.

Additionally, comments on the proposed amendment to the Henry Mountain MFP will be accepted for 90 days after the date of this notice at the following address: District Manager, Bureau of Land Management, 150 East 900 North, P.O. Box 768, Richfield, Utah 84701, telephone (801) 896-8221.

FOR FURTHER INFORMATION CONTACT: Mr. Kasparek, Mr. Pickelner, or Superintendent John Lancaster at the above addresses; or Mr. Greg Thayn at the Utah State BLM Office in Salt Lake City, telephone (801) 524-3135.

Dated.
July 6, 1984.

L. Lorraine Mintzmyer,
Regional Director, National Park Service.

Roland G. Robison,
State Director, Bureau of Land Management.

[FR Doc. 84-19138 Filed 7-18-84; 8:45 am]
BILLING CODE 4310-70-M

Bureau of Land Management

National Park Service

Sale of Public Lands in San Juan and McKinley Counties, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; sale of public land in San Juan and McKinley Counties, New Mexico.

SUMMARY: The following described lands have been 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 shown:

Parcel No.	Legal description	Acreage	Value
1	T. 15 N., R. 19 W., N.M.P.M., Sec. 14: SE¼SW¼, S½SE¼.	120	$81,700
2	T. 15 N., R. 17 W., N.M.P.M., Sec. 18: NE¼NE¼.	40	68,600
3	T. 15 N., R. 17 W., N.M.P.M., Sec. 18: NW¼NE¼.	40	63,400
4	T. 15 N., R. 17 W., N.M.P.M., Sec. 18: SW¼NE¼.	40	22,800
5	T. 15 N., R. 17 W., N.M.P.M., Sec. 18: SE¼NE¼.	10	34,300
6	T. 30 N., R. 13 W., N.M.P.M., Sec. 26: NW¼NE¼NW¼.	10	40,000

The above described lands will be sold by sealed bid through a competitive sale. The sale will be held on Thursday, September 27, 1984, and the sealed bids will be opened at 10:00 a.m., at the Bureau of Land Management.(BLM) Conference Room, 900 La Plata Highway, Farmington, New Mexico 87401.

Parcels one (1) thru five (5) are located immediately adjacent to the City of Gallup in McKinley County and Parcel six (6) is approximately one mile north of Farmington in San Juan County. These isolated parcels of the public land are being offered for sale because the BLM cannot economically or feasibly manage them. No other Federal agency or department hs indicated an interest in managing these lands. The sale is consistent with the Bureau's planning for the lands involved and has been discussed with governmental units and local officials. The public interest would be well served by offering the lands for sale.

The terms and conditions applicable to the sale are:

1. The patents will contain a reservation to the United States for ditches and canals.

2. The sale is for the surface estate only. The patents will contain a reservation to the United States for all minerals.

3. The sale will be subject to all valid existing rights.

4. No preference rights will be given to adjoining land owners. No bids will be accepted for less than the appraised price. Federal law requires that bidders be United States citizens or in the case of a corporation, subject to the laws of any state of the United States. Proof of citizenship shall accompany the bid.

5. On parcels one (1) thru five (5) the patents will be issued recognizing that a portion of the tracts lie within a floodplain as described by the U.S. Department of Housing and Urban Development/Federal Insurance Administration map numbered 3500390020 A (dated July 4, 1978), and as such the patentees or their successors are limited by Section 3(d) of Executive Order 11988 of May 24, 1977, from seeking compensation from the United States or its agencies in the event existing or future facilities on these lands are damaged by flood.

6. Subject to such rights-of-way for the purposes described below, by parcel:

Parcel	R/W purpose	Grantee	Serial No.
3	Pipeline	Gas Co. of N.M.	NM 7422.
	Road	N.M. St. Hwy. Dept.	NM 4496.
	Road	N.M. St. Hwy. Dept.	NM 21681.
	Road	N.M. St. Hwy. Dept.	NM 0556978.
	Road	N.M. St. Hwy. Dept.	NM 0556658.
4	Telephone Cable	Mountain Bell	NM 13097.
	Pipeline	Gas Co. of N.M.	NM 7422.
	Pipeline	Gas Co. of N.M.	NM 28549.
	Road	N.M. St. Hwy. Dept.	NM 0510484.
	Road	N.M. St. Hwy. Dept.	NM 0556978.
	Road	N.M. St. Hwy. Dept.	NM 4496.
	Road	N.M. St. Hwy. Dept.	NM 21681.
5	Pipeline	Gas Co. of N.M.	NM 28549
	Road	N.M. St. Hwy. Dept.	NM 0510484.
	Road	N.M. St. Hwy. Dept.	NM 0556658.
	Road	N.M. St. Hwy. Dept.	NM 21681.
6	Pipeline	Southern Union Gath.	NM 41609.

7. For tracts one (1) thru five (5), the continuance of the present livestock grazing use under authority of the Bureau of Land Management livestock grazing permit shall be allowed until June 27, 1986, after which this reservation expires. After the sale, grazing fees will be paid to the new landowner.

8. For parcels one (1), two (2) and five (5), the United States reserves the exclusive right to conduct all manner of historical, scientific and archaeological investigations, together with the exclusive right of ingress and egress to the parcels for a period ending June 27, 1986, after which this reservation expires.

These patent restrictions are binding upon the patentee and his successors, heirs, and assigns.

Sealed written bids will be considered only if received by the Bureau of Land Management, 900 La Plata Highway, Caller Service 4104, Farmington, New Mexico 87499 prior to 10:00 a.m., Thurday, September 27, 1984. A separate written bid should be submitted for each sale parcel desired. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashiers check made payable to the Department of the Interior, Bureau of Land Management for at least twenty percent of the amount bid. Bids shall be submitted inside a second sealed envelop with the works "Land Sale Bid" written on the inner envelope. The written sealed bids will be opened and publicly declared at the beginning of the sale. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by a drawing. The drawing will be conducted immediately after the bids have all been opened. All bids will be either rejected and returned or accepted within 30 days of the sale date.

Parcels not sold on the assigned day of the sale will remain available for sale until sold or withdrawn. Sealed bids will be accepted on unsold parcels at no less than the appraised fair market value. Bids on these parcels will be opened on the first Monday of each month and the described sale procedures will be utilized. The sale dates for the remainder of the 1984 calendar year for the unsold parcels will be as follows: October 1, 1984; November 5, 1984; and December 3, 1984.

ADDRESS: For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Albuquerque District Office, P.O. Box 6770, Albuquerque, New Mexico 87107 Any adverse comments will be evaluated by the District Manager, who may vacate or modify this Notice of Realty Action and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior

L. Paul Applegate,
District Manager.

[FR Doc. 84-19133 Filed 7-18-84; 8:45 am]
BILLING CODE 4310-FB-M

Minerals Management Service

Development Operations Coordination Document; Anadarko Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Anadarko Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4470, Block 2, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on July 12, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 12, 1984.

John L. Rankin,
Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-19082 Filed 7-18-84; 8:45 am]
BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Exxon Company, U.S.A., operator of the proposed Mississippi Canyon Blocks 354, 355, 398, and 399, Federal unit, submitted on June 29, 1984, a development operations coordination document describing the activities to be conducted.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service

is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: July 11, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-19081 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-MR-M

Minerals Management Service Alaska OCS Region; Approval of Outer Continental Shelf Official Protraction Diagrams

1. Notice is hereby given that, effective with this publication, the following revised OCS Official Protraction Diagrams, approved on the dates indicated, are available at the Minerals Management Service, Alaska Outer Continental Shelf Region, Anchorage, Alaska. In accordance with Title 30, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic area represented.

OUTER CONTINENTAL SHELF PROTRACTION DIAGRAMS

	Description	Revised date
NN 4-8		May 10, 1984.
NR 6-3	Beechey Point	Apr. 23, 1984.

2. Copies of these diagrams are for sale at two dollars ($2.00) per sheet by the Regional Manager, Minerals Management Service, Alaska Outer Continental shelf Region, P.O. Box 101159, Anchorage, Alaska 99510-1159. Checks or money orders should be made payable to the Department of the Interior—Minerals Management Service.

Alan D. Powers,

Regional Manager, Alaska OCS Region.

[FR Doc. 84-19129 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Extend Concession Contract; El Portal Market

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession contract with El Portal Market, authorizing it to continue to provide merchandise facilities and services for the public at Yosemite National Park, California for a period of two (2) years from January 1, 1985, through December 31, 1986.

This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the extension of the contract and in the negotiation of a new contract. This provision, in effect, grants El Portal Market the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by El Portal Market. If El Portal Market, amends its proposal, and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with El Portal Market.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: July 5, 1984.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 84-19137 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-70-M

Lewis and Clark National Historic Trail Advisory Council Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Lewis and Clark National Historic Trail Advisory Council will be held August 5, 1984, beginning at 9 a.m. at the Holiday Inn, 1411 Tenth Avenue, South, Great Falls, Montana.

The council was originally established on June 26, 1979, pursuant to provisions of the National Trails System Act, 82 Stat. 919, 16 U.S.C. 1241 et seq., to advise the Secretary of the Interior on matters relating to the administration and development of the Lewis and Clark National Historic Trail.

Matters to be discussed at the meeting will include strategies for implementing the comprehensive management plan for the Lewis and Clark National Historic Trail and the status of development and management of the trail in each state.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Thomas L. Gilbert, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone (402) 221-3441 (FTS 864-3441). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: July 11, 1984.

James L. Ryan,

Acting Regional Director, Midwest Region.

[FR Doc. 84-19135 Filed 7-18-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-170]

Certain Bag Closure Clips; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Starplast Industries Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on July 16, 1984.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 601 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: July 16, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-19131 Filed 7-18-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-152]

Certain Plastic Food Storage Containers; Issuance of Exclusion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of exclusion order and cease and desist orders.

Authority: 19 U.S.C. 337 (d) and (f).

SUPPLEMENTARY INFORMATION: On July 13, 1984, the Commission issued an exclusion order, limited to the respondents in the investigation (Jui Feng Plastic Mfg. Co., Ltd., Famous Associates, Inc.; Lamarle Hong Kong, Ltd., International Porcelain, Inc. d/b/a International Sources; Peter Marcar; Morris A. Lauterman; David Y. Lei; David Y. Lei, Morris A. Lauterman, Peter Marcar d/b/a/ Lamarle; Lamarle, Inc.; Lamarle B.V., and Griffth Bros. Ltd.), that packaging for plastic food storage containers bearing the trademark "Tupperware," "Wonderlier," "Handolier," and/or "Classic Sheer" be excluded from entry into the United States unless licensed by Dart Industries, Inc., owner of the trademarks. The Commission further issued a cease and desist order to each respondent directing the respondent to cease and desist in the United States from infringement of the trademarks, false designation of source, passing off, and false advertising.

SUPPLEMENTARY INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0493.

By order of the Commission.

Issued: July 13, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-19132 Filed 7-18-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB 3 (Sub-No. 42X]

Missouri Pacific Railroad Company—Abandonment—In Douglas and Sarpy Counties, NE; Exemption

Missouri Pacific Railroad Company (MoPac) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments.* The line to be abandoned, a portion of the Louisville Subdivision is between mileposts 465.9 near Louisville, NB and milepost 482.6 near Omaha, NE, a distance of 16.7 miles in Sarpy and Douglas Counties, NE.

MoPac has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, (2) that no formal complaint filed by a user or rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Nebraska has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1970).

The exemption will be effective on August 18, 1984 (unless stayed pending reconsideration). Petitions to stay must be filed by July 30, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 8, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 9, 1984.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-19124 Filed 7-18-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30528]

The New York, Susquehanna and Western Railway Corp.—Exemption Security Issuance

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11301 the reissuance of a promissory not by the New York, Susquehanna, and Western Railway Corporation to the New Jersey Economic Development Authority in the principal amount of $2,500,000.

DATES: This exemption will be effective on July 17, 1984. Petitions to reopen must be filed by August 8, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30528 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: William Quinn, Esq., 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

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. InfoSystem, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: July 12, 1984.

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

James H. Bayne,

Secretary.

[FR Doc. 84-19123 Filed 7-18-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. LTV Corporation, et al., Proposed Consent Judgment

Pursuant to the Antitrust Procedures and Penalties Act 15 U.S.C. 16 (a) and (b) the United States publishes below four comments it received from Cyclops Corporation, Wheeling-Pittsburgh Steel Corporation, Bliss & Laughlin Steel Co. and the United Steelworkers of America on a proposed consent judgment in *United States* v. *LTV Corporation*, et al. Civil No. 84-0884, United States District Court for the District of Columbia, together with the responses of the United States to those comments.

Exhibit A to the comments of Bliss & Laughlin Steel Co., a color coded map of the United States, and the exhibits to the comments of Wheeling-Pittsburgh Steel Corporation are not printed herein. All of these exhibits are available for inspection at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C., at the Legal Procedure Unit of the Antitrust Division, Room 7416, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW., Washington, D.C., and at the Office of the Clerk of the United States District Court for the District of Columbia, Room 1825, 3nd & Constitution Avenue, NW., Washington, D.C.

The exhibits to the comments of Wheeling-Pittsburgh Steel Corporation are as follows:

Exhibit I: Excerpts from the opinion of Judge Harold Greene in *United States* v. *American Telephone & Telegraph Co.*, Civil Action No. 82-0192 (D.D.C. 1982).

Exhibit II: Article from *Industry Week*, April 2, 1982.

Exhibit III: Article from *Pittsburgh Press*, March 22, 1984.

Exhibit IV: Excerpts from *Directory of Iron and Steel Works of the United States and Canada*, 1980.

Exhibit V: Maps of the United States showing automotive plant stamping locations.

Exhibit VI: Map of the United States showing locations of major appliance manufacturers.

Exhibit VII: Article from *Pittsburgh Post Gazette*, March 3, 1984.

Exhibit VIII: Article from New York Times, March 11, 1984.

Exhibit IX: Articles from *New York Times*, March 16, 1984; *American Metal Market*, February 17, 1984; *Washington, Post*, February 21, 1984; *Pittsburgh Press*, February 22, 1984 and March 9, 1984; *New York Times*, March 13, 1984; *Herald Star*, March 13, 1984; and *American Metal Market*, March 15, 1984.

Exhibit X: Article from *33 Metal Producing*, April 1984.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

In the U.S. District Court for the District of Columbia

U.S. of America, Plaintiff, v. *The LTV Corporation; Jones & Laughlin Steel Incorporated; J&L Specialty Steels, Inc., and Republic Steel Corporation*, Defendants.

Civil Action No. 84-0884 (Judge Pratt).

Dated: June 4, 1984.

Comments to Cyclops Corporation in Opposition to the Stainless Steel Aspects of the Proposed Final Judgment That Would Allow the Merger of LTV Corporation and Republic Steel Corporation

Cyclops Corporation ("Cyclops"), pursuant to the Antitrust Procedures and Penalties Act (the "Tunney Act"), 15 U.S.C. § 16(b)-(h), respectfully submits these written comments in opposition to the stainless steel aspects of the proposed final judgment that would allow the acquisition of Republic Steel Corporation ("Republic") by LTV Corporation ("LTV"). Accompanying these comments are the annexed affidavits of James F Will, Executive Vice President of Cyclops and President of Cyclops' Industrial Group, and Howard W. Pifer, III, an economist retained by Cyclops to assist in this matter.

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Preliminary Statement and Summary of Objections to the Proposed Final Judgment

The proposed merger between LTV and Republic which this Court must evaluate will inevitably increase concentration, and thereby reduce competition, in the already highly concentrated stainless steel industry. The circumstances indicate that in arriving at the present proposal, the Department of Justice ("DOJ") was influenced more by political expediency than by the goal of reducing the anticompetitive effects of the merger. The proposed merger is not in the public interest and should not be approved.

The DOJ could have eliminated the significant anticompetitive impact of the merger on the stainless steel industry simply by requiring the divesture of a different stainless steel facility than the antiquated one required to be divested under the present proposal. Unless the alternative divestures, which was actually considered but set aside without explanation by the DOJ, is adopted, the proposed merger should not be approved.

Cyclops is a Pennsylvania Corporation headquartered in Pittsburgh. It is engaged in three principal lines of business: steel, specialty retaining, and nonresidential construction. Steel is Cyclops' principal business and has accounted for between 62% and 82% of its sales over the past five years. In 1983, Cyclops' totals sales were slightly in excess of $1 billion. Cyclops employs approximately 8,300 men and women.

Cyclops; five steel divisions operate 13 plants in five states and manufacture a wide range of steel products, including carbon steels, high temperature alloys, galvanized steel, tubular products and stainless steel sheet and strip. Cyclops' concern over the proposed merger between LTV and Republic is limited to the impact which the proposed merger would have on Cyclops' production of and the market for stainless steel sheet and strip. Over the past five years stainless steel sheet and strip has accounted for between 10 and 12 percent of Cyclops' sales. That production accounted for approximately 5 percent of domestic shipments of stainless steel sheet and strip by domestic producers in 1982.

When the Department of Justice evaluated the merger of LTV and Republic as originally proposed, it identified three product lines in which the merger would lead to intolerable levels of concentration: (1) carbon and alloy hot rolled sheet and strip; (2) carbon and alloy cold rolled sheet and strip; and (3) stainless cold rolled sheet and strip. The enormous increase in concentration in the stainless steel sheet and strip market was the driving force behind the government's initial opposition to the merger. In an already highly concentrated market, the two companies proposing to merge were the largest and fourth largest producers of stainless steel sheet and strip, and together would have controlled nearly half of the market. Finally, after months of study the DOJ announced its intention to bring suit to enjoin the merger. Immdiately thereafter a policital firestorm erupted; it was ignited by Commerce Secretary Baldrige and Trade Representative Brock, and joined in by President Reagan himself. Only five weeks after its initial anouncement that it would sue to block the merger, the DOJ approved the merger with some cosmetic, face-saving modifications.

The proposed consent judgment purports to alleviate the problem in the stainless steel sheet and strip market requiring Republic to divest its only plant which manufactures cold rolled stainless steel sheet and strip, a part of the antiquated, run-down facilities located in Massillon, Ohio ("Massillon"). Other provisions, such as a ten-year supply contract, are thrown into the proposed judgment to create the illuison that the divested Massillon facility will be a viable entity. This supposed "solution" cannot withstand even the most superficial scrutiny. Therefore, Cyclops has decided after careful study that it has no interest in attempting to purchase Massillon.

Cyclops will show below that in respect of stainless steel sheet and strip, the proposed merger is contrary to the public interest and therefore should not be approved. The principal objections of Cyclops to the proposal are:

1. The market for stainless steel sheet and strip is already highly concentrated. This has resulted from a marked trend toward concentration in stainless steel sheet and strip in the past fifteen years, with LTV playing the major role as an acquiring company. The proposed consent judgment would accelerate the historical trend toward conentration in the stainless steel sheet and strip market and would further entrench the position of LTV as the dominant producer in that market.

2. The Republic stainless steel steel plant (Massillon) proposed to be divested cannot be a viable competitor in the long run, and the provisions of the proposed judgment relating to that divestiture virtually seal its doom, for the following reasons, among others:

(a) Massillon is completely dependent on outside sources for its supply of hot band, the critical material needed to produce stainless steel sheet and strip. The proposal attempts to deal with this problem by requiring a so-called "long-term supply contract" which causes more problems than it solves.

(b) The supply contract is outlined in a vague, 12-paragraph document, the terms of which must be met "unless the Plaintif [the United States] agrees otherwise." In other words, there is no assurance that even these vague terms would have to be met.

(c) The supply contract assures LTV of a ten percent profit on the sale of hot band to Massillon.

(d) The outline of the supply contract does not even attempt to define the costs and overhead components of the price which Massillon would have to pay for the hot band, thus leaving LTV free to control the price of hot band by manipulating its own internal operations.

(e) LTV will have ample opportunity to manipulate the price of hot band. The supply contract contemplates that LTV will use at least three separate facilities to supply Massillon with hot band, and further provides that if those plants "for any reason become inoperative or unavailable," then LTV may supply the hot band from any of its other plants then in operation.

(f) The proposed procedure supposedly intended to protect Massillon from artificial price manipulations by LTV would require Massillon to obtain LTV's cost data, hire auditors to analyze the data, and inspect all of the LTV plants involved in supplying the hot band.

(g) The supply contract is supposed to provide a method "for the speedy resolution of disputes." However, if Massillon wished to challenge LTV's practices, Massillon would have to exhaust unspecified prior remedies, petition the Court, and prove by a "clear and convincing showing" that without the requested relief Massillon could not compete with LTV in the sale of cold rolled stainless steel. This would embroil the Court in continuous disputes, particularly as to the calculation of cost, as if the Court were a permanent "Office of Price Administration."

(h) The requirement that Massillon establish an independent sales force, which it has never had, is a feeble and belated attempt to prevent LTV from capturing Massillon's market share—a process which already has begun.

(i) Massillon need not even be divested before the merger, and may not be sold until more than a year after the merger. This will give LTV ample additional time to complete its raid on Massillon's customers.

(j) Although barely even hinted at in the few documents made public by the DOJ, "Massillon" in fact consists of two connected plants—the stainless steel facility proposed to be divested and a hot rolled bar facility to be retained by LTV Because the two plants share numerous essential services, their separation will not be feasible except at prohibitive cost to Massillon.

3. An integrated foreign purchaser might be able to operate Massillon in the long run but only by circumventing United States trade restrictions, a result which surely is not in the public interest.

4. The proposed merger would lead to substantially increased concentration in the intermediate market for hot band, by reducing from five to three the number of producers of hot band with excess capacity which presently enables them to sell this key product to others. This will increase the price of hot band and squeeze the companies—such as Cyclops—that must purchase hot band in order to compete in the cold rolled sheet and strip market.

5. Without any public explanation, the Department of Justice considered and rejected an alternative divestiture—that of LTV's fully integrated stainless steel facility in Midland, Pennsylvania ("Midland")—that would have overcome all of the anticompetitive problems in the stainless sheet and strip market associated with the present proposal.

The Department of Justice's About-Face

While the DOJ has publicly maintained that the merging companies, and not the government, did an about-face on the proposed merger, the facts on this question speak for themselves.

On February 15, 1984, after an intensive four month study of the proposed LTV-Republic merger, the DOJ announced that it would file suit to prevent the merger. In a press statement issued that day, the DOJ stated (at pages 1–2):

> After an exhaustive investigation of the proposed deal, we concluded that the merger would sharply increase concentration in critical parts of the steel industry where only a few domestic companies compete. We concluded that the increased concentration would be unacceptably high under the standards contained in the Department's merger guidelines and under applicable law. On that basis we have decided to oppose the merger.

Of the three product lines affected by the proposed merger, the most radical increase in market concentration would have occurred in stainless sheet and strip. The DOJ stated that it was prepared to consider alternatives to the proposed merger, but LTV officials acknowledged that "the conditions Justice has laid down are very difficult." (*Wall Street Journal*, February 17, 1984, at p. 4, col. 1.) News articles reported that the DOJ itself "maintained that a satisfactory restructuring would be 'difficult' to arrange." (*Wall Street Journal*, February 23, 1984, at p. 2, col. 3)

Immediately following the February 15 announcement the DOJ, and in particular its Antitrust Division head, J. Paul McGrath, came under severe attack. The principal critics were Commerce Secretary Malcolm Baldrige and United States Trade Representative William Brock. Mr. Baldrige called the DOJ decision "a world-class mistake." One newspaper described Mr. Baldrige's comments as "a rare public criticism by a Cabinet officer of another department." (*New York Times*, February 16, 1984, at D4, col. 1.) Even President Reagan indicated publicly that he too disagreed with the DOJ. (*Wall Street Journal*, March 13, 1984, at p. 3, col. 2.)

In the face of this kind of pressure, observers soon began to point out that the DOJ may be forced to adopt a more lenient posture. The *New York Times* reported:

> Several steel analysts said that in light of the strong criticism that Mr. Baldrige and Bill Brock, the United States trade representative, had leveled against the department's decision to oppose the merger, Mr. McGrath would prove more receptive to accepting a restructured merger.
>
> The pressures on Mr. McGrath, several antitrust and steel analysts said, might cause him to be less harsh in judging how many mills the two companies will have to divest to reduce their market concentration to an acceptable level.

(February 27, 1984, at p. 5, col. 6). In effect, reports were that to obtain the government's approval the companies would have to shed at least two of Republic's carbon steel facilities, representing half of its output in carbon steel, plus either LTV's modern stainless facility in Midland or the two stainless facilities of Republic, in Massillon and Canton, Ohio. (*Business Week*, April 2, 1984, at 32; *Wall Street Journal*, February 17, 1984, at p. 4, col. 1.) When agreement was announced on a "scaled down" merger on March 21, 1984, only two plants were to be divested, Republic's carbon plant in Gadsden, Alabama and its stainless facility in Massillon, Ohio. The *Wall Street Journal* reported:

> Mr. McGrath, facing heat from within the Reagan administration over what was viewed as a shortsighted stance, is agreeing to a modified combination that keeps intact the most attractive elements of the original proposal... [T]he once carbon-steel facility in [Gadsden] Alabama that the merged company will surrender is deemed a marginal plant, portions of which may have been scrapped even without government interference. In specialty steelmaking, the divestiture of Massillon doesn't appear to be a costly sacrifice because the plant isn't as efficient and modern as some similar operations Jones & Laughlin retains.

(March 21, 1984, at p. 3, col. 2.) Donald Baker, a former head of the Antitrust Division, was quoted as saying: "Given the tone of the original decision, I would have suspected that the department would have demanded more divestiture." (*Wall Street Journal*, March 22, 1984, at p. 33, col. 6).

There was even a concession by the DOJ on the timing of the required sales. Before the agreement was announced, observers believed that the government's insistence on finding a buyer for the facilities to be divested before the merger could break off the talks. (*Wall Street Journal*, March 14, 1984, at p. 3, col. 2.) When the agreement was reached, however, the DOJ announced that it had abandoned its "normal 'fix it first' policy," under which the DOJ generally requires that divestitures necessary to cure anticompetitive aspects of a merger must occur prior to the merger itself. (Memorandum dated March 20, 1984 from Mr McGrath to D. Lowell Jensen, Acting Deputy Attorney General, at p. 6.)

The events between February 15 and March 21 may be summarized as follows:

—On February 15, 1984 the DOJ announced that it would sue to block the merger of LTV and Republic as a clear violation of the antitrust laws.

—Immediately following the February 15 announcement, the DOJ was subjected to unprecedented public criticism from top administration officials, and even from the President.

—On March 21, 1984, five weeks after its initial announcement, the DOJ announced that it had reached an agreement on a proposed consent decree which would require the merging companies to divest two plants.

—Industry experts believed that one of the plants to be divested, in Gadsden, Alabama, would have been closed or disposed of had the merger proceeded as originally planned.
—The other plant required to be divested, Massillon, is antiquated and dependent on outside sources of supply; the DOJ had considered but rejected the alternative divestiture of Midland, a modern, integrated facility.
—The DOJ agreed to postpone the divestitures until after the merger, possibly by as much as a year or even longer, thus departing from its own "fix-it-first" policy.
—The DOJ has staunchly refused to make public any documents central to its determination to enter into the proposed judgment.

The behind-the-scenes maneuvering of the parties and certain government officials to force the DOJ to retract its legal objections to the merger beg for a fuller explanation that the government has thus far been willing to provide. On April 2, 1984, the parties filed with the Court pursuant to the Tunney Act documents describing communications that the parties had with government officials regarding the proposed final judgment. These documents suggest that the parties and the government critics of the DOJ's position coordinated their efforts to pressure the DOJ to compromise. The filings show that the parties had discussions with Commerce Secretary Baldrige and Trade Representative Brock prior to beginning negotiations with the DOJ. On each occasion that the parties met with the DOJ prior to the March 21 announcement of the compromise, Commerce Secretary Baldrige was "[i]nformed . . . of the status of proposed Final Judgment discussions with the Department of Justice." LTV Description And Certification at 3–5.

While Commerce Secretary Baldrige's public efforts to alter the DOJ's opposition to the merger are well known, there is evidence suggesting that he was also active behind the scenes. On May 8, counsel for Cyclops requested from the Department of Commerce pursuant to the Freedom of Information Act ("FOIA") all of its documents relating to the proposed merger. The Commerce Department's response is attached hereto as Exhibit A. In that response the Commerce Department lists 18 documents relating to its activities on the merger which it refuses to provide to Cyclops' counsel. The descriptions of the listed documents clearly reflect the Commerce Department's heavy involvement in this matter.

Inquiry by this Court into the involvement of the parties with Commerce Secretary Baldrige and Trade Representative Brock and the efforts of these officials to influence the proposed Final Judgment is necessary to fulfill the purpose of the Tunney Act.

Concern is expressed throughout the legislative history of the Act about the 'great influence and economic powers' of antitrust violators and the considerable pressure they can bring to bear on the Government and the courts in the furtherance of their causes.

United States v. *Central Contracting Co.*, 527 F. Supp. 1101 (E.D. Va. 1981) (citations omitted). The Honorable J. Skelly Wright addressed this point in hearings on the Tunney Act:

By definition, antitrust violators wield great influence and economic power. They can often bring significant pressure to bear on government, and even on the courts, in connection with the handling of consent decrees.

The public is properly concerned whether such pressure results in settlements which might shortchange the public interest. * * *

And because of the powerful influence of antitrust defendants and the complexity and importance of antitrust litigation, the public reasonably asks in many instances whether, in reaching a settlement, the government gave up more than it need have or should have.

Some response to this public concern is desirable, * * * not only to ensure that the compromise struck by the Justice Department is fair from the public's point of view, but also to alleviate fears which, even if unfounded, are unhealthy in and of themselves.

Hearing on S. 782 and S. 1088 before the Subcomm. on the Judiciary, 93rd Cong., 1st Sess. 147 (1973), *quoted in* 119 Cong. Rec. 24597–98 (1973). Congress granted courts broad powers of inquiry to deal with exactly the type of situation that is presented here.

The Rejected Alternative—Divestiture of Midland

The section of the Tunney Act which requires the government to file and publish a competitive impact statement provides that the statement "shall recite," among other things, "a description and evaluation of alternatives to [the proposed consent judgment] actually considered by the United States." 15 U.S.C. 16(b)(6). The Competitive Impact Statement ("CIS") filed and published by the government in this proceeding contains the following statement (at page 11):

The Government considered the divestiture of the Midland works of LTV, which is a fully integrated stainless steel mill in lieu of a divestiture of Massillon. It was concluded, however, that divestiture of Massillon together with a long term supply commitment from LTV would be sufficient to avoid undue market concentration in the stainless cold rolled sheet and strip market.

That statement constitutes the sum total of the government's public "description and evaluation" of an alternative to the proposed judgment studied for months by the government, under which LTV's Midland plant, rather than Republic's Massillon plant, would be divested. Even under the most charitable definition of the term "description and evaluation," this statement does not meet the requirement of the Tunney Act that the DOJ describe and evaluate any alternatives to the proposed judgment which it considered. Rather, this bald conclusory statement gives no indication as to why the government abandoned this alternative.

As noted in the CIS, Midland is "a fully integrated stainless steel mill." In other words, it is a free-standing facility capable of producing stainless sheet and strip from start to finish, and therefore it would not be dependent on an outside source of hot band, as Massillon would be. Divestiture of Midland would not require the elaborate house of cards which the government has constructed in an attempt to preserve the fragile viability of Massillon.

The Stainless Sheet and Strip Industry

A. The Product

Stainless cold rolled sheet and strip is a specialty steel product consisting of stainless steel which has been processed into thin sheets or strips. Because of its surface quality, strength and corrosion resistance, it has very specialized applications. It is used principally in food processing equipment, dairy equipment, chemical plant equipment, beer barrels, automotive wheel covers and trim, electric power plant equipment, knives and other utensils, sinks and hospital and restaurant equipment.

Stainless steel is an alloy containing at least 11.5% chromium, 1% carbon, and one or more alloying elements such as nickel, molybdenum, silicon, titanium and manganese, with the balance being iron. The process of making stainless cold rolled sheet and strip consists of three principal stages: (1) melting, refining and casting; (2) hot rolling; and (3) cold rolling.

During the initial stage, carbon steel scrap, iron and one or more of the alloying elements are melted, usually in electric furnaces. The molten steel is transferred to an argon-oxygen decarburizing ("AOD") vessel, where argon and oxygen are injected to produce chemical reactions which remove impurities and otherwise refine

the steel. The molten steel is then cast into slabs, in one of two ways. In the traditional method, the steel is first molded into an ingot from which a slab is rolled. In the more modern and efficient method, the ingot stage is skipped and the molten steel goes from the AOD directly to what is known as a continuous caster, which produces the slabs. The final product of the stage, the slab, is a solid block of steel of varying lengths, approximately 25 to 50 inches in width and 5 to 10 inches in thickeness.

The second stage in the production of stainless cold rolled sheet and strip is to transform the slabs into "hot bands" in a process known as hot rolling. In this process the slabs are conditioned, reheated and put through a mill which reduces the thickness of the steel to approximately 0.150 (one hundred fifty one thousandths) of an inch. This reduction lengthens the product considerably. As the steel emerges from the mill it is rolled into a coil. The surface of the steel is then treated to improve its finish. This is done by unrolling the coil, passing it through a furnace to soften it ("annealing") and through acid baths to descale the coil ("pickling"), followed by rinsing and recoiling. The hot band produced in this second stage is a coil of stainless steel of varying length, approximately 25 to 50 inches in width and 0.150 inches in thickness.

The final stage is cold rolling, which involves passing the material through mills which further reduce the thickness and increase the length of the band, strengthen the steel and improve the dimensional accuracy and finish of the surface. The object of cold rolling is to apply considerably pressure to the steel to obtain a substantial reduction in thickness and improve the surface quality of the steel. Two kinds of mills are widely used in cold rolling, "four-high" mills and Sendzimer ("Z") mills. the more modern Z mills achieve the best results and are the most efficient to operate. After passing through the cold rolling mills, the steel again is annealed and pickled, and usually temper rolled. It may then be slit into narrower strips. The finished product, cold rolled stainless sheet or strip, has a very thin gauge, usually less than 0.100 (one hundred one thousandths) of an inch. Although the definitions vary, if the width is 24 inches or more it is considered "sheet," and if it is less than 24 inches, it is considered "strip."

B. The Producers and Market Concentration

At present there are seven major United States manufacturers of stainless cold rolled sheet and strip. While there are no publicly available data from which their market shares may be derived, the government did obtain such data from each of the manufacturers. Accordingly to the information included in the complaint, the ranking by market share of the seven companies in terms of capacity is a follows:[1]

Company	Market share (percent)
1. J&L Specialty Steels, Inc. (wholly owned by LTV)	37.5
2. Allegheny-Ludlum Steel Corporation	22.6
3. Armco Steel Corp	13
4. Republic Steel Corp	9.9
5. Washington Steel Co	9
6. Eastern Stainless Steel Co	5
7. Cyclops Corp	3

Only the five largest producers are fully integrated, in th sense that they perform for all of their output each of the three stages in the production of stainless cold rolled sheet and strip. Eastern melts steel to produce slbs and has cold rolling facilities, but no hot rolling mills. Therefore, Eastern must have its slabs rolled into hot band by one of its competitors. In stainless sheet and strip manufacturing, Cyclops performs only the cold rolling function, and must purchase its hot band needs from its competitors. Thus, of the seven major producers of stainless cold rolled sheet and strip, only five, including the two companies proposing to merge, are fully integrated. Two of the companies, including Cyclops, not only compete with but also are customers of the integrated producers.

The Proposed Merger is Contrary To The Public Interest

In directing a judicial determination of whether a Justice Department consent decree is in the "public interest" Congress granted the courts broad powers. Congress specified general factors the court *may* consider in making the public interest determination:

> Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination the court may consider
>
> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

Congress' general mandate to the courts to evaluate the "public interest" reflects the underlying purpose of the Tunney Act, which is to remedy the " 'judicial rubber stamping' by district courts of proposals submitted by the Justice Department." H.R. Rep. No. 1463, 93d Cong., 2d Sess. 4 (1974), 1974 U.S. Code Cong. & Admin. News 6535, 6538. In enacting the legislation, "Congress rejected case law to the effect that courts should not 'assess the wisdom of the Government's judgment in negotiating or accepting [a] consent decree.' " *United States* v. *American Telephone and Telegraph Co.*, 522 F Supp. 131, 149 n.74 (D.D.C. 1982) (hereinafter referred to as "the AT&T case"). "It is clear that Congress wanted the courts to act as an independent check upon the terms of decrees negotiated by the Department of Justice. " 522 F. Supp. at 149.

The courts have looked to the legislative history of the Tunney Act for guidance as to the intended scope of Court review. In the AT&T case, the court set forth the relevant legislative history indicating Congress' intent that courts determine as a starting point whether proposed decrees conform with the antitrust laws.

> What is clear is that, whatever other factors a court may take into account, it must begin by defining the public interest in accordance with the antitrust laws. It is therefore to the basis purposes of the antitrust laws that we must first turn. [Citations omitted.]

552 F Supp. at 148–49 (citing S. Rep. No. 93–298, 93rd Cong., 1st Sess. 5 (1973); and H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 6 (1974), 1974 U.S. Code Cong. & Admin. News 6535).

In addition, the reviewing court should consider whether a proposed consent decree is contrary to other public policies:

> While the issue of competition and the effects on competition which are at the heart of the antitrust laws should thus be deemed matters of paramount concern, it is clear from the cases that other factors are not irrelevant. As the Supreme Court has put it, antitrust violations should be remedied "with as little injury as possible to the interest of the general public" and to relevant private interests. *United States* v. *American Tobacco Co.*, 221 U.S. 106, 185, 31 S.Ct. 632, 650, 55 L.Ed. 663 (1911). See also, *United States* v. *E.I. duPont de Nemours*, 366 U.S. 316, 327–28, 81 S.Ct. 1243, 1250–51, 6 L.Ed. 2d 318 (1961). When choosing between effective remedies, a court should impose the relief

[1] The basis for these market shares is described at 34 *infra*.

which impinges least upon other public policies. *United States* v. *American Tobacco Co., supra, United States* v. *E.I. duPont de Nemours, supra, United States* v. *Terminal Railroad Ass'n* 224 U.S. 383, 410, 32 S.Ct. 507, 515, 56 L.Ed. 810 (1912). Thus, *the Court would be justified in rejecting the proposed decree or requiring its modification if it concluded that the decree unnecessarily conflicts with important public policies* other than the policy embodied in the Sherman Act.

552 F. Supp. at 150–51 (emphasis added).

As to the stainless steel industry, the proposed consent decree violates the antitrust laws and other important public policies, and thus cannot withstand a public interest analysis.

As a practical matter, courts are sometimes constrained in their review of consent decrees because of the need to balance rigorous review against the possibility of discouraging settlement of government antitrust suits. This Court has stated that

> as with any form of settlement, the consent decree process saves the parties the considerable time and expense of litigation. In the particular context of antitrust enforcement, the consent decree mechanism permits the Department to spread its limited resources over more suits and, thus, achieve broader antitrust enforcement.

United States v. *Stroh Brewery Co.*, Civil Action No. 82–1059, slip op. at 4 (D.D.C. Nov. 10, 1982) (unpublished opinion by Judge Pratt).

In the present case, the balance the Court must strike is somewhat different. There are no expected savings of time and expenses associated with actual or anticipated litigaton. LTV and Republic would not have proceeded with the merger in the face of a possible antitrust suit.

A contervailing consideration that must tip the balance toward more rigorous review is the unexplained about-face of the Department of Justice. Originally, the DOJ condemned the merger as illegal. Thereafter, during a period when the DOJ was being severely criticized for raising legal hurdles to the deal, LTV and Republic extracted a surrender masquerading as a compromise. Concessions made by the DOJ in the face of the kind of political pressure present here are exactly the type of situation that the Tunney Act was passed to "ventilate." Rigorous review of the Department's concessions relative to the stainless steel industry is particularly required because of the abject failure of the proposed divestiture of the Massillon mill to remedy the anticompetitive consequences of the merger (see discussion below).

A. The Proposed Merger Violates Section 7 of the Clayton Act

The Department of Justice contends that the proposed divestiture of the Massillon stainless steel mill remedies completely the Section 7 violation related to the stainless steel aspects of the merger. In fact, the proposed divestiture is hastily conceived cosmetic surgery that not only fails to remedy the Section 7 violation but raises additional anticompetitive concerns.

In testing the stainless steel aspects of the proposed merger under Section 7, the relevant inquiry is whether its effect "may be substantially to lessen competition or to tend to create a monopoly" in the stainless steel market. *See* 15 U.S.C. 18. Under a Section 7 analysis, the Court must assess the possibility of future as well as present injury. Section 7 is concerned with probability and not certainty, and the statute's requirements are statisfied when a "tendency" toward monopoly or the "reasonable likelihood" of a substantial lessening of competition in the relevant market is demonstrated. *Brown Shoe* v. *United States* 370 U.S. 294, 346 (1962); *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158, 171 (1964).

As elaborated below, there is a substantial likelihood, if not a virtual certainty, that the combination of the stainless steel operations of Republic and Jones & Laughlin, LTV's subsidiary, would stifle competition in the stainless steel industry. In fact, under applicable case law, had the DOJ decided to challenge the merger in Court, it almost certainly would have prevailed on a Section 7 claim. This was the course of action taken in a strikingly similar case also involving the steel industry, *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576 (S.D.N.Y. 1958) (Weinfeld, D.J.). In *Bethlehem Steel*, the Justice Department brought suit to enjoin the merger of the second and sixth largest steel companies. In granting the requested relief, Judge Weinfeld made the following findings, each of which has a parallel in the instant case:

Bethlehem/Youngstown	LTV/Republic
(a) The industry was highly concentrated, with the twelve largest integrated companies having almost 83 percent of the ingot capacity, and the six largest having almost 68 percent.	(a) At present, the stainless sheet and strip industry is highly concentrated, with the seven largest companies having nearly 100% of the capacity and with the five fully integrated companies having at least 87% of the industry capacity (see *infra* at 33–34);
(b) the merger would eliminate present and potential competition between the second and sixth largest companies;	(b) the merger would eliminate present and potential competition between the first and fourth largest companies (see *infra* at 31–42);
(c) the merger would eliminate a substantial independent alternative source of supply for steel consumers; and	(c) the merger, in the long run, would eliminate Massillon as a substantial independent source of supply for all stainless sheet and strip consumers (see *infra* at 48–61); and
(d) the merger would eliminate Youngstown as one of the six sources of supply for independent steel fabricators competing with Bethlehem in the sale of certain fabricated products.	(d) the merger would eliminate two of five current sources of supply of hot band for the nonintegrated producers of cold rolled stainless sheet and strip (see *infra* at 38–42).

