

Wednesday
April 30, 1986

FEDERAL REGISTER

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see
announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure

Federal Communications Commission
Federal Mine Safety and Health Review Commission

Customs Duties and Inspection

Customs Service

Employee Benefits

Pensions Benefit Guaranty Corporation

Endangered and Threatened Species

Fish and Wildlife Service

Fisheries

National Oceanic and Atmospheric Administration

Grant Programs—Agriculture

Cooperative State Research Service

Grants—Housing and Community Development

Housing and Urban Development Department

Hazardous Waste

Environmental Protection Agency

Highways and Roads

Federal Highway Administration

Maritime Carriers

Federal Maritime Commission

Marketing Agreements

Agricultural Marketing Service

Over-The-Counter Drugs

Food and Drug Administration

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There are no restrictions on the republication of material appearing in the **Federal Register**.

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.

How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Selected Subjects

Pesticides and Pests

Environmental Protection Agency

Privacy

Health and Human Services Department

Radio Broadcasting

Federal Communications Commission

Securities

Securities and Exchange Commission

Television Broadcasting

Federal Communications Commission

Water Pollution Control

Environmental Protection Agency

Wildlife Refuges

Fish and Wildlife Service

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Laurence Davey, 202-523-3517

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Rules and Regulations

Federal Register

Vol. 51, No. 83

Wednesday, April 30, 1986

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 918, 925, and 927

Expenses and Rates of Assessments for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenditures and establishes assessment rates under Marketing Orders 918 and 925. In addition, this regulation increases the 1985-86 budget under M.O. 927 (Oregon/Washington/California Winter Pears). Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: March 1, 1986-February 28, 1987 (§ 918.223); December 1, 1985-November 30, 1986 (§ 925.205); July 1, 1985-June 30, 1986 (§ 927.225).

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

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. The Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities.

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). These actions are based upon recommendations and information submitted by each committee, established under the respective marketing orders, and upon other information. It is found that the expenses and rates of assessment, as

hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking, and good cause exists for not postponing the effective dates until 30 days after publication in the Federal Register (5 U.S.C. 553). Each order requires that the rate of assessment for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such period. To enable the committees to meet current fiscal obligations, approval of the expenses and rates of assessment is necessary without delay. It is necessary to effectuate the declared policy of the act to make these provisions effective as specified, and handlers have been apprised of such provisions and the effective dates.

List of Subjects 7 CFR Parts 918, 925, and 927

Marketing agreements and orders, Peaches, Georgia; Desert grapes, California; Winter pears, Oregon, Washington, California

1. The authority citation for 7 CFR Parts 918, 925, and 927 continue to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Therefore, new §§ 918.223, 925.205 are added; § 927.225 (50 FR 28373) is amended to read as follows (the following sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 918—FRESH PEACHES GROWN IN GEORGIA

§ 918.223 Expenses and assessment rate.

Expenses of \$11,635 by the Industry Committee are authorized, and an assessment rate of \$0.01 per bushel of peaches is established for the fiscal year ending February 28, 1987.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

§ 925.205 Expenses and assessment rate.

Expenses of \$42,000 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of \$0.005 per 22-pound container of

grapes is established for the fiscal year ending November 30, 1986.

PART 927—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

§ 927.225 [Amended]

Section 927.225 is amended by changing \$1,678,124 to \$1,871,477.

Dated: April 24, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 86-9608 Filed 4-29-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 979

[Amdt. No. 5]

Melons Grown in South Texas; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule exempts gift boxes of melons from the container requirements of the handling regulation. The containers currently required are too large for gift pack use. This action will permit melon shippers to serve a small but growing segment of the melon market that would not otherwise be available to them.

EFFECTIVE DATE: May 1, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "nonmajor" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules proposed thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 35 handlers of melons will be subject to regulation under the South Texas Melon Marketing Order during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers, the added burden imposed on small entities by this amendment, if present at all, is not significant.

Notice was given in the March 3, 1986, Federal Register (51 FR 7279) affording interested persons until April 2, 1986, to submit written comments. None was received.

Marketing Agreement No. 156 and Order No. 979, regulate the handling of melons grown in designated counties in South Texas. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The South Texas Melon Committee, established under the order, is responsible for its local administration.

Because requirements under this program have changed infrequently, in December 1981 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

At its public organizational meeting in McAllen, Texas, on December 3, 1985, the committee recommended that the regulation continue but that gift boxes of melons be exempt from the container requirements of the handling regulation. Until this amendment, the handling regulation included a requirement that all melons be packed in containers of specified dimensions. The usual cartons for cantaloups contain 40 pounds and those for honeydew melons 30 pounds, too large for gift-type packaging. Moreover, for the gift-pack market a range of sizes and configurations for containers is necessary. The pack may contain other items such as fruit, preserves or nuts; and a range of different sizes is more appropriate in order to offer consumers a wider selection. All other provisions of the

handling regulation, including minimum grade requirements, still apply to such packages. Since gift packages must contain only the highest quality melons in order to command their price, there is little chance that this will be used as a "dumping ground" for melons of questionable grade. The committee believes this action will enable melon shippers to serve a small but developing market for gift packages.

Although the amended regulation is effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division before March 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, and other available information; and determine whether modification, suspension or termination of the regulations on shipments of South Texas melons would tend to effectuate the declared policy of the act.

Findings

After consideration of all relevant matters, including the proposal set forth in the notice, it is hereby found that the following amendment, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) in that (1) shipments of melons grown in the production area will begin about May 1; (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season; and (3) compliance with this regulation, which is similar to that in effect during previous marketing seasons, will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective date.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 979.304 (47 FR 13118, March 29, 1982; 47 FR 24109, June 3, 1982; 48 FR 21881, May 16, 1983; 49 FR 15541, April 19, 1984; and 50 FR 10206, March 14, 1985) is hereby further amended by adding a new paragraph (e)(4) as follows:

§ 979.304 Handling regulation.

(e) *Special purpose shipments.* * * *
(4) The handling to any person of gift packages of melons not exceeding 25 pounds per package, individually addressed to such person and not for resale, is exempt from the container requirements of paragraph (b) of this section, but shall meet all assessment requirements of § 979.42 and the grade and inspection requirements of paragraphs (a) and (c) respectively of this section.

* * * * *
Dated: April 24, 1986.

Thomas R. Clark,
Acting Director, Fruit and Vegetable Division,
Agricultural Marketing Service.
[FR Doc. 86-9609 Filed 4-29-86; 8:45 am]
BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34-23170]

Securities; Brokerage and Research Services

AGENCY: Securities and Exchange Commission.

ACTION: Interpretive Release Concerning the Scope of section 28(e) of the Securities Exchange Act of 1934 and Related Matters.

SUMMARY: The Commission today announced the issuance of an interpretive release under section 28(e) of the Securities Exchange Act of 1934 ("Act") which provides a safe harbor for persons who exercise investment discretion over beneficiaries' or clients' accounts to pay for research and brokerage services with commission dollars generated by account transactions. In the release, the Commission has clarified its interpretation of the phrase "brokerage and research services" in section

28(e)(3) and has reiterated the disclosure obligations of money managers under the federal securities laws concerning brokerage allocation practices and the use of commission dollars. The Commission has also expressed its views regarding best execution obligations of fiduciaries for their clients' transactions and its views and those of the United States Department of Labor regarding directed brokerage practices by sponsors of employee benefit plans. The Commission believes that the release will provide useful guidance to money managers and other persons in the securities industry.

FOR FURTHER INFORMATION CONTACT: Mary Chamberlin, Chief Counsel, or Kerry F. Hemond, Esq., ((202) 272-2848), Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. For further information regarding the obligations imposed under the Investment Advisers Act of 1940 and the Investment Company Act of 1940, contact Thomas P. Lemke, Chief Counsel, Stephanie M. Monaco, Esq., or Gerald T. Lins, Esq., ((202) 272-2030), Office of Chief Counsel, Division of Investment Management, Securities and Exchange Commission.

SUPPLEMENTARY INFORMATION:

I. Background

Section 28(e) provides a safe harbor to money managers who use the commission dollars of their advised accounts to obtain investment research and brokerage services, provided that all of the conditions in the section are met.¹ The section states that a person who exercises investment discretion with respect to an account² shall not be

deemed to have acted unlawfully or to have breached a fiduciary duty under state or federal law solely by reason of his having caused an account to pay more than the lowest available commission if that person determines in good faith that the amount of the commission is reasonable in relation to the value of the brokerage and research services provided. Conduct outside of the safe harbor of Section 28(e) may constitute a breach of fiduciary duty as well as a violation of specific provisions of the federal securities laws, particularly under the Investment Advisers Act of 1940 ("Advisers Act") and the Investment Company Act of 1940 ("Company Act") and of the Employee Retirement Income Security Act of 1974 ("ERISA"). In addition, the section only excuses paying more than the lowest available commission and does not shield a person who exercises investment discretion from charges of violations of the antifraud provisions of the federal securities laws or from allegations, for example, that he churned an account, failed to seek the best price, or failed to make required disclosures.

In connection with the abolition of fixed commission rates on May 1, 1975, money managers and broker-dealers expressed concern that, if money managers were to pay more than the lowest commission rate available to a broker-dealer in return for services other than execution, such as research,³ they would be exposed to charges that they had breached a fiduciary duty. This concern was based on the traditional fiduciary principle that a fiduciary cannot use trust assets to benefit himself. The purchase of research with the commission dollars of a beneficiary or a client, even if used for the benefit of the beneficiary or the client, could be viewed as also benefiting the money manager in that he was being relieved of the obligation to produce the research himself or to purchase it with his own money. This concern stemmed in part from litigation during the 1960's and 1970's over whether advisers of investment companies had a duty to recapture commission dollars for the benefit of the investment company.⁴ The Congress added section 28(e) of the Act⁵ to make clear that money

managers could consider the provision of research, as well as execution services, in evaluating the cost of brokerage services without violating their fiduciary responsibilities. In adopting section 28(e), the Congress acknowledged the important service broker-dealers provide by producing and distributing investment research to money managers and created a safe harbor to permit money managers, in certain circumstances, to continue to use commission dollars paid by managed accounts to acquire research as well as execution services. These arrangements have come to be referred to as "soft dollar" arrangements.

In 1976, the Commission issued an interpretive release concerning the scope of section 28(e).⁶ The Commission stated in the release that the safe harbor did not protect "products and services which are readily and customarily available and offered to the general public on a commercial basis." The Commission issued the release as a result of a number of practices which it did not believe were within the safe harbor. Since that time, the Commission has issued a report pursuant to section 21(a) of the Act reiterating this standard.⁷ The staff has generally declined, as a matter of policy, to express definitive views as to whether a money manager's receipt of any particular product or service would be protected by section 28(e), although it has provided general comments on research services through the no-action letter process.⁸

Prompted by an increased industry focus on soft dollar practices, over the past eighteen months the staff of the Commission's Divisions of Market Regulation and Investment Management, and the staff of the Commission's regional offices, have been engaged in an examination of such practices generally and in particular in a re-evaluation of the 1976 standard as to the meaning of the phrase "brokerage and research services" in the context of section 28(e). Based on the staff's analyses and recommendations, the Commission has concluded that the 1976 standard is difficult to apply and unduly restrictive in some circumstances, and

¹ Section 28(e) of the Act states in pertinent part: No person using the mails, or any means or instrumentality of interstate commerce, in the exercise of investment discretion with respect to an account shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law unless expressly provided to the contrary by a law enacted by the Congress or any State subsequent to June 4, 1975, solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for effecting a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such member, broker, or dealer, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion. . . .

² The term "investment discretion" is defined in Section 3(a)(35) of the Act.

³ This practice is commonly known as "paying up" for research.

⁴ See *Tannenbaum v. Zeller*, 552 F.2d 402 (2d Cir. 1977); *Arthur Lipper Corp. v. Securities & Exchange Commission*, 547 F.2d 171 (2d Cir. 1976); *Fogel v. Chestnutt*, 533 F.2d 731 (2d Cir. 1975), cert. denied, 429 U.S. 824 (1976); *Moses v. Burgin*, 445 F.2d 369 (1st Cir.), cert. denied, 404 U.S. 994 (1971).

⁵ *Securities Acts Amendments of 1975*, Pub. L. No. 94-29, 89 Stat. 97 (1975).

⁶ Securities Exchange Act Rel. No. 12251 (Mar. 24, 1976).

⁷ *Report of Investigation in the Matter of Investors Information, Inc.*, Securities Exchange Act Rel. No. 18679 (Mar. 19, 1980) [hereinafter cited as Release 18679].

⁸ See, e.g., *The Bank of New Jersey* [1976-77 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 80,662 [June 15, 1976]; *Hugh Johnson & Co.*, [1976-77 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 80,520 (Mar. 24, 1976).

that uncertainty about the standard may have impeded money managers from obtaining, for commission dollars, goods and services they believe are important to the making of investment decisions. Accordingly, the Commission is withdrawing the 1976 standard and adopting a revised standard, as discussed below. At the same time, however, the Commission emphasizes that money managers, particularly investment advisers registered under the Advisers Act, have important fiduciary and disclosure obligations concerning soft dollar practices, as well as a duty to obtain best execution of their clients' transactions. Finally, the Commission expresses its views on the practice of many employee benefit plan sponsors of directing their money managers to execute transactions through specified broker-dealers who have agreed to rebate to the plan a portion of the commissions paid in the form of cash, goods or services.