1. Relevant Market

Because Section 7 is violated only if competition is substantially reduced "in any line of commerce in any section of the country," 15 U.S.C. 18, the merger must be analyzed in terms of its impact upon a relevant product market ("line of commerce") and geographic market ("any section of the country"). *United States* v. *E. I. du Pont de Nemours*, 353 U.S. 586, 593 (1957).

As to the relevant product market, the DOJ discusses in its papers filed with the Court the effect of the proposed merger only on one stainless steel product: stainless cold rolled sheet and strip. Complaint para. 24–37, CIS at 6, 10. While the stainless cold rolled sheet and strip market is certainly relevant to the current inquiry, it is not the only relevant product market. The DOJ ignores completely the important product market for stainless hot rolled sheet and strip ("hot band"). Significantly, the Department's submissions to the Court do not mention at all the impact of the merger on non-integrated competitors in the cold rolled market who must purchase hot band from competing, fully integrated companies.

This complete disregard for the impact of the merger on the supply of hot band is fatal to the DOJ's merger analysis. Responsible antitrust analysis of this horizontal merger mandates consideration of the upstream supply and protection of *customers* as well as competitors.

A horizontal merger can affect competition in at least two ways. *It can have an impact not only on the competitors of the merged companies but also on the buyers who must rely upon the merged companies and their competitors as sources of supply.* The purpose of section 7 is to guard against either or both effects of a merger—if the likely consequence is substantially to lessen competition or to tend to create a monopoly.

The section 7 market must therefore be considered with reference to the two groups—(1) the competitors of the merged companies and (2) the buyers who would be dependent upon the merged companies and their competitors as sources of supply. While both impacts of a merger are interrelated and in an ultimate sense feed on each other, the major impact in some cases will be on the buyers and in other cases on the competitors of the merged companies.

* * * * *

The definition of line of commerce in a section 7 case is formulated for the purpose of determining the impact of a merger on competition. Competition is not just rivalry among sellers. It is rivalry for the custom of buyers. Also in many instances, and particularly in the steel industry, it is, during periods of shortage, strongly present as a rivalry among buyers for sources of supply. Thus competitive forces may move in a number of directions—buyer against buyer; seller against seller; buyer against seller. But however competition is defined and whatever its form or intensity, it always involves interplay among and between both buyers and sellers. *Any definition of line of commerce which ignores the buyers and focuses on what the sellers do, or theoretically can do, is not meaningful.*

Bethlehem Steel, 168 F. Supp. at 588, 592. In the present case, as in *Bethlehem Steel,* defining the relevant market to account for the effects of the merger on customers as well as competitors is doubly important—the customers are also competitors. Since competitors of LTV and Republic in the cold rolled sheet and strip market are also customers for essential hot rolled sheet and strip, an analysis of the relevant product market must take into account concentration in the market for hot band.[2] The merged company has a powerful incentive to use its control of hot band to eliminate these competitors.

2. Lessened Competition

In determining whether competition is illegally "lessened" in a relevant market, the courts look to (1) the market shares of the merging firms and (2) the degree of economic concentration present in the market before and after the proposed merger. ABA Antitrust Section, Antitrust Law Developments 158–61 (2d ed. 1984) (cases cited therein).

The Supreme Court has held that in relevant markets that are already concentrated the anticompetitive effects that warrant enjoining a horizontal merger can be established by statistical market share evidence. *United States* v. *Philadelphia National Bank,* 374 U.S. 321, 363–65 (1963) ("if concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great"). Traditionally, courts have measured concentration by combining the market shares of the top two, four or eight firms into "concentration ratios." In addition, a marked industry trend toward concentration may result in a finding of illegality on the basis of a merger of relatively small market shares. *United States* v. *Pabst Brewing Co.,* 384 U.S. 546, 550–52 (1966).

In the 1982 *Department of Justice Merger Guidelines* ("1982 Merger Guidelines"), the Justice Department suggests that courts use a measure of concentration known as the Herfindahl-Hirshman Index ("HHI"). With regard to the HHI, this Court has stated,

> It is calculated by squaring the percentage market share of each firm in the market and then adding those squares. It is arguably a more accurate measure of market concentration than two-firm or four-firm concentration ratios, which merely are sums of the market shares of those firms, because it takes into account both the number and size distribution of all sellers in a market.

Stroh Brewery, supra, at 3. The Department of Justice's HHI standards effectively raise the thresholds for enforcement action. Yet, even under these liberalized standards, the anticompetitive effect of the proposed merger on the already highly concentrated stainless steel industry is unmistakable. In fact, the increase in the HHI as a result of the originally proposed merger is nearly seven and a half times the threshold for likely Department of Justice enforcement.

a. Decreased Competition in the Stainless Cold Rolled Sheet and Strip Market

The product market for stainless cold rolled sheet and strip is already highly concentrated. In analyzing the current merger, the DOJ compiled recent market share data for the stainless steel industry by soliciting from individual companies data on stainless production, capacity and shipments. The Department has kept all of that information secret except for some of the capacity information contained in the Complaint. Consequently, the public cannot know—much less assess—the companies' market shares as measured by production or shipments. Based on the limited information alleged in the Complaint, it is possible to calculate the share of industry capacity of the seven major U.S. manufacturers of stainless cold rolled sheet and strip:[3]

Share of industry capacity	
J&L Stainless	37.5
Allegheny Ludlum Steel Corp.	22.6
Armco Steel Corp.	13
Republic Steel Corp.	9.9
Washington Steel Co.	9
Eastern Stainless Steel Co.	5
Cyclops Corp.	3

Given these industry capacity data, enforcement action was plainly warranted under the DOJ's own Merger Guidelines. The HHI analysis of the original proposal is as follows:

J & L share	37.5
Republic share	9.9
Combined J & L/Republic	47.4
Post-acquisition HHI	3,045.0
Change in HHI	744.0

The market's post-acquisition HHI very significantly exceeds 1800 points, the threshold for a "highly concentrated" market, and the change in HHI as a

[2] As to the relevant geographic market, the Justice Department assets, "The United States constitutes a geographic market for the sale of stainless cold rolled sheet and strip." Complaint, para 26. Cyclops agrees with that definition of the relevant geographic market, which is also applicable to the market for hot band.

[3] There is not legitimate reason for the DOJ's withholding a straightforward presentation of the industry capacity data, thereby forcing interested parties to calculate company shares as if this were a brain teaser. The DOJ provides directly in its complaint the industry capacity shares of only Jones & Laughlin (37.5 percent) and Republic (9.9 percent). The shares of industry capacity of the other major companies can be calculated as follows:

In the Complaint, the DOJ asserts that after the merger "[t]he two larger producers, J & L and Allegheny Ludlum, will account for approximately 70 percent of industry capacity. . . ." The post-divestiture J & L share after the merger is 47.4 percent (pre-divestiture J & L (37.5) plus Republic (9.9)). Consequently, Allegheny Ludlum's share is approximately 22.6 percent (70 minus 47.4).

According to the Complaint, before the merger "[f]our firms—Allegheny Ludlum, J & L Stainless, Republic and Armco—account for approximately 83 percent of industry capacity." Subtraction of J & L's pre-divestiture share (37.5) and Republic's share (9.9) from the 83 percent total leaves a combined industry share of capacity of 35.6 percent for Allegheny Ludlum and Armco. Therefore, Armco's share of industry capacity must be approximately 13 percent (35.6 minus the 22.6 Allegheny Ludlum share calculated above).

The capacity share of the remaining three stainless steel companies—Washington, Eastern and Cyclops—are not readily apparent from the numbers contained in the Complaint. In the Complaint the DOJ asserts that after the merger "the four largest producers will account for 87 percent of industry capacity." Since the three largest post-divestiture companies—Washington, Eastern and Cyclops—account for 83 percent of industry capacity, the fourth supposedly would have a share of 4 percent (87 minus 83). However, since the three smallest post-divestiture producers presumably must account for 17 percent of the capacity (100 minus 83), it is impossible for the largest of the three to have a 4 percent share. Even assuming that all three had a 4 percent share, they would not total 17 percent. Calculation of the shares necessary to result in the DOJ's HHI figures leads to the conclusion that the three smallest companies—Washington, Eastern and Cyclops—have shares approximately 9 percent, 5 percent and 3 percent, respectively.

result of the originally proposed merger is nearly seven and a half times the 100-point threshold for likely Department of Justice enforcement.[4] In this regard, the Department's own guidelines state:

Markets in this region [HHI above 1800] generally and considered to be highly concentrated. Additional concentration resulting from mergers is a matter of significant competitive concern, and the Department will resolve close questions in favor of challenging the merger. . . . The Department is likely to challenge mergers in this region that produce an increase in the HHI of 100 points or more.

The DOJ is plainly aware of the merger's impact on concentration in the stainless steel industry. Its own Complaint notes that "the two largest producers, J&L and Allegheny Ludlum [would] account for approximately 70 percent of industry capacity and the four largest producers [would] account for approximately 87 percent of industry capacity." Complaint para. 29.

Moreover, and again according to the government's Complaint, a trend toward increasing concentration in the stainless cold rolled sheet and strip market highlights the anticompetitive effect of the originally proposed merger:

In 1983, J&L Stainless acquired the stainless hot and cold rolled sheet and strip facilities of Crucible, Inc., and in 1981 J&L Stainless acquired the Stainless Steel Division of McLouth Steel Corporation, which produced cold rolled stainless sheet and strip. In the early 1970's, Allegheny Ludlum acquired Ingersoll-Johnson's New Castle, Indiana plant which produced stainless cold rolled sheet and strip. United States Steel Corp. and Sharon Steel Corp., once major producers of stainless hot and cold rolled sheet and strip, have exited the markets. The exit of firms from the stainless cold rolled sheet and strip market has not been balanced by new entry. No firm has entered the stainless sheet industry in over a decade. Barriers to entry are high.

Complaint para. 30. As shown in the accompanying affidavit of Howard W. Pifer, III, a look at what the recent J&L acquisitions have done to the HHI in the stainless steel industry demonstrates the anticompetitive impact of J&L's entrenchment:

	Pre-merger HHI	Post-merger HHI	Increase in HHI	Cumulative increase in HHI
1981 acquisition of McLouth	1,322	1,482	160	160
1983 acquisition of Crucible	1,482	2,022	520	680
1984 proposed acquisition of Republic	2,022	3,012	990	1,670

According to the 1982 Merger Guidelines,

where the post-merger is "moderately concentrated," with an index between 1,000 and 1,800. A challenge would still be unlikely, provided the merger increases the index by less than 100 points. If the merger increases the index by more than 100 points, a challenge by the Antitrust Division would be more likely than not, with the decision being based on the extent of the increase, the ease of entry, and the presence or absence of other relevant factors . .

b. Decreased Competition in the Stainless Hot Rolled Sheet and Strip Market

The proposed merger would have a serious anti-competitive impact on the stainless *cold* rolled sheet and strip market by increasing concentration in the already highly concentrated stainless *hot* rolled sheet and strip market, thereby limiting supply of a vital raw material to firms in the cold rolled market. Of the seven major producers of stainless *cold* rolled sheet and strip, two are not integrated. Cyclops and Eastern[5] are dependent upon their fully integrated competitors for the hot band used as a raw material for their cold rolling operations.

The proposed merger will decrease the number of suppliers from 5 to 3. First, the new merged entity can be expected to close the Canton mill's primary melt operations, since the Midland mill has the melt capacity to meet all of its needs, including that required by Massillon under the contemplated supply contract. Second, supply of the merged company's internal needs for hot rolled sheet and strip combined with the need to supply Massillon's requirements under the supply contract should occupy the full capacity of the Midland mill, thus effectively eliminating Midland as a source of supply to non-integrated competitors. Pifer Affidavit para. 53; Will Affidavit para. 17

Moreover, even if the Canton mill continued its melt operations, the high quality cast product of the Midland mill would be earmarked for internal use and supply of Massillon under the supply contract, leaving others with access only to the inferior quality ingot product of the Canton facility. Cyclops is generally reputed to produce the highest quality finished stainless product at its state-of-the-art cold rolling mill in Coshocton, Ohio. To preserve the quality of the Coshocton product, Cyclops must use the highest quality hot band. Cyclops currently purchases much of its required high quality hot band from J&L. These bands are produced from cast slabs from Midland and are hot rolled at Cleveland. Canton would be unable to replace Midland as a supplier of high quality cast slabs unless the merged company made capital improvements at Canton, something LTV is unlikely to do since Midland can fulfill LTV's requirements.

One effect of the proposed merger on Cyclops as a customer but also as a competitor is to increase barriers to entry of Cyclops into the stainless cold rolled wide sheet market. Cyclops is currently a producer of cold rolled strip (up to 24" wide) and narrow sheet (up to 36" wide). However, Cyclops does not have the capacity to produce wide sheet (up to 48" wide). Wide sheet is a desirable product and accounts for a substantial portion of the stainless cold rolled sheet and strip market. Cyclops wants to develop a wide sheet and strip market. Cyclops wants to develop a wide sheet capability. The limitation of supply of hot band resulting from the proposed merger raises a significant new barrier to entry for Cyclops to begin producing cold rolled wide sheet. The industry would lack capacity to provide a reliable supply of sufficient hot band to justify expanding production of cold rolled wide sheet.

A similar situation was presented in *Bethlehem Steel*, where one of the merging companies, Youngstown, was a supplier to non-integrated, independent steel fabricators that competed with the other merging company, Bethlehem Steel. Bethlehem Steel was integrated in several markets in which it also supplied raw material to non-integrated competitors. The court focused its analysis on one of those markets, the market for wire rope. Wire rope is fabricated by twisting together "wire rods," which non-integrated fabricators had to purchase as raw materials. The court emphasized the disadvantages of purchasing raw materials from a competitor.

From a competitive standpoint the most desirable source of rope wire for a non-integrated wire rope company is a rope wire manufacturer, such as Youngstown, which

[4] According to figures alleged in the Complaint, even when imports at current levels are included in the HHI calculations the increase in concentration in the cold rolled stainless sheet and strip market does not dip below a level meriting enforcement. To the contrary, the HHI still increases from 2180 to 2898. As the Department properly concludes, however, "the market shares of imports at current levels must be discounted" because of resistance by domestic users to foreign steel, because of restraints on imports, and because foreign steel producers are less able than domestic producers to respond effectively to market conditions in the United States. Complaint paragraph 34.

[5] Eastern is more integrated than Cyclops because Eastern has its own melting capacity. After the initial melting stage, Eastern sends the material to a fully integrated competitor for hot rolling. Eastern then performs the final cold rolling process.

produces its own wire rods and which does not compete in the manufacture and sale of wire rope. The competitive disadvantages to the independent wire rope fabricator of purchasing rope wire from a competitor are: (1) in a period of shortage of rope wire a competitor-supplier may supply his own needs first; (2) the competitor-supplier as a sales argument against the independent, may point to the latter's dependency upon him, the supplier, for raw materials; (3) if the independent sells wire rope below his competitor-supplier's price for wire he may lose his source of supply, thus giving his supplier a form of price control over him; and (4) the opportunities for a price squeeze on the independent are enhanced, since the supplier may shift his profit between rope wire and wire rope in such a manner as to narrow or eliminate the independent's margin of profit on wire rope.

168 F Supp. at 612–13. Stressing the competitive threat to non-integrated companies dependent on competitors as a source of supply, the court found that a decrease of sources from six to five was unacceptable under the antitrust laws:

There are 23 companies in the United States producing rope wire. Only six, one of which is Youngstown, produce wire rods but do not produce and sell wire rope. Thus, were Youngstown to be acquired by Bethlehem there would be removed from the market one of the only six companies in the United States which are the most desirable noncompetitive sources of supply of rope wire for the non-integrated independent wire rope fabricators. In view of the price squeeze and other competitive disadvantages under which the independent wire rope fabricators labor, to remove Youngstown as a source of supply would render even more hazardous the competitive position of the independents and might well mean the difference between their continued existence and their extinction.

168 F. Supp. at 613. In this case there is even a more marked threat to the nonintegrated producers, as the number of domestic suppliers of hot band will be reduced from five to three.

Non-integrated producers of stainless cold rolled sheet and strip are in an even more precarious position than the non-integrated competitors in *Bethlehem Steel* because here there are no non-competing suppliers of hot band. Consequently, the anticipated decrease in the number of available suppliers of hot band has a far greater anticompetitive effect than that which led the court to declare the merger unlawful in *Bethlehem Steel.*

3. Barriers To Entry Heighten the Anticompetitive Impact of the Proposed Merger

The level of entry barriers is perhaps the most important qualitative factor in the analysis of horizontal mergers. The anticompetitive impact of a merger is heightened when entry to the market is difficult. In the present case, entry barriers make it highly unlikely that the anti-competitive effects of the merger will be offset by companies entering or expanding into the relevant markets.

Barriers to entry in both the stainless hot and cold rolled sheet and strip markets are exceptionally high. With regard to the cold rolled sheet and strip market, the government asserted in its Complaint:[6]

The exit of firms from the stainless cold rolled sheet and strip market has not been balanced by new entry. No firm has entered the stainless sheet industry in over a decade. Barriers to entry are high.

Complaint para. 30. Indeed, it has been a quarter of a century since any firm entered the stainless cold rolled sheet and strip market. A new entrant would have to make an enormous capital investment to enter even one of the stainless hot or cold rolled sheet or strip markets. The required investment would be much greater to enter more than one of these markets, or greater yet to enter as a fully integrated manufacturer. As detailed above, failure to enter more than one market carriers the risks and liabilities of depending on competitors for supply of raw materials.

4. Proposed Divestiture of Massillon Does Not Remedy the Section 7 Violation

The Department of Justice asserts that the divestiture of Massillon is a complete remedy to the Section 7 violation. The DOJ states,

The effect of the divestiture of Massillon will be to eliminate entirely the increase in concentration in cold rolled stainless sheet and strip caused by the merger, since all of Republic's production is located at Massillon.

CIS at 10. This is simply not the case. All of the anticompetitive effects described above will occur even under the modified merger proposal. The modified merger proposal fails primarily for two reasons: (1) The divestiture plan not only fails to remedy, but increases, concentration in the supply of hot band to non-integrated products; and (2) the proposal fails adequately to assure the viability of Massillon.

[6] The 1982 Merger Guidelines state, In most cases in which significant entry is unlikely, the Department will not attempt to differentiate further the degrees of difficulty of entry. In cases where entry is unusually difficult, however, the department is more likely to challenge a merger.

In the present complaint, the Department apparently failed to differentiate the "degrees of difficulty of entry" because "significant entry is unlikely."

a. The Divestiture Plan Increases Concentration in the Hot Band Market

The proposed divestiture of Massillon does not even pretend to remedy the problems with increased concentration of the supply of hot band to the merged company's *customer*-competitors, discussed above. Indeed, the earmarking of Midland's supply of hot band exacerbates the problem for other purchasers of hot band.

The bankruptcy of the government's position is apparent. The DOJ clearly recognized the anticompetitive impact that the merger would have on the supply of hot band. However, rather than attempting to resolve the problem for all non-integrated producers, the DOJ sought to remedy the situation for only one, the newly created non-integrated Massillon mill.

The fig leaf which the DOJ has devised is a long-term supply contract for stainless hot rolled sheet and strip. The DOJ stated,

The hot rolled sheet that is cold finished at Massillon is produced at other Republic facilities; to assure the viability of the divested plant, the Final Judgment also requires that defendants enter into a long term contract with the purchaser of Massillon to supply stainless hot rolled sheet on favorable terms.

CIS at 10–11. Recognizing the inadequacy of hot rolled stainless from Republic's plant at Canton, Ohio, the DOJ provided that Massillon would be supplied out of the Midland mill.

A large part of the stainless hot rolled sheet to be supplied to Massillon will be made at LTV's Midland, Pennsylvania, plant and will be of higher quality and lower cost than that previously produced by Republic.

The government's apparent intention is to save Massillon from the anticompetitive consequences of the merger by giving it preferred access to the limited supply of hot band. Taking from Peter to save Paul may give the modified merger proposal an appearance of equity, but the practical effect is that non-integrated competitors dependent upon the same supply suffer even more severe anticompetitive harm.

b. The Divestiture Plan Does Not Adequately Assure the Viability of Massillon

Despite the Justice Department's apparent intentions to the contrary, the divestiture arrangement fails adequately to assure the viability of Massillon as an ongoing, independent enterprise. Such viability is a precondition to the DOJ's approval of the modified merger proposal and provides the rationale for requiring the supply contract:

Divestiture of Massillon shall be accomplished in such a way as to ensure that, as of the time of divestiture, it can reasonably be anticipated that Massillon can and will be operated by the purchaser or purchasers as a viable, ongoing business engaged in the manufacture and sale of stainless cold rolled sheet steel.

Proposed Final Judgement at 5.

Because Massillon appeared to present an opportunity for Cyclops to expand its product line, Cyclops attempted to evaluate the viability of that facility as a potential acquisition. If, indeed, Massillon would be viable under the divestiture plan, purchase by Cyclops could provide an alternative for alleviating to some extent the negative effects of the merger on Cyclops. In its attempt to evaluate Massillon, Cyclops officials visited Massillon to inspect the facility and talk with personnel, and visited Republic's Cleveland offices to examine information made available there to potential purchasers. Cyclops also obtained a brochure prepared by the First Boston Corporation to advertise the sale of Massillon. Based upon the paucity of information regarding the divestiture of Massillon, it appears that the divestiture proposal was so hastily conceived that nobody at Republic knows how the divestiture will be accomplished. Information as basic as the price at which hot band will be sold, the way in which facilities at Massillon will be divided, and the cost and manner of sharing utility and other services seems not to exist.

Even the scant information which Cyclops has received has let Cyclops to conclude that Massillon is not worth buying. Will Affidivit para. 7 As a divested company, Massillon would not have the long term viability or independence that would make prudent an investment in the mill. Consequently, Cyclops has decided that it will not make a bid for Massillon if the divestiture plan is approved.

If Cyclops, with its many years of experience in the industry, has concluded that there is no basis for assuming that Massillon can be operated as a viable entity, one only wonders how the Department of Justice has been able to reach the opposite conclusion. Unless there are determinative documents which solve this riddle (which the DOJ has steadfastly denied) the only alternative explanation is political expediency.

The non-viability of Massillon as a divested entity stems from inadequacies of the supply contract and problems with the Massillon facility itself. These problems in turn are the result of allowing the merging companies to create a competitor. Under such a circumstance, the incentive is for LTV and Republic to create as weak a competitor as they can get the DOJ to approve. As elaborated below, the current proposal appears innocuous enough but in reality creates a competitor with little likelihood of long term viability.

1. No Market Share Will Be Divested

Divestiture of Massillon's productive capacity will not result in a corresponding divestiture of Massillon's current market share. The Justice Department's theory that industry concentration will be remedied automatically because "Republic is divesting their one and only stainless cold finishing mill" is based upon the mistaken assumption that Massillon's productive capacity translates into a market share which will inevitably be captured by the purchaser of Massillon. See Transcript of Hearing at 28. While the theory might conceivably make some sense in an industry operating at full capacity, it makes no sense at all when applied to a divesting company with excess capacity. J&L has excess capacity at is other stainless cold finishing plants that it can employ to supply the customers previously serviced by Massillon. Pifer Affidavit para. 32.

It would be naive to believe that LTV would not use its excess productive capacity to capture Massillon's pre-divestiture market share. Indeed, no other conlcusion can logically be reached, since LTV will retain the cream of Republic's marketing force, Republic's customer lists and marketing information, and will enjoy a 10% cost advantage. J&L has more than enough capacity at its cold finishing plants to provide for the needs of Massillon's former customers. J&L currently operates stainless steel cold-reduction facilities in Midland, Pennsylvania, Detroit, Michigan, and Louisville, Ohio, as well as operating stainless steel melting operations in Midland, Pennsylvania, and hot rolling operations in Cleveland, Ohio. Pifer Affidavit para. 33. The Midland cold-reduction facilities were opened by J&L only shortly before the proposed merger with Republic was announced, perhaps even in anticipation of the current situation.

In recognition of the danger of J&L's recapture of Massillon's market share, the DOJ has created the appearance of providing Massillon with some ability to retain its prior customers. The proposed consent judgment requires that the merging companies (1) establish a marketing organization for Massillon and (2) limit communications regarding Massillon customers. The proposed Final Judgment states that the defendants shall:

Until divestiture of Massillon is accomplished, establish a marketing organization for the sale of cold rolled stainless sheet steel from Massillon which shall be maintained separate and apart for J&L Stainless' marketing organization in the same manner and to the same extent as if J&L Stainless and Republic remained competitors, and there shall be no understanding, agreement, consultation or other communication between the two organizations or its members with regard to prices or terms of sale to customers of stainless sheet steel or as to the allocation or division of trade or customers. LTV and Republic shall forthwith advise in writing all managerial employees of J&L Stainless or Republic having any responsibilities with regard to the marketing of stainless sheet steel of the provisions of this paragraph.

The provision is akin to locking the barn after the horses have gone. J&L will have competitively sensitive information regarding Massillon's operations and customers. Many Republic employees with intimate knowledge of Massillon's operations—knowledge acquired before March 21, 1984, when the consent agreement was entered—will remain with J&L. Moreover, this is the type of information that LTV officials almost certainly would have received in evaluating and implementing the merger, possibly even before the merger was announced in September 1983. In addition, all files and computerized data bases relating to Massillon's operations, which are apparently maintained at Republic's headquarters in Cleveland, will likely fall into LTV's hands.

Nor does the requirement that the merging companies establish a marketing organization for Massillon provide any assurance that Massillon will be successful in keeping its customers. Pifer Affidavit para. 35; Will Affidavit para. 16. LTV must relish the opportunity to staff its competitor's marketing organization.

With excess productive capacity, access to customer information, and the opportunity to appoint Massillon's sales team, LTV should have no trouble capturing Massillon's pre-divestiture market share. In addition, the departure from the Department of Justice's long-held "fix-it-first" policy virtually assures the rapid defection of Massillon's customers. Pifer Affidavit para. 36. Since LTV and Republic are not required to accomplish the divestiture of Massillon before the merger takes place, they will have ample time to prepare their attack on Massillon's customers—an advantage not extended to other competitors ignorant of who those

customer are and what products they require.

ii. Massillon Would Be Subject to an LTV Price Squeeze

Under the divestiture plan, LTV has the ability to squeeze Massillon out of the marketplace by increasing the price of hot band supplied by Midland while holding down its own price of cold rolled sheet and strip. Such a price squeeze was described in *Bethlehem Steel:*

> In effect the steel producers raised the price of the raw material sold to the independent fabricators, but did not raise the price of the ultimate product which some of the producers, including Bethlehem, sold in competition with the independents. The evidence establishes that the independents were caught in a price squeeze.

168 F Supp. at 613. Hot band costs constitute approximately 80% of the direct costs involved in the production of stainless cold rolled sheet and strip. Pifer Affidavit para. 40. Since LTV has the ability to increase the price of hot band under the supply agreement, Massillon's viability is in LTV's hands. Moreover, even if LTV never actually "squeezes" Massillon, the knowledge that LTV could do so would deter Massillon from competing forcefully with LTV in the marketplace. Massillon would be LTV's puppet.

The "cost-plus" feature of the long-term supply contract gives LTV's substantial opportunity to increase the price of hot band. The "cost-plus" provision states:

> The purchase price for the stainless steel hot bands shall be based upon (i) defendants' actual average monthly manufacturing costs by grade, plus (ii) overhead expenses accumulated on a monthly basis and allocated based on the ratio of defendants' hot band shipments to Buyer to defendants' total hot band production, together with (iii) a markup equal to ten percent of manufacturing and overhead expenses.

As also shown in the Will affidavit, this provision is fraught with cost allocation loopholes that allow LTV great latitude in manipulating the price of hot band. LTV can allocate costs not only within the fully integrated Midland facility, but also between Midland and any number of other facilities. As previously stated, costs at no fewer than three separate production facilities are involved, *i.e.*, material is melted at Midland and Canton and hot rolled at Cleveland. Each of these facilities will produce a multitude of products making meaningful verification of included costs virtually impossible.

The omission of any formula or other prescription for how "manufacturing costs" or "overhead expenses" are to be determined is fatal to the provision. the divesture plan is silent on crucial issues of cost allocation. For example, there are no provisions that account for or allocate between LTV and Massillon such costs as work and other production stoppages at Midland or elsewhere, changes in technology that require substantial new investment, adequate quality checks, or allocation or shifting of a variety of fixed or overhead costs according to an "appropriate" calculation of plant capacity. Pifer Affidavit para. 44.

The supply contract is also silent on important questions concerning methods of production. Of particular importance is Massillon's access to continuous cast steel. Production costs of stainless steel produced on a continuous caster are about $100 per ton less than production costs for stainless steel produced by the ingot pouring method. Pifer Affidavit para. 45. This cost savings amounts to about 10 percent of the cost of hot band. *Id.* However, the divestiture plan is completely silent on whether Massillon will be provided hot band produced on a continuous caster. Midland currently produces continuous cast slabs for hot rolling at Cleveland. Midland can also produce ingots to be rolled into hot band at its Cleveland plant. LTV could put Massillon in a severe price squeeze by simply deciding to provide Massillon with hot band rolled from ingots rather than from cast slabs. Also, even if continuous cast steel were provided, there are no accounting provisions to assure Massillon the full benefit of the substantial cost differential.

The vague verification provision of the supply contract is little more than a receipt for continuous conflict:

> Defendants will submit to Buyer monthly proof of all cost data used to calculate price, subject to right of audit by Buyer. Defendant shall grant Buyer reasonable access for inspection to its manufacturing facilities used to supply product to Buyer, and to all financial and other records pertinent to the contract or the parties' obligations thereunder.

The supply contract provides to the Massillon purchaser the right to petition this Court to resolve disputes, thus injecting the Court into the business of calculating costs and regulating sales of hot band. The inevitable continuous conflict itself will serve LTV's ends by running Massillon's operating costs ever higher through delays and interruptions and will embroil this court in a constant stream of contentious litigation.

iii. Massillon Cannot Survive the Ten Percent Cost Disadvantage of the Supply Contract

Under the terms of the supply contract, Massillon must compete against LTV under a ten percent cost disadvantage, since Massillon must pay a ten percent markup on hot band purchased from LTV The ten percent markup provides LTV a double advantage. In today's cyclical stainless steel industry a ten percent profit on hot band sales assured over a long period of time is a sweetheart deal for LTV. The fact that the ten percent profit also puts a competitor at a ten percent cost disadvantage is an added benefit. Pifer Affidavit para. 41, 42.

The profit margin on the types of stainless steel produced by Massillon will not support the ten percent cost disadvantage. In order to survive under the cost disadvantage always associated with being a non-integrated producer of stainless cold rolled sheet and strip, any company must overcome the cost of purchasing raw materials from a competitor by (1) achieving operating efficiences not achieved by competitors and/or (2) producing products with a profit margin that is high enough to offset the cost disadvantage. As discussed more fully below, Massillon is an antiquated, inefficient mill requiring extensive capital improvements. Pifer Affidavit para. 43. It will never achieve operating efficiencies over its competitors that are sufficient to offset a substantial cost disadvantage.

At the same time, Massillon does not produce, nor is it capable of producing, products with a profit margin sufficient to offset the ten percent cost disadvantage. In the stainless steel industry, higher profit margins exist for high value added specialty products, such as those produced by Cyclops at its highly efficient Coshocton plant. Massillon produces primarily wide stainless cold rolled sheet products which are regarded as commodity products in the industry. These commodity products have a relatively low value added and, consequently, a low profit margin. Without substantial and expensive capital improvements, Massillon does not have the physical capability to generate the high quality specialty steels that would give a product mix with a profit margin sufficient to offset a ten percent cost disadvantage.

iv. The Ten-Year Term of the Supply Contract Creates an Unreasonable Risk of Shutdown

At the end of 10 years, the supply contract will terminate, leaving Massillon without a vital supply of hot band unless it has been able to make alternative arrangements.[7] The fact that the DOJ has required a supply contract itself evidences how important a continuing supply arrangement is to Massillon's viability. Absent an adequate supply of hot band at the end of the contract term, Massillon will have to shut down. Shutdown obligations which would be discharged by a responsible purchaser would far outweigh any potential return on a purchaser's investment in the mill. These costs include a variety of capital and labor expenditures (such as expenditures for shutdown pensions and severance payments) that can be enormous.

There is no reason to expect that new entry or expansion will make additional hot band available in the next decade, especially for sale to non-integrated purchasers. In the last quarter of a century, not a single hot band supplier entered the market. Barriers to entry in the next decade will be greater than in the past. The industry is looking to a period of reduced return on investment and contraction. Consequently, it would be imprudent to bet an investment in Massillon against the likelihood of a supply of hot band opening up in 10–12 years.

The alternative would be for the purchaser of Massillon to develop its own hot band capacity. However, the anticipated return on Massillon operations over a 10 year period is far from adequate to finance the building or purchase of an integrated facility to produce hot band. As discussed more fully below, it is doubtful that anticipated revenues from Massillon's operations will cover even the capital improvements necessary for the antiquated Massillon facility itself, let alone further investment in melting and hot rolling facilities. Even if Republic virtually gives Massillon away in the divestiture, anticipated revenues would not be sufficient to finance development of such facilities by the the time the supply contract expires. See Will Affidavit para. 14, 15.

v. The Cost of Necessary Capital Improvements Makes Massillon Non-Competitive

When the proposed merger was announced, the *Wall Street Journal* quoted a steel company executive as stating that under the divestiture plan Republic "got rid of its dogs." (March 22, 1984, at p. 53, col. 5.) As to Massillon, the executive was right. As the *Wall Street Journal* stated in an editorial criticizing the Department's opposition to the merger, "in stainless steel most of Republic's capacity is old and costs $300 to $400 a ton more than the lowest-cost producers." (March 19, 1984, at p. 32, col. 2.)

Massillon is an antiquated plant. From all appearances, little investment has been made in its production facilities in the past 20 years. While they are currently functional, all of the mills are old. These mills lack modern gauge controls necessary to obtain accurate measurements. The important 50" Sendzimir ("Z") mill does not have the so-called crown control to obtain good shape. As shown in the Will Affidavit, the most antiquated facilities are the anneal and pickle lines, which operate at speeds of 10–12 feet per minute, compared with speeds of 50 feet per minute on modern hot lines and 100 feet per minute on modern cold lines. The material handling facilities at the ends of the anneal and pickle lines are very poor. Also, the acid tubs are made of wood, which disappeared in almost all stainless plants over 30 years ago.

To survive as a non-integrated facility, Massillon must have many expensive capital improvements. A non-intergrated cold reduction mill must have operating efficiencies and a product mix based on enough high value added products to enable it to overcome the cost disadvantage of having to purchase hot band from others. As shown in the Will Affidavit, merely updating the anneal and pickle lines, an absolutely essential step, will cost $20 million.

vi. Physical Divestiture of the Massillon Mill is not Reasonably Possible

Apparently overlooked by the Justice Department is the fact that the Massillon stainless steel mill is combined inextricably with Republic's Central Alloy Division, a large alloy bar mill that is not being divested. The stainless steel cold rolling and finishing operation (called "Enduro" by Republic) consists of three plants that share a common site and common utility and service facilities with Republic's bar complex. Separation of the shared facilities is not reasonably possible; if it can be done (which is doubtful), the cost of separation would be prohibitive. Pifer Affidavit para. 46; Will Affidavit para. 10.

Many services and facilities essential to running the Massillon stainless mill are currently provided by the Central Alloy Division. All utilities are shared and are controlled, maintained and serviced by the Central Alloy Division, including electricity, natual gas, water, heat, steam, and compressed air. Other shared facilities and services include roads and entrances, parking lots, mechanical maintenance facilities (machine welding, carpenter, pipe, rigger, scale and mobile equipment repair shops), and electrical shops (electrical construction and meter and electrical repair shops).

Important environmental control facilities are also shared. Republic presently operates a Water Quality Control Center ("WQCC") to treat acid rinse water, waste acid and soluble oil from Enduro and the Central Alloy Division. In addition to the waste water treated at the WQCC, Enduro discharges scale containing water into a lagoon which also services the Republic Central Alloy Districts' 24" and 18" bar mills. Under the current EPA pollution control permit, discharge allowances between the WQCC and the waste lagoon are based on a trade-off or "bubble" formula, providing for sharing or averaging of the total discharge allowance between the stainless and alloy bar facilities.

Republic has given Cyclops no detail of how these essential shared facilities and services will be handled, except that Republic has made it clear that LTV will not relinquish control over certain shared facilities and services. With regard to all of these services (specifically utilities, environmental control, and all the technical, electrical and mechanical maintenance services), the offering brochure provided by Republic merely indicates an intention to discuss these subjects with the purchaser.

LTV's control over these essential facilities and services would give LTV another element of control over those of Massillon's direct costs that would not already be controlled under the supply contract. Moreover, control over Massillon's vital utilities, environmental control and other technical services would give LTV day-to-day influence over Massillon's operations. There can be little doubt that during periods of shortage the Massillon mill will not get priority service over LTV's alloy bar

[7] The supply contract provides, The term of the contract shall be not less than ten years, with a right of renewal in Buyer for not less than two additional years in the event Buyer cannot by a reasonable effort secure an adequate alternative source of stainless steel hot bands upon expiration of the assigned term of the contract and that defendants then have substantialy as much stainless steel hot band capacity as they have today.

facility. Massillon would expect continuous disputes over such things as utility failures, limited utility services (*e.g.*, no utilities for weekends or overtime), work stoppages at the Republic plant that interrupt service, and access to shared services during periods of peak usage. the implications of LTV control over these services and facilities make prudent investment in the Massillon mill impossible.

B. The Proposed Merger is Contrary to Public Policy Limiting Foreign Imports

Since the Massillon facility cannot be purchased and operated profitably under the proposed supply contract, the Justice Department's divestiture plan significantly favors the purchase of Massillon by a foreign steel producer with its own supply of hot band that could be imported under the divestiture plan in circumvention of the trade laws. Pifer Affidavit para. 49, 50.

No responsible company without an independent supply of hot band could reasonably be expected to purchase the Massillon mill. Purchase by a firm not currently in the stainless steel market is unlikely given that no new firm has entered the market in recent years and several firms have exited this market:[8] Pifer Affidavit para. 47

One possible purchaser might be a speculator with short-term objectives who might seek to purchase Massillon at a liquidation price, operate it on a shoestring, withhold any capital investment for the period of the supply contract, and then shut the mill down upon termination of the supply contract and somehow escape payment of legitimate shutdown costs (*e.g.*, refuse to pay labor benefits such as shutdown pensions and severance). The proposed Final Judgment purports to limit purchase by such speculators:

> Divestiture shall be made to a purchaser or purchasers who shall demonstrate to the plaintiff or, if plaintiff objects, to the Court that (i) the purchase is for the purpose of competing effectively in the manufacture and sale of stainless cold rolled sheet steel, and (ii) the purchaser or purchasers have the managerial, operational and financial capability to compete effectively in the manufacture and sale of stainless cold rolled sheet steel.

Because these standards are completely subjective, there is no advance assurance of the qualifications of a purchaser. To the degree the standards are applied vigorously, Cyclops expects that no domestic buyer will be found for Massillon.

[8] Firms recently leaving the stainless steel market are United States Steel Corporation, Sharon Steel Corporation, McLouth Steel Corporation and Crucible, Inc.

Allegheny Ludlum and Armco, domestic steel companies having hot band capability, are in no position to purchase the Massillon mill. Allegheny Ludlum and Armco have market shares that would make purchase of Massillon anticompetitive. In each instance, the purchase would cause more than a 100 point increase in the HHI, thereby warranting enforcement measures by the Department of Justice. Given the problems inherent in the Massillon proposal *and* the need to set aside 55 million dollars in working capital, Will Affidavit para. 15, Cyclops seriously doubts that any other domestic producer would be inclined or financially able to purchase Massillon.

For these reasons, Cyclops believes that the only possible purchaser would be a foreign steel company capable of producing abroad and importing its own hot band. Purchase of Massillon would allow the foreign firm to circumvent import restrictions, specifically the antidumping provisions of the Foreign Trade Act of 1974. Pifer Affidavit para. 50. By selling hot band to Massillon at average cost and then selling the final product from Massillon at a loss, a foreign owner of Massillon would in effect sell its steel below average cost. The antidumping laws were enacted by Congress to curb precisely this problem.

Given the strong public policy expressed by Congress against importation of foreign stainless steel products other than according to prescribed trade restrictions, it would be inconsistent with the public interest to approve a divestiture plan where the most compelling, if not the only, reason for purchasing the divested mill is to circumvent these restrictions.

Relief Requested

For all of the reasons stated above, the Court should find the divestiture plan to be contrary to the public interest. Rejection of the proposed divestiture plan for the stainless steel aspects of the merger need not force a complete rejection of the entire proposed merger between LTV and Republic. Rather, Cyclops requests that upon finding that the current divestiture plan is contrary to the public interest, the Court withhold approval unless the parties modify the proposed decree to require divestiture of LTV's fully integrated stainless steel mill at Midland, Pennsylvania. The DOJ considered requiring divestiture of Midland but apparently opted for divestiture of Massillon as a less restrictive alternative:

> The Government considered the divestiture of the Midland works of LTV, which is a fully integrated stainless steel mill in lieu of a divestiture of Massillon. It was concluded, however, that divestiture of Massillon together with a long term supply commitment from LTV would be sufficient to avoid undue market concentration in the stainless cold rolled sheet and strip market.

CIS at 11. The Department of Justice was simply wrong in supposing that divestiture of the non-integrated Massillon facility with a supply contract could replace divestiture of the fully integrated Midland mill. Cyclops requests that the Court enter an order that incorporates the DOJ's alternative position.

A. Divestiture of the Midland Mill

Divestiture of LTV's Midland mill would cure the proposed merger's anticompetitive effects on the stainless steel market. As to increased concentration in the stainless cold rolled sheet and strip market, divestiture of Midland would more than offset the increased combination otherwise caused by the merger. Pifer Affidavit para. 56. Midland has a cold rolled sheet and strip capacity in excess of that of Massillon.

Equally important, divestiture of the Midland mill would eliminate the increase in concentration in the market for stainless hot band. The Midland mill is a fully integrated stainless steel facility, meaning that it has the capability to melt, hot roll and cold roll stainless sheet and strip. By requiring divestiture of a mill having the capability to supply its own hot band, all of the risks of a long term supply contract are avoided. Will Affidavit para. 18. No suppliers of hot band would be eliminated from the market because of the merger. LTV would have no control over the price at which the divested entity purchased hot band.

Similarly, divestiture of Midland would avoid the difficult problem of physically separating the ongoing operations of divested and non-divested facilities which would be present at Massillon. Pifer Affidavit para. 57. Moreover, divestiture of the Midland mill would not deprive the merged company from achieving combined efficiencies. Republic's Canton, Ohio, mill provides the merged company with an alternative to Midland if improvements are made. The Canton mill has a continuous caster that could be made to supply the needs of LTV's cold reduction plants. Under such an arrangement, the merged company would also be able to maintain the Canton-Massillon relationship.

The Court is empowered by Congress to require modification of the proposed consent judgment. *See United States* v.

American Telephone and Telegraph, 552 F. Supp. 131 (D.D.C. 1982) (court required modification of proposed final judgment after Tunney Act proceedings); *United States* v. *Ling-Temco-Vought, Inc.*, 315 F. Supp. 1301 (W.D. Pa. 1970) (court refused to enter proposed consent decree until parties acted to safeguard pension rights of defendant's employees). However, Cyclops is aware that this Court in the past has been reluctant to exercise that power. In *Stroh Brewery, supra* this Court stated:

> When presented with a proposed final judgment, one to which the parties have consented, this Court's role under the Tunney Act is only to "determine 'whether the settlement achieved is within the reaches of the public interest.' " *Carrols Development Corp., supra* at 1222 (citing *United States* v. *Gillette Co.* [1975–2 Trade Cases ¶ 60651], 406 F. Supp. 713, 716 (D. Mass. 1975)). It is not our function to determine whether it "is the best possible settlement that could have been obtained." *Carrols Development Corp., supra* at 1222. And, although we are not sitting to "rubber stamp" any proposed consent order, we will not substitute our judgment and attempt to forge a new settlement, incorporating new relief, as Heileman apparently desires. If after the comment and response period, we conclude that this settlement will not be in the public interest, it will simply be rejected. *United States* v. *Associated Milk Producers, Inc.* [1975–1 Trade Cases ¶ 60,326], 394 F. Supp. 29, 42 (W.D. Mo. 1975), aff'd [1976–1 Trade Cases ¶ 60,826], 534 F.2d 113 (8th Cir.) cert. denied *sub nom., National Farmer's Organization, Inc.* v. *United States*, 429 U.S. 940 (1976).

United States v. *Stroh Brewery Co.*, 1982–2 U.S.T.C. ¶ 64,804, p. 71,960 (D.D.C.) (Pratt, D.J.). Nevertheless, in the present case there are compelling reasons for the Court to withhold its approval unless the parties agree to modify the proposed final judgment.

Cyclops does not ask the Court to determine whether divestitute of Massillon "is the best possible settlement that could be obtained." Cyclops requests that the Court find that the current divestiture plan is not in the public interest. Cyclops further requests, however, that having rejected the current divestitute plan, the Court fill the void by requiring the parties to modify the proposed consent judgment to require divestiture of Midland as a condition to its approval. The alternative would be for the Court to throw the matter open for further negotiations, a new proposal, and another Tunney Act proceeding, thus causing further delays.

The Court may find its recent experience in *Stroh Brewery* instructive as to the delays which may arise if the Court opts not to modify the proposed consent judgment after finding the current divestiture plan to be contrary to the public interest. *Stroh Brewery* involved a proposed merger between the Stroh Brewing Company ("Stroh") and the Jos. Schlitz Brewing Company ("Schlitz").

Schlitz, with 13.4 percent of beer sales, and Stroh, with 6.9 percent of beer sales, were the third and fifth largest sellers of beer in the Southeast market in 1980. The Department alleged that the merger of Schlitz into Stroh would increase the four-firm concentration ratio in this market by 6.9 percent, from 85.2 percent to 92.1 percent, and would increase the seller concentration ratio as measured by the Herfindahl Index by 166 points, from 2,345 to 2,531.

Stroh Brewery Co., slip op. at 2–3 (unpublished).

The Department of Justice filed with the Court a proposed final judgment requiring that the combined company divest its entire interest in either Schlitz's Winston-Salem, North Carolina, brewery or its Memphis, Tennessee, brewery within twelve months for the date of the entry of the final judgment. Under that proposed consent judgment, as in the present case, provision was made for sale by a trustee if divestiture was not accomplished. On November 10, 1982, the Court found the proposed final judgment to be in the public interest and approved the divestiture. Subsequently, no purchaser was found for either brewery, at which point the parties filed a joint motion with the Court to modify the final judgment to require divestiture of a third brewery for which a potential purchaser had been located.

In light of the current interest of the parties in resolving this matter quickly, the Court should issue an order requiring divestiture of Midland as a precondition to the merger if the Court finds that the current divestiture plan is not in the public interest.

Request for Additional Information

The Tunney Act requires the United States to make public documents which it considered "determinative" in formulating the proposed consent judgment. 16 U.S.C. § 16(b). When the DOJ announced the proposed consent judgment in this proceeding, it stated that there were no such documents in its possession. CIS at 9.

On April 23, 1984 Cyclops filed a motion requesting the production of documents relating to the stainless steel aspects of the proposed merger in the possession of the United States and the merging parties. Cyclops based its requests on the Tunney Act requirement for the disclosure of "determinative" documents and also on the Act's broader authority to obtain evidence and take such other action in the public interest as the court may deem appropriate. 16 U.S.C. § 16(f) (3), (5).

On April 6, 1984 Wheeling-Pittsburgh Steel Corporation ("Wheeling") had made a similar motion for production of documents, but not limited to the stainless steel area. The DOJ and the merging parties opposed the motions of Cyclops and Wheeling. A hearing on both motions was held before this Court on May 1, 1984. One of the arguments advanced by the DOJ was that any order requiring the disclosure of documents would be premature before interested parties submitted their written comments. The principal concern of the parties to the merger was delay. Republic's counsel claimed that every day the merger was delayed cost Republic "millions of dollars." The Court denied the motions of Cyclops and Wheeling "without prejudice," and directed that they file their comments within the statutory 60-day period. The Court then stated:

> When we have considered these comments, those adverse comments, and considered them in the light of the Government's response, we are then going to make a determination as to whether or not there isn't something further out of the files of the Government, or perhaps someplace else, that we should have in order to make this determination that this Proposed Consent Judgment is in the public interest.

Transcript of Hearing on May 1, 1984 (Excerpt) at 9.

The government's boilerplate assertion in this proceeding that there are no documents which were determinative in formulating the consent decree is contrary to logic and common sense. On February 15, 1984, after several months of investigation, the Antitrust Division announced that it would sue to block the proposed merger. Five weeks later, following a political firestorm, the Antitrust Division announced an agreement which would allow the merger to proceed upon conditions which represent nothing short of a complete reversal of position. The authorities supporting Cyclops' request have already been extensively discussed in Cyclops' April 23rd memorandum and will not be repeated.

The comments of Cyclops set forth in this document, as well as the affidavits submitted herewith, have been prepared without access to the information requested by Cyclops in the possession of the DOJ and the parties. Cyclops submits that its comments establish that the merger as presently structured is contrary to the public interest insofar as it concerns stainless steel. Unless the merger is restructured along the lines

proposed by Cyclops, it should not be approved.

Even if the Court were not persuaded by these comments that the stainless stell aspects of the merger are contrary to the public interest, at the very least the comments raise significant questions as to the effect of the merger. Cyclops believes that the circumstances referred to by the Court at the May 1 hearing are present and accordingly renews its motion for an order requiring the production of the following documents relating to the stainless steel aspects of the merger:

By the United States:

1. Documents generated by the staff of the Department of Justice;

2. Documents submitted to the Department of Justice by LTV, Republic or their representatives; and

3. Documents submitted to the Department of Justice by other government entities, including the Department of Commerce, the Office of the U.S. Trade Representative, the Steel Advisory Committee, the White House, Senators or Congressmen.

By the defendants:

1. Documents submitted to the Department of Justice, Commerce or other government agencies either by any of the defendants or by any government agency;

2. Memoranda, studies, analyses or other documents prepared by or on behalf of any of the defendants, including documents relating to the proposed divestiture of the Massillon mill, or the proposed but rejected divestiture of the Midland mill, or the proposed Long-Term Supply Contract; and

3. Documents relating to communications among any of the defendants regarding the outcome or likely outcome of any decision of the Department of Justice, or attempts to influence or affect such a decision.

Cyclops is prepared to offer testimony in further support of its comments at an evidentiary hearing which the Court is empowered to hold under the Tunney Act, 16 U.S.C. § 16(b)(8). The Court is also empowered to take the testimony of government officials or experts, direct the production of other materials, and take such other action as it may deem appropriate to obtain and make public the information necessary to make its determination of whether or not the proposed merger is in the public interest.

Conclusion

For the foregoing reasons, Cyclops respectfully requests that this Court determine that the proposed final judgment is not in the public interest. Cyclops further requests that the Court withhold aproval of the merger unless the parties agree to a modification whereby LTV's Midland facility is divested. Alternatively, the Court should defer making such a determination until it has considered the additional information requested above.

Dated: June 4, 1984.

Respectfully submitted.

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Exhibit A

General Counsel of the United States Department of Commerce
Washington, D.C. 20230

Gerald M. Rosberg, Esq.
Dowey, Ballantine, Bushby, Palmer & Wood, 1775 Pennsylvania Avenue, N.W., Washington, D.C. 2006

Dear Mr. Rosberg: This responds to your request under the Freedom of Information Act (FOIA) dated May 8, 1984 for all documents or other material relating to the merger between the LTV Corporation and Republic Steel Corporation.

Some of the material responsive to your request is already in the public domain. We can make this material plus certain other documents available for your inspection. Please contact Mr. Robert Prumle: on 877-4772 to make arrangements for the inspection.

In addition, there are 18 documents described in Attachment A which relate to your May 8th request. Since these documents are part of the internal Department of Commerce deliberative process, and disclosure would be harmful to the ability of departmental employees to freely and frankly discuss and relate their views, I am denying access to these documents on the basis of the (b)(5) exemption of the FOIA (5 U.S.C. § 552(b)(5)).

This is the initial determination for the Department. You have the right to appeal administratively the denial of any records withheld within 30 days of the date of this letter. If you appeal, address your correspondence to the General Counsel, U.S. Department of Commerce, Room 5879, Washington, D.C. 20230. The appeal should include copies of the original request and the initial denial, a statement of the reasons why requested records should be made available, and why the initial denial was in error. Both the envelope and letter should be clearly marked, "Freedom of Information Appeal."

Sincerely,

Marilyn G. Wagner,
Assistant General Counsel for Administration.

Attachment A

1. Document dated February 23, 1984. Subject: draft, 13 pages (13 pages typed, pages hand written).
2. Document dated February 24, 1984. Subject: The Secretary's paper on Steel Industry Rationalization, 2 pages.
3. Document dated February 28, 1984. Subject: Steel Industry Concentration Ratios, 3 pages.
4. Document dated March 28, 1984. Subject: The LTV-Republic Settlement, one page memorandum with one page attachment.
5. Four page document, handwritten notes, no subject noted, undated.
6. Document dated February 17, 1984, no subject noted, one page memorandum.
7. Document dated February 21, 1984. Subject: The Need for Actions to Enable the US Steel Industry to Rationalize Itself and be Competitive in World Markets, 8 page memorandum.
8. Document dated February 3, 1984. Subject: Economic Analysis of the LTV-Republic Merger, 59 page memorandum, 4 page attachment.
9. Four page document, typed, no subject noted, undated.
10. One page document, typed, undated. Subject: Cabinet Council paper, Merger, Important Points, undated.
11. Four page document, typed, undated. Subject: Talking Points.
12. Document dated February 15, 1984. Subject: Notes on Justices' Republic-LTV Decision, 2 pages, typed.
13. Six page document, typed, no subject noted, undated.
14. Two page document, typed. Subject: American Steel—At the Breaking Point, undated.
15. Four page document, typed, with one page attachment, no subject noted, undated.
16. Five page document, typed. Subject: The Problems with Industry-Wide Rationalization, undated.
17. Document dated February 20, 1984. Subject: Economic Analysis of the LTV-Republic Merger: Addendum, 8 pages.
18. Document, 2 pages, undated. Subject: Feasibility.

In the U.S. District Court for the District of Columbia

United States of America, Plaintiff, v. *The LTV Corporation; Jones & Laughlin Steel Incorporated; J&L Specialty Steels, Inc., and Republic Steel Corporation*, Defendants

Civil Action No. 84-0884 (Judge Pratt).

Affidavit of James F. Will

James F Will, being duly sworn, deposes and says:

1. I am Executive Vice President of Cyclops Corporation ("Cyclops") and President of Cyclops' Industrial Group. I respectfully submit this affidavit in

support of Cyclops' written comments in opposition to the proposed final judgment that will allow the acquisition of Republic Steel Corporation ("Republic") by The LTV Corporation ("LTV"), insofar as the acquisition will affect the stainless steel market.

2. As President of the Industrial Group, I am charged with direct responsibility for Cyclops' steel business. I report directly to William H. Knoell, the Chief Executive Officer of Cyclops. Reporting directly to me are the Presidents of the five divisions through which Cyclops competes in the steel business. The heads of the construction division and the personnel and industrial relations functions also report to me.

3. The facts and conclusions set forth herein are based upon my personal knowledge of the steel industry in general, Cyclops' steel business in particular, my own study and analysis of the impact of the proposed merger upon the stainless steel industry, my personal inspection and review of Republic's cold rolling facilities located in Massillon, Ohio ("Massillon"), review by me and my staff of books and records provided at Republic's Cleveland headquarters, and discussions with Republic officials.

4. I have a Bachelor of Science degree in electrical engineering, which I received from Pennsylvania State University in 1961, and a Master of Business Administration degree which I received from Duquesne University in 1971. I have spent my entire working career in the steel industry, beginning with the United States Steel Corporation in 1961. Immediately prior to joining Cyclops in early 1982 as head of its steel business, I was President and Chief Operating Officer of Kaiser Steel Corporation.

5. Cyclops has two principal areas of concern. First, as a competitor in the stainless steel sheet and strip business. Cyclops believes that the increased concentration which will result from the proposed merger will make LTV a dominant entity in that market and have an adverse impact upon the competitive process. Second, Cyclops is not an integrated manufacturer of stainless steel sheet and strip products and must depend upon outside sources of hot band, which is the basic material utilized in the cold rolling of stainless steel sheet and strip. The impact of the merger will mean, in my judgment, a significant reduction in the potential sources of supply of hot band for Cyclops.

6. I understand that the Department of Justice has stated that the proposed merger will not increase concentration in the stainless steel sheet and strip market because the proposed consent decree requires the divestiture within six months of Massillon to a purchaser who can operate it as a viable, ongoing entity. I do not believe, based upon the information which as been provided to date, that this condition can be satisfied.

7 I have personally visited the Massillon facility on one recent occasion, have had several discussions with Republic officials regarding the proposed sale of Massillon, and have examined or directed my staff to examine such materials as have been made available to prospective purchasers. Cyclops undertook such a review because the purchase of Massillon would presumably permit Cyclops to expand its product line to include wide sheet stainless steel, for which Massillon has the cold rolling facilities which Cyclops lacks. Based upon my analysis, I can state categorically that Cyclops will not seek to purchase Massillon because Cyclops does not believe that that facility can be operated as a viable entity. As shown below, the facilities themselves are extremely antiquated and would require enormous capital improvements, the hot band supply contract be provided by LTV would put the purchaser at a 10% cost disadvantage with respect to LTV, and there is not reasonable likelihood that the purchaser would retain current sales attributable to Massillon. As also shown below, and in Cyclops' accompanying comments, all of the difficulties inherent in the divestiture of Massillon could be remedied were the Court to condition its approval of the merger upon the divestiture of the fully integrated facility currently owned and operated by LTV at Midland, Pennsylvania.

8. Shortly after the Department of Justice announced its approval of the proposed merger on March 21, 1984, Cyclops notified Republic that it would be interested in inspecting the Massillon facilities and in reviewing such books and records as would be pertinent to evaluating a possible purchase of such facilities.

9. I visited the Massillon facilities on April 17, 1984, accompanied by several members of my staff. It is significant that the Massillon plant actually consists of two separate operations: an alloy bar plant and the stainless flat rolled plant. Thus, because the consent decree only requires the divestiture of the stainless operations at Massillon, I was advised that Republic contemplates a physical subdivision of the Massillon facilities and the retention of the alloy bar plant. The separation of various buildings within a single complex is only the beginning of the problem. This matter is vastly complicated by the fact that the stainless plants share roads, electrical power, natural gas, water, compressed air, steam, parking, and other facilities, such as a water pollution control facility and a waste lagoon, with the alloy bar plant. I was advised by Republic representatives that no plan for dividing such facilities, or for sharing of utilities, had been devised as of that time.

10. Based upon my experience in the steel industry, which includes the actual management of steel mills, I anticipate extraordinarily difficult and unique problems in attempting to subdivide the Massillon facility. For example, certain utility services, such as the provision of steam, are generated from the same building. I see no practical way for the purchaser of Massillon to manage such facilities jointly with LTV except on a basis which would be prohibitively costly.

11. But even if the problems of subdividing the facility can be surmounted, other elements of Massillon present a different set of problems. The cold rolling plant facilities, for example, are extremely antiquated. The annealing and pickling lines are very old and primitive. Line speeds, by modern standards, are completely inadequate. In my judgment, Massillon could not be operated on an economically viable basis unless at least $20 million were invested in the annealing and pickling lines alone. The rolling mills themselves are also very old and would require additional capital outlays.

12. In addition, there are other reasons why I do not believe that Massillon, after the proposed divestiture, can be operated as a viable entity. Perhaps the most troublesome concern is that a post-divestiture LTV has the ability, under the cost plus feature of the long term supply contract for hot band, to drive up the price which the purchaser of Massillon must pay for hot band through cost allocation manipulations. Among other things, the proposed cost plus contract which is appended to the consent decree fails to indicate how costs will be computed. It is unclear if such costs would include, for example, management salaries, major maintenance expenses, marketing, advertising, distribution, interest, research and development, casualty and theft losses, general and administrative expenses, or costs attributable to strikes. In addition, it is unclear how capital improvements will be charged, or how depreciation will be handled. Moreover, any mechanism for resolving disputes over the allocation of costs

will, of necessity, be burdensome, complex and time consuming.

13. Moreover, there is no assurance that the hot band to be provided to Massillon will be produced from slabs made on the continuous caster at LTV's modern Midland facility. As a consequence, LTV could sell to the purchaser of Massillon hot band made from ingots. Since the production of hot band from ingots is considerably more expensive than if produced from the continuous caster at Midland, such an arrangement—while ostensibly in compliance with the supply contract—would nonetheless be a prescription for economic disaster.

14. Another adverse element of the supply contract is its 10 year duration. At the conclusion of that period, and the conditional two year renewal option, there is no assurance that the purchaser of Massillon will have an adequate supply of hot band. In view of the likelihood that Massillon cannot be operated on an economically viable basis, it is difficult to see how that facility will generate sufficient revenues to justify the capital expenditures needed to develop an alternative means for obtaining hot band.

15. Nor is it an answer to say that these problems can be addressed in terms of an attractive selling price for the Massillon facilities. Based upon figures recently made available by Republic, Massillon should generate approximately $200 million in stainless steel sales for the calendar year 1984. Based upon my experience in the steel business, it is my opinion that a purchaser would have to allocate at least $55 million in working capital to support a $200 million a year sales operation. Thus, even if the facilities at Massillon were sold at a nominal price, the purchaser would still have to contend with the heavy working capital requirements along with the enormous capital improvements needed to run the facility on a sound basis.

16. But even in the absence of any further interest on the part of Cyclops to purchase Massillon, additional elements of the proposed divestiture cause Cyclops deep concern. The assumption which is inherent in various statements by the Department of Justice is that concentration in the stainless steel business will not be increased because Republic's only stainless cold rolling facility is at Massillon. What the Justice Department fails to appreciate, however, is that the purchaser of Massillon is only purchasing stainless steel cold rolling facilities; it is not purchasing an ongoing business with a transferable market share. While Republic has advised us during our recent visit to its Cleveland headquarters that it has begun to set up a Massillon sales force, consisting of nine people with varying levels of experience located throughout the country, the vast bulk of Republic's current sales force will become LTV employees. Since they already possess Republic's customer lists and similar information, it is likely that in short order LTV will capture a significant portion of the stainless steel flat rolled sales which currently belong to Republic. This is especially so since the Massillon purchaser will immediately find itself at a 10% cost disadvantage with respect to LTV, its principal competitor as well as its source of hot band.

17 In addition, the proposed merger will have the effect of reducing potential sources of supply for hot band. The merger will eliminate Republic as an independent source of hot band. It will also effectively eliminate LTV as a source to the extent that LTV's excess hot band capacity will presumably be devoted to fulfilling the supply contract requirements of the purchaser of Massillon. The tightening of hot band supply represents a substantial problem to Cyclops presently, as it now purchases substantial quantities of hot band from LTV's Midland facility. It would also create a barrier to possible entry into the stainless wide sheet market by Cyclops.

18. It is my opinion that all of these problems can be rectified by the divestiture of LTV's Midland facility. Midland is a fully integrated, modern facility with the capacity of supplying its own hot band and the ability to cold roll wide sheet stainless steel products. Were the Court to condition its approval of the merger upon divestiture of Midland, Cyclops would support such a modification. In fact, I can represent that Cyclops would actively pursue acquisition of the Midland plant.

James F. Will,

Commonwealth of Pennsylvania County of Allegheny

Sworn to before me this 1st day of June, 1984.

Notary Republic.

In the U.S. District Court, for the District of Columbia

United States of America, Plaintiff, v. *the LTV Corporation; Jones & Laughlin Steel Incorporated; J&L Specialty Steels, Inc., and Republic Steel Corporation*, Defendants.

Civil Action No. 84-0884 (Judge Pratt).

Affidavit of Howard W. Pifer, III

Howard W. Pifer, III, being duly sworn, deposes and says:

1. I am the Chairman of the Board and Managing Director of Putnam, Hayes & Bartlett, Inc., a management consulting firm which specializes in economic analyses of public policy issues. During the last decade, Putnam, Hayes & Bartlett, Inc. has undertaken and completed a significant number of economic analyses of the steel industry for both public agencies and private corporations. My education, professional background and steel industry experience are summarized below.

2. Putnam, Hayes & Bartlett, Inc. has been retained in this matter by Cyclops Corporation ("Cyclops") to analyze the likely economic impact of the proposed merger between The LTV Corporation, its Jones & Laughlin, Inc. and Jones and Laughlin Specialty Steels, Inc. subsidiaries ("LTV"), and the Republic Steel Corporation ("Republic"). At Cyclops' request, this analysis has been limited to the cold rolled stainless sheet and strip market.

Summary of Opinions and Conclusions

3. Based on my experience and analysis, I have reached four principal conclusions:

(a) LTV's Jones and Laughlin Specialty Steels, Inc. has achieved through acquisitions a dominant position in the cold rolled stainless sheet and strip market, a market acknowledged by the Department of Justice to be highly concentrated;

(b) The divestiture of Republic's Massillon, Ohio cold rolling facilities will not, as maintained by the Department of Justice, eliminate entirely the increase in concentration in cold rolled stainless sheet and strip;

(c) The divestiture of the Massillon, Ohio cold rolling facilities will not result in a viable domestic competitor in the long run; and

(d) The divestiture of LTV's Midland, Pennsylvania mill would maximize the likelihood that the fully integrated merged company would maintain the Massillon, Ohio facilities.

Professional Qualifications and Background

4. I am a native of Pittsburgh and have been close to the steel industry for the greater part of my life. I attended the Carnegie Institute of Technology in Pittsburgh under a four year scholarship funded by the Latrobe Steel Corporation. I received a Bachelor of Science degree in Chemical Engineering from that institution in 1963. In 1966, I received a Master of Science degree in Industrial Administration from Carnegie Institute of Technology. In 1969, I

received a Doctor of Philosophy degree in Economics from Carnegie-Mellon University, formerly Carnegie Institute of Technology.

5. In 1967, I joined the Faculty of the Graduate School of Business Administration at Harvard University as an Instructor. I subsequently was promoted to Assistant Professor in 1969 upon completion of my doctoral dissertation and to Lecturer in 1972. In 1967, I was granted a leave-of-absence for the 1967–68 academic year to serve as Special Assistant to the Director of Research at the Federal Deposit Insurance Corporation. While a member of the Harvard faculty, I concentrated on the application of analytic techniques to public policy and strategic planning issues.

6. In 1973, I was granted a two year leave-of-absence for the 1973–74 and 1974–75 academic years to join Temple, Barker and Sloane, Inc., a management consulting firm. In 1974, I resigned my academic appointment at Harvard University to pursue a full-time career in consulting. In 1976, I resigned from Temple, Barker and Sloane, Inc. to join with two colleagues in founding Putnam, Hayes & Bartlett, Inc.

Previous Studies of the Steel Industry

7 In 1974, I and my colleagues at Temple, Barker and Sloane, Inc. received a government contract from the Economic Analysis Division of the Environmental Protection Agency to undertake an analysis of the economic impact of environmental regulations in the steel industry. This analysis was first published in *Economic Analysis of Proposed and Interim Final Effluent Guidelines—Integrated Iron and Steel Industry* in March 1976. Subsequently, this analysis was reproduced in July 1977 as Volume 1 of *Analysis of Economic Effects of Environmental Regulations of the Integrated Iron and Steel Industry.*

8. In 1976, I and my colleagues at Putnam, Hayes & Bartlett, Inc. received a government contract jointly funded by the Council on Wage and Price Stability and the National Center on Productivity and Quality of Working Life to analyze the impact of government regulations on the steel industry. This analysis was published in two volumes: *Review of Existing Studies of the Impact of Government Regulation of the Steel Industry* in July 1976 and *A Methodological Approach for Use in Assessing Impact of Government Regulation of the Steel Industry* in August 1977 In 1976, I and my colleagues at Putnam, Hayes & Bartlett, Inc. were retained by the American Iron and Steel Institute to analyze international trade in the steel industry. This analysis was published in May 1977 as a white paper entitled *Economics of International Steel Trade: Policy Implications for the United States.* In 1977, I was retained by the Executive Office of the President of the United States to analyze the economic impact of proposed oil and gas consumption taxes on the steel industry. This was published in a report in October 1977

9. In 1977, and in subsequent labor negotiations in 1980 and 1982–83, I was retained by the Coordinating Committee Steel Companies to provide economic counsel during labor negotiations with the United Steelworkers of America. The Coordinating Committee Steel Companies, which represent the largest collective bargaining unit in the United States, has included Allegheny Ludlum, Armco, Bethlehem Steel, Inland Steel, Jones and Laughlin Steel, National Steel, Republic Steel, United States Steel and Wheeling-Pittsburgh.

10. In 1978, I and my colleagues at Putnam, Hayes & Bartlett, Inc. were again retained by the American Iron and Steel Institute to review emerging international trade developments in the steel industry. This review was published in August 1978 as a white paper entitled *The Economic Implications of Foreign Steel Pricing Practices in the U.S. Market.*

11. In 1979, I was retained by United States Steel Corporation to assist in preparation of its "dumping" petition against the members of the European Economic Community. I subsequently testified on April 17, 1980 on behalf of United States Steel before the International Trade Commission.

12. In 1981, I was again retained by United States Steel Corporation to prepare testimony in support of its "dumping" petition against the members of the European Economic Community. This testimony was submitted on February 3, 1982 before the International Trade Commission.

13. In addition, from time to time, I and my colleagues at Putnam, Hayes & Bartlett, Inc. have been retained on a confidential basis by both domestic and foreign steel producers to undertake various studies which are not a matter of public record. I have also been retained to study the economic impact of mergers in other industries.

The Emerging Dominance of LTV in an Increasingly Concentrated Stainless Steel Market

14. It is my opinion, based upon my knowledge and background in the steel industry, and my study and analysis of the proposed merger between LTV and Republic, that LTV has already achieved a dominant position in the stainless steel market through prior acquisitions, and that the proposed merger will significantly increase the level of concentration in that market.

15. I have used as a frame of reference for my analysis the landmark 1958 decision in *United States v. Bethlehem Steel Corp.*, 168 F. Supp. 576, in which the court enjoined a proposed merger between Bethlehem Steel Corporation and Youngstown Sheet and Tube Company, the second and sixth largest steel companies as of that time.

16. In enjoining the Bethlehem/Youngstown merger, Judge Weinfeld noted the following significant factors.

(a) The industry was highly concentrated, with the twelve largest integrated companies having almost 83 percent of the ingot capacity, and the six largest having almost 68 percent;

(b) The merger would eliminate present and potential completition between the second and sixth largest companies;

(c) The merger would eliminate a substantial independent alternative source of supply for steel consumers; and

(d) The merger would eliminate Youngstown as a vital source of supply for independent steel fabricators competing with Bethlehem in the sale of certain fabricated products.

Recent trends in the stainless steel industry show that the same concerns which were present in the *Bethlehem* case are, if anything, even more troublesome here.

17. The starting point is 1968, when LTV agreed to merge with Jones & Laughlin Steel Corporation ("J & L"). The Justice department sued, alleging that this acquisition violated Section 7 of the Clayton Act. That litigation was settled in 1970 by means of a consent decree, and J & L became a subsidiary of LTV.

18. Thereafter, in 1978 J & L succeeded where Bethlehem had failed twenty years earlier, by acquiring Youngstown Sheet & Tube. By that time, J & L had an electric furnace melt shop for stainless steel in Warren, Michigan, stainless steel hot rolling facilities in Cleveland, Ohio and elsewhere, and cold-reduction and finishing facilities for stainless sheet and strip in Louisville, Ohio.

19. In 1981, J & L acquired a stainless steel cold-reduction and finishing facility in Detroit, Michigan from McLouth Steel. Prior to the acquisition, J & L supplied hot-rolled stainless steel bands to McLouth Steel. At the time of the acquisition, the Justice Department held up the final agreement and required that another buyer be sought for these

McLouth assets. When no other buyer was found, the acquisition was allowed to go forward.

20. In 1982, J & L acquired Crucible Steel's fully integrated stainless steel facilities in Midland, Pennsylvania from Colt Industries. Included in this purchase was a modern stainless steel melt shop with two 175-ton electric furnaces, a 100-ton AOD vessel and a continuous slab caster, a hot strip mill, and a cold-reduction and finishing facility which included two state of the art mills, known as Sendzimir or Z mills. In 1983, J & L closed its melt shop in Warren, Michigan, shifting its stainless steel melting operations to Midland, Pennsylvania, and reopened some, but not all, of the cold-reduction facilities acquired from Crucible Steel. Also in 1983, J & L agreed in principle to acquire Republic, with its stainless steel melt shop in Canton, Ohio, hot-strip mills in Cleveland and Warren, Ohio, and a stainless steel cold-reduction and finishing facility in Massillon, Ohio.

21. At the present time, there are seven major United States manufacturers of stainless cold rolled sheet and strip: Allegheny Ludlum Steel Corporation; Armco Steel Corp., Cyclops; Eastern Stainless Steel Company; J&L Stainless; Republic; and Washington Steel. Accepting the figures used by the Department of Justice in its compliant against the LTV/Republic merger which was filed with the proposed consent decree, four firms—Allegheny Ludlum, J&L Stainless, Republic and Armco—account for approximately 83 percent of industry capacity. Again accepting those figures, J&L Stainless is the largest manufacturer of stainless cold rolled sheet and strip with approximately 37.5 percent of industry capacity, and Republic is fourth, with nearly 9.9 percent of industry capacity. After the proposed merger, the Justice Department stated that " the four largest producers will account for approximately 87 percent of industry capacity. The HHI will be approximately 3045, an increase of 744."

22. In analyzing concentration in this market, I have utilized the Justice Department's own 1982 merger guidelines, which utilize the so-called Herfindahl index to set forth three levels of concentration:

(a) Where the post-merger market is "unconcentrated," that is, where even after the merger the Herfindahl index is below 1,000. In such an "unconcentrated" market the Department of Justice would be unlikely to challenge any merger;

(b) Where the post-merger market is "moderately concentrated," with an index between 1,000 and 1,800. A challenge would still be unlikely, provided the merger increases the index by less than 100 points. If the merger increases the index by more than 100 points, a challenge by the Antitrust Division would be more likely than not, with the decision being based on the extent of the increase, the ease of entry, and the presence or absence of other relevant factors; and

(c) Where the post-merger market is "highly concentrated," resulting in an index above 1,800. A challenge is unlikely where the merger producers an increase of less that 50 points. If the merger produces an increase in the index of between 50 and 100 points, challenge is more likely than not, again depending on the size of the increase, ease of entry and other factors. The Antitrust Division is likely to challenge mergers at this level that produce an increase in the index of more than 100 points.

23. Using estimated capacity data to fill in the gaps left by the Department's analysis, I have computed the Herfindahl Index from the time of the 1981 McLouth acquisition. I estimate that the 1981 McLouth acquisition by J&L increased the HHI from 1322 to 1482, an increase of 160. Using the 1982 Merger Guidelines, the post-merger market was "moderately concentrated" and a challenge was "more likely than not" since the increase in the index was greater than 100 points.

24. The 1982 Crucible Steel aquisition by J&L further increased the HHI from 1482 to 2022, an increase of 520. Using the 1982 Merger Guidelines, the post-merger market was "highly concentrated" and a challenge was "likely" since the increase in the index was far greater than 100 points.

25. In the absence of any divestiture, utilizing the same capacity figures, the Republic acquisition by J&L would increase the HHI from 2022 to 3012, an increase of 990. Using the 1982 Merger Guidelines, the pre- and post-merger market was "highly concentrated" and a challenge was "likely" since the increase in the index was an order of magnitude greater than the "100 points or more" trigger.

26. Thus, I conclude that J&L has achieved through acquisitions a dominant position in the cold rolled stainless sheet and strip market, a market acknowledged by the Department of Justice to be highly concentrated. Prior to 1981, the cold rolled stainless sheet and strip market was moderately concentrated with an HHI of 1322. After successive acquisitions or mergers with McLouth, Crucible and Republic, the HHI would have increased to 3012 and J&L would have increased its share of capacity from 10 percent to a potential of 48 percent.

27 It should be noted that this increase in concentration is based upon finishing *capacity* rather than *shipments*. While I recognize that there are circumstances in which the capacity to manufacture raw stainless steel (as opposed to the finishing of the final stainless product) may be an appropriate measure of market share, in my opinion, finishing capacity is not an adequate measure in an industry which has excess capacity and is undergoing rationalization. To my knowledge, the steel industry has never attempted to publish a measure of steel finishing capacity. Whereas raw steel is a fairly homogeneous product, finished steel has been processed to meet the heterogeneous requirements specified by customers. Furthermore, finishing capacity, especially cold finished stainless sheet and strip capacity, is extremely difficult to measure and does not necessarily reflect accurately the ability to ship finished products. Thus, if one desires a measure of market concentration in this case, a more appropriate measure would be *shipments* of final product, not *capacity*.

28. I understand that the Justice Department has received voluminous data from the steel companies in this matter, including data on stainless steel shipments as reported on American Iron and Steel Institute Forms AIS-10S, AIS-14S and AIS-16S.

29. Based on industry experience, I believe that such stainless steel shipment data would indicate that the cold rolled stainless sheet and strip market is highly concentrated and that the acquisition of Republic would substantially increase concentration. Among other things, J&L Stainless has sufficient idle capacity to produce all of the cold rolled stainless sheet and strip now shipped by Republic from Massillon. As shown below, it is my opinion that J&L Stainless should be able to recapture Republic's market share in terms of shipments.

The Divestiture of Massillon Will Not Eliminate the Anticompetive Effects of the Merger

30. In its March 21, 1984 news release announcing the filing of a proposed consent decree, the Department of Justice claimed that the "[d]ivestiture of Massillon will completely eliminate any increase in concentration in the cold-rolled stainless sheet and strip. ." In its March 22, 1984 Competitive Impact Statement, the Department of Justice also claimed that "the effect of the

divestiture of Massillon will be to eliminate entirely the increase in concentration in cold rolled stainless sheet and strip caused by the merger, since all of Republic's production is located at Massillon." Finally, at the May 1, 1984 hearing on Motions, the Department of Justice reiterated this claim: "[i]n the stainless steel area, the divestiture eliminates completely any increase in concentration. Republic is divesting their one and only stainless steel cold finishing mill."

31. The solution proposed by the Department of Justice attempts to resolve the real problem of concentration in the cold rolled stainless steel sheet and strip market with mirrors—divestiture of capacity does not necessarily result in an unequivocal divestiture of shipments, especially if the firm which results from a merger has available adequate capacity to produce and ship from other facilities *and* has available detailed customer records from the acquired firm.

32. Despite the proposed solution of the Department of Justice, LTV will have all that is required to recapture the current market share of Republic, that is (a) sufficient additional capacity to produce the cold rolled stainless sheet and strip previously produced at Massillon, Ohio, (b) specialized field sales personnel familiar with the requirements of the former Massillon customers and with the customer records, and (c) sufficient lead time to capture these former Massillon customers.

33. LTV owns a number of stainless steel facilities that it has acquired from others over the last several years:

—A currently operating melt shop in Midland, Pennsylvania (acquired from Colt Industries),
—Currently operating cold-reduction and finishing facilities in Detroit, Michigan (acquired from McLouth),
—Currently operating cold-reduction and finishing facilities in Midland, Pennsylvania (acquired from Colt Industries),
—Unused stainless steel melting capacity in Midland, Pennsylvania (acquired from Colt Industries),
—An idle hot strip mill in Midland, Pennsylvania (acquired from Colt Industries), and
—Additional cold-reduction and finishing capability now idle in Detroit, Michigan (acquired from McLouth), and Midland, Pennsylvania (acquired from Colt Industries).

In addition to these recent acquisitions, LTV currently operates a hot strip mill in Cleveland, Ohio, and cold reduction and finishing facilities in Louisville, Ohio. Under the proposed merger, LTV would acquire from Republic the stainless steel melt shop in Canton, Ohio and the hot strip facilities in both Cleveland and Warren, Ohio.

34. In partial recognition of the inadequacy of the proposed solution, the Department of Justice required that LTV, "until divestiture of Massillon is accomplished, establish a marketing organization for the sale of cold-rolled stainless sheet steel from Massillon which shall be maintained separate and apart from J&L Stainless's marketing organization. ." The merged companies will be poised to increase quickly and easily their market share to the combined current levels of each company.

35. Creation of a separate sales force at Massillion provides no protection. To my knowledge, marketing operations have never been conducted from this facility and have never been conducted separately from Republic's other marketing operations in Cleveland. The assumption that a newly created sales force would be effective is naive—individual sales personnel have every incentive to remain with the merged entity while LTV/Republic has the incentive and the knowledge to retain only the best personnel. Moreover, because sales records are currently maintained in Cleveland in a form combined with Republic's other sales activities, the merged company will almost certainly have ready access to the names, purchase levels, and grade and quality requirements of Massillon's current customers.

36. The departure from the Department of Justice's "fix-it-first" policy virtually assures the rapid defection of Massillon's customers. Since LTV and Republic are not required to accomplish the divestiture of Massillon before the merger takes place, as would normally be required, they will have ample time to plan and prepare their attack on Republic's customers for stainless steel produced at Massillon.

37 Thus I conclude that the proposed divestiture of the Massillon, Ohio cold-reduction and finishing facility will not " eliminate entirely the increase in concentration in cold-rolled stainless sheet and strip."

Non-Viabilty of Massillon

38. Based on industry experience and the terms of the proposed final judgment, I believe that divestiture of Massillon will not result in a viable domestic competitor in the stainless steel industry.

39. First, any domestic purchaser which does not have sufficient hot band capacity of its own would be required to depend upon the long-term supply contract and thus would find itself, as shown below, in an economically untenable position. Second, the purchase of Massillon by an integrated domestic manufacturer with sufficient hot band capacity of its own is not an answer, because purchase of Massillon by the companies which fall into this category would substantially increase concentration in the industry and such companies would face a "likely" challenge by the Justice Department according to the 1982 Merger Guidelines.

40. The principal feature which the Department of Justice has incorporated into the proposed decree is the long term contract for the supply of hot band. Under normal market conditions, the cost of hot band represents approximately 80% of the direct manufacturing cost of cold rolled stainless steel products.

41. In an industry in which profit margins average less than 5 percent and equal or exceed 10 percent only in extraordinary years, the cost-plus feature of the proposed long-term contract represents a substantial competitive disadvantage for a nonintegrated buyer, especially during a cyclical downturn in the domestic industry and/or during a period of increased import penetration.

42. The buyer of the Massillon, Ohio facility, by paying LTV a 10% premium above cost on all hot band purchases, is placed in the frustrating position of helping his competitor achieve cost reductions through an increase in volume every time that hot band is ordered from LTV The very nature of cost accounting will place Massillon at an enormous cost disadvantage just when competition is most severe—during a downturn. By allocating fixed costs to a reduced volume of production, unit costs per ton rise when volume falls. Thus the purchaser of Massillon will be forced to shoulder a significant cost disadvantage when its financial resources are most strained, exacerbating the cyclical nature of the market.