II. Definition of Brokerage and Research Services

A. In General

Subparagraph (3) of section 28(e) defines the brokerage and research services that are protected. The statute states that a person provides brokerage and research services insofar as he—

(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

(C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.

The legislative history of section 28(e) indicates that: The definition of brokerage and research services is intended to comprehend the subject matter in the broadest terms, subject always to the good faith standard in subsection (e)(1). Thus, for example, the reference to economic factors and trends would subsume political factors which may have economic implications which may in turn have implications in terms of the securities markets as a whole or in terms of the past, present, or future values of individual securities or groups of securities. Similarly, computer analyses of securities portfolios would also be covered. Thus, the touchstone for determining when a service is within or without the definition in section 28(e)(3) is whether it provides lawful and

appropriate assistance to the money manager in the carrying out of his responsibilities.⁹

The Commission relied on this legislative history in adopting the 1976 guidelines, but expressed its view that in order to rely on the section 28(e) safe harbor, the product or service must not be readily and customarily available and offered to the general public on a commercial basis. While application of this standard has in some cases been clear, in other cases it has caused substantial uncertainty and confusion on the part of money managers and others, particularly as the types of research products and their methods of delivery have proliferated and become more complex. For example, participants in the securities industry have repeatedly requested clarification as to whether the application of this standard would disqualify a product that is available for hard dollars, what is meant by "the general public," the extent to which economic, financial and statistical information conveyed through computer facilities to a money manager may be considered to be research, and whether the computer facilities themselves can constitute research. The Commission is concerned that this lack of clarity has impeded the use by fiduciaries of appropriate research material and has acted as a disincentive to competition among broker-dealers.

B. Revised Standard

The Commission believes that, subject to the process discussed below of allocating payment for products or services that serve both a research and a non-research function, the controlling principle to be used to determine whether something is research is whether it provides lawful and appropriate assistance to the money manager in the performance of his investment decision-making responsibilities. In making this determination, the fact that a product or service is readily and customarily available and offered to the general public on a commercial basis does not dictate the conclusion that the product or service is not research, as was the case under the 1976 standard.¹⁰ Rather, the focus should be on whether the product or service provides lawful and appropriate assistance to the money manager's investment decision-making process. What constitutes lawful and appropriate assistance in any particular

case will depend on the nature of the relationships between the various parties involved and is not susceptible to hard and fast rules. Of course, section 28(e) continues to require the money manager to make a good faith determination that the value of research and brokerage services is reasonable in relation to the amount of commissions paid.¹¹ The legislative history of section 28(e) makes clear that the burden of proof in demonstrating this determination rests on the money manager.¹²

In many cases, a product or service termed "research," may serve other functions that are not related to the making of investment decisions. For example, management information systems may integrate such diverse functions as trading, execution, accounting, recordkeeping and other administrative matters, such as measuring the performance of accounts. Where a product obtained with soft dollars has a mixed use, a money manager faces a conflict of interest in obtaining that product by causing his clients to pay more than competitive brokerage commission rates. Therefore, the Commission believes that where a product has a mixed use, a money manager should make a reasonable allocation of the cost of the product according to its use. The percentage of the service or specific component that provides assistance to a money manager in the investment decision-making process may be paid for in commission dollars, while those services that provide administrative or other non-research assistance to the money manager are outside the section 28(e) safe harbor and must be paid for by the money manager using his own funds.¹³ The money manager must keep adequate books and records concerning allocations so as to be able to make the required good faith showing.

Computer hardware is another example of a product which may have a mixed use. If the hardware is dedicated

¹¹ The fact that a product is available for hard dollars or is otherwise available and used by the general public is relevant to the determination of the value of the research.

¹² See *House Comm. on Interstate and Foreign Commerce*, H.R. Rep. No. 123, 94th Cong., 1st Sess. 95 (1975). The Report states that:

It is, of course, expected that money managers paying brokers an amount [of commissions] which is based upon the quality and reliability of the broker's services including the availability and value of research, would stand ready and be required to demonstrate that such expenditures were bona fide.

¹³ The allocation determination itself poses a conflict of interest for the money manager that should be disclosed to the client.

⁹ *Securities Acts Amendments of 1975, Report of the Comm. on Banking, Housing and Urban Affairs*, S. Rep. No. 75, 94th Cong., 1st Sess. 71 (1975).

¹⁰ Nevertheless, obvious overhead expenses such as office space, typewriters, furniture and clerical assistance would not constitute research.

exclusively to software that is used for research for a client's benefit, it may be paid for in commission dollars. On the other hand, if the computer will be used in assisting the money manager in a non-research capacity (e.g., bookkeeping or other administrative functions), that portion of the cost of the computer would not be within the safe harbor. The acquisition of quotation equipment should be analyzed similarly. Such equipment generally serves a legitimate research function of pricing securities for investment and keeping a manager informed of market developments. The equipment may also be used for a non-research purpose (e.g., client reporting). Finally, where a money manager is invited to attend a research seminar or similar program, the cost of that seminar may be paid for with commission dollars. Non-research aspects of the trip, however, such as travel costs, hotel, meal and entertainment expenses, are not within the safe harbor.

The Commission recognizes that the task of properly allocating the research and non-research properties of certain goods and services provided to fiduciaries may be complex. The Commission believes the standard will be satisfied where a fiduciary can demonstrate a good faith attempt, under all the circumstances, to allocate the anticipated uses of a product.

III. Third Party Research

Another issue raised under section 28(e) is whether research may be produced or provided by someone other than the executing broker-dealer, or so-called "third party" research. Prior to the elimination of fixed commission rates, a variety of techniques were employed that permitted money managers to purchase third party research with brokerage commissions. Although the legislative history of section 28(e) includes a strong statement that commission dollars may be paid only to the broker-dealer that "provides" both the execution and research services and that the section does not authorize the resumption of "give-ups,"¹⁴ it seems unlikely that Congress intended to forbid certain common practices that were then considered permissible and whose elimination would be anti-competitive.

In the 1976 release, the Commission indicated that section 28(e) might, under appropriate circumstances, apply to situations in which research produced by third parties is provided to a money

manager by a broker. The Commission suggested that payment of a part of the commission to another broker who is a "normal and legitimate correspondent" of the executing or clearing broker would not necessarily be a give-up outside the protection of section 28(e).

In Release 16679, a report pursuant to section 21(a) of the Act,¹⁵ the Commission found that the brokers involved in the arrangement did not provide the money managers with any significant research services. They merely executed the transactions and paid 50% of the commissions to Investors Information, Inc. ("III"), who represented various research originators. All arrangements for acquiring the services were made by the money managers and the vendors of the services. III simply held the money for the money managers and paid the bills as requested. The money managers were obligated to pay the vendors for the services and the brokers generally were not aware of the specific services which the managers acquired.

The Commission acknowledged that it is not necessary that a broker produce the research services "in-house" in order for the money manager to obtain the protection of section 28(e). The Commission emphasized, however, that the research services must be "provided by" the broker. The Commission stated that while a broker may under appropriate circumstances arrange to have research materials or services produced by a third party, it is not "providing" such research services when it pays obligations incurred by the money manager to the third party.

In approving the "Papilsky" rules,¹⁶ the Commission clarified that research provided in third-party arrangements falls within section 28(e) even if the money manager participates in selecting the research services or products to be provided to it by the broker-dealer. The Commission also stated that third-party research does not have to be shipped through the broker, but may instead be delivered directly by the third party to the manager in circumstances that otherwise qualified for the safe harbor. The Commission stated:

... a broker-dealer may be deemed to have provided third party research when it has incurred a direct legal obligation to a third party producer to pay for the research (regardless of whether the research is then sent directly to the broker's fiduciary customer by the third party or instead is sent to the broker who then sends it to his customer). The Commission does not believe,

however, that section 28(e) would apply where the broker was merely used as an alternative means of paying obligations incurred by the fiduciary in its direct dealings with the third party. . . . [citation omitted] In that regard, a broker-dealer may be deemed to have provided third party research that it is legally obligated to pay for even if its fiduciary customer participates in the selection of the research services or products to be provided to it by the broker-dealer.¹⁷

The staff also has expressed the opinion that section 28(e) was not intended to exclude from its coverage the payment of commissions made in good faith to an introducing broker for execution and clearing services performed in whole or in part by the introducing broker's normal and legitimate correspondent. The staff added that the protection of section 28(e) would not be lost merely because the fiduciary by-passed the order desk of the introducing broker and called its orders directly into the clearing broker.¹⁸ More recently, the staff has stated that its views concerning correspondent relationships contemplate that the "introducing broker would be engaged in securities activities of a more extensive nature than merely the receipt of commissions paid to it by other broker-dealers for 'research services' provided to money managers."¹⁹

IV. Disclosure and Other Obligations Under the Investment Advisers Act of 1940 and the Investment Company Act of 1940 Applicable to Money Managers Engaging in Soft Dollar Arrangements

Money managers engaging in soft dollar arrangements must comply with all applicable disclosure requirements under the federal securities laws, and registered investment advisers and others should pay particular attention to the disclosure and books and records requirements under the Advisers Act and the Company Act. Disclosure is required even if an arrangement is within the safe harbor provided by section 28(e).²⁰ In addition, money

¹⁷ *Id.* at 24, note 54.

¹⁸ *Becker Securities Corp.* [1976 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 80,641 (May 28, 1976).

¹⁹ *Data Exchange Securities*, [1981-82 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,016 (Apr. 20, 1981). See also *SEI Financial Services* (pub. avail. Dec. 14, 1983), in which the staff reviewed a specific broker correspondent relationship focusing on the services provided and concluded the nature of the relationship did not preclude reliance on section 28(e).

²⁰ As the Commission stated in a 1979 release adopting rule and form amendments designed to require registered investment companies to provide investors with disclosure about brokerage placement practices and policies, "[t]hese

¹⁴ *Securities Acts Amendments of 1975, Conference Report to Accompany S. 249, Joint Explanatory Statement of the Comm. of Conference*, H.R. Rep. No. 220, 99th Cong., 1st Sess. 108 (1975).

¹⁵ See *supra* note 7.

¹⁶ Securities Exchange Act Rel. No. 17371 (Dec. 12, 1980).

managers must comply with any other laws imposing fiduciary or other obligations with respect to their participation in such arrangements. Set forth below is a discussion of the principal provisions of the Advisers Act and Company Act and rules and forms thereunder which, depending on the facts and circumstances involved, impose disclosure and other obligations on money managers and related persons.

A. Advisers Act

1. Form ADV

Fundamental to the Advisers Act is the concept that an investment adviser has a fiduciary obligation to act in the best interests of clients. As a fiduciary, an adviser has a duty to disclose to clients all material information which is intended "to eliminate, or at least expose," all potential or actual conflicts of interest "which might incline an investment adviser consciously or unconsciously—to render advice which was not disinterested."²¹ Due to the potential conflict of interest when an adviser receives research as a result of allocating brokerage on behalf of clients' accounts, the Commission has long maintained that an adviser must disclose soft dollar arrangements to clients. The Commission has adopted mandatory disclosure standards for advisers involved in such arrangements,²² as discussed below.

Pursuant to its authority in section 28(e)(2) to adopt rules governing a money manager's disclosure of brokerage policies and practices, the Commission proposed disclosure rules in 1976,²³ but later determined to "incorporate more comprehensive brokerage placement practice disclosure requirements" within the registration process for investment advisers under the Advisers Act.²⁴ One of these

provisions is the so-called "brochure rule," which was adopted in 1979 and is set forth in Rule 204-3 under the Advisers Act. This rule requires generally that an adviser furnish each advisory client and each prospective advisory client with a written disclosure statement containing certain information regarding the adviser's business background and practices.²⁵ The disclosure statement may be either a copy of Part II of the adviser's Form ADV,²⁶ the registration form for investment advisers, or a written document containing at least the information required by Part II of the Form ADV.²⁷

Item 12 of Part II of Form ADV requires disclosure to clients regarding investment or brokerage discretion. The purpose of this disclosure is to provide clients with material information about the adviser's brokerage allocation policies and practices which may be important to them in deciding to hire an adviser or continue a contract with an adviser and which will permit them to evaluate any conflicts of interest inherent in the adviser's arrangements for allocating brokerage.²⁸ Because brokerage policies and practices vary greatly, the disclosure made in response to Item 12 should provide sufficient information to enable a client or potential client to understand such policies and practices. This item requires disclosure regarding (1) whether the adviser or a related person has authority to determine, without specific client consent, the broker-dealer to be used in any securities transaction or the commission rate to be paid, or (2) whether the adviser or a related person suggests broker-dealers to clients. If the adviser engages in either of these practices, whether or not pursuant to a written agreement, it must describe the factors considered in selecting broker-dealers and in determining the reasonableness of commissions charged.

²⁵ The specific delivery requirements applicable to the brochure are set forth in paragraphs (b) and (c) of Rule 204-3.

²⁶ Recently the Commission adopted a new, uniform Form ADV, the uniform application form for advisers registered with the Commission and the forty states that require advisers to register. Investment Advisers Act Rel. No. 991 (Oct. 15, 1985). The form was developed jointly by the Commission and the North American Securities Administrators Association.

New Form ADV retains the two part format for the earlier form. Part I requires disclosure primarily for use by regulatory agencies. Part II of the form, which serves as the basis for the brochure rule, requires disclosure primarily for use by clients.

²⁷ See Rule 204-3(a).

²⁸ A general discussion of the background, purpose, and effect of the disclosure required in what is now Item 12 of Form ADV may be found in Release 6019, *supra* note 20.

If the value of products, research, and services given to the adviser or a related person is a factor in those decisions, the adviser must describe the following:

- The products, research, and services;²⁹
- Whether clients may pay commissions higher than those obtainable from other brokers in return for those products and services;
- Whether research is used to service all of the adviser's accounts or just those accounts paying for it; and
- Any procedures the adviser used during the last fiscal year to direct client transactions to a particular broker in return for products and research services received.³⁰

In its release discussing the concurrent adoption of Form ADV disclosure requirements³¹ and the brochure rule, the Commission pointed out that:

the amended rule and forms represent mandatory disclosure standards. More detailed or additional information and explanatory material could and should be provided where necessary, because of circumstances in particular cases, to ensure that all material information regarding brokerage placement practices and policies will be disclosed to investors.³²

An investment adviser should be particularly aware of the fact that the Advisers Act disclosure requirements apply to all soft dollar arrangements, whether or not they are within the safe harbor of section 28(e).³³ Moreover,

²⁹ An adviser need not list individually each product, item of research, or service received, but rather can state the types of products, research, or services obtained with enough specificity so that clients can understand what is being obtained. Disclosure to the effect that various research reports and products are obtained would not provide the specificity required.

³⁰ The adviser should disclose any practices, including informal ones and whether or not they involve "paying up," to allocate brokerage to particular brokers in recognition of research products and services received. In this connection, the Commission notes that a money manager that obligated itself formally to generate a specified amount of commissions would be faced with a heavy burden of demonstrating that he was consistently obtaining best execution.

³¹ Item 12 of the new uniform Form ADV mirrors Item 11 of the superseded form and has remained substantively the same since its adoption in 1979.

³² Release 6019, *supra* note 20, 14 SEC Docket 839. In addition to the disclosure required by Item 12 of Part II of Form ADV, Item 13 of Part II requires disclosure that may be relevant to soft dollar arrangements. That item requires an adviser to describe any oral or written arrangements where it or any related person receives some economic benefit from a non-client, including a benefit in the form of non-research services, in connection with giving advice to clients.

³³ See, e.g., Release 16679, *supra* note 7; Release 6019, *supra* note 20.

disclosure requirements reflect a longstanding policy of the Commission that brokerage placement practices of investment managers may take into consideration research and brokerage services, provided, however, that such practices are disclosed to investors." Securities Act Rel. No. 6019 (Jan. 30, 1979) (emphasis added) [hereinafter cited as Release 6019]. See "Applicability of the Commission's Policy Statement on the Future Structure of the Securities Markets To Selections of Brokers and Payments of Commissions By Institutional Managers," Securities Act Rel. No. 5250 (May 9, 1972) [hereinafter cited as Release 5250].

²¹ *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92 (1963); See also Section 206 of the Advisers Act; Rule 204-3 under the Advisers Act.

²² E.g., Release 6019, *supra* note 20.

²³ Securities Act Rel. No. 5772 (Nov. 30, 1976).

²⁴ Investment Advisers Act Rel. No. 664 (Jan. 30, 1979).

compliance with Advisers Act disclosure requirements does not relieve an adviser from other disclosure obligations under federal or state law.

2. Section 204

Section 204 of the Adviser Acts authorizes the Commission to adopt rules prescribing the books and records a registered adviser must maintain. Pursuant to this authority, the Commission has adopted Rule 204-2, which requires an adviser to keep true, accurate, and current books and records relating to its advisory business.³⁴ In the case of securities transactions, particularly those which may involve soft dollars, the adviser's books and records should contain sufficient details relating to each participant in a particular transaction.

3. Best Execution

The Commission's staff has stated that an adviser, as a fiduciary, owes its clients a duty of obtaining the best execution on securities transactions.³⁵ For further discussion of best execution, see Section V of this release.

B. Company Act

The Company Act and rules and forms thereunder impose various disclosure and other obligations on registered investment companies, investment advisers of registered investment companies, and related persons in connection with soft dollar arrangements.

1. Form N-1A

Form N-1A is the integrated registration form used by most open-end management investment companies to register under the Company Act and to register their securities under the Securities Act of 1933. Its disclosure requirements form the basis of the two-part prospectus used by these investment companies. Part B of the form, termed the "Statement of Additional Information," requires disclosure about the company's brokerage allocation practices.³⁶

³⁴ E.g., Rule 204-2 (a)(1), (a)(2), and (a)(3).

³⁵ E.g., *Interfinancial Corp.* (pub. avail. Mar. 18, 1985). See also Release 5250, *supra* note 20 (in selecting a broker-dealer, a money manager "is not required to seek the service which carries the lowest cost so long as the difference in cost is reasonably justified by the quality of the service offered"); Securities Exchange Act Rel. No. 12251 (Mar. 24, 1976).

³⁶ Registered investment companies must make the Statement of Additional Information available free of charge to shareholders and potential investors upon request.

Specifically, Item 17 requires a description of how transactions in portfolio securities are effected, including a general statement about brokerage commissions. Investment companies also must describe how broker-dealers will be selected to effect securities transactions and how the overall reasonableness of commissions paid will be evaluated,³⁷ including the factors considered in connection with these determinations. The instructions to this item further require that:

- If the receipt of products or services other than brokerage or research is a factor in selecting brokers, the products and services should be described;

- If the receipt of research services is a factor in selecting brokers, the nature of such research services should be described;

- The registrant must state if persons acting on its behalf are authorized to pay a commission in excess of that which another broker might have charged for the same transaction in recognition of brokerage or research services provided by the broker;

- If applicable, the registrant should explain that research services provided by brokers may be used by the adviser in servicing all of its accounts or described other practices applicable to the registrant regarding allocation of research services provided by brokers; and

- The registrant must state the amount of transactions and related commissions paid as a result of directing the registrant's brokerage transactions to a broker because of research services provided pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure.³⁸

2. Section 20(a)

Section 20(a) of the Company Act makes it unlawful for any person to solicit proxies regarding the securities of any registered investment company in contravention of Commission rules. Pursuant to this provision, the Commission has adopted two rules that may be relevant to soft dollar arrangements. First, where a proxy solicitation is made on behalf of the management of the investment

³⁷ Where an investment manager, in return for research services, pays an affiliated broker-dealer more than normal charges for execution of brokerage transactions, the manager "would be under a heavy burden to show that such payments were appropriate." Release 6019, *supra* note 20, 16 SEC Docket 844.

³⁸ Disclosure about brokerage allocation practices also is required by other registration and reporting forms used by investment companies. E.g., Form N-2 (Item 9); Form N-3 (Item 22); and Form N-SAR (Item 26).

company, Rule 20a-1(b) requires the adviser of the investment company to furnish promptly to management, upon request, all information necessary for management to comply with the proxy rules, including information about soft dollar arrangements.

In addition to this general obligation, Rule 20a-2 requires disclosure of specific information about the adviser and its investment advisory contract in certain proxy solicitations,³⁹ including information about brokerage placement practices. Specifically, paragraph (b)(7) of the rule requires disclosure of, among other things, the following:

- A description of how brokers are selected to effect securities transactions for the company and how the reasonableness of overall brokerage commissions paid will be evaluated, including the factors considered in these determinations;

- If the receipt of products or services other than research or brokerage is a factor in selecting brokers, a description of these products or services;

- If the receipt of research services is a factor in selecting brokers, the nature of such services;

- Whether persons acting on behalf of the company are authorized to pay a broker a commission in excess of that which another broker might have charged for the same transaction in recognition of brokerage or research services provided by the broker;

- If applicable, an explanation that research services furnished by the company's brokers may be used by the adviser in servicing all of its accounts and that not all such services may be used by the adviser in connection with the company, or an explanation of other policies or practices applicable to the company regarding the allocation of research services provided by brokers; and

- The amount of transactions and related commissions directed to a broker or brokers pursuant to an agreement or understanding or otherwise through an internal allocation procedure.

3. Section 15(c)

Section 15(c) makes it unlawful for any investment company to enter into or renew any investment advisory contract unless it is approved by a majority of the company's disinterested directors. In approving such a contract, this provision

³⁹ The requirements of Rule 20a-2 are applicable to any solicitation made by or on behalf of management or the adviser involving action with respect to the election of directors of the investment company. See Rule 20a-2(a).

imposes on directors a duty to request and evaluate such information as may reasonably be necessary for the directors to evaluate the terms of the contract. This provision also imposes on the company's adviser a duty to furnish such information to the directors.⁴⁰

The Supreme Court has defined the Congressional purpose in enacting section 15(c) and related provisions of the Company Act as placing "the unaffiliated directors in the role of 'independent watchdogs'"⁴¹ entrusted with "the primary responsibility for looking after the interest of the funds' shareholders."⁴² Disinterested directors are required to "exercise informed discretion, and the responsibility for keeping the independent directors informed lies with management, *i.e.*, the investment adviser and interested directors."⁴³ Depending on the facts involved, the responsibility of the disinterested directors may include monitoring of the adviser's soft dollar arrangements.

4. Section 31

Section 31 of the Company Act authorizes the Commission to adopt rules prescribing the books and records to be maintained by a registered investment company or by others, on its behalf, including investment advisers.⁴⁴ Pursuant to this authority, the Commission adopted Rule 31a-1. Paragraph (b)(9) of that rule requires an investment company to maintain a record for each fiscal quarter describing in detail the basis or bases upon which it allocated orders for the purchase or sale of portfolio securities and divided brokerage commissions or other compensation on such orders.⁴⁵ The record also must indicate the consideration given to services or benefits supplied by broker-dealers to the investment company or adviser and show the nature of such services or benefits made available.

⁴⁰ In addition to paragraph (c) of section 15, paragraph (a)(1) of that provision may be applicable to a soft dollar arrangement. This provision makes it unlawful for any person to serve as an investment adviser of a registered investment company except pursuant to a written contract which has been approved by a majority vote of shareholders and which "precisely describes all compensation" to be paid under that contract. As to what constitutes "compensation," see *infra* note 46.

⁴¹ *Burks v. Lasker*, 441 U.S. 471, 484 (1979), citing *Tannenbaum v. Zeller*, *supra* note 4.

⁴² *Burks*, *supra* note 41, at 485.

⁴³ *Tannenbaum*, *supra* note 4, at 417-18.

⁴⁴ See Rule 31a-3.

⁴⁵ Rule 31a-1(b)(9) requires this record to be completed within ten days after the end of the quarter.

5. Section 36(b)

Under Section 36(b) of the Company Act, an investment adviser to a registered investment company has a fiduciary duty with respect to the receipt of compensation for services,⁴⁶ or of payments of a material nature, from the investment company or its shareholders. However, with respect to any such amount received by an adviser, no violation of section 36(b) could occur for a soft dollar arrangement falling within the safe harbor of section 28(e).⁴⁷ Where an adviser received amounts outside of the safe harbor of section 28(e) such amounts would have to be analyzed under section 36(b) to determine if they were consistent with that provision.

6. Section 17(e)(1)

As relevant here, Section 17(e)(1) of the Company Act makes it unlawful for an affiliated person of a registered investment company⁴⁸ to receive any compensation⁴⁹ for the purchase or sale

⁴⁶ The term "compensation" under Section 36(b) and other provisions of the Company Act has been broadly construed to include any economic benefit paid directly or indirectly to an adviser. *E.g.*, *Steadman Securities Corporation, Securities Exchange Act Rel. No. 13695* at 12 SEC Docket 1042, 1052 (June 29, 1977) *rev'd on other grounds sub. nom. Steadman v. Securities and Exchange Commission*, 603 F.2d 1126 (5th Cir. 1979), *aff'd*, 450 U.S. 91 (1981). *In re Investor Research Corporation, et al.*, 12 SEC Docket 102 (1978), *aff'd in part and vacated in part, Investors Research Corporation and Stouers v. Securities and Exchange Commission*, 628 F.2d 168 (D.C. Cir. 1980), *cert. denied*, 449 U.S. 919 (1981) [hereinafter cited as *Investors Research*]. *Investors Research Corporation, Investment Advisers Act Rel. No. 627* (May 1, 1978), *aff'd in part and vacated in part* 628 F.2d 168 (D.C. Cir. 1980), *cert. denied* 449 U.S. 919 (1981); *Imperial Financial Services*, 42 SEC 717 (1965); Release 5250, *supra* note 20; *Accord* Investment Advisers Act Rel. No. 770 (Aug. 13, 1981) (the element of "compensation" in the definition of an investment adviser in Section 202(a)(11) of the Advisers Act "is satisfied by the receipt of any economic benefit * * *").

⁴⁷ *Securities Acts Amendments of 1975, Conference Report to Accompany S. 249, Joint Explanatory Statement of the Comm. of Conference*, H.R. Rep. No. 229, 94th Cong., 1st Sess. 108 (1975). Although both the Senate and House versions of the section 28(e) legislation contained provisions protecting money managers against breach of fiduciary duty claims, the Conference Report makes clear that the Senate version was selected for the final legislation because it "more clearly preempted both statutory and common law." *Id.*

⁴⁸ The phrase "affiliated person" of an investment company is defined in section 2(a)(3)(E) of the Company Act and includes, among others, an investment adviser to an investment company. The proscription of section 17(e)(1) also applies to any affiliated person of an affiliated person of the investment company.