43. In addition, based on industry experience, and on my study and analysis of the proposed merger, I conclude that the Massillon, Ohio cold-rolling facilities are antiquated, produce a large proportion of commodity stainless steel products which are sold to the highly-competitive service center (wholesale distribution) sector of the market, and compete in this and other markets primarily on the basis of price, not superior quality or specialized products. This will aggravate the

competitive disadvantage for a buyer of Massillon.

44. Other uncertainties in the negotiation of a long-term contract abound. An endless list of safeguards would be required as part of the contract in order to determine how costs would be calculated by LTV/Republic and verified by the purchaser of Massillon (who would compete directly with the newly merged company in the stainless sheet and strip market). Such provisions would be required to account for work stoppages, changes in technology which require substantial new investment, proper allocation of costs to each stainless grade and shape (for which alloy costs alone vary substantially), adequate quality checks, allocation of fixed costs, rights of the buyer to refuse shipments at the maximum contract level without loss of access to future production, and so forth. Moreover, because a number of facilities in addition to Midland will also be involved in the supply of hot band to Massillon, the surviving company will have ample opportunity to manipulate the accounting to its own advantage.

45. Of particular importance, Justice's proposed solution is silent on the rights of the buyer to access to hot band rolled from continuous cast slabs, for which production costs are significantly lower than for hot band rolled from ingots (over $100 per ton—roughly 10 percent of the estimated cost of hot band) and from which steel quality is often superior.

46. Separation of the Massillon stainless steel sheet and strip facility from Republic's other Massillon facilities will be expensive, inefficient, and very complicated. I understand that LTV/Republic (through First Boston) has given assurances to provide shared services at Massillon only for six months. While they have offered to negotiate longer term cost-plus arrangements, such arrangements will only compound the already unacceptable dependence Massillon will have on LTV/Republic. The alternative of investing in new facilities to replace those currently shared (which include a number of machine shops, repair shops, a storeroom, plant security, environmental control, provision of steam and compressed air, and maintenance of the supply of electricity and natural gas) would be prohibitively expensive.

47 Based upon analysis of the long term contract, I have concluded that a purchase of Massillon by a responsible domestic steel producer is unlikely. Furthermore, no new firm has entered the stainless cold rolled market in decades. Firms which have left that market since 1970 include United States Steel Corporation, Sharon Steel, McLouth Steel and Crucible, Inc.

48. Moreover, based upon data used by the Department of Justice in its complaint, I have computed market shares and the Herfindahl Index for each possible acquisition of the Massillon, Ohio cold-reduction and finishing facilities by a domestic producer of stainless sheet and strip. These computations demonstrate that acquisition of the Massillon facility by an integrated domestic producer of stainless sheet and strip would produce an increase in the index well in excess of the 1982 Merger Guidelines developed by the Department of Justice.

49. The one remaining possibility is purchase by a foreign producer of hot band. As currently structured, Justice's proposed solution significantly favors the purchase of Massillon by a foreign steel producer capable of supplying its own need for hot band—removing the need for the hot band supply contract altogether and thus eliminating the most serious drawback of Justice's proposed solution.

50. It is likely that a foreign buyer would not rely on the long-term contract for stainless hot bands, opting instead to transship hot bands, from its foreign operations. This strategy would permit the foreign buyer to use Massillon to circumvent import restrictions, specifically the antidumping provisions of the Foreign Trade Act of 1974.

51. Thus, based on my industry experience and analysis, I conclude that the divestiture of the Massillon, Ohio cold-rolling facilities will not result in a viable competitor in the long run, except possibly as a domestic subsidiary of a foreign producer, a solution which would not be in the public interest.

Additional Anticompetitive Effects of the Proposed Merger

52. I have also concluded that the solution proposed by the Department of Justice will have a significant adverse effect on the supply of stainless hot bands. J&L Stainless has up to now been an active supplier in this market, supplying Cyclops with much of its purchase requirements. Thus, it is my opinion that Cyclops has a justifiable concern over a significant diminution in the supply of hot bands.

53. Shipments of stainless hot bands have been declining, averaging less than 90,000 tons per year during the 1980–1983 period, and have not exceeded 110,000 tons in any one year. By contrast, the proposed long-term contract required in the consent decree stipulates a supply of stainless hot bands of 120,000–144,000 tons per year. In order to meet the terms of the supply contract, it is likely that J&L Stainless will not have sufficient additional capacity to continue as a supplier of stainless hot bands to other nonintegrated producers, including Cyclops.

54. the proposed Final Judgment represents a departure from the normal "fix-it-first" policy of the Department of Justice, which generally requires that divestitures necessary to cure anticompetitive aspects must occur before the merger itself. The Department of Justice's rationale for permitting an exception to its normal policy is that, given the current state of the steel business, "a requirement that plants be sold prior to merger would not be practical and thus would make the merger impossible."

55. Based on industry experience and information made available to me by Cyclops during this assignment, I disagree with the conclusion that the current state of the steel business necessitated departure from the normal "fix-it-first" policy of the Department of Justice for two reasons:

(a) General economic conditions in the steel industry are much improved over last year, and

(b) In particular, the cold-rolled stainless sheet and strip market has remained profitable throughout the recent recession in the steel industry.

Divestiture of Midland Would Eliminate the Anticompetitive Effects of the Proposed Merger

56. In rejecting the sale of the facilities in Midland, Pennsylvania as a condition for the merger, the Department of Justice has forfeited an opportunity to enhance competition. The divestiture of the Midland facility would assure no increase in, and would reduce, the concentration in a market already highly concentrated in terms of the Justice Department guidelines. The Midland facility offers the opportunity for fully integrated operations and would not require a hot band supply contract.

57 The Midland facility is a fully integrated facility and is not dependent on other operating stainless steelmaking facilities, so that its divestiture could be accomplished without complicated arrangements pertaining to shared facilities and without the need for contentious cost accounting and expensive verification.

58. The divestiture of the Midland, Pennsylvania facility instead of the Massillon, Ohio facilities would also maximize the likelihood that the fully integrated merged company would maintain the Massillon, Ohio, facilities.

Conclusion

59. In view of the foregoing, I conclude that the proposed merger presents an even more troubling case than *Bethlehem Steel* for the following reasons:

(a) At present, the stainless steel industry is highly concentrated, with the seven largest companies having nearly 100 percent of the capacity and with the five fully integrated companies having approximately 90 percent of the industry capacity;

(b) The merger would eliminate present and potential competition between the first and fourth largest companies;

(c) The merger, in the long run, would eliminate Massillon as a substantial independent source of supply for all stainless steel sheet and strip consumers; and

(d) The merger would eliminate a substantial alternative source of supply of hot bands for the non-integrated producers of cold rolled sheet and strip.

In addition, the proposed merger would violate the 1982 Merger Guidelines.

Howard W. Pifer III,

Commonwealth of Massachusetts, County of Suffolk.

Sworn to before me this 3rd day of June 1984.

Ellen M. Macke,

Notary Public.

U.S. District Court for the District of Columbia

United States of America, Plaintiff, v. *The LTV Corporation; Jones & Laughlin Steel Incorporated; J&L Specialty Steels, Inc., and Republic Steel Corporation*, defendants.

Civil Action No. 84-0884 (Judge Pratt).

Plaintiff's Response to the Comments of Cyclops Corp., Wheeling-Pittsburgh Steel Corp., Bliss & Laughlin Steel Co. and the United Steelworkers of America

Plaintiff, the United States of America, responds herewith to the comments of Cyclops Corp. ("Cyclops"), Wheeling-Pittsburgh Steel Corp. ("Wheeling-Pittsburgh"), Bliss & Laughlin Steel Co. ("BLS") and the United Steelworkers of America ("United Steelworkers"). The responses are all contained in this document, since the four comments raise some common issues of fact and law. Each comment is addressed separately, however.

Before making our specific responses we briefly consider the applicable legal standard in this proceeding. The Antitrust Procedures and Penalties Act ("APPA;" also referred to as the "Tunney Act"), 15 U.S.C. § 16(b)-(h), clearly provides that the public interest is the relevant consideration in a case such as this. The relevant provision, 15 U.S.C. § 16(e), reads in full as follows:

(e) Public interest determination

Before entering any consent judgment proposed by the United States under this section, the Court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

In addressing the duties imposed by § 16(e), the court must balance two considerations—the need to review the proposed judgment and the competing need to preserve the negotiated consent decree as a viable means of settling antitrust cases. Since the APPA was enacted in December 1974, there have been a number of decisions dealing with this balance, and certain principles have been clearly and consistently established.

First, the courts have fully recognized that an important goal of the Tunney Act was to ensure that the courts would be more than mere "rubber stamps," entering consent judgments with no examination of their results and no ventilation of the process that produced them. *See United States* v. *American Telephone and Telegraph Co.*, 552 F. Supp. 131, 148-49, 151 (D.D.C. 1982). To this end, the Act requires that the provisions of the proposed decree be explained by the Department of Justice, that the decree and the explanation be published, that interested third parties be permitted to tender comments, that the defendant reveal all non-attorney contacts with the Government concerning the decree and that the Court make a specific "Public interest" determination.

At the same time, the courts have taken care to emphasize that the Act does not require, and Congress did not intend, for a court to replace the Department's judgment with its own, or with settlements proposed by third parties. It is, after all, the Department which is charged with enforcing the antitrust laws and protecting the public interest, a responsibility of which the Department was not relieved by the APPA:

The APPA codifies the case law which established that the Department of Justice has a range of discretion in deciding the terms upon which an antitrust case will be settled.

United States v. *Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. ¶ 61,508 at 71,980 (W.D. Mo. 1977).

Preliminary negotiation over the content of the proposed final judgment is a function vested in the government in the first instance.

United States v. *Stroh Brewery Co.*, 1982-2 Trade Cas. ¶ 64,804 at 71,980 (D.D.C.).

In federal antitrust litigation, it is the United States, not private parties, which "must alone speak for the public interest." Congress has vested in the United States the duty to protect the public interest. Any disagreement with the wisdom of the United States' decision concerning the adequacy of proposed relief does not indicate inadequate representation of the public interest. For these reasons, the courts have consistently denied intervention to private parties whose views about the proper terms for an antitrust settlement differed from those of the United States.

United States v. *G. Heileman Brewing Co., Inc.*, 583 F. Supp. 642, 648 (D. Del. 1983) (citations omitted).

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree.

United States v. *Bechtel Corp.*, 643 F. 2d 660, 666 (9th Cir. 1981) (citation omitted).

In recognition of the continuing role of the Department as the primary representative of the public interest, and the virtual impossibility of conducting true *de novo* reviews of the facts underlying each case which the Department has determined it should settle,[1] the courts have concluded that their discretion must necessarily be limited. Judge Greene, in connection with the *AT&T* settlement, made the following observations.

Where, as here, a court is evaluating a settlement, it is not as free to exercise its discretion in fashioning a remedy as it would be upon a finding of liability. If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust

[1] *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975).

enforcement tool, despite Congress' directive that it be preserved. See S. Rep. No. 93-298, *supra*, at 6; H.R. Rep. No. 93-1463, *supra*, at 6.

It follows that a lower standard of review must be applied in assessing proposed consent decrees than would be appropriate in other circumstances. H.R. Rep. No. 93-1463, *supra*, at 12. For these reasons, it has been said by some courts that a proposed decree must be approved even if it falls short of the remedy the court would impoe on its own, as long as it falls within the range of acceptability or is "within the reaches of public interest." Although these decisions are not necessarily binding, this Court will follow a similar approach.

United States v. *American Telephone and Telegraph Co., supra* at 151 (citations omitted). An even more comprehensive analysis was undertaken by Judge Aldrich in one of the seminal decisions in this area:

The legislative history shows clearly that Congress did not intend the court's action to be merely pro forma, or to be limited to what appears on the surface. Nor can one overlook the circumstances under which the act was passed, indicating Congress' desire to impose a check not only on the government's expertise—or at the least, its exercise of it—but even on its good faith. See 120 Cong. Rec. S 20862 (daily ed. Dec. 9, 1974); BNA Antitrust & Trade Reg. Report No. 630, at A-15 (1973). At the same time, both by the statute's listing various alternatives short of a comprehensive examination, 15 U.S.C. § 16(f), and by the announced expectancy of both congressional committees, the court is adjured to adopt "the least complicated and least time-consuming means possible." See S. Rep. No. 93-298, 93d Cong., 1st Sess. 6 (1973); H. Rep. No. 93-1463, 93 Cong., 2d Sess. 8 (1974), 1974 U.S. Code Cong. & Admin. News 6539. In this situation the court cannot provide the best of all possible worlds. Just as the parties are compromising, so in its process of weighing the public interest, must the court.

This seems neither improper nor unwise. Fear has been expressed that the act's "elaborate procedure will prove counterproductive and may, indeed, undermine [by placing too great obstacles on the consent process] effective enforcement of our antitrust laws." Courts' involvement in preventing potential harm to competition can become excessive. I agree that in terms of the important role of the consent decree in antitrust procedure, too much tillage can destroy the garden.

Nor do I think Congress, had, in fact, any contrary intention. The Senate Judiciary Committee reported that a high percentage of government antitrust actions are settled prior to trial, and recognized that the consent decree process was a "legitimate and integral part of antitrust enforcement." S. Rep., ante, at 3, 5. "Obviously, the consent decree is of crucial importance as an enforcement tool, since it permits the allocation of resources elsewhere." S. Rep. at 5. "[T]he Committee wishes to retain the consent judgment as a substantial antitrust enforcement tool." S. Rep. at 7. "The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree processs." 119 Cong. Rec. 24598 (1973).

United States v. *Gillette Co.*, 406 F Supp. 713, 715 (D. Mass. 1975) (citations omitted).

The review called for by Congress requires the Court to receive and evaluate comments and proposals submitted by interested third parties. It does not, however, require the Court to give deference to such proposals:

All of the foregoing issues and conflicting conditions relating thereto have been considered by the Court; each contention has been weighed on the scale of whether it tilts for or against "the public interest"; each has been considered in light of the special interest of the respective proponents thereof. None of the proponents strikes the Court as an advocate for "the public interest." Although each proponent has been of assistance to the Court in its consideration of "the public interest," none has offered a solution that meets "the public interest." *The government in its role as protector of "the public interest" appears to have accomplished an acceptable result.*

United States v. *National Broadcasting Co., Inc.*, 449 F. Supp. 1127, 1141 (C.D. Cal. 1978) (emphasis added).

The APPA does not permit or require the Court to determine ultimate issues of fact or law that would have been decided if this case were fully litigated.

* * * * *

While it is clear that it was the intention of Congress in passing APPA to require that a reviewing Court make an independent public interest determination, it is equally clear that APPA does not permit or require the reviewing court to make a *de novo* determination of facts and issues presented by the pleadings in the case.

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should carefully consider the explanations of the government in the competitive impact statement and its response to comments in order to determine whether those explanations are reasonable under the circumstances.

* * * * *

This Court may not substitute its opinion or views concerning the prosecution of alleged violations of the antitrust laws or the determination of appropriate injunctive relief for the settlement of such cases absent proof of an abuse of discretion.

United States v. *Mid-America Dairymen, Inc., supra* at 71,979-80. *See also United States* v. *Agri-Mark, Inc.*, 512 F. Supp. 737, 739 (D. Vermont 1981).

These principles were clearly affirmed by this Court in the *Stroh Brewery* litigation, where the Court, after reviewing the purposes of the Tunney Act, noted that it was still vital to preserve the usefulness of the consent decree process:

Despite the fact that the 1974 Tunney Act appears to require a higher level of judicial scrutiny of consent decrees than was previously the case, it was clearly not intended to discourage settlement of government antitrust suits. H.R. Rep. No. 1463, 93d Cong., 2d Sess. 5, *reprinted in* 1974 U.S. Code Cong. & Ad. News at 6539 (quoting S. Rep. No. 298, 93d Cong., 1st Sess.). As with any form of settlement, the consent decree process saves the parties the considerable time and expense of litigation. In the particular context of antitrust enforcement, the consent decree mechanism permits the Department to spread its limited resources over more suits and, thus, achieve broader antitrust enforcement. In the current climate of austerity in public spending, the consent decree mechanism is likely to play an even more significant role in the Department's enforcement scheme.

United States v. *Stroh Brewery Co.*, Civil Action No. 82-1059, slip op. at 4 (D.D.C. Nov. 10, 1982) (unpublished opinion by Judge Pratt). The Court then adopted the *Gillette* standard of review:

Therefore, our function in reviewing antitrust consent decrees, as Senior Circuit Judge Bailey Aldrich has stated in an oft-quoted opinion, is:

*not * * * to determine whether this is the best possible settlement that could have been obtained* if, say, the government had bargained a little harder. The Court is not settling the case. It is determining whether the settlement is within the reaches of the public interest. Basically * * * [we] must look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass. (emphasis supplied).

* * * * *

Although we have authority to scrutinize consent decrees under the Tunney Act, the power to negotiate the terms of any particular consent decree is lodged in the Executive Branch.

Id. (citations omitted).

The Government has concluded, after considering these four comments, that the proposed Final Judgment is fully consistent with the public interest. The record now before the Court clearly supports that conclusion. We therefore urge that the Court enter the proposed Final Judgment forthwith.

Response to Cyclops Corp.

Cyclops has appeared previously in this matter, filing two motions seeking an order compelling the production of virtually all documents and information possessed by the Government relating to the stainless steel aspects of this case.[2]

[2] Motion of Cyclops Corporation For Permission to Participate in Proceedings and for an Order Requiring the Production of Documents, filed April 23, 1984; Motion of Cyclops Corporation for an Order Requiring Filing by the Department of Justice of (1) Certain Staff Documents for Court Review and (2) A Report Regarding Document Disposal, filed May 14, 1984.

The Court denied both motions in substance.

Cyclops is itself a manufacturer of cold rolled stainless steel sheet and strip, and as such is a competitor of the defendants. Cyclops states in its comment that the relief relating to stainless steel in the Proposed Judgment, the divestiture of Republic's stainless cold rolled sheet and strip facilities at Massillon, Ohio, is inadequate and not in the public interest for essentially two reasons. (1) Cyclops contends that one of Cyclops' sources for stainless hot bands, the product from which stainless cold sheet and strip is made, may be threatened, and competition among sellers of hot bands for sales to Cyclops may be lessened. (2) Cyclops claims that the divested entity, Massillon, will not be a viable competitor in cold rolled stainless sheet and strip for various reasons: the plant is not competitive; the hot band supply contract is inadequate and subject to manipulation by LTV; and LTV may unfairly recapture Massillon's market share through improper use of proprietary information about Massillon's customers.

We will deal with each of these objections in detail. We turn first, however, to an argument made repeatedly and passionately by Cyclops—and by Wheeling-Pittsburgh—that after announcing its intention to block the merger as first proposed the Antitrust Division made an abrupt "about face" and reached the instant settlement agreement with defendants. As we have said previously, from the day the decision to block the merger was announced it was clear that the Antitrust Division would consider proposals from defendants to restructure the transaction to meet the Division's objections. There was no "about face." [3] It is especially inappropriate for Cyclops to make such a claim, for in stainless steel, the market with which Cyclops is concerned, there will be divested *all* of Republic's capacity in the relevant product, cold rolled stainless sheet and strip. The Government is confident that the Court will consider this proposed Final Judgment on its merits, not on the basis of speculation in newspaper articles about how the decision was made. The "political firestorm" hypothesis of Cyclops and Wheeling-Pittsburgh does nothing to contribute to the real issue at hand, whether the proposed Final Judgment is in the public interest.

A. Effect of the Proposed Final Judgment on Cyclops' Hot Band Purchases

Cyclops expresses its concern that the proposed Final Judgment will reduce the number of sources of supply of stainless hot bands, from which Cyclops produces stainless cold rolled sheet and strip. It must first be pointed out that very little hot rolled stainless sheet and strip is sold to ultimate users. Most is further finished—cold rolled—and therefore the Government alleged that the merger would have anticompetitive effects only in cold rolled stainless sheet and strip. Cyclops is the *only* firm that regularly purchases stainless hot bands to produce cold rolled sheet and strip. As noted in Cyclops' comment at p. 38, only Cyclops and Eastern Stainless Steel Co. are not fully integrated stainless steel producers. Eastern, however, melts and casts its own stainless steel. Eastern lacks a hot strip mill, and therefore must have its slabs rolled into hot bands on a competitor's hot strip mill. Both carbon and stainless steels are rolled on the same hot strip mills, however, and there is no allegation by Cyclops or Eastern that the proposed Final Judgment creates any competitive problem in stainless steel at the hot strip mill stage.

Cyclops' complaint regarding hot bands is simply this: Cyclops currently purchases a portion of its hot band requirements from LTV, made from slabs produced at Midland. Cyclops is apparently concerned that this source of supply may be affected by the Massillon supply contract, which also provides for the sale of hot bands rolled from Midland slabs.[4] We conclude, however, that there is no basis for such concern. Cyclops will have adequate sources of supply of hot bands for its operations after the divestiture of Massillon.

First, it must be pointed out that Cyclops purchases no hot bands from Republic. Cyclops states that Republic's Canton facility does not produce stainless steel of a sufficiently high quality for Cyclops.[5] The Government understands that Republic sells virtually no stainless hot bands to anyone. Thus, the merger will not "decrease the number of suppliers from 5 to 3 as claimed by Cyclops."[6] There are currently at least four possible suppliers to Cyclops, and that number will not be reduced by the merger.

Cyclops does not state precisely its current sources of hot bands and the quantities supplied therefrom. Such information might have enabled the Government and the Court to better evaluate Cyclops' claims. We understand, however, that Cyclops purchases hot bands from at least three sources, including LTV, and that its purchases from LTV account for no more than 30 per cent of Cyclops' purchases. Moreover, Cyclops itself produces significant amounts of hot bands, though it apparently cannot produce all of the grades and sizes that it requires.[7]

It is clear that implementation of the proposed Final Judgment will not create a shortage of hot band capacity for Cyclops. The Government understands that there is sufficient melting and continuous casting capacity at Midland to supply substantially more than Cyclops' current purchases from LTV, even after the addition of the Massillon requirements. Defendants will address these facts specifically in their response.[8] Further, previous investigations by the Government show that other producers of stainless hot bands, including Armco, Allegheny Ludlum and Washington have excess capacity sufficient to supply Cyclops. Nor does it appear that these other sources are inferior to Midland, in light of the substantial purchases that Cyclops is now making from them. Indeed, the proposed Final Judgment does not require the buyer of Massillon to do business with Midland.[9] Ironically, if the supply contract is as disadvantageous to Massillon as Cyclops contends, the new owner of Massillon will look elsewhere, leaving Midland's excess capacity undisturbed.

In sum, Cyclops is the industry's smallest producer, holding a market share of less than 5 per cent, and its hot band requirements are therefore not a substantial portion of total industry capacity; it is partially integrated; it has

[3] See, Plaintiff's Memorandum in Opposition to Motion of Cyclops Corporation for Permission to Participate in Proceedings and for Order Requiring the Production of Documents, filed April 30, 1984, at 14–16; Plaintiff's Memorandum in Opposition to Motion of Wheeling Pittsburgh Steel Corporation To Participate in Proceedings and to Compel Compliance With the Antitrust Procedures and Penalties Act, filed April 20, 1984, at 15–16.

[4] *See* Comment at 45.

[5] Comment at 39.

[6] Comment at 38.

[7] Cyclops supplied information to the American Iron and Steel Institute showing that in 1982, which was a depressed year in the steel industry, Cyclops produced more than 44,000 tons of stainless hot bands.

[8] Moreover, it is not likely that LTV will close Republic's Canton facilities, where Republic currently melts and refines its stainless steel, as predicted by Cyclops. Comment at 38. The supply agreement requires that Massillon be supplied from ingots made at Canton its requirements of certain specialty hot bands that Midland cannot supply. Appendix to proposed Final Judgment at ¶ 5. If Canton is ultimately closed, Massillon must be supplied with comparable products from some other LTV facility, and the Government understands that this is not likely.

[9] In paragraph 7 of the Appendix to the Proposed Final Judgment it is provided that "Buyer shall be permitted at its option to place orders for stainless steel hot bands with other suppliers in addition to or in lieu of placing orders with defendants."

available several sources of supply; and it is the only firm currently purchasing stainless hot bands for cold rolling. In this context there can be no concern about the adequacy of the supply of hot bands for Cyclops, or about the competition among hot band suppliers for Cyclops' business.

The district court decision in *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576 (S.D.N.Y. 1958) is not applicable here. There were both horizontal and vertical aspects to that merger. It is probable that the vertical rationale applied by that court, upon which Cyclops relies; would not be applicable today.[10] Moreover, the facts in *Bethlehem Steel* were substantially different from those in this case. Youngstown, the company to be acquired, was a seller of rope wire, the raw material for wire rope, to as many as 17 nonintegrated producers of wire rope. Youngstown did not itself make wire rope. By contrast, in this case there are *no* sellers of hot bands who do not also make cold rolled stainless and there is only one partially nonintegrated buyer. The *Bethlehem Steel* court found objectionable the elimination by that merger of a significant nonintegrated supplier. This merger does not have such an effect, since all suppliers are already integrated.

Thus, Cyclops' objection to the proposed Final Judgment on the basis of Cyclops' status as a partially nonintegrated producer of cold rolled stainless is unfounded in fact and law.

B. The Viability of Massillon

Cyclops complains that Massillon cannot be a viable competitor in cold rolled stainless steel sheet and strip. This is a curious argument for Cyclops to make, for it would benefit in two ways if Massillon fails or becomes a nonaggressive, fringe competitor. The loss of competition in cold rolled stainless will be to Cyclops' advantage as a competitor in that market, and Cyclops will also suffer fewer real or imagined hot band supply problems. In any event this objection of Cyclops is not valid for the reasons set forth below.

1. The Viability of the Assets

Cyclops claims that the Massillon stainless steel assets are "non-competitive," and that they cannot be divested and operated apart from the bar facilities also at Massillon.[11] Two facts clearly rebut the first objection. First, the Government understands that Massillon is profitable, even while Republic as a whole is not. Second, the Government understands that there already has been substantial interest expressed in Massillon. More than 50 inquiries have been made.[12]

While we do not mean to overstate Massillon's attractiveness, and recognize that it requires some modernization, as do many steel facilities in this country, there is every reason to believe that it can be sold quickly and subsequently operated at a profit. Moreover, Massillon has at least one significant advantage. It can produce sheet up to 60 inches wide. No other producer in the U.S. can make such a wide product. This 60-wide sheet is a "proprietary" product, which generally earns higher profits.[13] Also, as part of Republic, Massillon suffered from the lack of a source of hot bands made from continuously cast slabs, which are of a higher quality and are lower cost. This will change with the divestiture and accompanying supply contract from Midland. Massillon's raw material costs will very likely be lower after the divestiture than before.

Finally, the proposed Final Judgment provides that the Court will retain jurisdiction for the purpose of enforcing the judgment or the modification of any of its provisions. If, contrary to our expectation and information, divestiture of Massillon cannot be accomplished for any unforeseen reason, the Court could entertain proposals for some alternative form of relief.[14]

Cyclops also worries that the stainless steel operations and the bar operations at Massillon will share certain facilities, such as utilities and roads and entrances, and that there must be a joint effort in environmental control at Massillon. What is left unsaid by Cyclops is that the manufacturing facilities themselves are entirely separate. The sharing of some of the support facilities is a matter for negotiation and agreement between LTV and the buyer. There is no reason why an equitable agreement cannot be reached. Indeed, LTV is required by the proposed Final Judgment to reach such an agreement,[15] and if it fails the Trustee,[16] or ultimately the Court,[17] can impose one.

2. The Hot Band Supply Contract

Cyclops complains that the terms of the long term supply contract contained in the Appendix to the proposed Final Judgment are vague and incomplete and will permit LTV to manipulate its costs to apply a "price squeeze" to Massillon.[18] Cyclops' alarm is unfounded. The judgment requires that Massillon generally be accorded equal treatment with LTV's own operations. In any case, the Appendix to the proposed Finel Judgment is not itself a supply contract. It outlines the major terms and conditions that LTV must offer; the specifics are to be negotiated between LTV and the buyer. Moreover, the buyer is in a strong negotiating position because, as noted above, the trustee and the Court may ultimately impose more favorable conditions if LTV does not reach agreement.

Cost-plus contracts are negotiated frequently in business and insutry. There is no reason to expect that LTV will not carry out its obligations in this regard in good faith, especially when it is required to do so by an order of this Court. Moreover, the Appendix to the proposed Final Judgment provides special safeguards relating to the operation of the cost-plus contract. The buyer is to have access to LTV's manufacturing facilities and to its internal documents and records for the purpose of verifying LTV's costs, and may conduct an audit of the relevant records.[19] The contract must provide for a "speedy resolution of disputes under the contract," presumably some form of arbitration, and if those means fail, the buyer may petition the Court. The Appendix provides a guide to the Court, and to the parties in the administration of the contract: it should permit the buyer "effectively to compete with defendants in the sale of cold rolled stainless sheet or strip. . ."[20]

Cyclops claims that LTV could arbitrarily inflate Massillon's costs by providing Massillon with hot bands rolled from ingots produced at Midland, rather than from lower-cost continuously cast slabs. From the Government's knowledge of the

[10] See, *U.S. Department of Justice Merger Guidelines*, June 14, 1984, paragraph 4.2, attached hereto as Appendix A.

[11] Comment at 58–61.

[12] Defendants will provide specific information on these points in their response.

[13] Cyclops states at p. 55 of its comment that Massillon produces only "commodity" products that generate relatively low profit margins. This is obviously not true for the reason described above.

[14] In *United States* v. *Stroh Brewery Co.*, Civil Action No. 82–1059 in this Court, a consent judgment requiring the divestiture of one of two breweries in the Southeastern U.S. was subsequently modified by consent to permit the divestiture of a third brewery after changed circumstances made it unlikely that either of the first two breweries could be sold.

[15] Paragraph IV C requires that Massillon be divested in such a way as to ensure that it will be a "viable, ongoing business."

[16] Paragraph V A.

[17] Paragraph V F.

[18] Comment at 51–53.

[19] Paragraph 10.

[20] Paragraph 12.

operations at Midland it appears highly unlikely that LTV would resume ingot teeming at Midland on such a scale, but in any event this would not be permitted under paragraph 2 of the terms of the supply contract described in the Appendix to the proposed Final Judgment. That provision requires that LTV supply hot bands "as specific by the Buyer," and "at least equal in quality" to those used by LTV for its own customers.

Cyclops complains that the ten percent return permitted LTV under the supply contracts is a "sweetheart deal" for LTV, and puts Massillon at a cost disadvantage.[21] There are several responses to this. First, Massillon will not be bound to a requirements contract with LTV Massillon can, and undoubtedly will, turn elsewhere for hot bands if it can obtain a better price, or conversely it could negotiate a lower price with LTV. Second, LTV is entitled to a fair return on its assets at Midland. It must maintain and modernize its facilities as must every steel producer, and it would not be fair to require LTV to dedicate a portion of its assets to a competitor at cost. Also, the payment term outlined in the Appendix to the proposed Final Judgment,[22] which provides that the buyer shall pay for its hot band purchases at the end of each month following the month of delivery, is a significantly favorable one, the Government understands. Finally, there is every reason to believe that even at Midland's cost plus ten percent Massillon will be paying less for hot bands than it does now for Republic's inefficiently produced hot bands. Indeed, the Government understands from LTV that Cyclops itself is now paying more than LTV's cost plus ten percent for hot bands that Cyclops is currently purchasing from LTV

Cyclops contends that the minimum ten year term of the supply contract (plus a right to a two year extension under certain circumstances) is inadequate.[23] This is a highly subjective conclusion. Ten to twelve years is a very substantial period of time, and one cannot predict with accuracy what the conditions in the stainless steel industry will be so far in the future. Massillon will have several options available to it before the period expires: to expand internally into melting and refining, to negotiate supply arrangements with LTV or with other domestic suppliers, or to enter into an arrangement with a foreign manufacturer.

3. Retention of Massillon's Market Share

Finally, Cyclops argues that LTV will unfairly win away Massillon's customers, which LTV could supply from its current excess capacity, leaving Massillon with no market share.[24] Cyclops acknowledges that the proposed Final Judgment requires LTV to establish and maintain a separate marketing organization at Massillon pending divestiture and to refrain from communications between LTV and Massillon regarding prices, terms of sale or customers. Cyclops does not challenge the effectiveness of these provisions, but complains that LTV may have gained important proprietary information before the consent decree was agreed to, or "even before the merger was announced in September 1983." Thus, complains Cyclops, the safeguards in the judgment are "akin to locking the barn after the horses have gone." [25]

This is pure speculation, the implications of which mean that divestitures in Section 7 cases could rarely be successful. Indeed, the divestiture of Midland that Cyclops seeks would be subject to the same infirmity to an even greater degree, since Midland is already part of LTV, which would retain knowledge of all of Midland's customers. In any case, the Government understands that LTV and Republic exchanged no proprietary information about customers either before the consent decree was agreed to or afterward.

Cyclops implies that LTV will, in bad faith, inadequately staff the Massillon marketing organization, and "retain the cream of Republic's marketing force." The Government does not presume such conduct, which would, in all likelihood, violate the judgment.[26] The defendants' response will detail the measures they have taken to comply with the judgment in this regard. The defendants have described these measures to us, and we find them satisfactory.

Cyclops points to LTV's current excess capacity, the existence of which the Government does not deny, and worries that it will be used to capture Massillon's customers. LTV has long had excess capacity, as has every steel company, but LTV has not yet succeeded in capturing Massillon's customers, or those of Cyclops, for that matter. If Cyclops means that after the divestiture there will be competition between LTV and Massillon then the Final Judgment will have succeeded.

C. Effect of the Divestiture on Imports

Cyclops argues that it is most likely that the purchaser of Massillon will be a foreign steel producer, who will import its own hot bands and somehow circumvent U.S. trade laws. This argument has no merit. First, it is not at all so certain that the buyer would be a foreign producer, in view of the number of firms that have expressed interest in Massillon. In any case, if the buyer were a qualified foreign company the Government would not object; such a result could be highly procompetitive and, incidentally, would also ease Cyclops' worries about its supply of hot bands.

The mere acquisition of a U.S. plant by a foreign producer does not provide some kind of immunity from the U.S. antidumping laws. Those laws are adequate to deal with such a situation. There is no "public policy limiting foreign imports,"[27] and no policy against the ownership of U.S. manufacturing facilities by foreign suppliers of raw materials. There is a clearly stated public policy favoring competition, as expressed in the antitrust laws. Cyclops' position opposing any ownership of domestic cold rolled stainless steel facilities by a foreign producer is in conflict with that policy.

D. Divestiture of Midland

Cyclops urges the Court to reject the proposed Final Judgment and to require the divestiture of Midland instead.[28] Cyclops correctly notes that in the *Stroh* litigation this Court declined a similar invitation from a third party competitor. The Government respectfully submits that the Court should do so again. The issue is whether the relief in the proposed Final Judgment is in the public interest, not what is best for Cyclops. Cyclops has decided that it does not want to buy Massillon, for its own reasons, but it continues to covet Midland.[29] Those desires, however, are not relevant in this proceeding.

To require LTV to sell Midland would be to make it divest more than it acquired. LTV would then be without continuous casting capability in stainless steel, at least for the short run, and would be a substantially weaker competitor in that market than it was before the merger. The Government would not, and did not, automatically reject such relief where it is necessary to eliminate the anticompetitive effects of the merger, but it concluded that the divestiture of Massillon together with

[21] Comment at 54–55.
[22] Paragraph 9.
[23] Comment at 56–57.
[24] Comment at 48–57.
[25] Comment at 50.
[26] *See* paragraph VIII C.
[27] Comment at 61.
[28] Comment at 65–69.
[29] See Will Affidavit, ¶18.

the injunctive provisions designed to preserve and enhance Massillon's competitive viability will be sufficient to restore the competition that the merger would eliminate. That conclusion is amply supported in the record.

E. Cyclops' Document Request

Cyclops has renewed its request for nearly all documents possessed by the Government and the defendants relating to the stainless steel aspects of this case. There is no basis for such a request, and absolutely no precedent for it. To grant it would create an intolerable delay in this proceeding, a delay that Cyclops professes to want to avoid.[30] Such discovery would lay open the confidential files of defendants to a competitor, and would disclose the work product of Government attorneys for no good reason.

Most importantly, Cyclops has not established any legitimate need for additional information from the parties. A fully informed consideration of Cyclops' hot band concerns lacks only information from Cyclops itself about its hot band sources, but even without that information it is clear that Cyclops need not worry about its hot band supply. Cyclops' concerns about the viability of Massillon have also been fully ventilated. There is now a great deal in the record on the operations at Massillon, on the efforts by defendants to maintain the viability of the plant and to interest potential purchasers in it, and on the operation of the hot band supply agreement. Cyclops' document request therefore should be denied in its entirety.

Response to Wheeling-Pittsburgh Steel Corporation

Wheeling-Pittsburgh objects to the relief in the proposed Final Judgment relating to the alleged violation in carbon and alloy sheet and strip, the divestiture of Republic's Gadsden, Alabama mill. Wheeling-Pittsburgh is itself an integrated steelmaker, which also manufactures hot and cold rolled carbon and alloy sheet, among other products.

Wheeling-Pittsburgh comments that the divestiture of Gadsden will not be sufficient to remedy the anticompetitive effects of the merger in these markets and that Gadsden is not an attractive, readily saleable mill. The anticompetitive effect foreseen by Wheeling-Pittsburgh from the merger of LTV and Republic as modified by the proposed Final Judgment is that smaller steel companies, including Wheeling-Pittsburgh, will be subject to possible predatory pricing and the restriction of credit. Finally, Wheeling-Pittsburgh complains that the Government's decision to permit the restructured merger was linked to a mistaken policy in opposition to steel import quota legislation.

A. The Context of the Government's Decision

The adequacy of the relief obtained by the Government in carbon and alloy sheet must be considered in light of the violation alleged, and in this context the case was many times more difficult than in stainless sheet and strip. In stainless the increase in concentration caused by the merger was very substantially above the level at which the Department's Merger Guidelines indicated that we would probably file suit. Imports were not a significant factor. It was imperative that we obtain significant relief from this increase in concentration, and it was also evident that this could be done by divestiture of a discrete part of Republic that was not a critical component of the merged company.

In the carbon sheet markets the problem was fundamentally different. Most importantly, the effect of the merger on concentration was only moderate. The post-merger Herfindahl-Hirschman Indexes ("HHIs") calculated by the Government were increased by 176 to 1047 in hot rolled carbon and alloy sheet and by 193 to 1146 in cold rolled. These were not substantially above the minimum levels at which the Merger Guidelines indicated the Department would be "more likely than not" to challenge a merger.

Just as importantly, these numbers themselves were subject to considerable dispute between the Government and the defendants in connection with our analysis of the competitive effect of imported steel. Hot and cold rolled carbon and alloy sheet and strip have long been imported into this country from abroad. For some users foreign steel is not an adequate substitute for domestic sheet steel, but it is obvious that the role of imports cannot be completely ignored in any consideration of the domestic sheet market. The level of these imports fluctuates according to several factors, including levels of demand here and abroad, currency rates and perhaps most importantly, U.S. trade restrictions. In this regard the Government noted that imports from the European Economic Community and Japan, the two single largest sources of imports, were subject to quota arrangements that would not permit an increase in supplies to this country in the event of collusion by domestic manufacturers. We therefore determined that these imports should not be included to any extent in the HHI calculations because they could not be counted on to discipline a price increase here.

The Government was fully prepared to support that position at trial. Defendants, however, would have strongly opposed it, and the outcome was far from certain. Had defendants prevailed, and had the Court determined that all imports should be counted at their present levels, the post-merger HHIs would have fallen below 1,000.[31] Thus, it was not at all certain that the Government would have prevailed at trial on the legality of the merger in carbon and alloy sheet and strip.

Defendants also would have pressed at trial, by way of an affirmative defense, the fact that both companies had sustained very substantial losses in 1982 and 1983. LTV lost $155 million in 1982 and $181 million in 1983. Republic's losses were $239 million in 1982 and $326 million in 1983. These losses continued in the first quarter of 1984, with LTV's steel operations suffering a pre-tax loss of $63 million and Republic, $38 million. Defendants claimed that the merger of the two companies would produce very significant savings and operating efficiencies that would have substantially improved the competitive viability of the merged company.

The Government examined these claims in detail and concluded that neither firm was failing nor were they suffering from such fundamental weaknesses that their market shares overstated their future competitive significance.[32] We also concluded that while some of the claimed efficiencies would be realized, some were overstated and others could be achieved by means other than the merger. Nevertheless, these claims were not frivolous, and created substantial further doubt about the Government's ability to succeed at trial.

Finally, the Department's initial decision to oppose the merger of LTV and Republic was made when an even more anticompetitive merger between

[30] See Comment at 67.

[31] On June 14, 1984, the Antitrust Division issued revised Merger Guidelines. Those new Guidelines contain a somewhat different approach on the manner in which imports are included in market share calculations. All imports, including those from countries that are subject to quota limitations, are initially included, but then their significance will be evaluated in light of all factors affecting imports, including trade laws. Paragraphs 2.3 and 3.23, U.S. Department of Justice Merger Guidelines, as of June 14, 1984. A copy of the new Guidelines is attached to these responses as Appendix A.

[32] *See* new Merger Guidelines, paragraph 3.22.

United States Steel Corp. and National Steel Corp. was pending. While the legality of LTV-Republic transaction did not depend on the likelihood of the second merger, the two together posed a completely unacceptable change in the structure of the domestic steel industry. The two merged companies together would have controlled over 50 percent of total domestic sheet production. U.S. Steel and National subsequently abandoned their transaction, however, which made it easier for the Government to consider a compromise in this action.