⁴⁹ See *supra* note 46.

of any property to or for the investment company when that person is acting as an agent⁵⁰ for the company other than in the course of that person's business as a broker-dealer.⁵¹ The Court of Appeals for the Second Circuit has held that the objective of section 17(e)(1) "is to prevent affiliated persons [of investment companies] from having their judgment and fidelity impaired by conflicts of interest"⁵² in situations where the benefit of a reciprocal relationship between the affiliated person and another person is diverted to the affiliated person while the burden of that relationship is borne by the investment company.⁵³

It is important to emphasize that receipt by an investment adviser of any compensation⁵⁴ pursuant to a soft dollar arrangement in connection with the purchase or sale of any property, including securities, to or for the investment company arguably would violate section 17(e)(1). To the extent that compensation is received by an affiliated person of a fund pursuant to a soft dollar arrangement within the safe harbor of section 28(e), however, the prohibition of section 17(e)(1) would not apply.⁵⁵

Finally, it is not necessary to show that the person receiving compensation prohibited by section 17(e)(1) influenced the actions of the investment company,⁵⁶ nor must economic injury to the investment company be shown.⁵⁷ Rather, the essence of a violation of section 17(e)(1) is the mere receipt of compensation in connection with the purchase or sale of property to or from the investment company.

⁵⁰ As the Second Circuit stated in *United States v. Deutsch*, 451 F.2d 98, 111 (2d Cir. 1971), *cert. denied*, 404 U.S. 1019 (1972), an affiliated person of an investment company is acting as an "agent" in connection with the purchase or sale of property for purposes of Section 17(e)(1) "in all cases when he is not acting as broker for the investment company." See *Provident Management Corp.*, 44 SEC 442, 448 (1970) [hereinafter cited as *Provident*].

⁵¹ Where an adviser is acting as "broker" in connection with the purchase or sale of securities to or for an investment company, its activities would be governed by section 17(e)(2) of the Company Act.

⁵² *Deutsch*, *supra* note 50, at 109.

⁵³ See *Investors Research*, *supra* note 45, at 173.

⁵⁴ See *supra* note 46, and accompanying text.

⁵⁵ The fact that a soft dollar arrangement outside of section 28(e) is disclosed would not cure a violation of section 17(e)(1) because that provision reflects the Congressional determination that disclosure alone is not adequate protection in the investment company field. *Investors Research*, *supra* note 46.

⁵⁶ *Deutsch*, *supra* note 50, at 109.

⁵⁷ *Id.* "No showing of actual impairment need be made. This is a prophylactic statute. Its aim is not to redress harm but to prevent it." *Investors Research*, *supra* note 46, at 1023. See also *Provident*, *supra* note 50.

V. Best Execution Obligations

As a fiduciary, a money manager has an obligation to obtain "best execution" of clients' transactions under the circumstances of the particular transaction. The money manager must:

execute securities transactions for clients in such a manner that the client's total cost or proceeds in each transaction is the most favorable under the circumstances.⁵⁸

A money manager should consider the full range and quality of a broker's services in placing brokerage including, among other things, the value of research provided as well as execution capability, commission rate, financial responsibility, and responsiveness to the money manager. The Commission wishes to remind money managers that the determinative factor is not the lowest possible commission cost but whether the transaction represents the best qualitative execution for the managed account. In this connection, money managers should periodically and systematically evaluate the execution performance of broker-dealers executing their transactions.

VI. Employee Benefit Plans and Plan Sponsor Directed Brokerage

During the past year the practice of plan sponsor directed brokerage has drawn considerable attention. This phrase refers to an arrangement whereby an employee benefit plan sponsor requests its money manager, subject to the manager's satisfaction that it is receiving best execution, to direct commission business to a particular broker-dealer who has agreed to provide services, pay obligations or make cash rebates to the plan.

At the outset, the Commission wishes to emphasize that directed brokerage transactions clearly do not fall within the safe harbor of section 28(e). The safe harbor is available only to persons who are exercising investment discretion, as that term is defined in section 3(a)(35) of the Act.⁵⁹ A pension plan sponsor that

has retained a money manager to make investment decisions, as is the case in directed brokerage arrangements, is not exercising investment discretion.⁶⁰ Accordingly, neither the plan sponsor, the money manager, nor the broker-dealer participating in the transactions can rely on section 28(e).

Section 28(e), however, cannot by its terms be violated. Thus, the fact that sponsor directed brokerage transactions are outside its protections does not necessarily mean that such transactions are illegal. Nevertheless, each participant in the transaction may be exposed to liability unless certain aspects of the transaction are carefully handled. The Commission does not administer ERISA, but sponsor directed brokerage in connection with plans covered by ERISA may involve violations of that Act and may violate the antifraud provisions of the federal securities laws.

The Department of Labor has indicated that if the cash rebate, goods or services provided by the broker to the plan is not for a purpose that exclusively benefits the plan, the transaction would constitute a *per se* violation of ERISA. The Commission understands that many money managers and brokers who are engaging in directed brokerage transactions have required the pension plan to represent in writing at the initiation of such transactions that the rebate will be used for the exclusive benefit of the plan and its beneficiaries.

A second concern arises regarding the broker's obligation to accurately confirm transactions with customers pursuant to Rule 10b-10 under the Securities Exchange Act and to maintain books and records pursuant to Rule 17a-3. Rule 10b-10(a)(7)(ii) requires a broker to disclose the amount of remuneration received or to be received by him from a customer in connection with an agency transaction. In sponsor directed brokerage arrangements the broker-dealer has agreed to charge specified commissions but at the same time has agreed to rebate a portion of the commissions. At least in the case of a cash rebate, the confirmation is false if it does not at a minimum provide disclosure that a portion of the commission was returned to the plan. The Commission has emphasized in the past improper nature of this rebating practice without disclosure.⁶¹ Rule 17a-

3(a)(8) requires the broker to keep copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers. This provision would require that the broker document any rebating arrangements that it had entered into with plan sponsors.

Third, section 28(e) allows a money manager in making his good faith determination as to the reasonableness of commissions paid to consider not only the benefit to be derived by the account paying the commissions, but also the benefits derived by other accounts. Since sponsor directed brokerage transactions are outside of the safe harbor, this additional element of protection is unavailable. Stated differently, the Commission believes that it is illegal, from a securities law fraud perspective, for a money manager or a broker-dealer to use one client's commissions to fund an undisclosed rebate to another client. This problem is particularly acute where a money manager aggregates orders for managed accounts. In this connection, the Commission believes that serious concerns are raised under the antifraud provisions of the securities laws where a money manager or broker-dealer aggregates directed and non-directed orders unless the money manager or broker-dealer can demonstrate that it has not disadvantaged one client's account in order to fund a rebate to another client. This means that the money manager and the broker-dealer must have a system of controls and a system of records to assure that this commingling does not occur.

VII. Conclusion

The Commission believes that this release will provide useful guidance to money managers and other persons in the securities industry. It believes that the new standard comports fully with Congressional intent in the enactment of the section, while at the same time is responsive to concerns raised in response to a changing array of research products and the impact of new technology on brokerage practices. The Commission believes that the issue is ultimately one of good faith on the part of the money manager and that the disclosure obligations will allow clients to satisfy themselves that their money manager is in fact acting in their best interest.

List of Subjects in 17 CFR Part 241

Reporting and recordkeeping requirements, Securities.

⁵⁸ Securities Exchange Act Rel. Act No. 9598 [1971-72 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,776 (1972); *Kidder, Peabody & Co., Inc.*, Investment Advisers Act Rel. No. 232 (Oct. 16, 1968).

⁵⁹ Section 3(a)(35) provides that a person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold to or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder.

⁶⁰ See *Foley & Lardner* [1976-77 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 80,925 (Dec. 3, 1976); *Capital Institutional Services, Inc.* [Current] Fed. Sec. L. Rep. (CCH) ¶ 78,107 (May 1, 1985).

⁶¹ See Securities Exchange Act Rel. No. 16679, *supra* note 7; Securities Exchange Act Rel. No. 11829 (Sept. 3, 1975).

PART 241—[AMENDED]

Part 241 of Title 17 of the Code of Federal Regulations is amended by adding this Interpretive Release Concerning the Scope of section 28(e) of the Securities Exchange Act of 1934 [Release No. 34-23170] to the list of Interpretive Releases.

Dated: April 23, 1986.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86-9676 Filed 4-29-86 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 35**

[Docket No. RM86-6-000]

Electric Utilities; Interim Rule and Request for Comment Concerning Construction Work in Progress and Anticompetitive Implications; Extension of Time For Comments

April 25, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim Rule and Request for Comment; extension of comment and reply comment period.

SUMMARY: On February 27, 1986, the Commission issued an Order Adopting Interim Rule and Requesting Comment Concerning Construction Work in Progress and Anticompetitive Implications (51 FR 7774, March 6, 1986). The comment and reply comment periods are being extended at the request of Edison Electric Institute.

DATE: Comments in response to all questions (Questions 1-20) shall be submitted on or before June 4, 1986.

All reply comments shall be submitted on or before July 7, 1986.

ADDRESS: Submit comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary (202) 357-8400.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9698 Filed 4-29-86; 8:45 am]

BILLING CODE 8717-01-M

18 CFR Part 35

[Docket Nos. RM86-6-001, RM86-6-002, RM86-6-003, and RM81-38-15]

Electric Utilities; Construction Work in Progress; Reconsideration of Interim Rule and Request for Comment

Issued: April 25, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for purpose of further consideration.

SUMMARY: On February 27, 1986, the Federal Energy Regulatory Commission (Commission) issued a final rule to specify interim procedures and filing requirements to be followed in cases where electric utilities request inclusion of construction work in progress in rate base, pending further Commission action on the remand by the United States Court of Appeals for the District of Columbia Circuit in *Mid-Texas Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (1985).

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration. This order does not constitute action, in whole or in part, on the merits of the requests for rehearing.

EFFECTIVE DATE: April 25, 1986.

FOR FURTHER INFORMATION CONTACT: Daniel L. Larcamp, Federal Energy Regulatory Commission, Room 8006-A, 825 North Capitol Street NE., Washington, DC, 20426, (202) 357-8520.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing for Purpose of Further Consideration

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Issued: April 25, 1986.

On March 28, 1986, Public Systems¹ filed a request for rehearing of Order No. 448, 34 FERC ¶ 61,251, issued on February 27, 1986. On March 31, 1986, requests for rehearing of Order No. 448 were filed jointly by North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., and Sam Rayburn G&T, Inc. (Cooperative Customers), and by the National Rural Electric Cooperative Association, *et al.* (*Mid-Tex* Petitioners).²

¹ Public Systems references Appendix A of its comments filed on October 30, 1981, in Docket No. RM81-38, for a list of the systems sponsoring the present pleading.

² *Mid-Tex* Petitioners include the National Rural Electric Cooperative Association, American Public Power Association, Golden Spread Electric

In the absence of Commission action within 30 days, the requests for rehearing would be deemed to have been denied. 18 CFR 385.713. In order to allow sufficient time for due consideration of the matters raised, rehearing is hereby granted for the limited purpose of further consideration. This order does not, however, constitute action, in whole or in part, on the merits of the requests for rehearing.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9642 Filed 4-29-86; 8:45 am]

BILLING CODE 8717-01-M

DEPARTMENT OF THE TREASURY**Customs Service****19 CFR Parts 141 and 178**

[T.D. 86-94]

Customs Regulations Amendment Relating to Additional Information on Invoices for Imported Footwear

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by updating the information required on invoices of imported footwear. Customs had determined that much of the information now required, which generally is descriptive of footwear, no longer is necessary, and that other information, relating to the construction of footwear, is needed. The information is used by Customs to establish the correct tariff classification and value of imported footwear for duty and/or quota purposes.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Donald F. Cahill, Classification and Value Division (202-566-8181);

Operational Aspects: Alex Olenick, Duty Assessment Division (202-566-5307); Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

Cooperative, Inc., Kimwood Electric Cooperative, Inc., Full Requirements Cooperative Customers of Southwestern Public Service Company, Mid-Tex Electric Cooperative, Inc., and Magic Valley Electric Cooperative, Inc.

Technical Aspects: James Sheridan, National Import Specialist, New York Region (212-466-5889; FTS-668-5889).

SUPPLEMENTARY INFORMATION:

Background

Invoices of merchandise imported into the U.S. are required by section 481, Tariff Act of 1930 (19 U.S.C. 1481), to include certain specified information and "any other facts deemed necessary to a proper appraisal, examination, and classification of the merchandise that the Secretary of the Treasury may require." Section 141.89(a), Customs Regulations (19 CFR 141.89(a)), requires additional information on invoices of footwear classifiable under Schedule 7, Part 1A, Tariff Schedules of the United States (19 U.S.C. 1202). The additional information assists Customs in establishing the correct tariff classification and value of imported footwear for duty and/or quota purposes.

Footwear manufacturing methods have changed since the additional reporting requirements were established. Approximately seven new distinctions in footwear construction which result in classification differences are effective for footwear imports since July 1, 1981 (Pub. L. 96-39, July 26, 1979; section 223(b)(2)). As a result, much of the information now required, which generally is descriptive of footwear, no longer is necessary, and other information, relating to the construction of footwear, is needed. Accordingly, Customs proposed to amend § 141.89(a) to reflect those changes and to update the information reporting requirements.

The original notice proposing to amend § 141.89(a) was published in the Federal Register on July 28, 1978 (43 FR 32819). Essentially, that proposal requested comments on questions concerning the materials used in the manufacture of imported footwear, as well as the nature of the manufacturing process itself. After consideration of the comments received in response to that notice, it was determined advisable to expand the previous proposal's questions regarding the materials used in the manufacture of footwear, so that the information received would be adequate as an aid in the correct classification. The new proposal, published in the Federal Register on May 1, 1984 (49 FR 18543), also provided certain definitions to be used in completing footwear invoices, clarified the question concerning material(s) of chief value, and revised Customs Form 5523, titled "Invoice Details For

Footwear." Specifically, importers were asked to provide the following information with regard to imported footwear on Customs Form 5523.

- (1) Manufacturer's style number.
- (2) Importer's style number.
- (3) Type of shoe.
 - (i) After ski boot.
 - (ii) Basketball shoe.
 - (iii) Beachcomber.
 - (iv) Boat shoe.
 - (v) Clog.
 - (vi) Disposable, not rubber or plastic.
 - (vii) Espadrille.
 - (viii) Field (Football/Soccer/Astroturf) shoe.
 - (ix) Hiking boot.
 - (x) Inner liner.
 - (xi) Jogger/Training shoe.
 - (xii) Kung-Fu shoe.
 - (xiii) Moccasin/Soled moccasin.
 - (xiv) Oxford.
 - (xv) Popsicle.
 - (xvi) Pump.
 - (xvii) Rubber/Plastic Protective and Waterproof footwear.
 - (xviii) Rubber/Plastic Ski boot.
 - (xix) Slipper.
 - (xx) Slipper sock.
 - (xxi) Spiked Track shoe.
 - (xxii) Tennis shoe.
 - (xxiii) Workboot.
 - (xxiv) Woven bootie.
 - (xxv) Zori.
 - (xxvi) Other (specify).
- (4) Component materials of upper with value percentage of each component. If chief value of upper is fiber, and weight of entire shoe is neither 50 percent rubber or plastic, state the percentage by weight and value of each fiber used in the upper.
- (5) Component materials of entire article with value percentage of each component. If the materials in (4) and (5) are primarily of leather, answer only (8) and (12). Otherwise answer all questions.
- (6) Component materials of sole with value percentage of each component.
- (7) Percentage or weight of entire article:
 - (i) Fiber.
 - (ii) Rubber and/or plastic.
 - (iii) Other (specify material).
- (8) Percentage of exterior surface area of the upper:
 - (i) Leather.
 - (ii) Rubber and/or plastic.
 - (iii) Other (Specify material).
- (9) Is there a foxing or foxing-like band around bottom of upper? If so, specify component materials of the band.
- (10) Does the sole overlap the upper? If so, specify the part(s) of the upper overlapped.

(11) Does the upper extend over the ankle?

- (12) Type of construction:
- (i) Stitched-Turned.
 - (ii) Stitched-Goodyear Welt.
 - (iii) Stitched-Welt other than Goodyear.
 - (iv) Stitched-Slip-lasted (California).
 - (v) Stitched-Other (specify method).
 - (vi) Exclusively Adhesive (Cement).
 - (vii) Shell molded bottom cemented and/or stitched to upper.
 - (viii) Unit molded bottom cemented to upper.
 - (ix) Rolled Sole.
 - (x) Sole simultaneously molded and attached to upper (Simultaneous injection).
 - (xi) Vulcanized.
 - (xii) Riveted, Nailed or Stapled.
 - (xiii) Unsoled Moccasin.
 - (xiv) Combination of the above (specify types combined).
 - (xv) Other (specify).

(13) Is the shoe of the slip-on type, i.e., no laces, buckles or other fasteners?

(14) Does the upper have either an open toe or an open heel?

Comments on this proposal were to have been received by July 2, 1984. However, due to the complexity of the issues involved, by notice published in the Federal Register on July 9, 1984 (49 FR 27954), the comment period was extended to August 3, 1984.

Twelve comments were received in response to the proposal. Most of the commenters objected to the expanded information requirement as placing an inordinate burden on importers to collect and process many items of information not necessary for the classification of many types of footwear. Their specific comments and our responses follow:

Discussion of Comments

Comment: The lists of types and construction of shoes in proposed § 141.89(a), are too lengthy. Customs Form 5523, which would reflect the requirements in the proposal, is merely a basic entry form to aid in the classification of footwear. It need not be the most detailed and exhaustive footwear submission possible.

Response: We agree. Therefore, we are eliminating the exhaustive lists in favor of a requirement for a scaled down description of the imported footwear in terms normally used in the trade, with examples of the type, method of construction, and kind of construction provided only on the list of instructions for the final Customs Form 5523. Furthermore, we are reducing the number of examples of types of footwear from 26 to 11.

It is estimated that 25 percent of all footwear imports will require completion of only items 1 through 7, and that items 1 through 5 and 8 through 10 will need to be filled in on another 25 percent of imports. Items 1 through 5 and 8 will need to be filled in on 10 percent of imports, and 40 percent will not require the completion of a footwear invoice or an equivalent document. In no case will all items in the footwear invoice or other document be required to be completed.

Comment: Many of the terms mentioned in the proposal, such as "foxing" and "overlap", are difficult to apply to specific importations and lend themselves to misinterpretation.

Response: Providing specific definitions for all the terms used would render the document and invoice more cumbersome than now. However, we are adding a definition for the term "foxing-like band" since this term applies to many footwear importations. Also, we are deleting some definitions contained in the proposal, which we believe are unnecessary.

Comment: The requirement for information on percentage value is not necessary for proper classification of imported footwear. Only component material of chief value should be required.

Response: We agree. Therefore, we are removing the requests for percentage value, which were contained in several items in the proposal. However, Customs may request this or any other information on specific imports as may be necessary to properly classify the imported footwear.

After consideration of the comments received and upon further review of the matter, it has been deemed advisable to adopt the proposed amendment to § 141.89(a), Customs Regulations, with the modifications noted above. Final Customs Form 5523, which has been revised to reflect the information required in items 1 through 10 of § 141.89(a), may not be available at the time of publication of this document. Accordingly, Customs field offices may accept the existing Customs Form 5523 (3/2/78 version) or the proposed Customs Form 5523 (6/11/85 version) until the new form is available.

Executive Order 12291

It has been determined that the amendment is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), it is certified

that this amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604.

Paperwork Reduction Act

The collection of information requirements contained in § 141.89(a) are subject to provisions of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and have been cleared by the Office of Management and Budget (OMB). Accordingly, Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and the control numbers assigned by OMB, is being amended to include OMB Control Number 1515-0047.

Drafting Information

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

List of Subjects in 19 CFR Parts 141 and 178

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Collections of information.

Amendments to the Regulations

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624; § 141.89 also issued under 19 U.S.C. 1202 (Gen. Hdnote 11), 1481.

2. Section 141.89(a), Customs Regulations (19 CFR 141.89(a)), is amended by revising the paragraph for footwear to read as follows:

§ 141.89 Additional information for certain classes of merchandise.

(a) * * *
Footwear, classifiable under Schedule 7, Part 1A, Tariff Schedules of the United States (19 U.S.C. 1202)—

- (1) The manufacturer's style number.
- (2) The importer's style and/or stock number.
- (3) Type of shoe.
- (4) Percentage by weight of entire article:
 - (i) Fiber.
 - (ii) Rubber and/or plastic.
 - (iii) Other (specify).
- (5) Percentage of exterior surface area of the upper.
 - (i) Leather.
 - (ii) Rubber and/or plastic.
 - (iii) Other (specify).

If item 4(ii) is 10 percent or more, if item 4(iii) is less than 50 percent and if item 5(i) is less than 50 percent, omit items 6 and 7 and provide the information requested in items 8 through 12 below. If one or more of these conditions are not met, provide the information requested in items 6 and 7 and omit items 8 through 12.

- (6) Component material of chief value in
 - (i) Upper.
 - (ii) Sole.
 - (iii) Entire article.
- (7) Method of construction.
- (8) Kind of construction.
- (9) Whether slip-on type (no laces, buckles, or other closures).
- (10) Whether upper has open toe or open heel.
- (11) Does shoe have foxing or foxing-like band? If so, state material(s).
- (12) Whether sole overlaps upper.

The information requested in items 1 through 10 may be furnished on Customs Form 5523 or other appropriate format by the exporter, manufacturer or shipper. However, the information requested in items 11 and 12 must be furnished by the importer.

Definitions

For the purpose of this section, the following terms have the approximate definitions below. If either a more complete definition or a decision as to its application to a particular article is needed, the maker or importer of record (or the agent of either) should contact Customs prior to entry of the article.

(a) *Fiber.* "Fiber" means a material made from cotton, other vegetable fibers, wool, hair, silk, or man-made fibers. The term "man-made" fibers includes filaments and strips. Note: Cork, wood, cardboard, and leather are not "fibers".

(b) *Foxing-like band.* "Foxing-like band" means a strip of material, which is attached to the side or the top of the outsole or is molded of the same piece as the outsole and which overlaps the upper.

(c) *Turned.* "Turned" means that construction in which the upper is sewn to the sole while the shoe is turned inside out.

(d) *Upper.* "Upper" means everything above the insole level.

(e) *Welt.* "Welt" means that construction in which a separate strip (the welt) is attached to the edge of the sole and in which the welt, the upper and a lip on the surface of the insole are stitched together with a single stitch.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

19 CFR Part 178 is amended as follows:

1. The general authority citation for Part 178 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 et seq.

2. Section 178.2, Customs Regulations (19 CFR 178.2), is amended by inserting the following in appropriate numerical

sequence according to the section number under the columns indicated:

§ 178.2 Listing of OMB Control Numbers.

19 CFR section	Description	OMB control No.
§ 141.89(a)	Additional information on invoices for imported footwear.	1515-0047

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved: April 11, 1986.
Francis A. Keating, II,
Assistant Secretary of the Treasury.
[FR Doc. 86-9623 Filed 4-29-86; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Social Security Benefits; Standard of Review for Termination of Disability Benefits; Revised Rules for Certain Medical Cessation Cases; Corrections

AGENCY: Social Security Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors which appeared in the final rules published in the Federal Register on December 6, 1985 (50 FR 50118). This action is necessary to correct a number of typographical errors which could be misleading and confusing to the reader.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7337.

The following corrections are made in FR Doc. 85-28887 appearing on pages 50118 through 50147 in the issue of December 6, 1985:

§ 404.1501 [Corrected]

1. On page 50126, in the middle column, the asterisks following § 404.1501(j) should be removed.

§ 404.1579 [Corrected]

2. On page 50127, in the third column, line 25 in § 404.1579(c)(3), insert a period after "etc" and before the ";".

3. On page 50128, in the first column, line 16 in § 404.1579(d) introductory text, "persons" is corrected to read "person".

4. On the same page, in the first column, the second line in § 404.1579(d)(1), "your" is corrected to read "you".

5. On page 50129, in the third column, the heading in § 404.1579(f), "Steps" is corrected to read "steps". In the seventh line of paragraph (f) introductory text, "is" is corrected to read "are".

§ 404.1594 [Corrected]

6. On page 50131, middle column, the last line in § 404.1594(b)(2), Example, the parenthesis after "increased" is removed and inserted between "walk" and "has" in the same line.

7. On page 50132, middle column, the sixth line in § 404.1594(b)(4)(ii), "organs" is corrected to read "organ".

8. On the same page, third column, line 13 in § 404.1594(b)(7), insert a comma after "i.e." and before "your".

9. On page 50134, middle column, line 19 in § 404.1594(d)(2) Example 2, "engage" was misspelled.

10. On page 50137, in the middle column, amendatory item number 6 is corrected to read as follows:

"6. Section 416.992 is amended by revising paragraph (d)(2) to read as follows:"

§ 416.992 [Corrected]

11. The revised text in § 416.992 is correctly designated (d)(2).

§ 416.994 [Corrected]

12. On page 50138, in § 416.994(b)(1)(i) Example 2, first column, last sentence, "and" is corrected to read "to".

13. On that same page, in § 416.994(b)(1)(ii) Example, middle column, last line, the parenthesis after "increased" is removed and inserted between "walk" and "has" in the same line.

14. On page 50139, middle column, line 15 in § 416.994(b)(1)(vii), the parenthesis between "impairments" and "with" is removed.

15. On that same page, third column, the fourth line in § 416.994(b)(2)(iv) introductory text, "determination" is corrected to read "determinations".

16. On page 50140, first column, the eighth line in § 416.994(b)(2)(iv)(C), "and" is corrected to read "of".

17. On the same page, third column, line 17 in § 416.994(b)(3)(i), after the word "will" insert "be".

18. On page 50141, third column, the fifth line in § 416.994(b)(3)(iv)(A) Example 2, "education" is misspelled.

19. On that same page, third column, the first line in § 416.994(b)(3)(iv)(B), the

period at the end of the line is corrected to a comma.

20. On page 50142, middle column, the last line in § 416.994(b)(4)(i), "§ 416.988" is corrected to read "§ 416.1488".

21. On that same page, middle column, the seventh line in § 416.994(b)(4)(iii), after the word "be" insert "the".

22. On that same page, third column, the heading in § 416.994(b)(5), "Steps" is corrected to read "steps". In the sixth line, of paragraph (b)(5) introductory text "decision" is corrected to read "decisions".

23. On that same page, third column, the first line in § 416.994(b)(5)(iv), the second closing parenthesis is removed. In the third line "our" is corrected to read "your".

24. On page 50144, middle column, line 15 in § 416.994(c)(1)(v), "impairments(s)" is corrected to read "impairment(s)".

25. On that same page, middle column, the first line in § 416.994(c)(2)(i), "Improvement" is corrected to read "improvement".

26. On that same page, in § 416.994(c)(2)(ii), line 20 "Chapter" is corrected to read "chapter".

27. On page 50145, in § 416.994(c)(3)(iii)(A) Example, third column, second line, "has" is corrected to read "was".

28. On page 50146, in § 416.994(c)(3)(iii)(A) Example, first column, the last line in the example, "the" is corrected to read "this".