The settlement of the suit in carbon and alloy sheet by the divestiture of Gadsden is indeed a compromise. The Government did not achieve all the relief it might have obtained had the case been litigated and won, but there was substantial doubt about that outcome. The divestiture of Gadsden will preserve a competitor in the domestic sheet market, in which entry barriers are high, and will reduce the increase in concentration from the merger to a level that is only slightly above the minimum level at which, under the Guidelines, the Department has concerns. In this context the settlement is reasonable and in the public interest.

B. Effect of the Divestiture of Gadsden

Republic operates three mills that produce hot and cold rolled carbon and alloy sheet, located at Gadsden, Cleveland, Ohio and Warren, Ohio. The Government was persuaded that divestiture of either of the other two mills was unnecessary to effectively redress most of the anticompetitive effects of the merger and also that both mills were so important to the operations of the combined company that their divestiture was not feasible. Gadsden currently accounts for 15 to 20 per cent of Republic's output of sheet products. The separation of this production from Republic will reduce the post-merger HHI in hot rolled carbon and alloy sheet, with all imports from Japan and the EEC excluded, to approximately 1006. The HHI in cold rolled sheet will be reduced to approximately 1091. If imports from Japan and the EEC are included, these HHIs would both be below 1000.[33]

Wheeling-Pittsburgh's principal objection to the proposed relief in carbon and alloy sheet is that, in its view, Gadsden cannot readily be sold and, if sold, would not be profitable.[34] As with Massillon, however, defendants have received considerable interest from potential buyers in Gadsden. The Government understands that up to 40 inquiries have already been made. We also understand that the plant would be profitable if it were not for an unfavorable iron ore contract, which under the judgment the buyer need not assume.

Wheeling-Pittsburgh complains that Gadsden's location places it at a disadvantage in serving the large automobile manufacturers in the upper Midwest. It is true that Gadsden is not the most advantageously located to serve the automobile companies, but it has never relied on such sales to any great extent. Gadsden can serve a variety of customers from its locations, as it has done in the past. It is part of a single market[35] and will continue to exert a competitive influence on all other sellers in it.

Wheeling-Pittsburgh surmises that much of Gadsden's production is consumed by Republic at other mills, and that the new owner will not enjoy these "captive" sales. This is not true, the Government understands. Of the Republic plants substantially more of the output at Warren is further finished by Republic than that of Gadsden.

As with every steel mill in this country, Gadsden is in need of some modernization. Wheeling-Pittsburgh refers to press reports that Republic has postponed or cancelled some of its plans for these expenditures. These decisions are understandable in the context of Republic's deteriorating financial condition, but they do not reveal much about the viability of Gadsden in the hands of an independent competitor. It is recognized that the "hot end" at Gadsden (which includes the coke ovens, blast furnaces and steelmaking furnaces) is in need of more investment than the finishing end, which is efficient.[36] The buyer could decide to purchase slabs for rolling at Gadsden from elsewhere in the U.S. or abroad.[37] If that were done, Gadsden would continue as an effective competitor in carbon sheet, and the ongoing investment required would be substantially reduced.

In this regard, Wheeling-Pittsburgh, like Cyclops, appears to fear that the buyer of the divested mill will be a foreign producer. As in stainless steel, such a development could be substantially procompetitive. Indeed, there is now a greater likelihood than ever that foreign producers would be interested in Gadsden. The domestic industry, joined by the United Steelworkers, is pressing for substantial restrictions on imports under U.S. trade laws. Only last week the International Trade Commission made a preliminary finding that could lead to important restrictions on imports of all hot rolled and cold rolled sheet. In light of the continuing threat of such restraints, foreign producers are likely to be more interested than ever in owning manufacturing facilities in this country.[38] Gadsden presents a unique opportunity for such an entry.

In sum, the Government fully expects that Gadsden will be sold to a qualified buyer and subsequently operated profitably as a viable competitor in the U.S. market.

C. The Procedures Followed by the Government

Wheeling-Pittsburgh, like Cyclops, claims that the Government capitulated in this case because of criticism from outside the Department about the decision to block the merger. Wheeling-Pittsburgh also complains that the Division failed to adhere to its stated "fix-it-first" policy, which requires that divestitures for the purpose of eliminating anticompetitive overlaps be accomplished before the merger is consummated. We have addressed the first point in our response to Cyclops, above. We briefly discuss our deviation from the "fix-it-first" policy.

Fix-it-first exists because it is obviously desirable that divestitures be accomplished as quickly as possible. In most cases this can be done before the merger is consummated, with no adverse effect upon the merging parties. Those conditions did not exist here, however. Both companies, and especially Republic, are in difficult financial condition. They are not failing, but they are in ill health, and further substantial delays would aggravate that situation. As stated by Assistant Attorney General McGrath to Acting

[33] An affidavit by Paul E. Godek, an economist in the Economic Policy Office of the Antitrust Division, attached hereto as Appendix B, further explains these calculations.

[34] Comment at 15–23.

[35] No party or commenter, including Wheeling-Pittsburgh, has ever contended that there is anything but a national market in carbon and alloy sheet.

[36] *See* comment of United Steelworkers Union, at 2.

[37] The proposed Final Judgment specifically recognizes this possibility. Paragraph IV B.

[38] Recent examples of such entry by foreign producers into this market include the purchase of a minority interest in Wheeling-Pittsburgh itself by Nisshin, a Japanese steelmaker, and the formation of a joint venture between the two to construct and operate a steel coating line, the purchase of a 50 per cent interest in National Steel by Nippon Kokan K.K., also a Japanese Company, and a tentative agreement involving the purchase of the Fontana plant of Kaiser Steel by a group including Kawasaki Steel. Recent entry by Honda and Toyota into automobile manufacturing in the U.S. is another example of this phenomenon.

Deputy Attorney General D. Lowell Jensen, "Given the current state of the steel business, a requirement that plants be sold prior to merger would not be practical and thus would make the merger impossible." [39]

In its considered judgment the Government concluded that it should permit the merger to go forward if it could obtain the strongest possible assurances that divestiture would proceed promptly. We believe that we have those assurances. The proposed Final Judgment contains provisions not usually found in such degrees, designed to achieve prompt divestiture. In the preamble on the first page, "prompt and certain divestitures" is expressly made "the essence of this agreement." It is also stated:

> the defendants have represented to the plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below.

Defendants, and if necessary the trustee, must sell the plants free of mortgages, encumbrances and liens, contractral obligations such as unfavorable ore and fuel contracts and accrued pension rights or termination payment rights. As noted above, the buyer of Massillon is entitled to a favorable hot band supply contract, and the buyer of Gadsden is entitled to a supply contract for raw materials for six months on the same terms currently availble to Gadsden.[40]

In another unusual provision, defendants have waived their right to object to the selling prices obtained by the trustee, except defendants must receive the cost of their inventory. Defendants cannot object to a trustee sale on any ground except malfeasance. The trustee is empowered to sell the plants at "such price and on such terms as are then obtainable upon a reasonable effort."[41] Finally, the trustee's fee is to be based on an arrangement which provides an incentive to dispose of the plants promptly.[42]

Wheeling-Pittsburgh characterizes the Government's decision not to insist on fix-it-first as a "dramatic departure" from Antitrust Division policy, but it was not so. In other recent cases, where justified by unusual facts, the Government has consented to the entry of a judgment providing for divestiture after consummation. One of those was the *Stroh* litigation in this Court. [43] *See also, United States* v. *Baldwin United Corp.*, 1982–2 Trade Cas. (CCH)¶ 67,788 (S.D. Ohio 1982). Two major oil company mergers recently received tentative approval in the Federal Trade Commission on the basis of an agreement providing for divestitures after consummation.[44]

D. Anticompetitive Effects Alleged by Wheeling-Pittsburgh

The essence of Wheeling-Pittsburgh's complaint is that the increase in concentration brought about by the merger "will adversely affect smaller steel companies making these products, by creating the potential for a predatory pricing and restriction of credit.[45] In short discussion of these concerns, Wheeling-Pittsburgh notes that the steel industry has experienced a deep recession in recent years, in which domestic manufacturers attempted to maintain higher levels of production than warranted by demand, in an effort to cover fixed costs. The result was dramatically lower prices and significant losses by "virtually every integrated producer."

The Government does not dispute that these events occurred, but they bear little or no relation to the possibility of predatory pricing. There was no predation involved in the conduct described by Wheeling-Pittsburgh, merely an attempt at survival. Moreover, it was the larger firms who suffered correspondingly more. In the steel industry bigness is no longer necessarily a virtue, as evidenced by the success of the mini-mills.

Wheeling-Pittsburgh expresses concern that when credit becomes more scarce the lending institutions will tend to favor the larger companies more. They will "opt (or be forced) to go where the dollars are and support the continuation of large, market-dominate [sic] companies." [46] Wheeling-Pittsburgh provides no support for this hypothesis, however, and we simply do not understand why this should be so. Lenders will evaluate each borrower on its own merits. As noted above, mini-mills have apparently not suffered from a lack of access to the capital markets because of their size. In any event, Wheeling-Pittsburgh is not a small company. In 1983 it had assets of $1.2 billion, which ranked it 221 among the Fortune 500 industrial companies, and sales of $772 million, ranking it 352.

There are no cases under Section 7 of the Clayton Act holding a merger illegal for the reasons stated by Wheeling-Pittsburgh. Its comment is notable for what it does *not* say: Wheeling-Pittsburgh makes no allegation that the merger of LTV and Republic will increase concentration to the level that the likelihood of collusion among sellers will be increased. This is the economic rationale underlying Section 7, but it is not part of Wheeling-Pittsburgh's analysis. Wheeling-Pittsburgh apparently fears more competition, not less, from both domestic and foreign sellers. We turn now to Wheeling-Pittsburgh's last comment, regarding import competition.

E. Relation of the Merger to Trade Policy

Wheeling-Pittsburgh claims that the Department agreed to the settlement because it, along with others in the Administration, opposes steel quotas and, it is contended, approval of the merger would help defeat such quotas.[47] This is simply not true. We explained the reasons for our decision many times and in many forums, including in the Competitive Impact Statement filed on March 22, 1984, in press conferences by senior Division officials and again in these responses. The Department does oppose legislation that would impose quotas on all imports of steel as being unnecessary for the viability of domestic producers and having a highly anticompetitive effect. But our decision on this merger was not based upon that opposition. In stating its position against quotas the Department has never linked its decision on this merger or its general merger policy to that position. The Government's decision in this case is fully consistent with the public interest on its own merits, without regard to any other policy of the Administration regarding imports.

F Wheeling-Pittsburgh's Request for Additional Information

Wheeling-Pittsburgh requests that the Government furnish additional detail regarding its HHI calculations and the effect of the divestiture of Gadsden upon them.[48] The attached affidavit by

[39] Memorandum by Assistant Attorney General J. Paul McGrath to Acting Deputy Attorney General D. Lowell Jensen, March 20, 1984, at 6, Exhibit D to Wheeling-Pittsburgh's Memorandum in support of its motion to compel production of documents, filed April 6, 1984.

[40] Paragraphs IV F, V A, V B.

[41] Paragraph V A.

[42] Paragraph V D.

[43] *United States* v. *Stroh Brewery Co.*, Civil Action No. 82–1059 (D.D.C.) (Pratt, J.).

[44] *In re Standard Oil Co. of Calif.*, No. 841–0109, FTC, 4/26/84 (order tentatively accepting post-acquisition divestiture); *In re Texaco, Inc.*, No. 841–0077, FTC, 2/13/84 (order tentatively accepting post-acquisition relief). Both matters are awaiting final Commission approval.

[45] Comment at 5.

[46] Comment at 6.

[47] Comment at 38–41.

[48] Comment at 14.

Paul E. Godek provides that explanation. Wheeling-Pittsburgh also requests information about production capacities and operating rates of domestic carbon and alloy producers. Those data were not used in our HHI calculations, however, as explained by Mr. Godek, and Wheeling-Pittsburgh has not explained how they would be helpful in this proceeding. Moreover, as Wheeling-Pittsburgh itself knows, a great deal of information of that type is exchanged by members of the American Iron and Steel Institute, which include Wheeling-Pittsburgh. The company has had access to that information, but did not employ it in any way in making its comment.

At p. 24 of its comment Wheeling-Pittsburgh requests additional information regarding the Gadsden plant. Much of that has been provided in the responses by the Government and defendants. Wheeling-Pittsburgh also requests information regarding the Antitrust Division's decision not to insist on divestiture before consummation.[49] We believe that information has been supplied.

Finally, Wheeling-Pittsburgh requests information and documents relating to communications between Department officials and persons outside the Department regarding the merger. For the reasons stated above in our response to Cyclops, this request should be denied. To grant it could impose an intolerable delay, and more importantly, would serve absolutely no purpose in these proceedings.

Response to Bliss & Laughlin Steel Company

Bliss & Laughlin Steel Co. (BLS), an independent producer of carbon and alloy cold-finished steel bars, has submitted its comment on the proposed Final Judgment, in which BLS contends that approval of the judgment will have anticompetitive effects in the carbon and alloy hot rolled and cold finished steel bar markets. BLS proposes, as a solution, that Republic's Massillon, Ohio cold finished bar facility be divested.

The Government responds that BLS' objections to the effect of the merger in bars are not relevant to this proceeding because those issues were not part of any allegation in the Complaint and are not the subject of the proposed agreement between the parties. This Court, in the exercise of its responsibilities under the APPA, is not the appropriate forum for the resolution of BLS' concerns. The Government will also explain, however, why it concluded that the merger of LTV and Republic will not violate the Clayton Act in hot rolled and cold finished bar.

We first address the appropriateness of BLS's objection in bar, a product that is not the subject of the Government's suit. The relevant provision of the APPA, 15 U.S.C. § 16(e), quoted in full above in the discussion of applicable legal principles, states that in making its determination of whether the entry of the judgment is in the public interest the Court may consider, among other things:

(1) the competitive impact of such judgement, including termination of *alleged violations*

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the *violations set forth in the complaint*. (emphasis supplied)

Thus, it is clear from the statute itself that the public interest determination is to be made within the context of the violations alleged in the complaint.

The purpose of these proceedings is to consider the adequacy of the proposed Final Judgment, not the Complaint. As stated by one District Court: "APPA, under the circumstances of this case, [does not] permit or require this Court to force the Attorney General to assert additional claims not alleged at the outset of the case." *United States* v. *Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. ¶ 61,508, at 71,979 (W.D. Mo. 1977). In *United States* v. *Nat'l Assn. of Broadcasters*, 1982-83 Trade Cas. ¶ 65,050 (D.D.C. 1982), Judge Greene declined to consider a particular concern raised in a comment since it was "not involved in the instant lawsuit nor is it directly affected by the proposed judgment." *Id.* at 70,851 n. 7

In enacting the APPA Congress did not intend to affect in any way the usual exercise of prosecutorial discretion by the Government in bringing antitrust cases. The posture of this proceeding with respect to the bar markets is the same as if the originally proposed acquisition had involved only the sale of Republic's bar operations to LTV and the Government had decided, as it actually did in bars, not to challenge the acquistion. Under such circumstances, which occur often in the Government's exercise of its responsibilities under the premerger review provisions of 15 U.S.C. § 18a, the matter would never have been presented to the Court, and the appropriate avenue for a competitor would have been the filing of a private action against the defendants. The present case is no different simply because the Government found violations in other markets and negotiated a settlement to rectify those violations. The Government respectfully submits that the proposed Final Judgment should not be rejected because the Government did not allege a Clayton Act violation in bar. Nevertheless we proceed herewith to explain the Government's reasons for its decision in those markets.

BLS asserts that the increases in concentration in the bar markets, measured by the Herfindahl-Hirschman Index ("HHI"), are unacceptably high under the standards contained in the Department's Merger Guidelines. In fact, however, the market shares computed by the Government were substantially lower than those computed by BLS. The bar markets are fundamentally different from the sheet markets that are the subject of this case. There are many more bar producers than sheet producers, a function of the substantially lower entry barriers in bars.[50] Moreover the bar markets are undergoing significant change, specifically in the form of the growing presence of the so-called mini-mills, and the retreat of the large, integrated producers.

The technology and operating practices employed by mini-mills are extremely efficient and are considered by many experts to be the way of the future. As stated by Donald F. Barnett and Louis Schorsch in *Steel: Upheaval in a Basic Industry* (1983) at 88-89:

Since the mid-1960s, and especially during the 1970s, mini-mills have gradually pushed their integrated competitors out of these product lines [lower quality bars]. Integrated firms have thus either given them up entirely or retreated to the higher quality ranges that have been difficult for mini-mills to produce. Yet the pace of technical progress in the mini-mill sector is such that they are already moving into higher quality product lines. The eventual elimination of integrated producers from such product categories now seems inevitable, barring fundamental changes in the operating practices of the integrated sector.

Faced with these rapidly evolving markets and the large number of competitors in them, some of whom are not members of the American Iron and Steel Institute and therefore do not report their shipments to that trade association, the Government found initially that it could not calculate market shares to the same degree of accuracy as in the sheet markets. Our preliminary calculations showed, however, that the post-merger HHIs in the hot rolled and cold finished bar markets were at or near 1000. We knew that these could be refined, but the would almost certainly be slightly lower,

[49] Comment at 29.

[50] BLS recognized this fact, stating that there are "about 48 U.S. firms currently producing cold finished bars." Comment at 7.

as we identified more small firms who were not reporting to the AISI. In any event these HHIs indicated that a Clayton Act violation was highly problematical, and our consideration of relevant "other factors" caused us to conclude that the merger would not be illegal in bars.

BLS addresses some of these other factors. It notes the proximity of the bar plants of LTV and Republic.[51] This in true of all major bar producers, however, since their customers are also clustered in the Midwest and Northeast. The fact that the two firms offer similar products is not of overriding importance, in light of the large number of firms that offer competing products.

Another factor emphasized by BLS in its comment is the existence of information exchanges in the cold finished bar market. However, the proposed Final Judgment, in paragraph XI, prohibits the combined company, which would be one of the largest firms in the industry, from exchanging operating, output or efficiency data for its operating units, including bar mills, for a period of ten years. In addition, many of the independent cold finished bar producers and mini-mills are not members of the AISI, the primary medium for the exchange of information. Under these circumstances, it is doubtful that information exchange is a meaningful consideration.

BLS does not address the most significant "other factor," barriers to entry. Entry into the production of cold finished bars requires only the purchase and installation of draw benches and other finishing equipment, an undertaking that can be completed in a short period of time with a relatively small investment. This fact is evidenced by the large number of small, independent producers currently in the market. Furthermore, mini-mills that produce hot rolled bars are in a very favorable position to enter the cold finished bar market and Nucor, a large mini-mill, has recently done so. Entry requirements into hot rolled bar are more substantial, but they are not insurmountable. There has been significant new entry by mini-mills in the market in recent years, while in the sheet markets that are the subject of this case there has been none. Thus, these lower entry barriers were an important factor in the Government's decision that the merger did not violate the Clayton Act in bars.

BLS' principal objection to the merger appears to be that the combined firm, an integrated producer of both hot rolled and cold finished bars, would have such power over price that it could "squeeze" independent cold finished bar producers by raising the price of hot rolled bar, the raw material for cold finishers, and lowering the price for cold finished bar. In such a situation, the cold finished bar producers would find the spread between the cost of their raw materials and their selling prices to be unacceptably low.

These contentions ignore the fact that, in 1982, there were at least 31 suppliers of hot rolled bars. If LTV decided to apply such a squeeze, BLS could turn to one or more of the other hot rolled bar manufacturers, many of whom are nonintegrated. The structure of the hot rolled bar market, characterized by low-to-moderate concentration and the continuing new entry by mini-mills, makes collusion in the market less likely.[52]

In sum, the BLS comment relating to the effect of the merger in hot rolled and cold finished bars is not a proper issue in this proceeding because the complaint did not allege any anticompetitive effects in bars. Further, the Government has explained why, in its view, the merger would not violate Section 7 in those markets.

Response to the United Steelworkers of America

The United Steelworkers of America, AFL-CIO-CLC, commented that it is not opposed to the merger of LTV and Republic, but states its concern that the required divestitures of Massillon and Gadsden are "thinly veiled excuses for closing plants and laying off workers." The United Steelworkers expressed its opposition to the divestitures because of the likelihood, in the United Steelworkers' view, that the plants would ultimately be closed and jobs lost.

The Government responds that it is our conclusion that the unrestructured merger of LTV and Republic would violate Section 7 of the Clayton Act, and could not be approved without the divestitures. The intent and purpose of the proposed Final Judgment, however, is to preserve Massillon and Gadsden as viable, continuing businesses, offering significant competition in their respective markets.[53] It is not anticipated that the plants would be closed,[54] and the Government will not approve of any purchaser who is likely to close the mill after reaping short term profits.

The Steelworkers Union comments that Massillon would be "perilously dependent" upon LTV for its critical raw material, stainless hot bands, under conditions that would permit LTV to "control the cost of [Massillon's] operations." We have dealt with this objection at length in our response to the Cyclops comment, and will not repeat those points in detail. We state again, however, that Massillon will be free to obtain its hot bands from any source, but that the proposed Final Judgment guarantees that Massillon can, if it wishes, obtain all of its hot bands from LTV at LTV's cost plus ten per cent. We view this as a highly favorable option for Massillon. The LTV hot bands will be of high quality, principally made from continuously cast slabs at LTV's Midland plant. The cost-plus contract can be negotiated to prevent the "manipulation" that the Steelworkers Union fears, and the proposed Final Judgment provides that the parties can resort to the Court if disputes cannot be resolved. It is likely that Massillon's hot bands under the supply contract will cost less than those that Republic is now supplying Massillon, and be of higher quality.

The Steelworkers Union is concerned that the replacement of Republic's Canton mill by LTV's Midland mill as the primary source of supply for Massillon will cause LTV to close or "contract" Canton resulting in a loss of jobs. The terms of the hot band supply agreement contained in the Appendix to the proposed Final Judgment, however, require that LTV continue to supply Massillon's requirements of certain specialty hot bands from ingots made at Canton. It may be that Canton will be contracted, or even ultimately closed, but that would have been equally likely if the divestiture of Massillon had not been required. In view of the higher quality and lower cost of the continuously cast slabs made at Midland, and the excess capacity there, LTV undoubtedly would have substituted as much production from

[51] Comment at 9.

[52] BLS asserts that recently announced Republic price increases in hot rolled and cold finished bar, which had the effect of narrowing slightly the margin between prices of the two products, are the first indication of implementation of such a predatory pricing scheme. It should be noted, however, that the narrowing of the margin is very slight, and results from a slightly larger increase in the hot rolled bar prices than the increase in the prices of cold finished bar, not from a *lowering* of cold finished bar prices, as was the case with the Japanese West Coast experience described by B&L

[53] *See* part IV of the proposed Final Judgment.

[54] See transcript of press conference with J. Paul McGrath, Assistant Attorney General in charge of the Antitrust Division, Appendix B to the Government's response to Wheeling Pittsburgh's motion to compel production of documents, filed April 20, 1984, wherein Mr. McGrath stated at p. 21: "It will not be acceptable to us to have those two plants close down. . . " *See also* p. 23.

Midland for that from Canton as possible.

The United Steelworkers express a similar concern about Gadsden: that it may be closed after the divestiture. We refer to the Government's response to Wheeling-Pittsburgh for a detailed discussion of that point. In today's steel industry no one can guarantee that Gadsden or any other steel mill will remain open indefinitely. The Government, and more than anyone, the Steelworkers Union, are painfully aware of the many recent closings of steel mills and the attendant loss of jobs. These closings were done independently by steel companies. There was no court order requiring divestiture. If, as the proposed Final Judgment envisions, Gladsden and Massillon are sold to companies for whom these plants will be their principal U.S. operations, it is more likely, not less so, that the new owners will strive to keep the plants in operation. They will not have other plants on which to fall back, as do LTV and the major integrated mills.

The purpose of the proposed Final Judgment is to preserve competition. In doing so it will also preserve jobs. In that regard the settlement is fully consistent with the goals of the Steelworkers Union.

Conclusion

The Government has given careful consideration to the four comments submitted in this case and concludes, for all of the reasons given above, that the entry of the proposed Final Judgment is in the public interest. We therefore urge the Court, after consideration of the comments and the reponses thereto, to enter the Final Judgment forthwith.

The defendants have informed the Government that their merger agreement expires on June 29, 1984 and that they intend to consummate the transaction on that date. Defendants have satisfied all waiting periods imposed by the statutory premerger notification procedures, 15 U.S.C. § 18a, and are under no restraints that would prevent such consummation from taking place. The Government does not object to consummation, providing the Court has had sufficient time to consider the comments and the responses thereto.

Respectfully submitted,

John W. Clark,

Eric F. Kaplan,

Attorneys, Department of Justice, Antitrust Division, Washington, D.C. 20530, Telephone: (202) 724-6335.

Dated: June 19, 1984.

Appendix B

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *The LTV Corporation; Jones & Laughlin Steel Incorporated; J&L Specialty Steels, Inc.; and Republic Steel Corporation*, Defendants.

Civil Action No. 84-0884 (Judge Pratt).

Affidavit of Paul E. Godek

1. I am an economist employed in the Economic Policy Office of the Antitrust Division of the Department of Justice. I received my Ph. D. in economics from the University of Chicago in 1983. I have been with the Department of Justice since August, 1983.

2. I am assigned to the Antitrust Division staff responsible for the investigation and litigation of this case. I have participated in all phases of this matter since the proposed merger was announced in September of 1983. Among my assignments was the responsibility for calculating the market shares and Herfindahl-Hirschman Index ("HHI") measures of concentration. Below I explain our methodology for gathering the information and making the calculations for the hot rolled and cold rolled sheet markets.

3. About one-third of all hot rolled sheet is sold without further processing directly to users and service centers, which perform some additional functions before selling to users. The remainder is further processed to make such products as cold rolled and galvanized sheet. Since the hot rolled sheet used to make further finished products could also be sold as hot rolled sheet, however, it too should be considered as part of the market. Each firm's market share in hot rolled sheet and strip was calculated by adding to its shipments of those products as reported to the AISI in the case of domestic firms, and to the Department of Commerce in the case of imports, its shipments of cold rolled and galvanized sheet and strip. Market shares in cold rolled sheet and strip were calculated on the basis of shipments of those products. Imports were aggregated by country, on the assumption that many countries coordinate the exports of individual firms through national trade policies.

4. The HHIs for hot rolled and cold rolled carbon and alloy sheet and strip, based on 1983 shipments, are provided in the attached Tables 1 and 2. Also provided therein are the market share for LTV and Republic, assuming that all 1983 imports are included and, alternatively, that all imports except those from Japan and the European Economic Community are counted. These market shares and HHIs are also calculated giving effect to the divestiture of Republic's Gadsden mill, assuming that the buyer is a firm not currently in the U.S. market.

Paul E. Godek.

Subscribed and sworn to before me this 19th day of June, 1984.

Geraldine Schlosburg,

Notary Public.

My Commission expires August 14, 1988.

TABLE 1.—1983 HOT ROLLED CARBON AND ALLOY SHEET AND STRIP HHI

	Gadsden not divested		Gadsen divested	
	All imports except EEC and Japan	All imports	All imports except EEC and Japan	All imports
Premerger	871.0	758.0	871.0	758.0
Post merger	1,047.0	903.0	1,006.0	869.0
Change	176.0	145.0	135.0	111.0
J&L share (percent)	11.6	10.5	11.6	10.5
Rep. share (percent)	7.6	6.8	6.4	5.8

Notes: 1. EEC treated as one country.
2. Gadsden=15 percent of Republic production.

TABLE 2.—1983 COLD FINISHED SHEET AND STRIP HHI

	Gadsden not divested		Gadsen divested	
	All imports except EEC and Japan	All imports	All imports except EEC and Japan	All imports
Premerger	953.0	836.0	953.0	836.0
Post merger	1,146.0	998.0	1,091.0	952.0
Change	193.0	162.0	138.0	116.0
J&L share (percent)	12.4	11.4	12.4	11.4
Rep. share (percent	7.8	7.1	6.3	5.8

Notes: 1. EEC treated as one country.
2. Gadsden=19 percent of Republic production.

Certificate of Service

I hereby certify that I have served the foregoing Comments of Cyclops Corporation, Wheeling-Pittsburgh Steel Corporation, Bliss & Laughlin Steel Co. and the United Steelworkers of America and the Government's responses thereto upon the following counsel by hand delivery on June 19, 1984.

Richard W. Pogue, Jones, Day, Reavis & Pogue, 1735 Eye Street, NW., Washington, D.C. 20006

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and upon the following counsel by mail, postage prepaid

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John W. Clark.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *the LTV Corporation; Jones & Laughlin Steel Incorporated; J & L Specialty*

Steels, Inc., and Republic Steel Corporation, Defendants.

Civil Action No. 84-0884; (Judge Pratt).

Comments of Wheeling-Pittsburgh Steel Corporation

The following comments are submitted on behalf of Wheeling-Pittsburgh Steel Corporation ("Wheeling-Pittsburgh") on the proposed Final Judgment, Stipulation and Competitive Impact Statement filed with the Court in this case on March 22, 1984. Unless otherwise indicated the term "Consent Decree" is used herein to subsume these documents. Such comments are submitted pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) ("the Tunney Act") and the notice required thereby which appeared in the Federal Register of April 5, 1984 (49 F.R. 13603, et seq.).

I. Background

In September 1983 LTV Corporation ("LTV") and Republic Steel Corporation ("Republic") announced the intention to merge to form a new company, LTV Steel Co. A wholly owned subsidiary of LTV, Jones and Laughlin Steel Incorporated, is now the 3rd largest domestic steel producer, with 8.6% of domestic capacity, (hereinafter the term LTV includes this subsidiary). Republic is the country's 4th largest steel producer, with 7.3% of domestic capacity. The new company would be the second largest domestic steel company with approximately 16% of domestic capacity. A fuller description of the transaction is contained in Section II of Wheeling-Pittsburgh's memorandum filed with the Court on April 6, 1984.

On February 15, 1984, J. Paul McGrath, Assistant Attorney General for Antitrust announced that the merger would be opposed by the Department by the initiation of a civil action under the Clayton Act, as amended, should LTV and Republic proceed with the merger. Mr. McGrath stated that the proposed merger was deemed by the Department to violate Section 7 of the Clayton Act. The basis for the Department's position was contained in a press release issued February 15, 1984, (Exhibit B to Wheeling-Pittsburgh Memorandum of April 6, 1984), which stated in part:

"After an exhaustive investigation of the proposed deal, we concluded that the merger would sharply increase concentration in critical parts of the steel industry where only a few domestic companies compete. We concluded that the increased concentration would be unacceptable high under the standards contained in the Department's merger guidelines and under applicable law. On that basis we have decided to oppose the merger." (DOJ Press Release of February 15, 1984, at pages 1-2)

In support of this conclusion the press release stated that the post-merger company would control almost half of domestic production of stainless steel sheet and strip and would be the largest producer of carbon and alloy sheet and strip, with well over 20% of the market. It was stated that with respect to both products the increase in market concentration resulting from the merger was well in excess of the Department's guidelines, as measured by the Herfindahl-Hirschman Index (HHI) (Press Release, pages 2-3). Mr. McGrath further noted that the claims of LTV and Republic that the merger would produce operating efficiencies had little justification, noting that "there was little or no basis for many of the claimed efficiencies" (Press Release, page 4).

This was where the matter stood until an awesome lobbying campaign forced the Department of justice to retreat and agree to the proposed Consent Decree now before the Court. The Consent Decree was announced by a press release issued by Mr. McGrath on March 21, 1984. The rationale for the reversal by the Department of Justice is contained in this press release and a memorandum from Mr. McGrath to Mr. D. Lowell Jensen, Acting Deputy Attorney General, of March 20, 1984 (the "Jensen Memorandom"), (Exhibit D to Wheeling-Pittsburgh Memorandum of April 6, 1984). The Consent Decree is widely regarded within the steel industry as a fig leaf for the abdication of the government's responsibility for enforcement of the antitrust laws.

II. Description of Wheeling-Pittsburgh

Wheeling-Pittsburgh is the eighth largest steel producer in the United States. It is one of the smallest integrated producers with about 3% of domestic capacity. Its steelmaking facilities are located in the Monongahela Valley in Pennsylvania and the Ohio Valley in West Virginia and Ohio. Its corporate offices are located at Four Gateway Center, Pittsburgh, Pennsylvania. Its principal products are hot and cold rolled sheet, railroad rails, pipe and galvanized products.

Approximately 70% of Wheeling-Pittsburgh's finishing capacity is for the production of carbon and alloy sheet and strip. It is, therefore, in primary competition with both LTV and Republic in the market for hot and cold rolled carbon and alloy sheet and strip steel and will be adversely affected by the greatly increased concentration of economic power with respect to such products which would result from the merger of these companies.

As noted above Wheeling-Pittsburgh is a major producer of carbon and alloy sheet and strip. Its comments will be addressed primarily to this product area.

Wheeling-Pittsburgh's only business is steel. It does not have interests in other areas of economic activity and has invested heavily in the modernization and improvement of its steelmaking facilities. In the last five years it has invested over $500 million in new and improved technology for steelmaking, finishing and pollution control. Relative to its size it has over this period far and away the highest rate of investment in the steel industry. This is the pathway of survival for the U.S. steel industry—not anticompetitive mergers.

III. Further Concentration Will Adversely Affect Small Steel Companies With the Potential for Further Concentration and Reduced Competition

Increased concentration of market power in carbon and alloy sheet and strip will adversely affect smaller steel companies making these products, by creating the potential for predatory pricing and restriction of credit. To appreciate the dynamics of this process the Court must consider the highly concentrated and capital intensive structure of the U.S. steel industry. The facilities required to produce and finish steel-blast furnaces, basin oxygen furnaces, continuous casters and finishing mills—cost a great deal of money. At normal levels of operation capital costs account for 15-20% of the cost of making steel.

Steel is a cyclical industry and is becoming more so because of a variety of factors, including fluctuating federal fiscal and monetary policy. When there is a slack market for steel the cost of production per ton goes up sharply as fixed costs are distributed over few units. In such periods there is a strong pressure to try to keep volume up as a way to cover a high portion (if only a portion) of fixed capital costs. This has certainly been the case during 1982 and 1983. In the past two years the steel industry experienced the worst recession since the 1930s, if not in our history, with many companies operating at times as low as 30% of capacity. Prices for steel have been well below the cost of production and virtually every integrated steel producer has lost very substantial amounts of money over this period.

Allowance of further concentration of market power will permit the larger companies to maintain volume by undercutting smaller producers with the effect, intended or not, of further

concentration by elimination of competitors. In this cycle the major banks and other financial institutions will opt (or be forced) to go where the dollars are and support the continuation of large, market-dominate companies. When the smoke clears there will be further reduction of competition—and a less efficient and less competitive market—exactly what the antitrust laws are intended to prevent.

IV. Scope of Review.

Under the Tunney Act the Court is required to review a proposed consent decree in a government-initiated antitrust case and to determine prior to entry that it is in "the public interest" (15 U.S.C. § 16(e). The purpose of the Tunney Act is to expose negotiated settlements between the Government and private litigants to public comment and independent judicial examination. The Tunney Act stemmed from Congressional concern with undue political pressure on the executive branch of the government resulting in settlements which were not in keeping with the antitrust laws. Thus, by statute a reviewing court is directed not just to concur that the government and other parties have reached a settlement, but to make a *positive, independent finding* that the settlement is beneficial to the public interest.

For an excellent discussion of the legislative history of the Tunney Act, the role and function of a reviewing court, and the public standard the Court is respectfully referred to a portion of Judge Harold Greene's Opinion filed August 11, 1982 in the AT&T case, Civil Action No. 82-0192, appended hereto as Exhibit I.

In the AT&T case Judge Greene was dealing with a situation where the government sought the breakup of a company alleged to be operating in restraint of trade, whereas the case before this Court presents a prospective violation that would result from a merger. Nonetheless, in substance they present the same question, whether the antitrust violation alleged in the Complaint will be rectified to the degree necessary to eliminate the injury or threat of injury to the public.

In his opinion Judge Greene provides a succinct statement of the reviewing Court's responsibility and function as follows:

"The Court concludes that, taking into account the various legislative and decisional mandates discussed above, it will apply the following standard to its evaluation of the proposed decree. After giving due weight to the decisions of the parties as expressed in the proposed decree, the Court will attempt to harmonize competitive values with other legitimate public interest factors. If the decree meets the requirements for an antitrust remedy—that is, if it effectively opens the relevant markets to competition and prevents the recurrence of anticompetitive activity, all without imposing undue and unnecessary burdens upon other aspects of the public interest—it will be approved. If the proposed decree does not meet this standard, the Court will follow the practice applied in other Tunney Act cases and as a prerequisite to its approval, it will require modifications which would bring the decree within the public interest standard as herein defined." (Opinion, at pages 35-36)

Wheeling-Pittsburgh submits that this standard should be applied by the Court in reviewing the proposed Consent Decree in the instant case. Under it the Court is charged to determine that the antitrust violations alleged in the Complaint are in fact, remedied by the proposed settlement.

V The Merger is a Violation of § 7 of the Clayton Act and the Proposed Divestiture of the Gadsden Plant Does Not Cure This Violation

a. The merger is a violation

With respect to carbon and alloy hot and cold rolled sheet and strip the merger is a major horizontal merger of the 2nd and 6th largest producers in the country. Such mergers are to be viewed very critically under the antitrust laws.

The post-merger company will combine the productive capacity of the LTV plant on one side of Cuyahoga River in Cleveland with the Republic plant on the other side to produce one gigantic facility with the capacity to produce a significant percentage of the U.S. requirements for hot and cold rolled sheet and strip. This mill will contribute to LTV Steel's market dominance. In combination with the other large producers listed in the Complaint—Bethlehem, U.S. Steel and National—LTV will determine pricing for these products. Because of its volume consumers of these products, primarily the automotive, appliance and container industries, will have few domestic alternatives to the procurement of a substantial portion of their requirements from one or more of these companies, effectively reducing competition among them. LTV and Republic now compete in these sectors. That competition will be totally eliminated.

The potential for administered and predatory pricing which now exists with the high degree of concentration in the steel industry will be exacerbated by the merger. If concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great. *United States v. Continental Can Co.* (1964) 378 U.S. 441, 12 L Ed 2d 953, 84 S Ct. 1738.

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. Section 18, Provides in pertinent part:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation . . shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. (emphasis added)

The Supreme Court has stated repeatedly that Section 7 of the Clayton Act represents Congress's determination to prevent acquisitions which lessen the number of independent decision makers in concentrated industries, *i.e.*, those dominated by a small number of firms. *Brown Shoe v. United States*, 370 U.S. 294, 315-316, 320-322 (1962); *United States v. Aluminum Company of America*, 377 U.S. 271 (1964) ("Alcoa-Rome").

As described by the Supreme Court in *Brown Shoe, supra*, Congress adopted the provision because it believed that markets with a relatively small number of independent firms do not perform competitively or efficiently. Accordingly Congress decided to halt trends towards concentration by outlawing acquisitions which lessen the number of independent competitors in markets already dominated by a relatively small number of firms. *Ibid.* Thus, the Supreme Court has construed the Clayton Act as representing a Congressional premise that "(c)ompetition is likely to be greatest when there are many sellers, none of which has any significant market share," *United States v. Philadelphia National Bank*, 374 U.S. 321, 363 (1963).

To assess whether or not a merger *may be* anticompetitive and hence illegal, the Department of Justice has developed merger "guidelines," to guide antitrust enforcement. These have generally been followed by the courts.

In 1982, the Department of Justice revised these merger guidelines. In assessing the legality of a proposed transaction, the Department now relies primarily upon the "Herfindahl-Hirschman Index" ("HHI") as a measure of market concentration (Complaint ¶ 3).

Under the revised merger guidelines, the United States is "more likely than not" to challenge mergers in the postmerger HHI range of 1,000—1,800 if the merger increases the HHI by 100 or more points. 1982 Merger guidelines, Trade Reg. Rep. (CCH) ¶ 4500, p. 6881-3.

In the present case, based on the government's 1982 *domestic production* statistics, the HHI in the carbon and alloy hot rolled sheet and strip market is 1013 and, as a result of the acquisition, will rise to 1219. In the carbon and allog cold rolled sheet and strip market, the HHI is 1104 and, as a result of the acquisition, will rise to 1330 (Complaint ¶¶ 15, 19). Thus, the proposed transaction is presumptively illegal, as the HHI is in the post-merger range of 1,000—1,800 and the merger will increase HHI by over 100 points.

In an industry where a few companies control most of the market and the leading companies are able to set prices the merger of the fifth and seventh largest companies resulting in a company having 12.1% of industry capacity has been held to violate § 7 of the Clayton Act. *United States v. Amax, Inc.* ((1975 D.C. Conn.) 402 F Supp 956). The *Amax* case involved the copper industry. The degree of concentration in the steel industry is comparable to that in copper and the degree of market power which would attach to the merged company in this case would be much greater than in the *Amax* case. Here LTV Steel would have 16% of total capacity and over 20% of carbon and alloy sheet and strip. In *Amax* the Department of Justice argued successfully that a post-merger market share of 6% in a highly concentrated industry was too high.

The following chart illustrates that the level of concentration in the hot and cold rolled sheet and strip markets and the market shares of the two parties are comparable to those in a number of Supreme Court cases in which the challenged acquisitions were held to be unlawful under Section 7

Case	Market share of top 4 firms (percent)	Combined share of firms involved in acquisition (percent)
Alcoa-Rome	[1] 76.0	29.1
Continental Can	63.7	25.0
Stanley Works	50.0	23-25.0
Von's Grocery	24.4	7.5
LTV/Republic:		
Hot rolled	52	20.8
Cold rolled	58	21.9

[1] Top 3.

What is already a very highly concentrated market subject to administered pricing will become more concentrated. Approximately 60% of domestic capacity will be in four companies, rather than five. Had the proposed acquisition of National Steel by U.S. Steel gone forward this would have been three companies. Termination of acquisition of National Steel by United States Steel apparently is given as a major factor in the change in position of the Department of Justice on LTV-Republic (See Jensen Memorandum, page 4). This is a non sequitur. The degree of concentration which would flow from the LTV-Republic merger alone is a violation.