29. On that same page, middle column, the last line in § 416.994(c)(4)(i), "§ 416.988" is corrected to read "§ 416.1488".

30. On that same page, middle column, the heading in § 416.994(c)(5), "Steps" is corrected to read "steps". In the third line of paragraph (c)(5) introductory text "decision" is corrected to read "decisions".

31. On page 50147, first column, second line in § 416.994(c)(6)(i)(F), "that you" is added after "you" and before "could".

32. On the same page, middle column, the sixth line in § 416.994(c)(7), "Subpart" is corrected to read "Subparts". In that same line "described" is corrected to read "describe".

§ 416.998 [Corrected]

33. On that same page, third column, the fourth line in § 416.998, "to" is corrected to read "is".

Dated: April 24, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management
Analysis and Systems.

[FR Doc. 86-9672 Filed 4-29-86; 8:45 am]

BILLING CODE 4190-11-M

20 CFR Part 404

[Regs. No. 4]

Social Security Benefits; Federal Old-Age, Survivors, and Disability Insurance; Revised Medical Criteria for the Determination of Disability; Corrections

AGENCY: Social Security Administration, HHS.

ACTION: Final rule; corrections.

SUMMARY: This document corrects errors which appeared in the final rules published in the *Federal Register* on December 6, 1985 (50 FR 50068). This action is necessary to correct a number of typographical errors which could be misleading and confusing to the reader.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7415.

PART 404—[CORRECTED]

In FR Doc. 85-28672 beginning on page 50068 in the issue of Friday, December 6, 1985, make the following corrections.

Appendix A—[Corrected]

1. On page 50089, second column in 1.10A, insert a semicolon instead of a comma after "disarticulation" and before "or".
2. On page 50090, third column, 2.06 should read "*Total bilateral ophthalmoplegia*".
3. On page 50091, third column, third line under "C", "bronchiectasis" should read "bronchiectasis".
4. On the same page, third column, under "D", eighth line from the bottom of the page, "excursion" should read "excursions".
5. On page 50092, third column, 3.02C, "Chronic Impairment" should read "Chronic impairment".
6. On page 50095, third column, under 4.13B2, third line, "less" should read "more".
7. On the same page, third column, under 5.00B, sixth line from the bottom, remove the period after "disorders".
8. On page 50096, first column, second line under 5.04, add a period after "endoscopy)".
9. On the same page, second column,

first line of 5.06, remove the first parenthesis before "*Chronic*".

10. On the same page, second column, under 5.08B4, third line, "hypogloemia" should read "hypoglycemia".

11. On page 50101, first column, first line of 13.03 should read "*Sarcoma of skin*".

12. On the same page, second column, second line under 13.18 "Carcinoma" should read "carcinoma" and sixth line under 13.18, insert a semicolon after "nodes" and before "or" instead of a comma.

13. On the same page, third column, in the "Table of Sections" remove "Sec" between "100.00 Growth Impairment" and "101.00 Musculoskeletal System".

14. On the same page, third column in the "Table of Sections", in line 10, "110.00 Multiply Body Systems." should read "110.00 Multiple Body Systems."

15. On page 50105, first column, fourth line under 109.03, after the word "serum" add the word "calcium".

16. On the same page, third column under 111.00A, in line six of third paragraph, "111.02 of 111.03" should read "111.02 or 111.03".

17. On page 50106, first column, third line under 111.07, "111.03" should read "101.03".

18. On the same page, first column, last line, "111.03" should read "101.03".

Dated: April 24, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management
Analysis and Systems.

[FR Doc. 86-9671 Filed 4-29-86; 8:45 am]

BILLING CODE 4190-11-M

20 CFR Part 416

Social Security; Cost-of-Living Increases; Delayed Retirement Credits; and Maximum Family Benefits

Correction

In FR Doc. 86-8182 beginning on page 12600 in the issue of Monday, April 14, 1986, make the following corrections:

1. On page 12602, second column, fourth line, "maximums of" should read "maximums or".
2. On page 12606, second column, in § 416.405, eighth line, "416.412" should read "416.412". In the third column, in the same section, ninth line, "SST" should read "SSI".
3. On page 12607, first column, in § 416.412, eighth line, "December 31," should read "December 31, 1983,".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 480

[FHWA Docket No. 85-26]

Use and Disposition of Property Previously Acquired by States for Non-Interstate and Withdrawn Interstate Segments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation concerning the use and disposition of property acquired by States, with the participation of Federal-aid highway funds, in connection with highway projects which are subsequently modified or terminated. This amendment to 23 CFR Part 480 implements the provisions of Pub. L. 96-106 which limited those situations in which States could avoid crediting Federal funds (payback) where FHWA had participated in the acquisition of property for Interstate highway segments that were subsequently withdrawn. This amendment also narrows the scope of Part 480 by eliminating situations other than Interstate withdrawals from its coverage.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Curtis L. Shufflebarger, Chief, Interstate Management Branch, Office of Engineering, (202) 426-0404; or S. Reid Alsop, Office of the Chief Counsel, (202) 426-0800, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA published its regulation on the use and disposition of highway property acquired by the States on November 17, 1978 (43 FR 54077). The regulation provided that a State need not make a credit to Federal funds if property acquired for highway purposes were reused for another public purpose, when the highway project for which the property was acquired was modified or terminated.

Subsequently, in section 2 of Pub. L. 96-106 (93 Stat. 796), Congress amended section 103(e) of Title 23, United States Code, to clarify its intent, as previously set forth in section 107(f) of the STAA of 1978 (Pub. L. 95-599, 92 Stat. 2689), with regard to repayment for Interstate segments that are withdrawn pursuant

to 23 U.S.C. 103(e)(2) or 103(e)(4). Section 2(c) of Pub. L. 96-106 requires payback of the costs of construction items, materials, or rights-of-way (all of which are referred to herein as property) acquired for highway projects on segments withdrawn from the Interstate System on or after November 6, 1978 (the effective date of the STAA), unless the following three conditions are satisfied: (1) The property was acquired before November 6, 1978, (2) the Secretary of Transportation had not approved the environmental impact statement for the withdrawn segment prior to the date of withdrawal, and (3) the property is used for a public purpose within ten years after the date of withdrawal. Although payback is required for properties not meeting these conditions, section 2(c) of Pub. L. 96-106 provides that the amount of payback can be reduced significantly where the State uses the property for certain other transportation projects. In these cases, the amount that must be repaid would be the difference between the amount of Federal funds actually received by the State and the amount that would have been received based on the Federal share presently applicable to the transportation project (or type of project) for which the property is used.

An NPRM published on November 20, 1980 (45 FR 76705), as Docket No. 80-7, proposed to implement these statutory changes, while leaving the policy for situations other than Interstate withdrawal unchanged. Pursuant to the President's memorandum of January 29 1981, which, among other things, directed executive agencies to review outstanding proposals, further action was postponed on the NPRM.

The FHWA incorporated most of that NPRM's proposed changes into a new NPRM which was published on September 20, 1985 (50 FR 38130), as Docket No. 85-26. The new NPRM proposed a return to its traditional policy concerning payback for situations other than Interstate withdrawals. This policy generally requires a credit to Federal funds for property previously acquired on projects, other than Interstate withdrawals, that are terminated. House Report No. 288¹ which accompanied Pub. L. 96-106 stated that, "It is the intent of the Committee that the Department generally continue to follow the traditional ad hoc policy of the Federal Highway Administration to require the repayment of the Federal share of certain costs so as to provide for sound fiscal management and responsible

stewardship of Federal funds." The FHWA position is consistent with legislation that established the Highway Trust Fund.

Payback determinations in situations other than Interstate withdrawals will no longer be covered by this regulation. Other FHWA regulations already cover certain kinds of property disposition such as excess right-of-way resulting from plan changes (23 CFR Part 713, Subpart C), deletions of open-to-traffic segments (23 CFR Part 470, Subpart A), and individual project phases which do not advance to the next phase within certain time limits for reasons other than termination of the entire segment (23 CFR Part 630, Subpart C).

The FHWA will consider any remaining payback questions for situations other than Interstate withdrawals based on the traditional payback policy. These situations are expected to occur primarily where decisions are made not to complete a highway segment not yet open-to-traffic, or where a segment, not yet open to traffic, is terminated because of a major realignment. In making these payback determinations, the FHWA will take into consideration such factors as the cause for the termination, whether FHWA had agreed to the termination, and the current value of the acquired property. In any case, where property is reused for another transportation project under 23 U.S.C., the amount of funds obligated can be deobligated and replaced by other Federal-aid funds at the appropriate participation ratio.

In order to facilitate project administration in these situations, it is expected that all outstanding payback questions for situations other than Interstate withdrawals will be settled, credits to Federal funds be made, and the projects be closed out as soon as possible after the effective date of this final revised rule. Any future termination should be closed out with a credit to Federal funds as soon as possible after termination.

Besides the fundamental change in the applicability of these regulations, other significant changes include the following: (1) The reuse of the previously acquired property will actually have to begin within 10 years of the date of withdrawal, (2) transfer of property to a private party without making payback is further limited, and (3) the FHWA expects to receive a pro rata share of the proceeds from any leasing and/or sale of the property to the public or private sector.

Disposition of Comments

There were only three comments received in FHWA Docket No. 85-26 on

the second NPRM. Two were from State highway agencies (SHA) and the third was from another Federal agency.

One SHA was concerned that immediate implementation of the regulation would force States, with withdrawals nearing the 10-year time limit, to sell substantial amounts of property in a very short time period. This could result in substantially lower revenues than would be expected under a systematic disposal program. Under § 480.109(b)(2) it is indicated that the State shall credit Federal funds "as soon as practicable" and that sales procedures shall be "designed to result in the highest possible return." This indicates FHWA's support for a systematic disposal program. To further support this approach, § 480.103(b) has been amended to indicate that the rigid 10-year deadline does not apply when a State has decided to sell the property. FHWA will work with the States to expedite such sales, recognizing the desire to maximize sales proceeds.

In the former regulation, the 10-year statutory time limit on reuse of property could be met by FHWA's approval of a plan for reuse and the State providing assurances that the actual reuse would be implemented "expeditiously." The definition of "applied to reuse under this part" in § 480.105 of the NPRM was revised to require that the actual reuse occur or the physical construction leading to the reuse must begin within the 10-year statutory time limit. The other SHA indicated that the controversies surrounding Interstate segments which ultimately resulted in the withdrawal of those segments may also delay the application of property to a reuse. It was suggested that the definitions be expanded to include preliminary engineering activities. Expanding the definition to include preliminary engineering would do little to assure the timely implementation of the proposed reuse. In fact the SHA proposal would be that the 10-year statutory time limit would be fully satisfied by preliminary engineering activities and, therefore, the subjective "expeditiously" requirement of the former regulation would not even be in effect. The intent of the NPRM was to implement a meaningful time limitation on the reuse of the property consistent with a clear reading of the statute and other similar regulations dealing with the 10-year limit. The SHA suggestion is counter to this intent and could actually lead to longer delays in implementing approved reuses. Accordingly, the SHA suggestion was not adopted.

¹ H.R. Rep. No. 288, 96th Cong., 1st Sess. 3 (1979).

The commenting Federal agency indicated that the NPRM adequately addresses their interests.

Other Changes

In addition to the above noted change in response to a comment, two minor editorial type revisions were made to the regulation. The phrase "In the event payback is required" was added at the beginning of § 480.111. This was done to make the section read properly. The second change was in § 480.115. The phrase "During this time period" was added at the beginning of the third sentence to better tie the participation statement in the third sentence to the preceding sentence.

The proposal in NPRM § 480.113 to limit relocation assistance to a two-year period after the date of withdrawal has been eliminated for better consistency with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et seq.*). Instead, wording similar to that used in the previous regulation concerning the period of Federal-aid eligibility has been used in this final rule.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory procedures. The impact of this regulation falls primarily on State highway agencies. For this reason and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. The FHWA has prepared a final regulatory evaluation which is available for inspection in the public docket (No. 85-26, Room 4205). Copies of the regulatory evaluation may be obtained by contacting Mr. Curtis L. Shufflebarger, at the address provided above under the heading "For Further Information Contact." (Catalog of Federal Domestic Assistance Program Number 20:205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 480

Grant programs—transportation, highway projects—withdrawal, Highways and roads, Intergovernmental relations, Mass transportation, Rights-of-way, Urban Mass Transportation Administration.

Issued on: April 21, 1986.

R.A. Barnhart,
Federal Highway Administrator, Federal
Highway Administration.

In consideration of the foregoing, the FHWA hereby revises 23 CFR Part 480 to read as follows:

PART 480—USE AND DISPOSITION OF PROPERTY PREVIOUSLY ACQUIRED BY STATES FOR WITHDRAWN INTERSTATE SEGMENTS

Sec.	
480.101	Purpose.
480.103	Applicability.
480.105	Definitions.
480.107	Reuse of property.
480.109	Requirement of credit to Federal fund.
480.111	Credit to original class of fund.
480.113	Relocation assistance.
480.115	Property management.
480.117	Intangible items.

Authority: Sec. 2, Pub. L. 96-106, 93 Stat. 796 (23 U.S.C. 103(e)(5), (6), (7)); § 107(f), Pub. L. 95-599, 92 Stat. 2689 (23 U.S.C. 103(e)(5), (6)); 23 U.S.C. 315; 49 CFR 1.48(b).

§ 480.101 Purpose.

This part addresses the extent to which a credit to Federal funds (payback) will be required for property acquired by States with the participation of Federal-aid highway funds when an Interstate segment for which the property was acquired is subsequently withdrawn under section 103(e)(2) or (e)(4) of Title 23, United States Code.

§ 480.103 Applicability.

(a) This part applies to property acquired with the participation of Federal-aid highway funds for any project on a Federal-aid Interstate segment which is subsequently withdrawn and where the Federal Highway Administration (FHWA) has not previously determined if a credit to Federal funds would be required for such property prior to the effective date of this part. This part applies to both individual submissions for specific pieces of property and comprehensive reuse plans for all property, depending on the extent of the State's submission.

(b) The provisions of § 480.107 concerning payback waiver and § 480.109(b)(3) concerning payback reduction apply only to property which has been or will be applied to a reuse under this part, as determined by the FHWA, within 10 years of the withdrawal of the Interstate segment in connection with which it was acquired. Lacking a submission by a State indicating the intent to sell property in accordance with the provisions of § 480.109(b)(2) or a submission by the

State for waiver of paycheck within 10 years of withdrawal and actual reuse within 10 years of withdrawal, the FHWA will require that the pro rata share of the current fair market value of the property be credited to Federal funds in accordance with § 480.109(b)(1).

(c) Nothing in this part shall be considered to affect or conflict with the obligations of States with respect to the right-of-way (ROW) revolving fund pursuant to 23 U.S.C. 108(c).

§ 480.105 Definitions.

For purposes of this part: "Acquired" in the case of real property means that title has been passed to the acquiring agency, or a legal obligation to complete the purchase of such real property has been established; or, in the case of construction, that work has been performed, or materials obtained, and payment is due under the contract provisions.

"Applied to a reuse under this part" means that construction leading to the reuse, or the reuse itself, has begun on the real property or that construction leading to the reuse, or the reuse itself, has begun on the site where the construction items and materials will be incorporated into another project.

"Intangible items" means items having no physical existence or recoverable value, e.g., preliminary engineering, construction engineering, appraisals, relocation payments, etc.

"Property" means land, and/or interests therein, including improvements, structures and appurtenances thereto, and any other acquired items having a physical existence but not yet physically incorporated into the project (such as construction items, materials, movable equipment and machinery).

§ 480.107 Reuse of property.

(a) This section applies to:

(1) Property acquired in connection with an Interstate highway segment withdrawn before November 6, 1978; or

(2) Property acquired before November 6, 1978, in connection with an Interstate highway segment withdrawn on or after November 6, 1978, if the final environmental impact statement for the segment had not been approved prior to the date of withdrawal.

(b) When property to which this section applies is no longer needed for the Interstate highway project for which it was acquired because of withdrawal of such Interstate segment, the State may, subject to the provisions of this section, reuse the property without being required to make payback, for:

(1) A transportation project permissible under Title 23, United States Code;

(2) A public conservation or public recreation purpose; or

(3) Any other public purpose determined by the FHWA to be in the public interest.

(c) In order to request a waiver of payback for reuse of the property without being required to make a credit to Federal funds, the State shall submit to the FHWA the following information (States are encouraged to submit a comprehensive reuse plan, covering all property, rather than individual submissions for each piece of property):

(1) A description of how the State, or political subdivision thereof, or any of their agencies or instrumentalities, has reused or proposes to reuse the property and how such use satisfies paragraph (b) of this section. Only that property actually needed for a known reuse will be considered for waiver of payback. The intent of paragraph (b) of this section is to enable the States to avoid payback if the property is reused for publicly owned and operated facilities providing government services. To this end, the State shall indicate if any of the property involved was or will be transferred directly or indirectly to any private party in connection with the reuse. The State shall justify to the FHWA why reuse by a private party, without a requirement for credit to Federal funds, is considered a public purpose in the public interest. As a minimum, justification for such a transfer would have to show that property value estimates indicate the property has nominal value, and/or that proposals to competitively dispose of the property have generated little market interest.

(2) A certification that the current rights under State law of persons owning the real property immediately prior to such property being obtained by the State have been observed;

(3) An assurance that no major alteration in the reuse will be made without resubmitting the particulars of the individual case to the FHWA for another payback determination; and

(4) An assurance that the State will assume all obligations with respect to providing relocation assistance benefits to those persons described in § 480.113 after the FHWA's obligations are terminated in accordance with § 480.113.

(d) The State should also make the following information available in order to facilitate processing of a payback determination:

(1) The date the property was acquired;

(2) The withdrawal date of the Interstate segment for which the property was acquired;

(3) The approval date of any final environmental impact statement for the Interstate segment for which the property was acquired;

(4) The amount of Federal funds expended for the property to be reused; and

(5) Any additional related information requested by the FHWA.

(e) Based on the submission, the FHWA will determine if the State is required to make a credit to Federal funds.

(f) Besides making the basic determination of whether or not the reuse satisfies paragraph (b) of this section, the FHWA will require a credit to Federal funds with respect to property if:

(1) The reuse is inconsistent with any Federal statute applicable to State/local undertakings not federally assisted;

(2) The certifications and assurances required by paragraph (c) of this section are not made;

(3) The property is to form, or its value is to form, part of the State or local matching share with respect to any Federal program; or

(4) The property is transferred to any private party, unless the FHWA determines that such a reuse, without a requirement for a credit to Federal funds, is for a public purpose in the public interest.

(g) If the FHWA determines that the assurances required by paragraph (c) of this section have not been observed, the FHWA will require that a credit to Federal funds be made as provided in § 480.109.

(h) While the FHWA does not require that the State be compensated for property reused by others under this section, should there be a payment or intergovernmental credit to the State for sales, leases, rents, etc., the State shall credit Federal funds at the same pro rata share as Federal funds participated in the original acquisition. The credit to Federal funds shall be made as soon as practicable after money or credit is received.

§ 480.109 Requirement of credit to Federal funds.

(a) This section applies to:

(1) Property for which the FHWA, under § 480.107, has determined that a credit to Federal funds must be made;

(2) Property acquired before November 6, 1978, in connection with an Interstate highway segment withdrawn on or after November 6, 1978, if the final environmental impact statement for the

segment had been approved prior to the date of withdrawal;

(3) Property acquired on or after November 6, 1978, in connection with a segment withdrawn from the Interstate System; or

(4) Property described in § 480.107(a) for which the State elects not to request a waiver of payback.

(b) With respect to property to which this section applies, the State shall credit Federal funds, as soon as practicable, in the following manner:

(1) If the property is retained or transferred without cost, in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the current fair market value of the property.

(2) If the property is sold, in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the sale proceeds (after deducting actual and reasonable selling or fix-up expenses). Fix-up expenses are limited to the extent that they are reasonably expected to increase the value of the property by at least the amount of the fix-up expenses. The credit to Federal funds shall be based on sales procedures which, unless otherwise agreed to by the FHWA, provide for competition to the maximum extent practicable and are designed to result in the highest possible return.

(3) If the property described in paragraphs (a)(2) or (a)(3) of this section has been or will be reused for another transportation project permissible under 23 U.S.C., in an amount equal to the difference between the funds the FHWA actually reimbursed the State for the property and the funds that would have been reimbursed in accordance with the current Federal share applicable to the transportation project to which the property will be applied. If the amount that would have been reimbursed is greater than the amount that was actually reimbursed, the difference will be considered zero. States shall provide to the FHWA the information required by § 480.107(c) and should provide the information requested by § 480.107(d) as soon as practicable after the State has determined how the property will be reused.

§ 480.111 Credit to original class of fund.

In the event payback is required, an amount equivalent to the Federal funds paid back pursuant to this part will then be credited to the unobligated balance of the same class of funds to which the original acquisition of the property was attributable in the manner set forth in 23 U.S.C. 118(b).

§ 480.113 Relocation assistance.

With respect to owner-occupants, tenants, businesses, and farm operations whose property has been acquired in connection with federally assisted highway project, who are still in occupancy, and who could have qualified as displaced persons if they had moved prior to the date of withdrawal, the Interstate project obligations of the FHWA under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et seq.*) shall continue for that period of time after the withdrawal as is considered equitable by the Administrator but in no event shall this period extend beyond the date the FHWA determines that no credit to Federal funds is necessary for a reuse of the property or the date the State sells or otherwise disposes of the property.

§ 480.115 Property management.

Rules or standards of property management normally applicable to property obtained with the participation of Federal-aid highway funds shall continue to apply to the management of property acquired by States in connection with the project after withdrawal of the Interstate segment. These rules or standards shall cease to apply to the property two years after the effective date of this regulation or two years after a withdrawal approval (whichever occurs later) unless the Federal Highway Administrator determines that an extension beyond two years is in the public interest. During this time period the FHWA may, at its discretion, participate in the net costs of property management and in other costs related to the acquisition of the property or withdrawal of the highway project that are incurred. Costs associated with the design and development of the property for other uses (such as developing a reuse plan or site development costs) are not considered property management costs. In any case, Federal participation will not extend beyond the date of a determination by the FHWA that no credit to Federal funds is necessary for a reuse of the property or the date the State sells or otherwise disposes of the property.

§ 480.117 Intangible items.

States are not required to make a credit to Federal funds for intangible items for which the State had expended Federal-aid highway funds in connection with an Interstate segment which is later withdrawn.

[FR Doc. 86-9587 Filed 4-29-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Community Planning and Development****24 CFR Part 570**

[Docket No. R-86-1288; FR-2244]

Urban Development Action Grants; June 1986 Funding Round for Large Cities and Urban Counties

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule revises the Urban Development Action Grant regulations to permit a June 1986 funding round for large cities and urban counties with applications to be received from April 30, 1986, through May 16, 1986 and preliminary approval decisions to be made by June 30, 1986. The revision is being made to facilitate the utilization of UDAG funds that had been subject to a rescission proposal that expired on April 15, 1986. This rule does not affect the July 1986 funding round for small cities or the September funding round for large cities and urban counties.

DATES: *Effective date:* June 6, 1986.

This rule applies to applications submitted by large cities and urban counties from April 30, 1986, through May 16, 1986 and to hold over applications that will be considered in the June 1986 funding round.

FOR FURTHER INFORMATION CONTACT: Michael McMahon, Room 7264, Office of Urban Development Action Grants, Office of Community Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-8227. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:**Background**

The February 5, 1986 rescission and deferral message of the President included a proposed rescission of UDAG budget authority. As a result of this rescission proposal, the Department suspended the processing of applications for the March 1986 funding round for small cities and the May 1986 funding round for large cities and urban counties and returned new applications that were received for these two funding rounds. Funding rounds are denominated by the month in which HUD must make preliminary approval decisions.

On April 15, 1986, the proposed rescission expired. The Department estimates that it will have approximately \$55 million available for small cities and \$164 million for large cities and urban counties, for the remainder of fiscal year 1986. These estimates include anticipated recaptures of previously obligated budget authority.

Under current UDAG regulations (24 CFR 570.460(a)), there are two funding rounds remaining in fiscal year 1986, one each for small cities (the July funding round) and for large cities and urban counties (the September funding round). Applications for the July small cities funding round are due during May and for the September large cities and urban county funding round during July. The Department believes that the July funding round provides adequate opportunity to utilize the \$55 million anticipated to be available for small cities and, accordingly, is making no change to the current regulations with respect to funding rounds for small cities. However, the Department believes that an additional funding round for large cities and urban counties before the September round is needed for the efficient utilization of the estimated \$164 million available for large cities and urban counties, and is revising § 570.460 to establish a submission and review schedule for a June 1986 funding round. Two funding rounds for large cities and urban counties will enable the Department to make funds available to large cities and urban counties more rapidly and will avoid a prohibitively large funding round in September. It will also permit the Department to make better use of its staff in reviewing large cities and urban county applications.

A June funding round is the only feasible time for an additional funding round for large cities and urban counties. A July funding round would conflict with the July small cities funding round and an August funding round would be too close to September funding round for large cities and urban counties to be of any substantive benefit. To have a June 1986 funding round, the Department has had to shorten the normal submission period and its own review period. This final rule provides the following summary:

Application submission period: April 30-May 16, 1986.

Review period: May 16-June 27, 1986.

Financial Commitment deadline: June 16, 1986.

Decision date: June 30, 1986.

Other Matters

The subject matter of this rulemaking action relates to grants and is therefore exempt from the notice and public comment requirements of Section 553 of the Administrative Procedure Act. As a matter of policy, the Department submits many rulemaking actions with such subject matter to public comment either before or after effectiveness of the action, notwithstanding the statutory exemption.

The Department has determined that prior notice and comment are unnecessary and that good cause exists for publishing this rule as final to become effective without prior public comment. The revision affects neither the substantive standards for obtaining an urban development action grant nor the amount of funding available. This rule simply makes a temporary procedural change intended to improve the efficiency of program administration.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely makes one-time change in the submission date and review schedule for large cities and urban counties.

The rule was not listed in the Department's Semiannual Agenda of Regulations published on April 21, 1986

(51 FR 14036), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.221, urban development action grants.

List of Subjects in 24 CFR Part 570

Grant Programs—Housing and Community Development.

Accordingly, the Department amends 24 CFR Part 570, Subpart G as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 570.460 a new paragraph (d) is added to read as follows:

§ 570.460 HUD review and action on application.

* * * * *

(d) *Submission and review schedule for June 1986 large cities and urban counties funding round.*

Notwithstanding the submission and review schedule in paragraphs (a) and (a)(1) of this section, HUD will also accept and review applications from large cities and urban counties in accordance with the following schedule:

Application submission period: April 30–May 16, 1986.