It is not possible for Wheeling-Pittsburgh, or the Court to determine the accuracy of the quoted computations under the HHI since none of the documents containing the basic information used to make them has been placed on the record. To permit the Court to make the independent determination required of it by the Tunney Act the Department of Justice should include in its response to these Comments the assumptions used in making the HHI calculations resulting in the conclusions contained in paragraphs 15 and 19 of the Complaint, including, the following:

1. Industry capacity for production carbon and alloy hot and cold rolled sheet and strip.
2. Operating rates for the carbon steel industry as a whole and for the merged companies.
3. Capacities and operating rates for each of the facilities now operated by LTV and Republic.
4. Productive capacity in these products by company for the top six producers.

b. The Proposed Divestiture of Gadsden Does Not Remedy the Violation

The Complaint alleges that there is a violation of Section 7 of the Clayton Act with respect to carbon and alloy, hot and cold rolled sheet and slab. Is the remedy in the proposed consent decree adequate? The only curative measure is the provision in the Consent Decree (Part IV, page 4) whereby the defendants are required to divest themselves of the Gadsden, Alabama sheet mill currently owned and operated by Republic. This divestiture is not sufficient to mitigate the adverse effect of this merger on competition in the marketplace for hot and cold rolled carbon and alloy sheet.

First, under the most favorable assumptions (that Gadsden is sold and operated at or near capacity) the divestiture does not cure the violation. The Department of Justice calculates that divestiture of the Gadsden plant will produce an HHI for hot rolled carbon and alloy sheet of approximately 1,000 and an HHI for cold rolled carbon and alloy sheet of approximately 1100, with increases in each market of less than 150 (Jensen Memorandum, page 5). These levels are still in excess of the Department's guidelines. The Department's Press Release of March 21, 1984 acknowledges that this divestiture only reduces the "increase" in concentration by one-third.

Second, there is very substantial doubt that the Gadsden plant can be sold and operated as an effective competitor. It is clear from the public comments of spokesmen for LTV and Republic as well as industry analysts that the Gadsden plant was never a significant element in their post-merger plans. The Court is respectfully referred to an article which appeared in Industry Week on April 2, 1984 under the title " 'Limited size' elephants." (Exhibit II). It notes that any "major change' by Justice would have meant a big change in financial terms and quotes Julian Sheer, LTV senior vice president-corporate affairs as acknowledging "the financial deal is exactly the same." In other words, the divestitures are so insignificant, or in harmony with the companies' own plans, that they do not affect the terms of the merger. This supports the conclusion that the remedial effect of the divestitures relative to the antitrust violations initially found by the Department of Justice are cosmetic at best.

This is the view of industry analysts. Exhibit III is an article from the Pittsburgh Press of March 22, 1984 which quoted William Stephens, a steel analyst with Rauscher Pierce in Dallas as saying:

"* * * it's not much different from the original. They certainly didn't have to give up much. Republic probably would have closed the Gadsden plant anyhow."

On February 23, 1984, according to the *Wall Street Journal*, an LTV official stated:

"Justice wants Gadsden divested as a going, viable business, which it isn't. It's a problem plant. But we can't just shut it down; that's the worst solution from Justice's standpoint."

On March 22, 1984, the *Wall Street Journal* reported:

"But industry experts say a Gadsden plant wasn't a stiff price to pay. It is viewed as small, inefficient and able to compete only in sales to smaller buyers in its region. Republic had considered at least a partial shutdown of the plant."

On March 21, 1984, the *Wall Street Journal* reported:

"On the other hand, the one carbon steel facility in Alabama that the merged company will surrender is deemed a marginal plant, portions of which may have been scrapped even without government interference."

Not only is the divestiture of the Gadsden mill minimal in effect there is also a very real question as to whether the Gadsden mill will be divested and

continue to operate. The Consent Decree departs from the normal practice of the Department of Justice which is to require that a divestiture be completed before a merger proceeds—the so-called "fix-it-first" doctrine. Under the Consent Decree the merged company has six months to sell off the Gadsden plant or, failing that, agrees that a trustee may sell the plant. While the Consent Decree (Part IV) purports to require that the Gadsden mill be sold to a buyer who will effectively compete with defendants there is no assurance that it will be. For purposes of analysis divestiture of the Gadsden plant cannot be assumed. If a buyer cannot be found within a year either by the defendants or a trustee, defendants are not obligated to continue to operate the mill pending a sale. If it stays with the merged company there will have been no mitigation of the antitrust violation which prompted this action. If it is closed then the market concentration resulting from the merger is in fact well above that presumed as the basis for the Consent Decree.

It is advanced by the Department of Justice that the required divestiture has a major mitigating effect on the concentration in carbon and alloy sheet which was alleged to be in violation of the Clayton Act by virtue of reducing the *increase* in the HHI by approximately ⅓ (Press Release of March, 21, 1984, page 2). However, it is clear that even when Gadsden divestiture is viewed in its most favorable light the decree of concentration in this case exceeds the Department's guidelines (Jensen Memorandum, page 5). When the tenuous character of this divestiture is recognized its value as a curative measure shrinks to deminimus.

If the plant is eventually closed the divestiture required by the decree becomes a sham. This conclusion was stated expressly by Mr. McGrath in his press conference of March 21 in the following exchange with a questioner:

"Question; Why would the shutdown of the two plants be unacceptable?

"Mr. McGrath: The shutdown of the two plants would be unacceptable because if the plants are simply shut down it does not do anything to help repair the increase in concentration that has occurred.

"Instead, if the plants are operated by a separate entity, there will be a new player in the market. In the case of stainless, there are only a few companies that make stainless steel and we want to make sure that this merger does not reduce the number of companies by one. In the case of carbon and alloy sheet, again there are relatively few companies in this country that are surviving in that business. We want to make sure that the Gadsden facility is run by a company that will be a player in the market, that will therefore increase competition in the market and we want to be sure that the—that it doesn't simply get shut down." (Transcript of Press Conference of March 21, page 23, attachment to Plaintiff's Memorandum of April 20, 1984)

So, the public record shows that effective operation of the Gadsden plant is essential in the eyes of the Department of Justice to cure one of the violations which prompted this action. By Mr. McGrath's own statement quoted above, continued competitive operation of this plant is essential to any remedy of the violation alleged in the Complaint. In the face of these considerations the Department has chosen to depart from its standard "fix-it-first" practice and let the merger go forward with *no* assurance that this divestiture will take place or that, if it does, that the plant will be operated by an effective competitor.

This very substantial doubt is heightened by the following facts about the Gadsden plant:

(1) In 1982, Republic *cancelled* previous plans to modernize the Gadsden facility by installation of new equipment at the 54-inch hot strip mill to permit processing of thicker slabs (Source: Republic 1982 10-K p. 7);

(2) In 1982 at the Gadsden facility, Republic idled its Thomas coke ovens and No. 1 blast furnace and temporarily suspended operations at its No. 2 blast furnace, sinter plant, basic oxygen furnaces and 40-inch blooming mill. Operations at these facilities, except for the Thomas coke plant, sinter plant and No. 1 blast furnace, recommended in 1983 (Source: 1983 10-K p. 7);

(3) In December 1982, Republic entered into a consent order with the state of Alabama pertaining to the operation of the No. 2 Coke battery at the Gadsden plant. That order required Republic to implement an air pollution control program and requires Republic to pay a penalty of over $250,000 if the control program is not implemented. Further, a daily penalty for future violations of pollution standards is imposed and "is applicable *until the battery is permanently shut down.*" (Source: Republic 1982 10-K p. 10);

(4) The Gadsden plant coke oven was named, in 1982, as a "cancer hot-spot" producing potentially dangerous pollution, according to the National Clean Air Coalition (Source: UPI March 10, 1982);

(5) Earlier this year, Republic rejected a proposal made by leaders of the United Steel Workers Union and officials of the Alabama Development Office designed to pump about $19 million in new equipment at the Republic Steel Gadsden plant. According to published reports, the Alabama Development Office made the $19 million modernization proposal "in hope of heading off the possible shut down" of the Gadsden steel plant. (Source: UPI February 2, 1984). Republic's rejection of the $19 million modernization plan suggests that it knew that its merger with LTV would allow it to shut down Gadsden;

(6) Reports have abounded that the Gadsden facility would have been shut down regardless of the outcome of this merger (*e.g.*, UPI February 2, 1984, "The merger is expected to result in some plant closings and the Gadsden operation is rumored to be among those that will be shut down.") When asked in the fall of 1983, to comment on such reports, a spokesman for LTV was quoted as saying: "We're a long, long way from coming to grips with the Gadsden plant * * * That's not to say it's positive or negative." (Source: UPI September 29, 1983). Thus, as of the fall of 1983, LTV officials could not state that the Gadsden operation would continue to exist.

Divestiture of Gadsden is questionable. Successful operation of this plant as an effective competitor to the merger entity is even more questionable. This is apparent from an appraisal of the facility and its products.

Wheeling-Pittsburgh does not have access to other than published data to make such an assessment, but even from such sources it is apparent that this is a very marginal facility. Attached for the Court's reference as Exhibit IV is an excerpt from the Directory of Iron and Steel Works of the U.S. and Canada, 1980 Edition. It shows the characteristics of Gadsden and other Republic facilities.

The Gadsden plant has a 52-inch cold rolling mill. Approximately one-half of cold rolled production in the U.S. is sold for automotive use. The current standard in the automotive industry is to use cold-rolled sheet mostly in the range of 60 to 72 inches, a product that cannot be produced at Gadsden. The Gadsden plant will also lack the ability to produce surface quality that permits the steel to be utilized for exposed auto body panels.

It appears very likely that the Gadsden plant has been sustained in recent years by the use of its products by other Republic facilities. Republic produces a substantial number of fabricated products which use galvanized, hot rolled and cold rolled sheet. These include such items as conduit, drums, lockers, shelving, doors, preengineered buildings and similar products (see "Products," Exhibit IV). It is clear that the merged entity will have

the capacity to supply sheet to the Republic plants making these fabricated products without the Gadsden plant. The Consent Decree does not require the merged entity to buy any production from Gadsden. In addition, one may presume that the Republic tube mills at Counce, Tennessee and Cedar Springs, Georgia have been supplied, in whole or in part, by the Gadsden mill. Clearly, the merged entity will supply these mills from other plants with a loss of market for the Gadsden plant.

There is no question that the merged entity can replace production at Gadsden from other plants both in supplying its fabricating operations and any customers formerly supplied by Gadsden since other plants of LTV and Republic have been operating far below capacity. There is no indication that the Department of Justice has examined the use of sheet produced at Gadsden by Republic fabricating operations and the extent to which the loss of these captive outlets will impair the viability of the plant as an independent operation.

Finally, the Gadsden is handicapped by its location. Without any support from a company with other sheet mills—remember that Mr. McGrath has stated that the buyer must not be in the sheet business—Gadsden will have to market its products on an independent basis to distant markets. Attached as Exhibits V and VI are maps showing the concentration of automotive and appliance plant locations. These are clustered in the Great Lakes region, where they will be effectively served by the mills which the merged entity would be allowed to keep, and a long way from Gadsden, Alabama.

There is simply nothing on the public record to indicate that the Gadsden plant can be sold and function thereafter as a viable competitor to the merged entity.

Under these circumstances Wheeling-Pittsburgh submits that the Court can only determine that the Gadsden divestiture is an effective remedy if it has before it certain information which the Department of Justice had to have in its possession to make a rational judgment to proceed with the Consent Decree.

Accordingly, Wheeling-Pittsburgh requests that in its response to these Comments the Department of Justice provide to the Court the following:

1. Any and all information upon which it relied in determining that the Gadsden plant could be sold to an unrelated party capable of operating it as an effective competitor to the merged company.

2. Its assumptions, and the basis therefor, regarding the capacity of the Gadsden plant and its rate of utilization at various levels of demand and industry operating capacity.

3. Any and all information upon which it relied which shows that the the Gadsden plant would be profitable as an independent facility and therefore atttractive to a potential purchaser.

4. Data showing sales (tonnage and dollars) of sheet and strip produced at the Gadsden plant during 1982 and 1983.

5. Any and all information about Gadsden's current customers and future market potential including specifically the degree to which Gadsden's production has been used by other Republic plants.

c. The Need for the "Fix-It-First" Rule Is Particularly Strong in This Case.

The competitive impact statement also recognizes that the government's "stated policy" is to require the defendants to "complete the divestitures, or at least to reach binding agreements of sale, *prior* to the consummation of the merger " (CIS p. 12) (Emphasis added).

The fix-it-first policy was *not* followed here. Rather, the parties were given authority to merge prior to acconplishing divestiture. Wheeling respectfully suggests that the dramatic departure from policy is not justified.

In analogous circumstances, the judiciary obligates the government to explain a change in its course:

> "An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute."

Greater Boston Television Corp. v. FCC, 143 U.S. App. D.C. 388, 394, 444 F.2d 841, 852 (1970), *cert. denied* 403 U.S. 923 (1971).

In the present case, the Justice Department's explanation for abandoning the fix-it-first rule is "intolerably mute." The government's rationable for abandoning the fix-it-first rule is contained in one paragraph of the Competitive Impact Statement:

> "The Government did not require pre-merger divestiture in view of the substantial delays that have already occurred since LTV and Republic announced their agreement to merge and of the *deleterious effect* that further significant delays could have on both firms."

(CIS p. 12) (Emphasis added).

This Court, and the public, are not provided with any information which would demonstrate any "deleterious effect" from adherence to the fix-it-first rule.

The United States has offered one further clue to the real reason for departure from the fix-it-first policy—a clue which suggests that the United States realizes that the Gadsden plant cannot be divested and is not a viable facility. In his memorandum to Mr. Jensen, Mr. McGrath states:

> "The proposed decree does depart somewhat from our normal "fix it first" policy, under which we generally require that divestitures necessary to cure any competitive aspects of the merger must occur prior to the merger itself. In this case, we have consented to a provision under which the companies would have six months after entry of the decree to divest on their own, after which time a trustee would assume control of the plants and sell them. We decided to make an exception to our normal policy here in light of our conclusion that, given the current state of the steel business, *a requirement that plants be sold prior to merger would not be practical* and thus would make the merger impossible. We also concluded that the stringent requirements of the consent decree will effectively compel divestiture." (p. 6)

Wheeling-Pittsburg respectfully submits that for the reasons set forth above divestiture of Gadsden is not "practical."

The government's fall-back position—reliance on a trustee to accomplish divestiture—is of little comfort. Experience with the appointment of trustees to effectuate divestiture demonstrates that antitrust defendants do not always cooperate with the trustee and can delay the effective date of restoration of competition. *E.g., United States* v. *United Foam Corporation,* 565 F.2d 563 (9th Cir. 1977).

The United States suggests that the consent decree provisions in this case guarantee that the defendants will not frustrate the trustee's efforts. The trustee provisions, Wheeling-Pittsburgh submits, do suggest future difficulties. For example the consent decree, by its explicit terms, permits LTV/Republic to demand of a buyer that it pay "the current production costs" of any inventory purchased (Proposed Judgment, ¶ V (A). A dispute over that formula can be easily envisioned. Further, LTV/Republic is obligated to offer to sell to a purchaser, for a period of up to six months, necessary raw materials "to the extent that such items are currently being supplied by defendants to Gadsden, and on substantially the same financial and other terms and conditions." One can well imagine protracted wrangling over whether the raw materials are being

provided "to the extent that such items are currently being supplied" and are being offered on "*substantially* the same financial and other terms and conditions." In addition, the consent decree itself envisions that the trustee will not be able to effectuate divestiture and directs the Court to resolve the matter at that point (paragraph V(F)). Further, the final judgment permits the defendants to object to a sale made by a trustee on grounds of "malfeasance"—a concept which could allow LTV/Republic to protect, for example, the adequacy of the price obtained by the trustee. Allowing the defendants that type of veto is contrary to settled antitrust precedent, which prohibits those who violate Section 7 of the Clayton Act from claiming *any* hardship caused by a divestiture decree. For example, in *United States* v. *E.I. Dupont de Nemours*, 366 U.S. 316 (1961), the Supreme Court concluded that a District Court should not refuse to grant effective relief because of "harsh" financial consequences. The Court declared (*id.* at 326–327, quoting *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 198 (1944)):

"Those who violate the Act may not reap the benefits of their violations and avoid an undoing of their unlawful project on the plea of hardship or inconvenience."

Wheeling-Pittsburgh is of the strong view that the merger should not be permitted in any event; if the merger is allowed to proceed, divestiture of some plant other than Gadsden is required. Even if the Court permitted the merger to proceed by divestiture of Gadsden, Wheeling-Pittsburgh respectfully suggests that, at the barest minimum, this Court should order compliance with the fix-it-first rule.

In its response to these comments the Department of Justice should provide the following to the Court:

1. The basis for departure from the "fix-it-first" doctrine by allowing the merger to go forward with no assurance that the Gadsden divestiture can be accomplished.

2. Any and all information that shows the range of potential purchasers excluding existing producers of sheet and strip. Note that Mr. McGrath states in the passage quoted on pages 16 and 17 that for the divestiture to be effective it must be to a company not now in the business.

3. Any and all information that shows that the Gadsden mill will be profitable for a buyer. Presumably, this would include pro forma financial statements, market projections and the like.

d. There Are No Other Justifications for Allowing the Merger

Measured against the fact that, even *after* divestiture of Gadsden, the merger is preemptively unlawful, the Department of Justice has attempted to justify the merger on the basis of efficiencies and other considerations. The competitive impact statement, for example, claims that "other considerations such as the financial condition of the firms and possible efficiencies resulting from the merger, led the government to conclude that the restructured merger would not be anticompetitive." (CIS p. 10)

However, the government initially rejected outright the justifications of "financial condition of the firms" and "possible efficiencies" in its first assessment of the proposed transaction. With respect to efficiencies, Mr. McGrath initially stated in his February 15 press conference that:

"Having looked at those efficiencies, however, with the guidance of the U.K. consultants, we concluded that a large amount of the proposed efficiencies either could be obtained in some way other than through this merger or the numbers just seemed overstated."

In his official press release of the same date, Mr. McGrath acknowledged:

"We also considered the claim by the companies that the merger would permit substantial cost savings and that these savings are important if Jones & Laughlin and Republic are to continue as competitive factors in an increasingly difficult marketplace. The companies asserted that the merger would reduce operating expenses by more than $300 million per year. It was clear from our study, however, that there was little or no basis for many of the claimed efficiencies. In addition, a number of them could be realized without merging the two companies, through internal cost savings, supply contracts among the companies and perhaps even swapping of plants and other assets among companies in the industry." (p. 4)

In reversing his field when the Consent Decree was filed, Mr. McGrath avered in his memo to Mr. Jensen, that "there is at least *a chance* that the merger may permit these companies to compete more effectively " (p. 7) (Emphasis added).

That kind of backhanded and lukewarm adoption of an efficiency argument is at odds with the United States' established view of the validity of an efficiencies defense to an otherwise anticompetitive merger. Indeed, as recently as March 8, 1984, Mr. McGrath stated, in a speech to the National Association of Manufacturers (Exhibit C to Wheeling-Pittsburgh memorandum of April 6, 1984, p. 10) (Emphasis added):

"Because efficiencies are difficult to prove, let alone quantify, we are cautious about accepting the claim that specific efficiencies would save the merger which would not otherwise pass muster. We do not ignore efficiency claims, but we do require a *factual showing that an otherwise problematic merger proposal is likely to generate substantial cost savings* that cannot be achieved otherwise.

"In the LTV-Republic context, for example, we were prepared to give considerable weight to possible efficiencies, and we devoted substantial resources to analyzing the companies' claims.. we hired the highly respected British firm of steel experts—Atkins Planning—as an outside consultant... We concluded, however, that only a fraction of the claimed cost savings were attributable solely to the proposed merger. The majority of the realizable savings could be achieved without the complete consolidation sought by the companies."

Thus, only two weeks before acceptance of the LTV/Republic merger, the Department admitted that no factual showing on efficiencies has been made. If between March 8 and March 21 an efficiencies defense was established, it has not been shared with the public.

With respect to the purported justification of "financial harm" to the companies absent the merger, Mr. McGrath has stated repeatedly that neither party to this proposed transaction is relying on the so-called "failing firm" defense. (Exhibit D to Wheeling-Pittsburgh Memorandum of April 6, 1984, p. 3). In his press conference of February 15, Mr. McGrath addressed this point:

" . Republic has made no claim that without this transaction they would go into bankruptcy. Indeed, they expressly avoided making any such claim. The most they have said is that, if conditions in the industry continued in an adverse way, that over time they *may* have difficulty financing the kind of improvements that are needed and thus *might* be so weakened that at some point in the future they *might* have difficulties.

"Under the antitrust laws, there are very specific rules as to when the financial condition of a company except (sic) it from the normal rules, the so-called failing company exception. Both Republic and LTV made it very clear here that they were not claiming that they fit within that exception, and that they were making no claim that if this transaction did not go through that they were in some kind of imminent danger of bankruptcy." (pp. 7–8) (Emphasis added)

VI. The Highly Unusual Circumstances Surrounding the Settlement in this Case Requires Special Scrutiny From This Court

This case is not a run-of-the-mill proceeding. The Consent Decree

proposed by the parties could create the second largest steel company in the United States, junior in capacity by a narrow margin only to United States Steel Corporation. It would create a company with over 20% of domestic capacity to produce carbon and alloy sheet and strip. It would bring under single management a substantial array of facilities and products and eliminate competition between what are now the 3rd and 4th largest steel producers in the U.S. This merger is high stakes business, for communities, consumers, competitors, politicians and ultimately, because steel is such a basic commodity, the vast majority of consuming Americans.

It is a major horizontal merger in a basic industry which is already highly concentrated and, therefore, to be viewed skeptically in any event.

The Consent Decree proposed to be entered in this case was negotiated (or imposed) under highly unusual circumstances. As set forth above the initial opposition of the Department of Justice was reversed by a drumbeat of political pressure from within and without the executive branch of the government. In the wake of the initial announcement that the Justice Department and other high federal officials were critical of Mr. McGrath. The following statements are representative:

On March 7, 1984 the President said that he did not think that the merger "would constitute a monopoly." (See Exhibit VII)

On March 11, 1984, Secretary of Commerce Malcolm Baldrige called the DOJ position a "world class mistake for the United States." (See Exhibit VIII)

Additional articles from various newspapers and trade journals documenting these pressures on the Department of Justice are attached as Exhibit IX).

If these public statements of the President (at whose pleasure Mr. McGrath serves) and the Secretary of Commerce were harsh, their private communications, which are not on the record, must have been doubly so. The motive for this intense pressure is, in part, apparent. It is clear that approval of this merger is seen as a major element in a political campaign by the Reagan Administration to defeat the enactment of quotas on the importation of foreign steel. (See Relation of the Merger to Trade Policy, Section VI of these Comments).

Further, the refusal of the Department of Justice to put on the record *any* documents pertaining to this settlement and its adamant opposition to the efforts of Wheeling-Pittsburgh and Cyclops Corporation to gain access to such documents through this Court raises questions about the conduct and good faith of the Department in this proceeding.

In light of these circumstances Wheeling-Pittsburgh submits that the Court must make special inquiry into these circumstances and must have adequate information to determine whether the proposed Consent Decree is tainted by less-than-objective treatment by the Department of Justice.

This case is a casebook study of the circumstances to which the Tunney Act was addressed. The only distinguishing feature in the instant case from the circumstances presumed by the Congress in passage of the Tunney Act is that the intense pressure on the Department of Justice to go along with the merger has been, to a considerable extent, applied in public by such effective advocates as the President of the United States, the Secretary of Commerce and the Special Trade Representative.

The description and certification of written or oral communications concerning the proposed final judgment in this action filed with the Court by LTV and Republic on April 2, 1984 pursuant to 15 U.S.C. § 16(g), indicate numerous contacts with the Secretary of Commerce and the Special Trade Representative regarding settlement negotiations with the Department of Justice. Neither of these officials have any responsibility for the antitrust laws. The only reason for contacts with these officials was to seek their help and influence with the Department of Justice during settlement negotiations.

The Tunney Act requires that the defendants disclose "any and all written or oral communications by or on behalf of such defendant(s)." Communications on their behalf by other federal officials are not excluded from this requirement. Defendants may or may not be aware of such contacts and communications. If they are, their filings of April 2, 1984 are deficient. In any event the Department of Justice should provide to the Court as part of its response to these Comments the following:

1. A list of any and all communications, written or oral, between persons outside the Department of Justice and the Assistant Attorney General for Antitrust or other officials of the Department of Justice regarding the proposed merger, settlement negotiations, the proposed Consent Decree and/or its relation to other matters, such as trade legislation, and the dates, duration and content of such contracts, including, but not limited to the following:

a. The President

b. The White House staff

c. Secretary of Commerce Malcolm E. Baldrige

d. Other officers and employees of the Department of Commerce

e. The Special Trade Representative William E. Brock

f. Other officers and employees of the Office of the Special Trade Representative

g. Other officers and employees of the Executive Branch of the Federal Government

h. Members of Congress and/or their staffs

2. Copies of any and all documents, memoranda, notes or other writings which constitute or record the substance of such communications.

3. Affidavits providing the recollections of any such oral communications by persons within the Department of Justice who were party to them.

VII. Relation of the Merger to Trade Policy

The political forces that lined up against the Department of Justice and forced approval of this merger in the form of the Consent Decree have done so in substantial degree because of a perceived political connection between it and trade policy.

For over a decade the U.S. has been afflicted with a flood of foreign steel being dumped and/or subsidized for sale in the U.S. market. Most foreign steel companies are government owned and many have been found to be selling in this country in contravention of U.S. trade laws. This is a sensitive issue, however, for the U.S. Government since stopping this tide of unfairly-traded steel conflicts with other foreign policy objectives and heightens the exposure of U.S. financial institutions on loans to countries and concerns engaging in this unfair trade. Accordingly, those in charge of enforcing U.S. trade laws have been slow to attack the transgressors leaving the burden with the industry to pursue the long and tortured proceedings required of private litigants.

Because of this failure of will on the part of the executive branch of the government the steel industry and a significant group in the Congress have advocated the enactment of legislation to impose quotas on foreign steel entering into the U.S. The Reagan Administration opposes this legislation. The trade question and mergers in the steel industry have become linked because certain steel companies suggest that mergers are a way to make the U.S. industry more efficient and thereby

more competitive in the world economy. Further, whether the pending merger results in concentration beyond that permitted by the antitrust laws is in part a function of assumptions about the future course of steel imports.

There was great consternation within the government when the Justice Department, quite properly, announced that the LTV-Republic merger would violate Section 7 of the Clayton Act and would be opposed. This appears to have been prompted not by any judgment that the merger was in the public interest, but rather that government opposition to it would improve the prospects for quota legislation.

The connection between the two is not logical. The Department of Justice found that there was little justification for the claim that efficiencies would result from this merger (Press Release of February 15, 1984, at page 4). In the absence of such efficiencies there is little or no basis to think that this merger would improve the competitive position of the industry in the world market, including the U.S. However, since steel companies assert that mergers will produce efficiencies, approval of them is apparently seen by the Reagan Administration as a means of releasing pressure for quota legislation.

This connection is plainly evident in the fierce opposition to the position initially taken by the Department of Justice by the Secretary of Commerce, the Special Trade Representative and even the President. The 180 degree turn of the Department of Justice is the result. In further corroboration of the political connection between the Department's position on this merger and pending trade legislation it is worthy of note that Mr. McGrath testified before the Subcommittee on Employment and Productivity of the Senate Committee on Labor and Human Resources on March 22, 1984, the day after announcing the pending consent decree. In his testimony Mr. McGrath strongly opposed legislation to limit imports. Just as antitrust enforcement is not the province of the Secretary of Commerce and the Special Trade Representative, neither is trade legislation normally a matter where the Assistant Attorney General for Antitrust has expertise or jurisdiction.

This connection was explicitly recognized by Joel Hirschhorn who is an expert on the steel industry for the Congressional Office of Technology Assessment who stated, "The Justice Department wouldn't have approved the merger if the quota bill didn't exist." The passage containing this quote addressed the direct connection between this merger and trade policy. (Quoted in Metal Producing of April 1984, Attached as Exhibit X)

Approval of the Consent Decree before the Court would serve to commit the U.S. Government further to the policy of free importation of unfairly traded steel, for were the Government to take aggressive action against dumped and subsidized steel entering the U.S. market, it would increase the market concentration and power of the behemoths it is now helping to create.

VIII. Conclusion

For the foregoing reasons the Court is urged to refuse to enter the consent decree as proposed as not being the public interest. Wheeling-Pittsburgh submits that the increase in concentration in carbon and alloy hot and cold rolled sheet and strip that would result from entry of the proposed consent decree is in violation of Section 7 of the Clayton Act, the Department of Justice merger guidelines and the pertinent case law. The Court is urged to refuse to enter the consent decree unless it is modified to eliminate any increase in market concentration in these products and that any such remedial action be taken on a "fix-it-first" basis.

Respectfully submitted,

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June 1, 1984.

Comments of Bliss & Laughlin Steel Co. on the Proposed Final Judgment Approving Acquisition of Republic Steel Corporation by the LTV Corporation

I. Summary

Bliss & Laughlin Steel Co. ("BLS"),[1] the largest independent, non-integrated producer of cold-finished steel bars in the United States, submits these comments on the proposed consent decree allowing the acquisition of Republic Steel Corporation by The LTV Corporation. We oppose entry of the judgment in its present form because it would result in the anticompetitive combination of the two largest firms in the cold-finished steel bar market. We submit the judgment should be modified to require divestiture of Republic's Massillon, Ohio, bar facilities as well as the stainless steel facilities at that location.

BLS began producing cold-finished steel bars in 1891. Today it ranks third in market share behind the two merger partners. Republic and Jones & Laughlin Steel Corporation ("J & L") (an LTV subsidiary) compete with BLS and about 45 other U.S. firms in producing cold-finished bars. Unlike BLS, Republic and J & L are integrated producers that make a wide range of steel products, including specifically the hot-rolled bars that are the essential raw material for cold-finished bars. BLS contends the merger will unquestionably have substantial anticompetitive effects in the cold-finished and hot-rolled bar markets and will unacceptably enhance the market power of LTV The proposed combination of the two largest firms in our industry would create conditions which could eventually eliminate BLS and other smaller competitors from the market and result in an effective monopoly of the cold-finished steel bar market by LTV.

While the Department has chosen to challenge the merger because of its effect in the sheet steel and stainless steel markets, it has not challenged the merger in the bar markets. According to the complaint, the merger would result in unacceptable increases in market concentration in three discrete segments: (1) Carbon and alloy hot rolled sheet and strip steel; (2) carbon and alloy cold rolled sheet and strip steel; and (3) stainless cold rolled sheet and strip steel. The Department believes the merger would result in the following market concentrations as measured by the Herfindahl-Hirschman Index ("HHI"):

Segment	Pre-merger HHI	Post-merger HHI
Hot sheet/strip	1013	1219
Cold sheet/strip	1104	1330
Cold stainless	2291	3045

BLS submits that the increased concentration in the bar markets will be at least as unacceptable as the increases found unacceptable in the hot and cold sheet and strip segments. As we detail below, the merger will result in the following concentration in the bar markets:

[1] BLS is a division of AXIA, Incorporated, a Delaware corporation whose stock is listed on the New York Stock Exchange.

Segment	Pre-merger HHI	Post-merger HHI
Cold-finished bars	954	1562
Hot-rolled bars	1232	1832

If the increases in concentration in the hot and cold sheet and strip segments cannot be permitted under the antitrust laws, clearly the increases in concentration in the hot and cold bar markets cannot be allowed either.[2]

Because the complaint inexplicably finds no fault with the merger in the bar market, the proposed Final Judgment does not require any divestiture of any bar facilities to avoid this increased concentration. Nevertheless, the failure of the proposed judgment to require divestiture of bar facilities is striking in light of the divestiture of the Massillon stainless steel facilities that is being required. The Competitive Impact Statement states inaccurately that the proposed Final Judgment requires LTV "to divest its *entire interest* in Republic's Massillon, Ohio steel mill " Impact Statement at 6, emphasis added. In fact the proposed decree specifically defines the Massillon facility as "the stainless sheet cold rolling and finishing facilities owned by Republic. located in Massillon, Ohio." Proposed Final Judgment at II.I. Thus the Judgment would not require any divestiture of the existing cold-finished bar facilities owned by Republic at Massillon. That failure is significant, for if those bar facilities were divested, the post-merger concentration picture in the cold-finished bar market would be strikingly different:

Segment	Pre-merger HHI	Post-Merger HHI
Cold-finished bar	954	963

Divestiture of the Massillon bar facilities would therefore virtually eliminate any anticompetitive increase in concentration in the cold-finished bar market and leave that market at the under-1000 HHI level. Such a result is clearly in the pubic interest. The rationale for divestiture of the Massillon bar facility is precisely the same as the rationale announced by the Department in court and in the Impact Statement for requiring divestiture of the Massillon stainless steel facility. BLS submits that the Judgment should be modified to require divestiture of the bar facilities at the Massillon plant. If it is not so modified, the Department should withdraw its consent to entry of the Judgment.

[2] We have used the HHI figures set out in the complaint which do not include imports. Inclusion of imports does not significantly alter the analysis of the anti-competitive effects in the 3 markets challenged in the complaint or in the bar market. If imports are included, the following concentrations result:

Segment	Pre-merger HHI	Post-merger HHI
Hot sheet/strip		
Hot sheet/strip	871	1047
Cold sheet/strip	953	1047
Cold stainless	2190	2898
Cold-finished bars	763	1242
Hot-rolled bar	1062	1568

II. The Relevant Markets

The complaint in this case identifies several distinct product markets affected by the merger. Although the Department has decided to challenge the merger only because of unacceptable increased concentration in three product markets, we understand the Department recognizes the existence of certain other discrete and relevant product markets. In describing the businesses of LTV and Republic, the complaint notes that both companies produce "hot rolled and cold finished bars," Complaint, ¶¶ 4,5. In analyzing the effects of the merger on the three challenged markets, the complaint uses the entire United States as the relevant geographic market. Complaint, ¶¶ 14, 18, 26. Based on these assertions and our prior discussions with the Department, we understand the Department has concluded that cold-finished steel bars and hot-rolled steel bars are relevant product markets and that both are properly analyzed for antitrust purposes in terms of a geographic market defined as the United States. Although we will not set out all the reasons for so defining cold-finished bars as a separate product markets, some overview will be helpful.

Cold-finished bars possess certain mechanical properties and other qualities which make them sufficiently different from hot-rolled bars that the two products are not substitutes. Cold bar prices run in the range of $650–700 per ton; hot bar prices run in the range of $200–400 per ton. The fact that cold-finished bars are a distinct product is illustrated by the existence of the Cold Finished Steel Bar Institute which promotes our indistry and sets quality standards and product specifications.

The cold-finished steel bar market occupies a select niche in the steel industry. Cold-finished bars are produced by taking hot-rolled bars through a variety of finished processes at or near room temperature. These processes produce a type and quality of steel bar that is unique and particularly suitable for a variety of special uses throughout a number of major manufacturing groups including:

Machinery Industry—(This includes screw machine shops) These are relatively small shops that produce parts for a multitude of end uses:

—Hydraulic Hose fittings
—Brake assembly parts
—Carburetor needle valves
—Tie rods

Electrical Machinery:

—Electric motor shafts

Automotive:

—Rack shafts
—Alternator shafts
—Power transmission shafts
—Distributor shafts
—Spark Plug bodies
—Power brake booster assembly

Agriculture:

—Tie Rods
—Chrome plated hydraulic piston rods
—Spindle Valves
—Power transmission shafting

Cold-finished bars have particular applications in defense-related industries in several situations including:

—Ballistic shells, projectiles and fuses
—Tank axles
—Motorized equipment components
—aircraft power transmission shafting

III. Effect of the Merger in the Cold-Finished Bar Market

Under the Department's Merger Guidelines the analysis of this merger must begin with a determination of the concentration in the market as measured by the HHI. We have undertaken such an analysis using the nationwide geographic market used by the Department in the complaint. In addition to our HHI calculations, we have looked at the "other factors" considered under the Guidelines. Our analysis shows that this acquisition should not be permitted.

A. The Nationwide Cold-finished Bar Market

BLS believes there are about 48 U.S. firms currently producing cold-finished bars. Data are available from the American Iron and Steel Institute to determine the total size of the cold-finished bar market. BLS, of course, knows its own share of that market with a high degree of accuracy. BLS believes it can estimate the shares of its competitors with enough accuracy to evaluate the proposed merger under the DOJ Guidelines. Attached as Table 1 is a calculation of BLS's Estimated 1984 market shares for the cold-finished steel

bar market.[3] That table shows that BLS will have a 7.85% share of the 1984 estimated market, defined as all cold-finished steel bars sold in the United States, excluding imports.[4] For the same period we estimate that Republic, if it were not acquired, would have a 18.65% share and J&L a 16.32% share. If the acquisition were completed, the Republic/J&L share would rise to 34.97%.[5] The market shares of the various competitors result in an HHI of 1562 in the post-merger situation, with an increase of 609 as a result of the merger. Under the DOJ Guidelines the Department is "more likely than not" to challenge such a merger, subject to consideration of certain other factors discussed below.

B. Consideration of the "Other Factors"

The guidelines list certain "other factors" to be considered in cases where the post-merger HHI is more than 1000 but less than 1800:

(1) One of those factors is the location of the merging firms and the similarity of their products. As stated in the guidelines:

> In markets with spatially dispersed sellers and significant transportation costs, the Department will consider the relative proximity of the merging firms. *If the products or plants of the merging firms are particularly good substitutes for one another, the Department is more likely to challenge the merger.* Guidelines, § III.C.1.(c).

In this case the products of Republic and J & L are particularly good substitutes for one another and several of the plants are particularly good substitutes. Both Republic and J & L produce virtually the complete spectrum of cold-finished bars. Both firms have significant research and development programs which effectively overwhelm the rest of the industry. The proposed merger would eliminate the existing competition between them in R & D. Both firms specialize in producing the most profitable products in the industry: alloy bars, special finish bars and furnace treated bars. The two firms are seen by customers as supplying quite similar products and a similar range of products.

Attached as Exhibit A is a map showing the location of the Republic and J & L plants. In three locations existing Republic and J & L plants are effectively located "across the street" from one another: Willimantic/East Hartford, Connecticut; Youngstown/Massillon, Ohio—Beaver Falls, Pennsylvania; and Gary-Hammond, Indiana. Geographic proximity is particularly relevant in this industry because transportation costs are such a significant factor in the total cost of the product. Steel bars are heavy, bulky and difficult to handle. Transportation by truck or rail is a significant cost factor and the location of competitors—which determines transportation costs—effectively limits sales to an area about 500–700 miles from the plant. Accordingly the plants located in the three areas identified above are particularly good substitutes for one another, a factor which weighs significantly against this acquisition.

(2) The guidelines further provide that the Department is "more likely to challenge a merger where orders for the relevant product are frequent, regular and small relative to the total output of a typical firm in the market. " Guidelines, § III.C.2. That condition prevails in this market. BLS is a typical producer of cold-finished bars. It sells to about 600 customers; it receives about 40–50 orders a day for shipments averaging 8 tons/order (0.008% of the total annual BLS production); and these orders come on a regular basis, with the major customers averaging 8 orders a month.

(3) The Department is also "more likely to challenge a merger where detailed information about specific transactions or individual price or output levels is readily available to competitors." Guidelines, § III.C.2. That situation also prevails in this market. Product definitions are standard in our industry. Most firms report output on a monthly basis to the AISI. Our sales force regularly receives information from our customers on specific transactions. When we do not get a particular order, we frequently know who did get the order and at what price. Prices for particular grades, sizes and shapes of bar are known throughout the industry. Price changes become known to competitors almost instantaneously. Indeed the ready availability of such business information was a factor in the Department's decision to include a provision in the proposed Final Judgment prohibiting the defendants from providing certain information to AISI.

IV. Effect of the Merger on Competition in Hot-Rolled Steel Bars

We have examined the effect of the proposed acquisition on competition in the cold-finished bar market and concluded that the merger should not be permitted because of the effects in that market. However, we have also examined the acquisition in the context of the hot-rolled bar market. Conditions in that market are of great concern to us since hot-rolled bar is the "raw material" for our industry. Any decrease in competition in that market would affect the price BLS and others would pay for our supply, thereby affecting our ability to compete effectively in the cold-finished bar market.

Attached as Table 2 is the BLS estimate of 1984 market shares in the hot-rolled bar market. Our estimates here are based on BLS' perceptions and experience, but are less reliable than our estimates of the cold-finished bar market since we are a purchaser and not a producer of hot bar. BLS estimates that the 1984 share of Republic would be 25.07% with J & L having a 11.96% share. The post-merger HHI for this market is 1832, with an increase of 600 attributable to the merger.

This analysis of the hot-rolled bar market produces results substantially similar to those obtained in the analysis of the cold-finished bar market. In both cases the acquisition will result in a concentration index exceeding 1500 with the merger increasing concentration by more than 600 points. Under the DOJ Guidelines the Department is "more likely than not" to challenge such mergers.[6]

BLS is particularly concerned about this aspect of the proposed acquisition because of the likely consequences on competition in the hot bar market. Healthy competition in that market is essential to the preservation of our ability to operate as an independent, non-integrated producer of cold bars. Republic and J & L are currently the "price leaders" for hot bars. Competition between them tends to limit price increases. If they merge and decide to raise prices, BLS believes other producers of hot bars are likely to follow their lead and increase prices rather than trying to compete. Thus LTV will

[3] In all the attached HHI tables we have combined a number of smaller domestic companies into several "miscellaneous" companies of equal size. This method is an acceptable means of approximating the HHI for a given market and does not produce any significant differences. Combining 4 companies with a 1% share each into one company with a 4% share will increase the HHI by 12.

[4] We have excluded imports for the same reasons that the Department excluded imports in its complaint. Inclusion of imports does not significantly affect our analysis. See footnote 2, *supra*, and Tables 3 and 4.

[5] All post-merger calculations assume that (LTV) will retain all of the sales of the separate companies and gain no additional sales after the merger.

[6] The post-merger index for hot-rolled bars is 1832, just over the 1800 limit. This market structure could be put in the class of mergers which the Department is "likely" to challenge, but we treat it as a "more likely than not" case because the index is so close to 1800. *See* Guidelines § III. A.

effectively be able to set the price in this market.

Because LTV—if the merger is allowed—will be able to set the price for hot-bar and will also be competing in the cold-bar market, we fear that LTV will have the power to set prices in such a manner that BLS and other independent producers will be squeezed out of the cold-bar market. This concern is not merely hypothetical anxiety. BLS has already experienced precisely such a price squeeze in its market.

Until mid-1983 BLS operated a cold-bar plant in Los Angeles, California. We have been forced to close that plant, in large part because of the pricing policies of foreign competition. Vertically integrated Japanese steel producers have been selling both hot-rolled and cold-finished steel bars in the Pacific market area for many years. Until recently the price structure allowed for successful competition by BLS in the cold-finished market. BLS could buy hot bar, process it and still compete with the Japanese. Within the past 3 years, however, the Japanese changed their price structure in a manner which effectively precluded competition from independent, non-integrated cold-bar producers. During that period the Japanese lowered the price of cold-bar on the West Coast, but raised the price of hot-bar. The net spread was reduced so drastically that it became uneconomical for BLS to purchase hot bar from the Japanese for processing into cold bar. For example, in the second half of 1980 the Japanese priced bar so that the spread for 12L14 grade steel in 1" bars was $7.59 per hundredweight, a sufficient difference that BLS could purchase hot bar, process it and sell it at a profit. In the second half of 1983, however, they have reduced the spread to $0.10, far below BLS' cost of producing cold bar, on either a marginal cost or fully-allocated cost basis. This price change was typical of other changes in price for Japanese bars. See Exhibit B. This price change squeezed BLS out of the West Coast market. We can no longer purchase hot-bars in that market at a price low enough to compete with the Japanese in the cold-bar market. The transportation costs are too high to permit competition based on purchases of hot-bar in other areas or shipment of cold-bar from BLS' other plants. BLS therefore decided to close its California plant.

We are concerned about the LTV acquisition because we fear that history will repeat itself and LTV's dominance in the hot-bar market may produce prices that will force BLS out of the cold-bar market altogether.

Indeed, we may now be seeing the first signs of this predatory pricing as a result of the merger. Republic has recently announced a new price schedule to take effect in August, 1984. Under that schedule the net spread between hot-bar and cold-bar will be reduced. *See* Exhibit C. This reduction in the spread price increases the competitive pressures on Bliss & Laughlin and other independent producers making it increasingly difficult to compete with an integrated company. Because the merger destroys the only existing competition between integrated mills in the bar market, there will be no effective competition to restrain predatory pricing of hot-bar.

We recognized that some economic theorists do not believe such a price squeeze reflects rational business behavior, but in the real world we know that businessmen will make theoretically irrational decisions to gain market share. We also are aware that the Department believes no such squeeze will occur without collusion at the hot-bar level. This view ignores the fact that after the merger LTV will be the only integrated producer of hot and cold bars and will not have any effective competition. Price collusion is unnecessary when there is no competition.

V Mini-Mills and the Cold Finished Bar Industry

Over the past several years a number of "mini-mills" have been constructed. These facilities use electric furnaces to produce steel, but production involves much smaller quantities than the major mills such as Republic or J & L. One mini-mill—Nucor—has also decided to produce cold-finished bars and uses its own mini-mill to supply its raw material for the cold bars. These mini-mills might be thought by some to be more efficient than a non-integrated producer like BLS and represent a trend toward vertical integration in the cold-bar market which might mitigate against the anti-competitive effects of the proposed acquisition and eliminate the concern over the absence of price competition in the hot-bar market.[7]

BLS does not believe that conversion of independent cold-bar plants to mini-mills represents a satisfactory alternative. We examined the vertical integration approach and found that it would not be feasible. Mini-mills today produce about 15–18% of the total hot bars supplied as raw materials for cold-finished bars. We believe technological factors, customer requirements and the economics of the steel industry limit the ability of mini-mills to fulfill the supply needs of producers of cold bars. The cold-finished bar market today includes a wide range of products. Different grades and compositions of hot bars are required to make the full range of cold-finished bars. Production of the complete range of cold bar products requires a mill capacity exceeding that of the mini-mills. Mini-mills have to schedule their production days or weeks in advance while cold bar producers receive orders for short-term delivery out of inventory. Because of these factors, mini-mills cannot provide a reliable, consistent source of supply for cold bar producers.

The technology of mini-mills is not able to produce steel that is equal in quality to that of major mills, at least in the perception of cold bar customers. Mini-mills produe steel using the "cold melt" method with relatively small electric furnaces and scrap steel as the major raw material. While major mills also use the "cold melt"method, they primarily employ the traditional "hot melt" method which involves large open hearths or oxygen furnaces and use iron ore as the major raw material. Cold melt steel, because of these technological and raw material limitations is unsuitable for certain specific end uses such as high fatigue resistant bars. For this reason, some cold bar customers specify that their steel cannot come from mini-mills. We have concluded that mini-mills cannot supply the full range of material we need to meet our customers' demands using existing technology.

Mini-mills use scrap steel for their plants and when scrap prices are advantageous, as compared to finished steel, they can effectively compete against major mills in some areas. As scrap prices rise or supplies become restricted, however, the cost advantage narrows and mini-mills cannot compete effectively against the large mills. The steel industry is highly cyclical. Mini-mills cannot change their manufacturing methods to meet these cyclical changes. A cold-bar producer like BLS that wanted to achieve effective vetical integration would have to duplicate the facilities of a major mill to limit the risks of shifting market conditions. BLS believes that mini-mills will not be an effective long range solution to the supply needs of cold bar producers. We believe we are less subject to temporary shortages of raw material when we purchase hot bar from a number of firms

[7] It should be noted that our HHI calculations include Nucor and all other mini-mills. We do not contend mini-mills are in a separate market, but we do contend they do not utilize technology which produces low barriers to entry which might allieviate concerns over increased concentration.

as opposed to developing our own source of hot bar by vertical integration.

The cold bar industry represents only about 1.7% of the total steel industry. It is not economical for an independent cold bar producer to build a mini-mill just to supply raw material for production of cold bar because the output from such a mill would exceed the demand for cold-bar production. Since there is already excess capacity in the steel industry, the mini-mill could not expect to sell its excess output to other customers. BLS therefore feels that mini-mills do not represent a viable response to the dominant position LTV will attain if this acquisition is permitted.

IV Conclusion

The analysis of increased concentration in the bar markets that will result from this merger shows that the merger is at least as likely to lessen competition in the bar segments as in the sheet and strip segments. The Department—and the Court—should therefore be as concerned about the bar segment as they are about the sheet and strip segments. The Department had originally concluded that the merger should not be permitted, but the merging companies restructured the merger to alleviate the unacceptable increases in three segments. That proposal included a divestiture of the stainless steel facilities operated by Republic at Massillon, Ohio. That proposal—fortunately—affords the Department and the Court an opportunity to eliminate the unacceptable increased concentration in the cold-finished bar market as well.

Republic makes both hot-rolled and cold-finished steel bars at the Massillon facility. BLS believes that facility produces about 75–80% of the total Republic bar product. We believe the bar facility at Massillon is in fact integrated in some ways with the stainless steel facility and a combined divestiture of both facilities might be more feasible than divestiture of the stainless steel facility alone. If such a divestiture were required, virtually all of the increased concentration in the bar segments would be eliminated. Attached as Table 5 is our analysis of the HHI in the cold-finished bar market assuming that the Massillon bar facilities are divested as an operating unit sold to a third party—the same divestiture required for the stainless steel facilities. Such a divestiture would result in the following post-merger concentration indices.[8]

[8] Table 8 shows a similar HHI calculation including imports.

Segment	Post-merger HHI (without divestiture)	Post-merger HHI (with divestiture)
Cold-finished bars	954	993

The Department is fortunate to have this opportunity to remedy the situation and avoid increased concentration in the cold-finished bar market. Divestiture of the Massillon bar facilities may well make divestiture of the stainless steel facilities more practical since it would afford a prospective purchaser an opportunity to acquire facilities producing different products in close geographic proximity.

We hope the Department would be in a position to insist on such a modification to the proposed consent decree, but we recognize such a change might not be acceptable to the merger partners at this time. If that is so, we urge the Department to review our submission, together with all other information available to it, and withdraw its consent to entry of the final judgment to protect the public interest.

Respectfully submitted,

AXIA, Incorporated

By: Dennis W. Sheehan,

Executive Vice President & General Counsel.

Reasoner, Davis & Vinson

By: Kenneth C. Bass, III,

Counsel for AXIA.

Of Counsel: John H. Shenefield, Milbank, Tweed, Hadley & McCloy, 1825 Eye Street, NW., Washington, D.C. 20006

TABLE 1.—HERFINDAHL-HIRSCHMAN INDEX FOR COLD FINISHED BARS, NATIONWIDE MARKET

[Excluding imports]

Company	Tonnage	Market share (percent)	Cumulative HHI index
Bliss & Laughlin	101,000	7.00	62
Republic	240,000	16.65	403
Jones & Laughlin	210,000	14.62	676
LaSalle	90,000	6.20	724
Western	78,000	5.00	761
Wyckoff	77,000	5.33	797
Nucor	80,000	5.22	836
Plymouth	64,000	4.97	873
Ramco	57,600	4.49	893
Baron	51,200	3.53	905
Nelson	44,800	3.40	920
Miscellaneous #1	33,600	3.01	917
Miscellaneous #2	33,600	3.01	920
Miscellaneous #3	33,600	3.01	925
Miscellaneous #4	33,600	3.01	944
Miscellaneous #5	33,600	3.01	954
Total	1,437,000	100.00	954
Increase due to Republic/J&L merger			639
Post-merger index			1,593

TABLE 2.—HERFINDAHL-HIRSCHMAN INDEX FOR HOT-ROLLED BARS, NATIONWIDE MARKET

[Excluding imports]

Company	Tonnage	Market share (percent)	Cumulative HHI index
Republic	1,300,000	25.07	629
Jones & Laughlin	620,000	11.96	772
Chaparral	240,000	4.63	793
Northstar	670,000	12.92	959
Bethlehem	350,000	6.75	1006
Inland	445,000	8.58	1079
U.S. Steel	390,000	7.52	1133
Mac	100,000	1.93	1140
Nucor	400,000	7.71	1199
Miscellaneous #1	134,000	2.58	1206
Miscellaneous #2	134,000	2.58	1212
Miscellaneous #3	134,000	2.58	1219
Miscellaneous #4	134,000	2.58	1226
Miscellaneous #5	134,000	2.58	1232
Total	5,185,000	100.0	1232
Increase due to Republic/J&L merger			600
Post-merger index			1832

TABLE 3.—HERFINDAHL-HIRSCHMAN INDEX FOR COLD-FINISHED BARS, NATIONWIDE MARKET

[Including imports]

Company	Tonnage	Market share (percent)	Cumulative HHI index
Bliss & Laughlin	101,000	6.96	48
Republic	240,000	16.53	322
Jones & Laughlin	210,000	14.46	531
LaSalle	90,000	6.20	569
Western	78,000	5.37	598
Wyckoff	77,000	5.30	626
Nucor	80,000	5.51	657
Plymouth	64,000	4.41	676
Ramco	57,600	3.97	692
Baron	51,200	3.53	704
Nelson	44,800	3.09	714
Miscellaneous #1	33,600	2.66	721
Miscellaneous #2	33,600	2.66	723
Miscellaneous #3	33,600	2.66	735
Miscellaneous #4	33,600	2.66	742
Miscellaneous #5	33,600	2.66	749
Imports #1	55,000	3.79	749
Imports #2	55,000	3.79	756
Imports #3	55,000	3.79	763
Total	1,452,000	100.00	763
Increase due to Republic/J&L merger			478
Post-merger index			1242

TABLE 4.—HERFINDAHL-HIRSCHMAN INDEX FOR HOT ROLLED BARS, NATIONWIDE MARKET

[Including imports]

Company	Tonnage	Market share (percent)	Cumulative HHI index
Republic	1,300,000	23.03	530
Jones & Laughlin	620,000	10.93	651
Chaparral	240,000	4.25	669
Northstar	670,000	11.87	810
Bethlehem	350,000	6.20	843
Inland	445,000	7.83	911
U.S. Steel	390,000	6.91	953
Mac	100,000	1.77	961
Nucor	400,000	7.09	1012
Miscellaneous #1	134,000	2.37	1017
Miscellaneous #2	134,000	2.37	1023
Miscellaneous #3	134,000	2.37	1028
Miscellaneous #4	134,000	2.37	1034
Miscellaneous #5	134,000	2.37	1040
Imports #1	153,333	2.72	1047
Imports #2	153,333	2.72	1055
Imports #3	153,333	2.72	1062

TABLE 4.—HERFINDAHL-HIRSCHMAN INDEX FOR HOT ROLLED BARS, NATIONWIDE MARKET—Continued

[Including imports]

Company	Tonnage	Market share (percent)	Cumulative HHI Index
Total	5,645,000	100.00	1062
Increase due to Republic/J&L merger			506
Post-merger index			1568

TABLE 5.—HERFINDAHL-HIRSCHMAN INDEX FOR COLD-FINISHED BARS, NATIONWIDE MARKET

[Excluding imports—assuming divestiture of Massillon]

Company	Tonnage	Market share (percent)	Cumulative HHI index
Bliss & Laughlin	101,000	7.85	62
Massillon facility	180,000	13.99	257
Jones & Laughlin	270,000	20.98	697
LaSalle	90,000	6.99	746

TABLE 5.—HERFINDAHL-HIRSCHMAN INDEX FOR COLD-FINISHED BARS, NATIONWIDE MARKET—Continued.

[Excluding imports—assuming divestiture of Massillon]

Company	Tonnage	Market share (percent)	Cumulative HHI index
Western	78,000	6.06	783
Wyckoff	77,000	5.98	819
Nucor	80,000	6.22	857
Plymouth	64,000	4.97	892
Ramco	57,600	4.48	902
Baron	51,200	3.98	918
Nelsen	44,800	3.48	914
Miscellaneous #1	38,680	3.01	927
Miscellaneous #2	38,680	3.01	936
Miscellaneous #3	38,680	3.01	945
Miscellaneous #4	38,680	3.01	954
Miscellaneous #5	38,680	0.01	963
Total	1,287,000	100.00	963

TABLE 6.—HERFINDAHL-HIRSCHMAN INDEX FOR COLD-FINISHED BARS, NATIONWIDE MARKET

[Including imports—assuming divestiture of Massillon]

Company	Tonnage	Market share (percent)	Cumulative HHI index
Bliss & Laughlin	101,000	6.98	48
Massillon facility	180,000	12.40	202
Jones & Laughlin	270,000	18.60	548
LaSalle	90,000	6.20	586
Western	78,000	5.37	615
Wyckoff	77,000	5.30	643
Nucor	80,000	5.51	674
Plymouth	64,000	4.41	693
Ramco	57,600	3.97	709
Baron	51,200	3.53	721
Nelsen	44,800	3.09	718
Miscellaneous #1	38,680	2.66	728
Miscellaneous #2	38,680	2.66	735
Miscellaneous #3	38,680	2.66	742
Miscellaneous #4	38,680	2.66	750
Miscellaneous #5	38,680	2.66	757
Imports #1	55,000	3.79	771
Imports #2	55,000	3.79	785
Imports #3	55,000	3.79	800
Total	1,452,000	100.00	800

Note.—Exhibit A is not published in this issue and is on file with the original document at the Office of the Federal Register.

Exhibit B

PRICING IN THE WEST COAST MARKET FOR 12L14 STEEL BARS (DOLLARS/CWT)

	1980 2nd half			1983 2nd half		
	Cold-finished	Hot-rolled	Spread	Cold-finished	Hot-rolled	Spread
¼ inch	$32.20	$24.24	$7.96	$28.75	$28.05	$0.70
⅜ inch	32.20	24.24	7.96	28.75	27.35	1.40
⅝ inch	32.20	24.24	7.96	28.40	27.35	1.05
1 inch	33.70	26.11	7.59	27.05	26.95	.10
2 inches	33.80	24.80	9.00	27.60	28.00	(.40)
3 inches	33.80	24.80	9.00	28.40	28.55	(.15)

Exhibit C

REPUBLIC PRICING OF BAR PRODUCTS

	Grade	May 31, 1984			Aug. 1, 1984		
		Hot-bar	Cold-bar	Spread	Hot-bar	Cold-bar	Spread
Carbon:							
10,000# ½" Rd	1018	$31.70	$40.90	$9.20	$34.20	$42.70	$8.50
10,000# 1" Rd	1018	29.85	38.00	8.15	32.35	39.80	7.45
20,000# 1½" Rd	1018	29.10	37.55	8.45	31.60	39.20	7.60
10,000# 2" Rd	1018	29.70	37.55	7.85	32.20	39.35	7.15
20,000# 3" Rd	1018	28.85	37.65	8.80	31.35	38.95	7.60
10,000# 4" Rd	1018	29.60	37.65	8.05	32.10	39.45	7.35
10,000# 1" Sq	C1018	30.60	39.50	8.90	34.85	43.00	8.15
Alloy:							
10,000# ½" Rd	8620	42.00	53.25	11.25	44.50	55.25	10.75
10,000# 1" Rd	8620	40.15	50.10	9.95	42.65	52.10	9.45
20,000# 1½" Rd	8620	39.40	49.50	10.10	41.90	51.50	9.60
10,000# 2" Rd	8620	40.00	49.75	9.75	42.50	51.75	9.25
20,000# 3" Rd	8620	39.15	49.40	10.25	41.65	51.40	9.75
10,000# 4" Rd	8620	39.90	49.90	10.00	42.40	51.90	9.50
10,000# 3" Sq	8620	39.90	55.20	15.30	42.90	56.90	14.00

Comments of United Steelworkers of America AFL-CIO CLC

Five Gateway Center Pittsburgh, PA. 15222

June 1, 1984.

Mr. John W. Clark,
Chief, Special Trail Section,
Antitrust Division,
Department of Justice,
Washington, D.C. 20530

Dear Mr. Clark:

Pursuant to the public comment provision of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), the United Steelworkers of America hereby submits its views regarding the proposed merger between The LTV Corporation and Republic Steel Corporation.

The United Steelworkers is not opposed to the merger itself. However, the required divestitures are thinly veiled excuses for closing plants and laying off workers. As to these unnecessary job reductions, we express our strong opposition. If divestiture are required, they should be divestitures of viable facilities which will provide continued long-term employment to our members.

We are deeply concerned about the proposed divestitures that have been required as a pre-condition to the merger. We believe that divestitures of the Massillon stainless steel plant and of the Gadsden carbon steel plant are not in the interest of steelworkers of the public. The proposed divestiture inevitably will result in an unnecessary loss of jobs.

Under the divestiture plan, it is highly likely that the Massillon stainless steel facility will eventually be shut down, thus eliminating 1,200 jobs. The Massillon mill is unlikely to survive as a divested entity. It is an antiquated facility that needs many expensive capital improvements which a potential purchaser would be unlikely to make given the mill's prior marginal profitability.

In addition, as a divested entity the Massillon mill would be perilously dependent upon its largest competitor for the supply of stainless hot band that is absolutely essential to Massillon's cold finishing operations. The long-term supply contract by which LTV would provide hot bands to Massillon has the primary result of tying Massillon to LTV under terms that would allow LTV to control the cost of the mill's opperations by manipulating the supply and price of the hot band sold to Massillon. No mill can operate viably under such a dependency. Even if Massillon were somehow to survive in the shorter term, at the end of the ten-year supply contract the mill would be forced to shut down.

One of our greatest concerns is that the mill will be purchased by a speculator that would close the mill after it had produced whatever return it could in the short run. This action would deal a double blow to Massillon employees, risking not only their jobs but also their accrued employee benefits.

Furthermore, the stainless steel divestiture plan will likely affect jobs at Republic's hot rolling mill at Canton, Ohio. The Canton mill currently produces steel for Massillon. Under the divestiture proposal, the merged company would be able to provide substantially all of Massillon's stainless steel needs out of LTV's fully integrated stainless mill at Midland, Pennsylvania. The older Canton melt facility would likely be closed or contracted, resulting in an additional loss of jobs.

The United Steelworkers is also concerned about the apparent loss of jobs associated with the divestiture of Republic's carbon steel mill at Gadsden, Alabama. As a divested entity, the Gadsden mill will not be a viable competitor. The Gadsden mill has efficient rolling and finishing facilities, but the steelmaking segment of the mill will need substantial investments involving large amounts of capital in order to be competitive in future years.

If the mill is sold at all, the most likely buyer would be an importer of steel slabs who planned to limit the mill to a re-rolling function. The resulting closure of the hot end of the mill would result in a loss of 800 jobs. If the mill is not sold at all and simply closed, the total job loss at Gadsden would be 2,200.

As I stated above, we do not oppose the merger itself. However, if divestitures are needed in order to comply with antitrust regulations, we strongly urge that these divestitures should not result in further loss of steel capacity in the United States, and further loss of employment opportunities for steelworkers and management employees.

Sincerely,

Carl B. Frankel,

Associated General Counsel.

[FR Doc. 84-18167 Filed 7-18-84; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

1. Date: August 16, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in English Literature submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

2. Date: August 16, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in Art History submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

3. Date: August 17, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in Comparative Literature; Literary Theory and Criticism; Theater; Linguistics; Composition and Rhetoric submitted to the Division of Fellowships and Seminars, for projects after January 1, 1985.

4. Date: August 17, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in Ancient and European History submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

5. Date: August 21, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research and Fellowships for College Teachers applications in American History I submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

6. Date: August 22, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in American History II submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

7. Date: August 22, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in Philosophy submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

8. Date: August 23, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in English Literature to 1900 submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

9. Date: August 24, 1984
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2
Program: This meeting will review Fellowships for College Teachers applications in Modern British and American Literature submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

10. Date: August 27, 1984
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for Independent Study and Research applications in Art History submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

11. Date: August 28, 1984
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2
Program: This meeting will review Fellowships for Independent Study and Research and Fellowships for College Teachers applications in Religious Studies submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

12. Date: August 20, 1984
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2
Program: This meeting will review Fellowships for College Teachers applications in 19th and 20th-Century American History submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

13. Date: August 29, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers applications in Sociology Psychology, Education, and Economics submitted to the

Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

14. Date: August 30, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.
Program: This meeting will review Fellowships for College Teachers and Fellowships for Independent Study and Research application in Anthropology submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

15. Date: August 30, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for Independent Study and Research applications in Education; Psychology, and Sociology submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1985.

The proposed meetings are for the purpose of Panel review discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,
Advisory Committee Management Officer.

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NATIONAL TRANSPORTATION SAFETY BOARD

Reports and Recommendations; Availability of Reports Issued

Marine Accident Report: Sinking of the U.S. Tug TECO #2 While Assisting in the Docking of the USS WILLIAM V PRATT, Pensacola, Florida, October 12, 1983 (NTSB/MAR-84/04) (NTIS Order No. PB84-916404).

Marine Accident Reports: Summary Format, Issue Number 6—Reports Adopted January 1983 through December 1983 (NTSB/MAB-84/01) (NTIS Order No. PB84-917301).

Marine Accident Report: Collision of the U.S. Coast Guard Cutter POLAR SEA and Barges, Seattle, Washington, September 10, 1983 (NTSB/MAR-84/03) (NTIS Order No. PB84-916403).

Highway Accident Report: Valley Supply Company Truck Towing Farm Plow/Anchor Motor Freight, Inc., Car-Carrier Truck/New York State Association for Retarded Children Bus Collision and Fire, State Route 8, near Holmesville, New York, April 5, 1983 (NTSB/HAR-84/01) (NTIS Order No. PB84-916201).

Pipeline Accident Report: El Paso Natural Gas Company Compressor Station Explosion and Fire, Bloomfield, New Mexico, May 26, 1983 (NTSB/PAR-83/04) (NTIS Order No. PB83-916504).

Safety Study: Statistical Review of Alcohol-Involved Aviation Accidents (NTSB/SS-84/03) (NTIS Order No. PB84-917003).

Aircraft Accident Report: Western Helicopters, Ninc., Bell UH-1B, N87701, Valencia, California, July 23, 1982 (NTSB/AAR-84/02) (NTIS Order No. PB84-910402).

Safety Study: Deterrence of Drunk Driving: The Role of Sobriety Checkpoints and Administrative License Revocations (NTSB/SS-84/01) (NTIS Order No. PB84-917001).

Aircraft Accident Report: Eastern Air Lines, Inc., Lockheed L-1011, N334EA, Miami International Airport, Miami, Florida, May 5, 1983 (NTSB/AAR-84/04) (NTIS Order No. PB84-910404).

Aircraft Accident Report: McCauley Aviation, Inc., Mitsubishi MU-2B, N72B, near Jeffersonville, Georgia, March 24, 1983 (NTSB/AAR-84/01) (NTIS Order No. PB84-910401).

Aircraft Accident Report: Brief Format, U.S. Civil and Foreign Aviation, Issue Number 6 of 1982 Accidents (NTSB/AAB-83/08) (NTIS Order No. PB83-916908).

Note.—Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports, call 707-487-4650, and to order subscriptions to reports call 703-487-4630.

Recommendations to

Aviation—*Federal Aviation Administration: May 4: A-84-45 through -50:* Issue a rule defining the blood alcohol concentration level that constitutes "under the influence" at the lowest possible level consistent with the capability of testing equipment to measure any ingested alcohol. Issue a rule which establishes implied consent to toxicological testing as a condition of issuance of an airman certificate. Develop comprehensive educational and classroom materials on the effects of alcohol on airman performance and distribute them to appropriate FAA personnel and to individual pilots through the Accident Prevention Program and through fixed base operators, flying clubs, flight schools, and individual flight instructors. Provide to appropriate FAA personnel, particularly Aviation Medical Examiners and Flight Surgeons, and to others within the aviation community, materials to improve their ability to detect airmen with alcohol problems for use in determining fitness for medical certification and in making referrals for counseling. Seek legislative authority to use the NDR to identify airmen whose driving licenses have been suspended or revoked for alcohol-related offenses. Develop and implement a plan for improved surveillance and enforcement of the requirement for possession of a valid medical certificate for the exercise of airman privileges. *June 14: A-84-58 through -60:* Issue an Airworthiness Directive to require the installation of a containment shield or deflector on the engine or in the engine compartments of the Sikorsky S-76A helicopter equipped with Allison 250-C30 engines on an urgent basis after the device(s) is available. Urge the manufacturer to accelerate design and fabrication of the device(s) to provide protection from debris resulting from turbine failure for the No. 1 section of tail rotor driveshaft, the electrical wiring, the adjacent engine, and the fuel and hydraulic system components. Review and evaluate the Detroit Diesel Allison 250-C30 engine certification data to assure that the engine complies with the requirements of 14 CFR 33.75 (Safety Analysis) and 29.903 (Engines) regarding turbine rotor structural design, and take appropriate action if the safety analysis and engine design do not meet the requirements.

Review the engine compartment designs of all certificated multiengine helicopters with regard to the probability that an uncontained engine failure will result in a catastrophic damage to drive train, electrical, and/or fuel and hydraulic system components and require appropriate design changes if warranted. *March 29: A-84-8 and -9 and A-84-17 through -20:* Provide FAA

air carrier inspectors, for use in their surveillance activities, failure trend information based on airline maintenance data which have been reported by airlines, and analyzed and ranked by the FAA for their significance on flight safety. Require the Federal Aviation Administration's principal maintenance inspectors to document and report periodically on the effectiveness of FAA-directed actions to correct deficiencies detected during surveillance activities. Require the revision of the Eastern Air Lines flight manual emergency landing/ditching checklist in the emergency procedures section and the flight deck crew duties checklist in the ditching/crash landing procedures section (1) to make them consistent with those procedures in the flight attendant manual regarding the cockpit crew informing the flight attendants of the nature of the emergency and the approximate time available for cabin preparation, and (2) to prescribe a standardized signal to flight attendants to direct passengers to assume the brace position. Require air carrier operations inspectors to review and to require modification as needed of the flight manuals, flight attendant manuals, and training programs of their respective air carriers to assure compatibility of emergency procedures and checklists. Specific attention should be given to communications among crewmembers during emergencies, including a requirement that the cockpit crew inform the flight attendants of the nature of the emergency and the approximate time available for cabin preparation, and a standardized signal to flight attendants to direct passengers to assume the brace position. Initiate a research and development project directed at revising the minimum performance standards for life preservers contained in Technical Standard Order (TSO) C13d, to require that the life preservers manufactured under this standard can be donned in a minimum time by the average passenger without assistance while seated with the lap belt fastened. Revise 14 CFR 121 to require the installation to TS–C13d life vests on all air carrier aircraft within 12 months of the effective date of TSO–C13d. *April 16: A–84–21 through –41:* Amend 14 CFR 139.65, "Public Protection," to require safeguards against unauthorized entry of persons and inadvertent entry of large animals onto any airport operations area. Revise FAA Order 5280.5, "Public Protection," to establish criteria for acceptable types of fencing and support structure and a policy for gate security for the air operations area at certificated airports. Revise FAA Order 5280.5, "Ground Vehicles," to include specific criteria for determining the adequacy of ground vehicle control, such as the number of ground vehicle accidents each year, disciplinary actions taken in accident cases, the number of repeat offenders, and an annual accident rate. Establish an airport directorate within the FAA, similar to aircraft certification directorates, having technical resources and authority to provide leadership for the airport certification program and consistent application of 14 CFR Part 139. Certificate fueling personnel at certificated airports. Establish designated fueler certification examiners to ensure a uniform standard for fueling training, knowledge, and competence at certificated airports. As an interim measure until a program for certificating fueling personnel can be established, revise the compliance criteria applicable to certificated airports in FAA Order 5280.5 "Handling and Storage of Hazardous Materials," to contain specific standards for initial and recurrent training of fueling personnel, which address methods of assuring fuel quality, fire prevention, vehicle inspection and operation, proper fueling techniques, and knowledge of airport operating rules. Revise the compliance criteria in FAA Order 5280.5, "Handling and Storage of Hazardous Material," incorporate detailed procedures for fuel storage area inspections and specific facility acceptability criteria. Require certificated airport to include fuel storage and dispensing facilities in the selfinspection program prescribed in 14 CFR 139.57 and 139.91 and specify the items, including tank overfill warning devices, which must be checked and approved by airport inspection staff. Adopt design and construction standards for fuel storage area site selection and safety devices at airport fuel storage facilities to be applied uniformly to new airports receiving Federal funds or to currently certificated airports when storage facilities are relocated. Revise 14 CFR 139.49(b) crash-fire-rescue index requirements for water and extinguishing agents to include the recommendations for extinguishing agents specified by the International Civil Aviation Organization or as published in FAA Advisory Circular 150/5210–6B. Revise FAA Order 5280.5, "Fire Fighting and Rescue," to prescribe equipment equal to or better than the proximity suit with lining that is recommended in paragraph 154d, as acceptable for aircraft firefighting and to contain standards by which the adequacy of this protective clothing can be determined for the most extreme exposure conditions which can be safely encountered. Amend 14 CFR 139.55 to require a full-scale demonstration of certificated airport emergency plans and procedures at least once every 2 years, and to require an annual validation of notification arrangements and coordination agreements with participating parties. Incorporate in any 14 CFR Part 139 rule-making proposal calling for a reduction in crash-fire-rescue capability at index A and B airports a list of affected airports, a list of types and schedules of air carrier aircraft serving these airports, and a description of the effect of such a reduction on the firefighting posture of the airports. Initiate research and development activities to establish the feasibility of submerged low-impact resistance support structures for airport facilities, and promulgate a design standard, if such structures are found to be practical. Initiate research and development activities to establish the feasibility of soft-ground aircraft arresting systems and promulgate a design standard, if the systems are found to be practical. Where elimination of obstructions that have a significant adverse effect on aircraft operation at public-use airports is not feasible, publish detailed data on the location of the obstructions and corresponding operational procedures or flight restrictions in the Airport/Facility Directory. Seek statutory authority to prescribe civil penalties for sponsors of proposed construction who fail to comply with the notification requirements of Subpart B of 14 CFR Part 77. Incorporate into pilot training programs and appropriate aeronautical publications sufficient information on the Airport Safety Data Program to familiarize airmen with the criteria in 14 CFR Part 77 used to determine whether an object is an obstruction to air navigation that might adversely affect aircraft operations. Provide continuing maintenance services for existing navigational facilities during the period of transition to the new generation of equipment. *May 31: A–84–52:* Examine the operating procedures used by Grand Canyon sightseeing tour operators and, if necessary, develop and publish standards for operating procedures, including route selection, flight scheduling, and altitude selection for sightseeing flights in the Canyon, and require that operators incorporate these standards in their operations specifications. *June 5: A–84–55 through –57:* Amend 14 CFR 105 to require that persons who intend to operate aircraft for parachute jump activities obtain an

initial approval for the use of the aircraft for this purpose from an appropriate FAA District Office, and require that persons seeking such approval present sufficient evidence to permit evaluation of the following:

—The effect of any aircraft modification such as door removal or external protuberances on the controllability or handling qualities of the aircraft.
—The relationship of the maximum number of persons to be carried aboard the aircraft to the emergency exit requirements of 14 CFR 91.47, the safety belt requirements of 14 CFR 91.14, and the aircraft's published weight and balance envelope for takeoff and landing.
—The parachute jump egress procedures to be used as they may affect adversely the airplane weight and balance limitations and controllability during jump operations and may require suitable placards on the aircraft defining special procedures needed to maintain controllability.

Direct FAA District Office inspectors to contact periodically operators known to use aircraft in parachute jump activities to review their operations to assure adherence to applicable regulations and good safety practices. Encourage FAA District Office inspectors to maintain close liaison with the United States Parachute Association and local parachute clubs to foster appreciation for adherence to good safety practices.

June 19: A-84-63: Require the Beech Aircraft Corporation to modify the main circuit breaker panel installations in all Model 1900C airplanes (1) to prevent contact between the Adel clamps, which hold the circuit wire bundles in place at the lowest panel corners, and the adjacent circuit breaker bus bars, (2) to provide complete antichafe protection for electrical wiring to and from the circuit breaker panel where the wires pass through the support intercostal openings, and (3) to eliminate the possibility of crimping the adjacent diode leads during closure of the circuit breaker panel.

Eastern Air Lines, Inc.. May 7: A-84-42 through -44: Revise its flight manual emergency landing/ditching checklist in the emergency procedures section, the flight deck crew duties checklist in the ditching/crash landing procedures section, and the flight attendant manual (1) to make them consistent regarding the flightcrew informing the flight attendants of the nature of the emergency and the approximate time available for cabin preparation; and (2) to prescribe a standardized signal from the flightcrew to flight attendants to direct passengers to assume the brace position. Review and modify as needed, its flight manuals, flight attendant manuals, and training programs to assure compatibility of emergency procedures and checklists, and to require joint cockpit and cabin crew training with respect to emergency procedures; specific attention should be given to conducting periodic emergency drills in which cockpit/cabin crew coordination and communication are practiced and passenger briefings are simulated regarding events that may be expected during such emergencies. Revise, as required, its predeparture oral briefing and supplementary safety briefing cards to ensure that each accurately demonstrates or describes all steps necessary for passengers to locate and recover life vests from the stowed position, remove them from their plastic containers, and don them.

DOD Advisory Committee on Federal Aviation: June 15: A-84-61-and 62: Develop and institute procedures to meet the assessment and reporting requirements of 14 CFR 139.69 at military airports from which civil aircraft operate. Distribute to all military airports from which civil aircraft operate National Transportation Safety Board Special Investigation Report, Large Airplane Operations on Contaminated Runways (NTSB/SIR-83/02), and institute the actions recommended in Safety Recommendations A-82-157 and A-82-158 at military airports from which civil aircraft operate.

National Agricultural Aviation Association, National Association of Flight Instructors, and Aircraft Owners and Pilots Association: May 4: A-84-51: Dissmeminate to its members through articles in periodicals, seminars, workshops, and other avenues, information on the dangers of alcohol use in connection with flying.

Railroad—*Association of American Railroads, American Railway Engineering Association, and American Short Line Railroad Association: April 20: R-84-20:* Review and revise, where necessary, procedures for the installation and maintenance of high-strength alloy rails, especially high-strength chrome-vanadium alloy rails, to minimize the possibility of externally induced stress factors in such rails and to implement more stringent internal defect testing programs.

Federal Railroad Administration: June 18: R-84-30 and -31: Promulgate rules requiring enginecrews to communicate to the rear crews the aspects displayed by all wayside signals governing the progress of the train, irrespective of the signal indication. Develop and promulgate a requirement that locomotives operated in main track service be equipped with an alerting device which will stop a train if the engineer fails to respond to an alarm indicating that he or she has fallen asleep or has become incapacitated.

Association of American Railroads: June 18: R-84-32: Encourage member railroads to develop and implement rules that will require enginecrews to communicate to the rear crews the aspects displayed by all wayside signals governing the progress of the train, irrespective of the signal indication.

Highway—*New York State Department of Motor Vehicles: Apr. 12: H-84-9:* Seek amendment of Section 375.29a of the New York State Vehicle and Traffic Law to require the use of safety chains, cables, or other redundant devices with any dolly that is used for transporting a vehicle on public highways that is incapable of being towed on its own wheels.

New York State Department of Transportation: April 12: H-84-5 through -7: Revise, if necessary, your procedures for purchasing special purpose buses to provide end users full information about the type of vehicles and the safety options available. Provide the end user with a copy of the agreed-upon purchase specifications. Require that all emergency exits are properly labled both on the interior and exterior of special-purpose buses, and that these exits are readily accessible exits. Install placards on the front, rear, and sides of mass transportation vehicles which routinely carry mentally retarded and physically handicapped persons to alert motorists and rescue personnel to the fact that bus passengers may have mobility and other impairments and may need assistance in evacuating the vehicle in an emergency situation.

New York State Association for Retarded Children: April 12: H-84-10: Require all drivers to wear seatbelts while operating the Association's vehicles.

Governors of the 50 States and the Mayor of the District of Columbia: April 13: H-84-8: When purchasing buses of the types designed to meet the Federal standards for schoolbuses built after April 1977, which are intended for special-purpose uses in which the standards are not mandatory, conduct an evaluation of any proposed modifications for their possible adverse effects on the safety of the intended passengers.

Governors of Arizona, Arkansas, Florida, Georgia, Idaho, Maryland, Massachusetts, Nebraska, New Jersey, New York, South Dakota, Vermont, and Virginia: April 23: H-84-15 thru -18:

Continue and expand the use of sobriety checkpoints on a periodic and continuing basis by the appropriate enforcement agencies under your jurisdiction as part of a comprehensive Driving While Intoxicated enforcement program. These checkpoints should be conducted according to accepted procedures and constitutional safeguards. Encourage local law enforcement agencies within your State to institute sobriety checkpoints on a similar basis. Enact legislation or utilize existing authority to provide for administrative revocation of the licenses of drivers who refuse a chemical test for alcohol or who provide a result at or above the State presumptive limit. Evaluate the effectiveness of sobriety checkpoints and administrative license revocation implemented.

Governors of Alabama, California, Connecticut, Hawaii, Guam, Illinois, Kansas, Kentucky, Michigan, Montana, New Hampshire, Pennsylvania, Puerto Rico, Rhoide Island, South Carolina, Tennessee, Texas, Virgin Islands, Wisconsin, and Wyoming: Apr. 23: H-84-11 thur -14: Institute the use of sobriety checkpoints on a periodic and continuing basis by the appropriate enforcement agencies under your jurisdiction as part of a comprehensive Driving While Intoxicated enforcement program. These checkpoints should be conducted according to accepted procedures and constitutional safeguards. Encourage local law enforcement agencies within your State to institute sobriety checkpoints on a similar basis. Enact legislation or utilize existing authority to provide for administrative revocation of the licenses of drivers who refuse a chemical test for alcohol or who provide a result at or above the State presumptive limit. Evaluate the effectiveness of sobriety checkpoints and administrative license revocation procedures implemented.

National Highway Traffic Safety Administration: April 23: H-84-25: Evaluate the effectiveness of sobriety checkpoints and administrative revocation procedures.

Governors of Colorado, Delaware, Missouri, New Nexico, Oregon, Utah, and Washington: April 23: H-84-19 thru -21: Continue and expand the use of sobriety checkpoints on a periodic and continuing basis by the appropriate enforcement agencies under your jurisdiction as part of a comprehensive Driving While Intoxicated enforcement program. These checkpoints should be conducted according to accepted procedures and constitutional safeguards. Encourage local law enforcement agenies within your State to institute sobriety checkpoints on a similar basis. Evaluate the effectiveness of sobriety checkpoints and administrative license revocation procedures implemented.

Mayor of the District of Columbia: April 23: H-84-19 thur -21: Continue and expand the use of sobriety checkpoints on a periodic and continuing basis by the appropriate enforcement agencies under your jurisdicaion as part of a comprehensive Driving While Intoxicated enforcement program. These checkpoints should be conducted according to accepted procedures and constitutional safeguards. Encourage local law enforcement agencies within your jurisdicaiton to institute sobriety checkpoints on a similar basis. Evaluate the effectiveness of sobriety checkpoints and administrative license revocation procedures implemented.

Governors of Alaska, Indiana, Iowa, Louisiana, Maine, Minnesota, Mississippi, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, and West Virginia: April 23: H-84-22 thru -24: Institute the use of sobriety checkpoints on a periodic and continuing basis by the appropriate enforcement agencies under your jurisdiction as part of a comprehensive Driving While Intoxicated enforcement program. These checkpoints should be conducted according to accepted procedures and constitutional safeguards. Encourage local law enforcement agencies within your State to institute sobriety checkpoints on a similar basis. Evaluate the effectiveness of sobriety checkpoints and administrative license revocation procedures implemented.

Federal Highway Administration: May 16: H-84-28 and -29: Issue an "On Guard" bulletin reporting the circumstances of the accident on October 7, 1983, in Philadelphia, Pennsylvania, and warn commercial motor vehicle operators that the use of after-market parts as replacements for critical suspension components can be a dangerous practice since the parts may not meet original equipment standards. Motor carriers should be advised to physically inspect all leaf spring suspension components, directing particular attention to the tension side of all after-market leaves in the spring clip area. Direct inspectors of the Bureau of Motor Carrier Safety to give particular attention to the examination of suspension components and axles for fatigue cracks during the conduct of roadside inspections and vehicle audits.

Mack Trucks, Inc., May 16: H-84-30: Institute quality control procedures to validate that all new vehicle and service part leaf springs are manufactured in accordance with the engineering drawing specification, and require that the engineering drawing include information regarding decarburization control.

Railroad—*New York City Transit Authority: April 9: R-84-17 through -19:* Immediately require all existing construction contract to provide plans that meet approved engineering, construction, and maintenance specifications of the New York City Transit Authority, and require that all future contracts contain such provisions. Immediately evaluate the New York City Transit Authority maintenance division standards for supporting skeletonized track, and insure that the standards provide for the safe operation of trains. Provide those standards to all divisions involved in the construction and maintenance of track, and incorporate those standards in all work plans. Require that inspectors responsible for insuring safe conditions of track know the necessary standards for maintaining those conditions.

Metro Rail System: May 15: R-84-21 through -30: Until the MDTA automatic train control (ATC) system is certified and put in service, operate trains in accordance with the manual block (absolute) system outlined in the MDTA "Operating Plan Metrorail Dadeland South-Overtown" dated May 10, 1984, and require that all main line switches in the manual block (absolute) sections to be clamped for the normal route. Emphasize in the training of all operating personnel the operation of the MDTA manual block (absolute) system for safely and effectively operating trains in revenue service. Establish a method of periodically monitoring employees for compliance with the MDTA system of operating rules. Provide a dedicated means of communication for train operations using standardized terminology for train operations and require that all instructions issued for the operation of trains be in the standardized terminology. When conditions, such as the disablement of a train or other emergency, require that two or more trains enter the same block when the ATC is inoperative, use train orders requiring all trains to operate at speeds not to exceed 15 mph and prepared to stop in one-half the sight distance. Require by operating rule the use of blocking devices on control consoles which govern the signal aspects and movement of switches behind trains when the manual block (absolute) system is in effect and eliminate the use of a permissive block. Limit the duty

time of rail attendants (train operators), train controllers, and train dispatchers to not more than 12 hours in a 24-hour period and not more than 60 hours in a 7-day week. Improve the contrast of numbers and background of speed signs and locate signs so that glare from the sun does not impair their legibility to permit rail attendants (train operators) to determine proper train speed at all times. In consultation with local fire and police departments, establish standard operating procedures for emergencies which outline the responsibilities of response personnel and the methods to be used to cope with specific emergencies. Establish a positive method for informing all emergency personnel that third rail power is off and that it is safe to move to the track level.

Seaboard System Railroad: June 18: R-84-33 and -34: Develop and implement a rule requiring enginecrews to communicate to the rear crews the aspects displayed by all wayside signals governing the progress of the train, irrespective of the signal indication. Establish procedures at initial and terminal crew reporting points that will verify that crewmembers are not under the influence of alcohol or drugs and that crewmembers are or have been fully capable of performing the duties of their assignment safely.

Marine—*U.S. Coast Guard: April 5: M-84-17 through -19:* Install on the USCGC POLAR SEA and other Coast Guard vessels of similar size a means of automatically recording engine orders during maneuvering and a means of automatically recording the vessel's headings. Require the commanding officers of U.S. Coast Guard vessels using commercial tugs for assistance in berthing to retain the services of a qualified docking pilot until they are knowledgeable of local conditions. Provide training for commanding officers and prospective commanding officers of larger Coast Guard vessels in the use of tugs.

Pipeline—*American Gas Association and American Public Gas Association: April 9: P-84-10:* Notify member companies of the circumstances of the accident in East Boston, Massachusetts, on September 23, 1983, and urge them to determine if regulators in their systems may be balanced internally by unsecured weights, and where such conditions are found, urge that corrective action be implemented.

Boston Gas Company: April 9: P-84-7 through -9: Inspect all primary and monitoring regulators in its gas distribution system to verify that the regulator gaskets are correctly installed and that the vent piping is watertight. Secure the balance weights on the diaphragm plate on all regulators that use balance weights. Repair as necessary and maintain existing pressure recording equipment to record correctly the operating conditions of the gas distribution system.

American Gas Association and American Public Gas Association: April 9: P-84-10: Notify member companies of the circumstances of the accident in East Boston, Massachusetts, on September 23, 1983, and urge them to determine if regulators in their systems may be balanced internally by unsecured weights, and where such conditions are found, urge that corrective action be implemented.

American Gas Association: June 15: P-84-13 and -14: Disseminate to its member companies the circumstances of the accident in Clear Lake, Iowa, on July 12, 1983, and urge them to reevaluate their plastic pipe fusion procedures and to check that their responsible personnel are explicily following the procedures. Urge its member companies to reemphasize to their responsible personnel the importance of rapidly shutting down failed gas facilities and the importance of evacuating residents, ventilating buildings, and eliminating sources of ignition.

Plastic Pipe Institute: June 15: P-84-17 and -18: Urge its member companies to emphasize to users of plastic pipes the importance of explicitly following recommended fusion procedures. Urge its member companies to cooperate with the Gas Research Institute in the development of nondestructive equipment testing capable of detecting inadequately fused butt, saddle, and socket fusion joints in the field.

Gas Research Institute: June 15: P-84-15 and -16: Conduct research and develop guidelines concerning safe bending radii for plastic pipe containing butt, saddle, and socket fusions. Support the development of nondestructive testing equipment which can be used practically for plastic pipe fusions in the field.

Interstate Power Company: June 15: P-84-11 and -12: Review with its pipefitters/operators all elements of its procedures for fusion of plastic pipe emphasizing the importance of strict adherence to each element of these procedures to assure proper fusion. Review with its gas district clerks procedures for the immediate recording of leak complaints and immediate dispatch of personnel, and stress the importance of immediately recording complaints and ensuring response activity.

Research and Special Programs Administration: June 18: P-84-26: Amend Federal regulations governing pipelines that transport highly volatile liquids to require a level of safety for the public comparable to that now required for natural gas pipelines.

Mid-America Pipeline System: June 18: P-84-19 through -25: Institute a more aggressive program for the removal or accommodation of identified encroachments of pipeline easements which involve added risks of damage to pipelines. Provide to the Tulsa Dispatch Control Center sufficient information on operating conditions along the pipeline system to enable dispatchers to identify the reason for any actuation of an operating console alarm. Establish, in addition to on-the-job training, a formal dispatcher training program for identifying and responding to emergency conditions. Enforce company requirements for inspection of pipeline markers by its area operators to assure, accuracy, thoroughness, and early correction of identified deficiencies. Validate the inventory of fire and other emergency services in the vicinity of its pipeline and establish procedures to update changes. Determine periodically the stress level, burial depth, protection at road crossings, and other factors affecting the safety of its pipelines carrying highly volatile liquids; correlate these factors with the members of people at risk; and establish a ranked order of risks that includes appropriate preventive actions that will be initiated to precluded unacceptable threats to public safety. Provide, by remotely operable valves or other means, a capability to rapidly isolate failed sections, and evaluate the need for reducing the separation of remotely operable valves or other closure devices.

National Association of Counties: June 18: P-84-27: Advise its members of the circumstances of the accident near West Odessa, Texas, on March 15, 1983, and urge them to develop measures to preclude the development of residential lots over pipelines transporting hazardous liquids or gases or of lots on which construction will necessarily encroach on easements for the pipelines.

American Land Development Association and The Urban Land Institute: June 18: P-84-28: Advise its members of the circumstances of the accident near West Odessa, Texas, on March 15, 1983, and urge them to cooperate with local government land planning and zoning agencies in the development and implementation of restrictions against the development of residential lots over pipelines transporting hazardous liquids or gases or of lots on which construction will

necessarily encroach on easements for the pipelines.

National Association of Realtors: June 18: P-84-29: Advise its members of the circumstances of the accident near West Odessa, Texas, on March 15, 1983, and develop practices for its members to follow concerning notification on prospective purchasers or occupants of real estate of existence of any pipelines or pipeline easements or rights-of-way which cross the property and of the potential hazards posed by the products transported and advise them of the need to contact the owner of the pipeline before undertaking any excavation operations.

Transportation Research Board: June 18: P-84-30: Assess the adequacy of existing public policy for surface and subsurface use of land adjacent to pipelines that transport hazardous commodities to provide reasonable public safety. Based on the findings of the assessment, develop a recommended policy to correct identified deficiencies in current policy.

Intermodal—*United States Coast Guard, Federal Emergency Management Agency, National Institute for Occupational Safety and Health, and Environmental Protection Agency: April 23: I-84-5:* Work with the National Fire Protection Association and the American Society for Testing and Materials in the development of standards for design and construction of chemical protective suits.

International Association of Fire Fighters and International Association of Fire Chiefs: April 23: I-8-4: Work with the National Fire Protection Association and the American Society for Testing and Materials in the development of standards for design and construction of chemical protective suits.

National Fire Protection Association: April 23: I-84-1 through -3: Develop and issue standards for the design and construction of chemical protective suits, including face pieces whether or not an integral part of suit. Assist the American Society for Testing and Materials F23.5 Committee in developing and issuing standards for both initial certification and periodic recertification of chemical protective suits. Establish standards for both the content and format of chemical compatibility information which should be provided by manufacturers of chemical protective suits.

Note.—Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include the recommendation number(s) in your request. Copies of recent recommendations are free of charge while supplies last. Recommendations that must be photocopied will be billed at a cost of 14 cents per page ($1 minimum charge.)

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

July 13, 1984.

[FR Doc. 84-18090 Filed 7-18-84; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co.; (Pilgrim Nuclear Power Station) Issuance of Final Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a final decision concerning a Petition dated July 20, 1983, filed by Michael D. Ernst on behalf of the Massachusetts Public Interest Research Group. The Petitioner had requested that the Commission take action to remedy certain alleged serious deficiencies in the offsite emergency response plans for the Pilgrim Nuclear Power Station in Plymouth, Massachusetts. On February 27, 1984, the Director of Inspection and Enforcement issued an Interim Decision denying in part and deferring in part the Petitioner's request. The portion of the Petitioner's request deferred dealt with potential bottlenecks near the Pilgrim site which might impede effective evacuation. The Director has now determined to deny the remaining portion of Petitioner's request dealing with this issue. Reasons for this final decision are explained in the "Final Director's Decision Under 10 CFR 2.206" (DD-84-15) which is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the local Public Document Room for the Pilgrim Nuclear Power Station at the Pilgrim Public Library, North Street, Plymouth, Massachusetts, 02360.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c) the decision will become the final action of the Commission twenty-five (25) days after issuance, unless the Commission on its own motion institutes review of the decision within that time.

Dated at Bethesda, Maryland, this 3rd day of July 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-18143 Filed 7-18-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-325]

Carolina Power & Light Co., Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-71, issued to Carolina Power & Light Company, for operation of the Brunswick Steam Electric Plant, Unit 1 located in Brunswick County, North Carolina.

The amendment proposed by the licensee would permit a one-time only deferment of Technical Specification (TS) required surveillance involving full-stroke cycling of four reactor instrumentation system isolation valves in accordance with the licensee's application dated May 10, 1984 as supplemented June 20, 1984. The deferment would be from August 19, 1984 until the end of the current outage scheduled to be no later than November 2, 1984. The valves involved in this request are excess flow check valves (EFCV) located in the instrument sensing lines on drywell (DW) penetrations E-53A, X-53B, X-69F and E-83A. These instrument lines provide input to reactor instrumentation transmitters. The purpose of the EFCVs is to provide a means of isolating an instrument line in the event of a line failure downstream of the EFCV; therefore, the EFCVs involved are only required to function in the unlikely event of such an instrument line failure.

Brunswick Steam Electric Plant (BSEP) Technical Specification section 4.6.3.4 requires that each reactor instrumentation system isolation valve be demonstrated operable at least every 18 months by cycling each valve through at least one full cycle of travel. The four EFCVs involved in this request were last tested on October 2, 1982. Utilizing the maximum surveillance period of 125 percent, the latest required performance date is August 19, 1984. This proposed revision will permit a one-time only extension of the surveillance interval until the outage schedule to begin no later than November 2, 1984. Instead of the permitted interval of 22.5 months

(687 days), which is 18 months plus 4.5 months (25%) flexibility, the interval would be 25 months (762 days). This represents an extension of the surveillance interval of 2.5 months (75 days) or 10.9%.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed its request, and has concluded that the proposed change involves no significant hazards consideration. The staff agrees with this conclusion. The proposed change represents a relaxation in the surveillance requirements; however, the length of the requested extension is small with respect to the maximum allowable frequency and that the need for the EFCVs to function during the proposed extension is very small.

The only safety question associated with this change is whether a one time increase in surveillance interval for these valves would significantly increase the risk of malfunction of these valves in the event of instrument line failure. Extending the surveillance interval for the valve cycling of the EFCVs involved, from a maximum surveillance interval of 22.5 months to 25 months, does not constitute a significant reduction in the verification of operability of the involved EFCVs less than 10%. For a one time extension it would be even less. This small change in reliability would have no significant effect on the probability of instrument line failure followed by EFCV failure. This is based on the following information:

1. There is a level of confidence in the instrument lines involved based on seismic qualification and hydrostatic testing. The high level of confidence in the integrity of the lines is based on the fact that the instrument lines involved are seismically qualified and that the lines were tested during reactor pressure vessel hydrostatic test on June 1, 1983.

2. The likelihood of the simultaneous failure of an instrument and the associated EFCV is amall.

3. The excess flow check valves involved will continue to be available, if called upon, to perform their reactor coolant system isolation function if an accident involving the failure of a reactor instrumentation line were to occur during the interim period. Thus the margin of safety provided is not significantly reduced.

4. The increase in likelihood of a malfunction of the EFCVs resulting from the 10.9 percent increase in the maximum surveillance frequency permitted by TS is small. Extending the surveillance interval from 687 days to 762 days represents only 10.9 percent increase in the maximum surveillance frequency permitted and thus does not significantly affect the level of assurance that the valves are capable of performing their intended function.

Based on the above evaluations the proposed amendment request would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

Therefore, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn.: Docketing and Service Branch.

By August 20, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also indentify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first perhearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitoner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn.. Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Indentification Number 3737 and the following message addressed to Domenic B. Vassallo: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Dated at Bethesda, Maryland, this 13th day of July 1984.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 84-19140 Filed 7-18-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-363]

Georgia Power Comapny, et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 39 to Facility Operating License No. NPF-5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensees), which revised the Technical Specifications for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2, (the facility) located in Appling County, Georgia. The amendment was effective as of the date of its issuance.

This amendment revised the Technical Specifications to implement the Average Power Range Monitor/Rod Block Monitor/Technical Specification (ARTS) Improvement Program. This amendment relates to Unit 2 only. The remaining request on Unit 1 will be acted upon at a later date. This amendment also made other revisons to the TSs which are being separately noticed.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action ws published in the Federal Register on May 16, 1984, 48 FR 20769. No request for a hearing or petition for leave to intervene was filed following this notice. Subsequent to this notice, the licensees submitted correspondence dated June 20 and 27, 1984. This correspondence did not alter the substance of the licensees' request, but was provided as confirmatory documentation of our understanding.

Also, in connection with this action, the Commission prepared an Environmental Assessment and Final Finding of No Significant Impact which was published in the Federal Register on July 12, 1984 (49 FR 28487).

For further details with respect to this action, see (1) the application for amendment dated February 6, 1984, as supplemented April 3, 1984, June 20 and 27, 1984, (2) Amendment No. 39 to License No. NPF-5, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 13th day of July 1984.

For the Nuclear Regulatory Commission.

George W. Rivenbark,

Acting Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84-19147 Filed 7-18-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-4; Low Power]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Order Scheduling Limited Appearance Statements

July 13, 1984.

An evidentiary hearing will be held in this low-power operating license proceeding, commencing July 30, 1984. Any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene, may request in-writing permission to make a limited appearance statement pursuant to the provisions of 10 CFR 2.715 of the

Commission's Rules of Practice. A member of the public does not have a right to participate; limited appearance statements will be heard only at the discretion of the Board, at a time designated in order not to interfere with the taking of evidence in the formal hearing.

Oral limited appearance statements will be heard commencing at 9:00 a.m. until 12:00 noon on Saturday, August 4, 1984, at the Office of the County Legislature, County Center, Legislative Meeting Room, Riverhead, New York. Forms for requesting permission to present such statements will be available. Individual presentations must be germane to the issues under consideration by the Board, and may be no more than five minutes in length.

Written limited appearance statements may be submitted to the Board at any time prior to the closing of the record in this proceeding. Such statements may be of any length, and may be delivered to the Board at the hearing site, or mailed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Docketing and Service Branch, Washington, D.C. 20555. Both oral and written statements will be made a part of the official record of this proceeding.

It is so ordered.

Dated at Bethesda, Maryland, this 13th day of July 1984.

For the Atomic and Licensing Board.

Marshall E. Miller,

Chairman, Administrative Judge.

[FR Doc. 84-19148 Filed 7-18-84; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Coal Options Task Force; Regular Meeting Notice

AGENCY: Coal Options Task Force 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 Commission Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Approval of minutes of the second meeting.
- Status Report: assessing the implications of The Clean Air Act and Clean Water Act.
- Set schedule for review of draft NEPA memorandum and for preparation of a coal specific supplement.
- Set schedule for review of Issue Paper: *Process for Acquiring Options.*
- Status Report: assessment of coal option shelf life.
- Status Briefings: Creston (Bob Henriques) Wyodak (Dick Barnette).
- Status Report: Assessment of site availablility.
- Thermal Resource Data Base generic cost and performance data (Ron Menke).
- Rate base treatment of large coal piles (Jeff King).
- Option development schedules (Bob Henriques).
- Other business.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Coal Options Task Force.

DATE: Friday, July 20, 1984. 9:00 a.m.

ADDRESS: The meeting will be held at the Council Conference Room at 700 S.W. Taylor; Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jeff King, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-19117 Filed 7-18-84; 8:45 am]

BILLING CODE 0000-00-M

Hydropower Assessment Steering Committee and River Assessment Task Force; Combined Meeting Notice

AGENCY: Hydropower Assessment Steering Committee and River Assessment Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of combined meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- River assessment study issue paper.
- River assessment study detailed workplan draft.
- Other.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming combined meeting of its Hydropower Assessment Steering Committee and River Assessment Task Force.

DATE: July 24, 1984. 9:00 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-19118 Filed 7-18-84; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

[Docket No. MC84-1]

Mail Classification Schedule, 1984, Special Fourth-Class Mail; Prehearing Conference; Correction

Issued July 16, 1984.

In FR Doc. 84-18679, appearing at page 28794, July 16, 1984, on line 12 of paragraph 1, change June 8, 1984 (49 FR 24476) to June 5, 1984 (49 FR 23205).

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 84-19189 Filed 7-18-84; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17a-13

No. 270-27

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a-13 (17 CFR 240.17a-13) under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) which requires quarterly securities counts to be made by certain exchange members, brokers and dealers. The potential affected persons are approximately 5,000 registered broker-dealers.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: July 12, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-19168 Filed 7-18-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 15Aa-1

No. 270-24

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.),* the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15Aa-1 (17 CFR 240.15Aa-1) and Form X-15AA-1 thereunder (17 CFR 249.801) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires applicants for registrations as a national, or as an affiliated securities association to file on Form X-15AA-1. To date, only one such association has registered with the Commission.

Submit comments to OMB Desk Officer: MS Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: July 12, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-19165 Filed 7-18-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8102]

The Circle K Corp., Application To Withdraw From Listing and Registration

July 13, 1984.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock ($1.00 par value) of The Circle K Corporation ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on May 22, 1984, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before August 3, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley, E. Hollis,

Assistant Secretary.

[FR Doc. 84-19160 Filed 7-18-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-707]

Sears Mortgage Securities Corp.; Application and Opportunity for Hearing

July 16, 1984.

NOTICE IS HEREBY GIVEN that Sears Mortgage Securities Corporation (the "Applicant"), as sponsor of certain GNMA-backed multiple-class mortgage pass-through certificates, has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an exemption from certain reporting requirements under section 13 and from the operation of Section 16 of the 1934 Act.

The application states in part:

In the absence of an exemption, Applicant would be required to file reports adhering to all the item requirements of Form 10-K, 10-Q and 8-K under the 1934 Act.

Applicant believes that the exemptive order requested is appropriate in that Form 10-Q and certain items of Form 10-K under the 1934 Act are inapplicable to its pass-through mortgage pool arrangement, and that the requirements of Section 16 of the 1934 Act are inapplicable to holders of its mortgage pass-through certificates.

For a more detailed statement of the information presented, all persons are referred to said application, which is on file in the Office of the Commission at the Public Reference Room, 450 5th Street, NW, Washington, D.C., 20549.

NOTICE IS FURTHER GIVEN that any interested persons may submit to the Commission in writing, not later than August 10, 1984, his views on any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-19167 Filed 7-18-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission Office of Consumer Affairs Washington, D.C. 20549.

Extension of Approval

Rule 15b3-1

No. 270-11

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15b3-1 (17 CFR 240.15b3-1) under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) which requires that broker-dealers promptly file amendments to correct inaccuracies contained in any application for registration as a broker-dealer. The

potential affected persons are approximately 6,300 registered broker-dealers.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-19114 Filed 7-18-84; 8:45 am]

BILLING CODE 6010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirement Under OMB Review

ACTION: Noticeof Reporting Requirments Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the Federal Register that the agency has made such a submission.

DATE: Comments must be received on or before August 24, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible.

Copies: Copies of the proposed questionnaire forms, the requests for clearance (S.F. 83), supporting statements, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer:

Elizabeth M. Zaic, Small Business Administration, 1441 L St., N.W., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538.

OMB reviewer: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503 Telephone: (202) 395-4814.

Information collections submitted for review

Title: Business Loan Reconsideration Request.

Frequency: On occasion.

Description of Respondents: Applicants, whose request for business loans are declined.

Annual Responses: 3,600.

Annual Burden Hours: 7,200.

Type of Request: New.

Title: Personal Financial Statement.

Form No.. SBA 413.

Frequency: On occasion.

Description of Respondents: Sole proprietorship by the proprietor; a partnership by each partner; a corporation by each officer and each stockholder.

Annual Responses: 76,500.

Annual Burden Hours: 76,500.

Type of Request: New.

Title: Application for Business Loans.

Form No.. SBA4, 4I, 4 Schd. A.

Frequency: On occasion.

Description of Respondents: Applicants for SBA financial assistance.

Annual Responses: 30,000.

Annual Burden Hours: 600,000.

Type of Request: Revision.

Dated: July 13, 1984.

Elizabeth M. Zaic,

Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 84-19183 Filed 7-18-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Fulton County, Georgia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fulton County, Georgia.

FOR FURTHER INFORMATION CONTACT: David H. Densmore, District Engineer, Federal Highway Administration, Suite 700, 1422 West Peachtree Street, N.E., Atlanta, Georgia 30309, telephone (404) 881-4750, or Peter Malphurs, State Environmental Analysis Engineer, Georgia Department of Transportation, Office of Environmental Analysis, 65 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696-4634.

SUPPLEMENTARY INFORMATION: The FHWA, In Cooperation With the Georgia Department of Transportation (Georgia DOT) will prepare an environmental impact statement (EIS) on a proposal to extend State Route 400 as a limited access facility on new location from its present end at I-285 southward approximately six miles through suburban north Atlanta to interchange with I-85 near Lindberg Drive. This is designated Georgia Project F-056-1(42), Fulton County (the North Atlanta Parkway).

The facility as proposed would consist of two lanes plus a bus/HOV lane in each direction. The proposed facility is considered necessary to provide for existing and projected traffic demand in the corridor.

Alternatives under consideration include: the build and no-build alternatives. The location of the build alternative is generally fixed by the limited availability of undeveloped or less developed land, but numerous design options exist to minimize impacts.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Numerous public information meetings have been and will continue to be held and agency scoping meetings are anticipated. An attempt has been made to meet with every interested citizen/civic organization in proximity to the project. They have each designated representatives for continuous coordination. In addition, a public hearing will be held. Public notice will be given of the time and place of future meetings and hearings.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

The Catalog of Federal Domestic Assistance Program Number is 20.205, *Highway Research, Planning and Construction.* Georgia's approved clearinghouse review procedures apply to this program.

Issued on: July 10, 1984.

David H. Densmore,

District Engineer, Atlanta, Georgia.

[FR Doc. 84-19088 Filed 7-18-84; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; St. Tammany Parish, LA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be

prepared for a proposed highway project in St. Tammany Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth A. Perret, Project Development Engineer, Federal Highway Administration, Louisiana Division, P.O. Box 3929, Baton Rouge, Louisiana 70821, Telephone: (504) 389-0466; or Mr. Vincent Pizzolato, Public Hearings and Environmental Impact Engineer, Louisiana Department of Transportation and Development, Office of Highways, P.O. Box 44245, Capitol Station, Baton Rouge, Louisiana 70804, Telephone: (504) 342-7542.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development, Office of Highways (LDOTD), intends to prepare an environmental impact statement (EIS) on a proposal to construct an interchange on I-10 in St. Tammany Parish. The proposed action would include a full diamond interchange with a bridge across I-10. The service road on the east side of I-10 will be realigned to maintain its use. A new access road will be constructed between the I-10 Interchange and U.S. 11 to efficiently move through traffic. The purpose of the proposed improvements is to relieve the existing and projected congestion and hazardous intersection conditions that presently exist at the La 433 interchange.

Alternatives under consideration include (1) no action; (2) upgrading the existing interchange on La 433; and (3) three additional interchange configurations, all of which would include access to and from the adjacent lands and a bridge crossing the I-10.

There are currently no plans to hold a formal scoping meeting for the proposed action. A public hearing will be held at a convenient time and place for persons in the project area after the draft environmental impact statement has been circulated. The hearing will be announced through the local news media.

To ensure the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestion are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or Louisiana Department of Transportation and Development at the addresses provided above.

Issued on: July 12, 1984.

Kenneth A. Perret

Project Development Engineer, Louisiana Division, Baton Rouge, Louisiana.

[FR Doc. 84-19130 Filed 7-18-84; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 140
Thursday, July 19, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, July 24, 1984, 9:30 a.m. (Eastern Time).

PLACE: Commission Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, D.C. 20507

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Freedom of Information Act Appeal No. 84-5-FOIA-060-CT, concerning a request for copies of documents from a closed ADEA charge file.
4. Freedom of Information Act Appeal No. 84-5-FOIA-62-CT, concerning a request for information from a closed Title VII/ADEA file.
5. Freedom of Information Act Appeal No. 84-5-FOIA-33-NO, concerning a request for documents from a closed age file.
6. Proposed Regulations on Issuing Opinion Letters

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Consideration of Systemic Decisions/Settlements

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

Dated: July 17, 1984.

Treva McCall,

Executive Secretary to the Commission.

[FR Doc. 84-19238 Filed 7-17-84; 1:44 pm]

BILLING CODE 6570-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:23 a.m. on Monday, July 16, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the application of Home State Bank and Trust Company, Humboldt, Nebraska, an insured State nonmember bank, for consent to merge, under its charter and title, with Louisville State Savings Company, Louisville, Nebraska, an operating noninsured institution, and for consent to establish the sole office of Louisville State Savings Company as a branch of the resultant bank.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Chairman's Office, Room 6023 of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: July 16, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-19213 Filed 7-17-84; 11:34 am]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 24, 1984, 10 a.m.

PLACE: 1325 K Street, NW. Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, July 26, 1984, 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (Fifth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential Primary Matching Funds
Ms. Sonia Johnson/Sonia Johnson-Citizens for President Committee
General election certification
Draft Advisory Opinion #1984-28
Alton H. (Bill) Starling, Candidate for United States House of Representatives
Technical amendments to the public financing of nominating conventions regulations
Notice of proposed rulemaking—testing the water regulations
Transmittal to Congress on FOIA and public disclosure regulations, 11 CFR Parts 4 and 5
Finance Committee Report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-19252 Filed 7-17-84; 2:23 pm]

BILLING CODE 6715-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 25, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and

salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 17, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-19268 Filed 7-17-84; 8:45 am]

BILLING CODE 6210-01-M

5

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, July 26, 1984.

PLACE: Hearing Room A, Interstate Commerce Commission Building, 12th & Constitution Ave., NW., Washington, D.C. 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED: Finance Docket No. 28640 (Sub-No. 9), Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Reorganization-Acquisition by Grand Trunk Corporation, et al (Embraces Finance Docket Nos. 9A-E, 9K-N, 9P-BB) and Nos. MC-F-15231 and MC-F-15231 (Sub-Nos. 1 and 2).

CONTACT PERSON FOR MORE INFORMATION: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,

Secretary.

[FR Doc. 84-19297 Filed 7-18-84; 3:53 pm]

BILLING CODE 7035-01-M

Federal Register

Thursday
July 19, 1984

Part II

Department of Health and Human Services

National Institutes of Health

Laboratory Animal Welfare; Proposed U.S. Government Principles for the Utilization and Care or Vertebrate Animals Used in Testing, Research and Training; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Laboratory Animal Welfare: Proposed U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training

AGENCY: National Institutes of Health, HHS.

ACTION: Notice of Interagency Research Animal Committee Proposed U.S. Government Principles for Public Comment.

SUMMARY: The Interagency Research Animal Committee (IRAC) is the focal point for interagency discussion of issues regarding the use of animals for biomedical research, testing, and training. At the request of the Office of Science and Technology Policy (OSTP), IRAC drafted "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training." The draft principles are published below for public comment. When the U.S. Principles are finalized and adopted by OSTP they will serve as a model to be used by Federal agencies in developing specific agency policies for the use of animals.

DATES: Public comment on the proposed U.S. Principles is invited and all comments will be made available to the IRAC for consideration. The comment period will close September 21, 1984.

ADDRESSES: Please send comments or requests for additional information to: Ms. Carol Young, Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 4B09, Bethesda, Maryland 20205, telephone (301 496-7163. All comments received will be available for inspection weekdays (Federal holidays excepted) between the hours of 9:0 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION: The Interagency Research Animal Committee is comprised of representatives from the Department of Health and Human Services (HHS), the Department of Agriculture, the Department of Defense, the Department of State, the Department of the Interior, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Science Foundation and the Veterans Administration. The National Institutes of Health is the lead representative of HHS on the committee, due to the volume of research it conducts and funds involving animals. Other components of the Public Health Service within the HHS that are represented on the committee include the Alcohol, Drug Abuse, and Mental Health Administration, the Centers for Disease Control, the Food and Drug Administration, and the Office of International Health.

The principal concerns of IRAC include the conservation, supply, use, care, and welfare of animals, and the committee's responsibilities include information exchange, program coordination and contributions to policy development.

When the proposed U.S. Principles are finalized it is expected that they will replace the existing 12 PHS/NIH principles listed in the appendix to the *NIH Guide for the Care and Use of Laboratory Animals,* currently being revised by the Institute of Laboratory Animal Resources, National Academy of Sciences—National Research Council. The PHS is also considering the inclusion of the final version of the principles in the PHS Policy on Humane Care and Use of Animals, which is currently undergoing revision. If this is the case, these U.S. Government Principles would replace the PHS Principles listed as article III in the published draft PHS Policy (Special edition, *NIH Guide for Grants and Contracts,* Vol. 13, No. 5, April 5, 1984). The PHS would not, however, adopt the waiver provision that accompanies the IRAC principles and may make other modifications in the principles prior to including them in the PHS Policy.

To a considerable extent IRAC has based the proposed U.S. Principles on a draft statement of principles prepared by the Council for International Organizations of Medical Science (CIOMS), whose membership represents a large majority of the world's biomedical scientific community. It is also anticipated that the World Health Organization will eventually determine whether the CIOMS principles are acceptable on an international basis.

Interagency Research Animal Committee Proposed U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training

The development of knowledge necessary for the improvement of the health and well-being both of man and of animals requires recourse to *in vivo* experimentation with a wide variety of animal species. Methods such as mathematical models, computer simulation, and *in vitro* biological systems should be used wherever appropriate. Whenever U.S. Government Agencies develop requirements for testing, research, or training procedures involving the use of vertebrate animals, the following principles shall be considered; and whenever these agencies actually perform or sponsor such procedures, the responsible institutional official shall ensure that these principles are adhered to:

I. The transportation, care, and use of animals shall be in accordance with the Animals Welfare Act (7 U.S.C. 2131 et. seq.) and other applicable Federal, state and local laws and prescribed policies.[1]

II. Procedures involving animals should be designed and performed with due consideration of their relevance to human or animal health, the advancement of biological knowledge, or the good of society.

III. The animals selected for a procedure should be of an appropriate species and quality, and the minimum number required to obtain scientifically valid results.

IV Proper care of animals, including the avoidance or minimization of discomfort, distress or pain is a moral imperative. Lacking evidence to the contrary, investigators should consider that procedures that cause pain in human beings cause pain in other animals.

V Procedures with animals that may cause more than momentary or slight pain or distress should be performed with appropriate sedation, analgesia, or anesthesia. Surgical or other painful procedures should not be performed on unanesthetized animals paralysed by chemical agents.

VI. Animals that would otherwise suffer severe or chronic pain or distress that cannot be relieved should be painlessly killed at the end of the experiment or, if appropriate, during the experiment.

VII. The living conditions of animals kept for biomedical purposes should contribute to their health and comfort. Normally, the housing, care, and feeding of all animals used for these purposes must be supervised by a properly qualified veterinarian. In any case, veterinary care shall be provided as indicated.

VIII. Investigators and other personnel shall be appropriately qualified and experienced for conducting procedures of living animals. Adequate arrangements shall be made for their in-service training, including the proper

[1] For guidance throughout these Principles the reader is referred to the *Guide for the Care and Use of Laboratory Animals* prepared by the Institute of Animal Laboratory Resources, National Academy of Sciences.

and humane care and use of laboratory animals.

If it is deemed necessary to waive one of the foregoing principles, the decision should be made, with due regard to the provisions of Principle II, by an appropriate review group, such as an institutional animal research committee. Such waivers should not be made where the primary purpose is teaching or demonstration.

Dated: July 6, 1984.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 84-19143 Filed 7-18-84; 8:45 am]

BILLING CODE 4140-01-M

Federal Register

Thursday
July 19, 1984

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 103

Ultralight Vehicles; Safety Review; Notice of Meetings

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 103

[Docket No. 24154]

Ultralight Vehicles; Safety Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: This notice announces a series of meetings to solicit information from the public concerning the operation of ultralight vehicles under Part 103 of the Federal Aviation Regulations. The regulations affecting ultralight vehicles have been in effect for almost 2 years. The FAA made it clear in the preamble to Part 103 that it would monitor the performance of the ultralight community in terms of safety, growth trends, and maturity and, if indicated, would take additional regulatory action to preclude degradation of safety while allowing maximum freedom for ultralight operations. Consistent with this intent, the FAA now seeks factual information from the public to determine whether or not further regulation of the ultralight community is needed. The objective of these meetings is to obtain public input on ultralight vehicle safety and operations.

DATES: Materials relating to the subject matter for presentation at the meetings are requested by August 29, 1984. Later requests to make presentations will be accepted on a space-available basis only. The meetings will be held on the following dates: September 18, 1984—Washington, D.C., September 20, 1984—Rosemont, Illinois; September 25, 1984—El Segundo, California; and September 27, 1984—Fort Worth, Texas. The meetings are scheduled to begin at 8:30 a.m. on each of the above dates and to adjourn at 5 p.m.

ADDRESSES: The meetings will be held at the following locations: September 18, 1984—FAA Headquarters Auditorium, 800 Independence Ave., SW., Washington, D.C., September 20, 1984—Holiday Inn, O'Hare, at Kennedy Expressway, 5440 N. River Road, Rosemont, Illinois; September 25, 1984—Hacienda Hotel, 525 N. Sepulveda Blvd., El Segundo, California; and September 27, 1984—Fort Worth Hilton, 1701 Commerce Street, Fort Worth, Texas.

Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24154, 800 Independence Ave., SW., Washington, D.C. 20591, or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Ave., SW., Washington, D.C. Comments may be examined in the Rules Docket weekdays, except Federal Holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: For requests to be heard at the meetings and for questions about the logistics of the meetings, contact Miss Jean Casciano, Regulatory Review Branch, Safety Regulations Division, Office of the Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 426-8128.

For questions concerning the ultralight issue, contact Mr. Thomas E. Stuckey, Operations Branch, General Aviation and Commercial Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Ave., SW., Washington, D.C. 20591, Telephone (202) 426-8194.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1982, Part 103 of the Federal Aviation Regulations became effective to govern the operations of ultralight vehicles in the United States. The Federal Aviation Administration (FAA) determined that rules governing ultralight vehicles were needed to achieve an acceptable level of safety by reducing potential conflict with other airspace users and by protecting persons and property on the ground. The intent was to provide for safety with a minimum amount of regulation. Accordingly, ultralight vehicles are exempt from certification and registration requirements. Similarly, pilots of ultralight vehicles are not required to possess an FAA pilot or medical certificate.

The FAA chose not to promulgate regulations regarding pilot certification, vehicle certification, and vehicle registration, preferring that the ultralight community assume the initiative for the development of these important safety programs. The ultralight community was also expected to take positive action to develop and administer these programs under FAA guidelines and in a timely manner.

The FAA has worked very closely with the ultralight community since the effective date of Part 103 and has encouraged it to continue its efforts to improve safety. The FAA is now setting in motion the review process that was planned when Part 103 was adopted. This process will examine the effectiveness of Part 103 by soliciting factual information from the public. Comments are specifically invited on the safety issues of pilot training and certification, vehicle standards, and vehicle registration. With this in mind, the FAA poses the following questions:

1. Based on operational experience since the adoption of Part 103, to what extent has Part 103 been effective in meeting its stated purpose?

2. Even though substantial strides have been made by the FAA and the aviation community to educate the ultralight pilot, is there more which should be done to ensure that ultralight pilots are adequately informed of the obligations imposed upon them by Part 103 and by common sense? Is it necessary to adopt a form of simplified pilot training and licensing for this purpose?

3. Will the best interests of aviation safety be further enhanced if the FAA were to require a system of registration in a manner similar to that required of certificated U.S. civil aircraft?

4. The FAA has been encouraging establishment of separate flight parks for ultralights and separate landing strips to be made available at airports for ultralight use so they will be taken out of the normal stream of traffic. What other measures, if any, should be taken to reduce the possibility of incidents between ultralights and conventional aircraft?

5. To what extent, if at all, has operational experience since the adoption of Part 103 indicated a need for the FAA to consider issuing airworthiness standards for ultralight vehicles?

The FAA wishes to obtain the participation of all interested persons to make this a meaningful review of ultralight operations. To obtain this participation, the most effective procedure is to hold public meetings.

Requests To Be Heard

Persons wishing to make formal presentations at the meeting are requested to provide the FAA an abstract or summary of the material to be presented by August 29, 1984. The material should include an estimate of the time needed to make the presentation and should be mailed to the person identified under the caption "FOR FURTHER INFORMATION CONTACT." A brief discussion period open to all attendees will follow each presentation.

Following receipt of the presentation material, the FAA will develop a detailed agenda which also will be available from the person identified as contact for further information. The agenda will be available at the meeting. Requests for time to make a presentation received after August 29,

1984, will be honored on a space-available basis and may not appear on the written agenda.

Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures which are established to facilitate the workings of the meeting:

1. Registration will begin at 7:30 a.m. on the morning of the meeting and will continue until 4 p.m.

2. Sessions will be open to all persons who register. If necessary to complete the agenda, the meeting may be accelerated to enable adjournment at the scheduled time.

3. A panel of FAA personnel will be present to answer questions.

4. All sessions will be recorded by a court reporter. Anyone interested in purchasing a copy of the transcript should contact the court reporter directly.

5. The FAA will consider all material presented at the meeting by participants or forwarded to the public docket. Position papers or other handout material may be accepted at the discretion of the chairperson. However, enough copies should be provided for distribution to all participants.

6. Statements made by FAA participants at the meeting will be made to facilitate discussion and should not be taken as expressing a final FAA position.

Issued in Washington, D.C., on July 13, 1984.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 84-19004 Filed 7-18-84; 8:45 am]

BILLING CODE 4910-13-M

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H.R. 5653 / Pub. L. 98-360

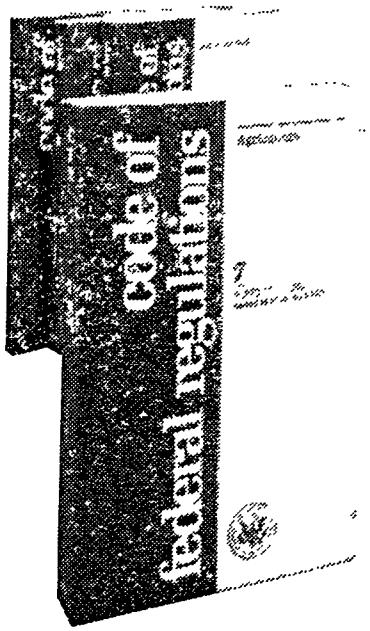
Making appropriations for energy and water development for the fiscal year ending September 30, 1985, and for other purposes. (July 16, 1984; 98 Stat. 403) Price: $2.50

H.R. 5154 / Pub. L. 98-361

National Aeronautics and Space Administration Authorization Act, 1985 (July 16, 1984; 98 Stat. 422) Price: $2.00

H.R. 3075 / Pub. L. 98-362

Small Business Computer Security and Education Act of 1984 (July 16, 1984; 98 Stat. 431) Price: $1.50



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