Review period: May 16–June 27, 1986.

Financial Commitment deadline: June 16, 1986.

Decision date: June 30, 1986.

Dated: April 25, 1986.

Alfred C. Moran,
Assistant Secretary for Community Planning and Development.

[FR Doc. 86-9753 Filed 4-29-86; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[T.D. 8067]

Income Taxes; Accounting for Long-Term Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction.

SUMMARY: This document contains a correction to Treasury Decision 8067, which was published in the Federal Register on January 6, 1986 (51 CFR 376).

T.D. 8067 issued final regulations relating to the accounting for long-term contracts.

EFFECTIVE DATE: The correction is effective January 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dale D. Goode of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone: 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

On January 6, 1986, the Federal Register published (51 FR 376) Treasury Decision 8067 relating to the accounting for long-term contracts. The document contained final regulations under section 451 of the Internal Revenue Code of 1954.

Need for Correction

As published, T.D. 8067 contains a typographical error on page 380, third column, line 12.

Correction of Publication**§ 1.451-3 [Corrected]**

Accordingly, the publication of Treasury Decision 8067 which was the subject of FR Doc. 85-30814 is corrected on page 380, third column, line 12, by removing the last word "on" and adding "in" in its place.

Paul A. Francis,
Acting Director, Legislation and Regulations Division.

[FR Doc. 86-9683 Filed 4-29-86; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION**29 CFR Part 2676****Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal—Interest Rates**

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal, which was published on March 25, 1986 (at 51 FR 10322). Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month ending after the effective date of the regulation, a series of interest rates

to be used in valuing benefits and certain assets as of valuation dates that occur within that calendar month. This amendment adds a series of interest rates to that table.

EFFECTIVE DATE: May 1, 1986.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202-956-5050 (202-956-5059 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal establishes rules for valuing assets and benefits of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15 of the regulation prescribes an interest assumption to be used in performing these valuations. Paragraph (c) of that section contains a table setting forth, for each calendar month ending after the effective date of the regulation, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month.

This amendment to the regulation adds the next monthly rate series to the table in § 2676.15(c). This rate series is

for the month of May 1986 and applies to valuation dates occurring within that month. The PBGC intends to publish a new entry in the table each month, whether or not the new entry contains rates different from those prescribed for the preceding month. The PBGC will publish the rate series for each month before the beginning of the month. Beginning with the rates for June 1986, the PBGC expects to publish each month's rates on or about the fifteenth of the preceding month.

The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of \$100 million or

more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN ASSETS AND PLAN BENEFITS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: Secs. 4002(b)(3), 4219(c)(1)(D), and 4281(b), Pub. L. 93-406, as amended by sections 403(1) and 104(2) (respectively), Pub. L. 96-364, 94 Stat. 1302, 1237-1238, and 1261 (1980) (29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1)).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest

* * * * *
(c) Interest rates.

For valuation dates occurring in the month—	The values of i_t are—																
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}	
April 1986.....	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 29th day of April 1986.
Katheleen P. Utgoff,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 86-9582 Filed 4-29-86; 8:45 am]
BILLING CODE 7708-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Rules of Procedure

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Amendment of Commission procedural rule; adoption of final rule with request for comments.

SUMMARY: The Federal Mine Safety and Health Review Commission [the "Commission"] revises its current procedural rule governing temporary reinstatement proceedings to provide an opportunity for a hearing prior to the issuance of an order temporarily reinstating a miner in discrimination proceedings arising under the Federal Mine Safety and Health Act of 1977. The current procedural rule was adopted as an interim rule on July 31, 1981, and public comments were requested. The United States Court of Appeals for the Sixth Circuit subsequently has held that the Commission's current procedural rule denies adequate due process by not providing for a minimal hearing before an order is issued temporarily reinstating a miner. Upon consideration of the Court's decision and the comments received concerning the

interim rule, the Commission has determined that revision is appropriate. By issuing this revision as a final rule, the Commission immediately affords an opportunity for an expeditious pre-reinstatement hearing that insures due process to all parties to temporary reinstatement proceedings. The Commission requests public comments on the final rule.

DATES: Effective date: April 30, 1986. Comments must be received on or before June 30, 1986.

ADDRESS: Comments may be submitted to the General Counsel, Federal Mine Safety and Health Review Commission, Sixth Floor, 1730 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: L. Joseph Ferrara, Acting General

Counsel, Office of the General Counsel, at (202) 653-5610.

SUPPLEMENTARY INFORMATION:

Background

The Commission is an independent adjudicatory agency that provides trial and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (1982) [the "Mine Act"]. Section 105(c) of the Mine Act, 30 U.S.C. 815(c), prohibits unlawful discharge or discrimination against miners or interference with their protected statutory rights. Section 105(c)(2) of the Mine Act, 30 U.S.C. 815(c)(2), provides that following a miner's timely complaint of unlawful discrimination, the Secretary of Labor [the "Secretary"] shall commence an investigation within 15 days following his receipt of the complaint. If the Secretary finds that the complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending a final order on the complaint. *Id.*

Under the Commission's current Procedural Rule 44, 29 CFR 2700.44, the Secretary's application shall state his finding that the discrimination complaint was not frivolously brought and shall be accompanied by a copy of the miner's complaint, an affidavit setting forth the Secretary's reasons for his finding, and proof of service upon the mine operator. 29 CFR 2700.44(a). The Secretary's application is to be examined on an expedited basis by a Commission administrative law judge and, if it appears that the Secretary's finding is supported by the application and accompanying documents, the judge shall issue immediately an order of temporary reinstatement. *Id.* If a temporary reinstatement order is issued, the person against whom relief is sought may request a hearing before a Commission administrative law judge, who shall hold a hearing within 5 days following the request to determine whether the complaint was frivolously brought. *Id.* The judge may then dissolve, modify, or continue the order. *Id.*

In *Southern Ohio Coal Co., et al. v. Donovan*, 774 F.2d 693 (1985), *reh'g denied*, 781 F.2d 57 (1986), the United States Court of Appeals for the Sixth Circuit held that the Commission's current Procedural Rule 44 fails to insure any reasonable opportunity for a minimal pre-deprivation hearing before a miner is temporarily reinstated and, thus, violates the constitutional due process rights of the person against

whom relief is sought. Upon consideration of this option, the Commission has revised Procedural Rule 44 to afford immediately an opportunity for a limited, pre-reinstatement hearing that insures due process to all parties to temporary reinstatement proceedings. In adopting the revised procedural rule, the Commission has reviewed and considered the comments submitted in response to the July 31, 1981 publication of the interim rule. 46 FR 39137 (1981).

Explanation of Provisions

The Commission's revised Procedural Rule 44, in new paragraph (b), provides that following prompt service of the Secretary's application for temporary reinstatement, the respondent has 10 days within which to request a hearing. If no hearing is requested, a Commission administrative law judge shall review immediately the Secretary's application. If, based upon the contents of the application, the judge determines that the complaint was not frivolously brought, he shall issue immediately an order of temporary reinstatement. If a hearing on the Secretary's application is requested, a hearing before a Commission administrative law judge shall be held within 10 days following receipt of the request for hearing, unless compelling reasons mandate the granting of a request for an extension of time.

New paragraph (c) states that at the hearing on the Secretary's application for temporary reinstatement, the burden of establishing that the complaint was not frivolously brought shall be on the Secretary. The Secretary may limit his presentation to the testimony of the complainant. The respondent shall have an opportunity to cross-examine any witnesses called by the Secretary and to present evidence in support of its position. The sole issue to be determined by the judge is whether the miner's complaint was frivolously brought. New paragraph (d) provides that within 5 days following the close of a hearing on the Secretary's application, the administrative law judge shall issue an order granting or denying the application. The order shall include fully reasoned findings of fact and conclusions of law supporting the judge's determination as to whether the miner's complaint was frivolously brought.

New paragraph (e) provides further that a party may seek review of the judge's order on the Secretary's application for temporary reinstatement by filing a petition for review and supporting arguments with the Commission within 5 days following

receipt of the order. The filing of a petition for review shall not stay the effect of the judge's order, unless the Commission directs otherwise. After a petition has been received, the revised rule provides that any response must be filed within 5 days. The Commission shall render a ruling on the petition for review within 10 days following receipt of any response or the expiration of the period for filing such response.

By permitting the opportunity for a pre-deprivation hearing, revised Procedural Rule 44 thus balances constitutional due process requirements with the Mine Act's directive that temporary reinstatement proceedings be conducted on an expedited basis.

Notice and Public Procedure

Notice and comment rulemaking does not apply to rules of agency procedure. 5 U.S.C. 553(b)(3)(A). Commission Procedural Rule 44, as revised, is a procedural rather than a substantive rule. This rule does not alter the individual rights or obligations provided by section 105(c)(2) of the Mine Act. The rule is limited to a Commission procedure for insuring all participating parties constitutional due process during temporary reinstatement proceedings before the Commission. Therefore, the rule falls within the procedural rule exception of 5 U.S.C. 553(b)(3)(A). Accordingly, no notice of proposed rulemaking was published prior to its issuance as a final rule. However, given the importance of temporary reinstatement in the Mine Act's scheme, the Commission invites and will accept public comments received on or before June 30, 1986.

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Mine safety and health. Penalties.

Adoption of Amendment to the Commission's Rules of Procedure

For the reasons set forth in the preamble, Part 2700 of Chapter XXVII of Title 29 of the *Code of Federal Regulations* is amended as follows:

PART 2700—[AMENDED]

1. The authority citation for Part 2700 continues to read as follows:

Authority: 30 U.S.C. 815 and 832.

2. Section 2700.44 is revised to read as follows:

§ 2700.44 Temporary reinstatement proceedings.

(a) *Contents of application.* An application for temporary reinstatement shall state the Secretary's finding that

the miner's complaint of discrimination, discharge or interference was not frivolously brought and shall be accompanied by an affidavit setting forth the Secretary's reasons supporting his finding, a copy of the miner's complaint, and proof of notice to and service on the person against whom relief is sought by the most expeditious means of notice and delivery reasonably available.

(b) *Request for hearing.* Within 10 days following receipt of the Secretary's application for temporary reinstatement, the person against whom relief is sought shall advise the Commission's Chief Administrative Law Judge or his designee, and simultaneously notify the Secretary, whether a hearing on the application is requested. If no hearing is requested, the Judge assigned to the matter shall review immediately the Secretary's application and, if based on the contents thereof the Judge determines that the miner's complaint is not frivolously brought, he shall issue immediately an order of temporary reinstatement. If a hearing on the application is requested, the hearing shall be held within 10 days following receipt of the request for hearing by the Commission's Chief Administrative Law Judge or his designee, unless compelling reasons are shown in an accompanying request for an extension of time.

(c) *Hearing.* The scope of a hearing on an application for temporary reinstatement is limited to a determination by the Judge as to whether the miner's complaint is frivolously brought. The burden of proof shall be upon the Secretary to establish that the complaint is not frivolously brought. In support of his application for temporary reinstatement the Secretary may limit his presentation to the testimony of the complainant. The respondent shall have an opportunity to cross-examine any witnesses called by the Secretary and may present testimony and documentary evidence in support of its position that the complaint is frivolously brought.

(d) *Judge's order on application.* Within 5 days following the close of a hearing on an application for temporary reinstatement the Judge shall issue an order granting or denying the application. The Judge's order shall include findings and conclusions supporting the determination as to whether the miner's complaint has been frivolously brought. In addition to service of the order granting or denying the application, the Judge shall notify the parties of his determination by the most expeditious means reasonably available.

(e) *Review of order.* Review by the Commission of a Judge's order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition for review with supporting arguments within 5 days following receipt of the Judge's order. The opposing party simultaneously shall be notified and served. The filing of a petition for review shall not stay the effect of the Judge's order unless the Commission directs otherwise. Any response shall be filed within 5 days following receipt of a petition. The Commission's ruling on a petition for review shall be rendered within 10 days following receipt of any response or the expiration of the period for filing such response.

(f) *Dissolution of order.* If, following an order of temporary reinstatement, the Secretary determines that the provisions of section 105(c)(1), 30 U.S.C. 815(c)(1), have not been violated, the Judge shall be so notified and shall enter an order dissolving the order of reinstatement. If the Secretary fails to file a complaint with the Commission within 90 days after an order of reinstatement has been issued, the Judge may issue an order to show cause why the order of reinstatement should not be dissolved. An order dissolving the order of reinstatement shall not bar the filing of an action by the miner in his own behalf under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), and § 2700.40(b) of these rules.

Approved: April 23, 1986.

Ford B. Ford,
Chairman, Federal Mine Safety and Health
Review Commission.
[FR Doc. 86-9583 Filed 4-29-86; 8:45 am]
BILLING CODE 6735-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 288

[DoD Instruction 7230.7]

User Charges; Fixed Fees

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The part revises 32 CFR Part 288 to reestablish and update the Schedule of Fees and Rates as requested by DoD Components. It also deletes references to an "administrative surcharge" since it conflicts with principles established by the Supreme Court in connection with the "user charges" statute. In January 1985, DoD Instruction 7230.7 eliminated the fixed

fee schedule and gave Components authority to compute charges. The part reestablishes fixed fees and withdraws this authority.

EFFECTIVE DATE: January 29, 1985.

ADDRESS: The Assistant Secretary of Defense (Comptroller), Department of Defense, The Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Thomas P. Mares; telephone 202-697-0536.

List of Subjects in 32 CFR Part 288

Accounting, Armed Forces,
Government property and Services.

Accordingly, 32 CFR Part 288 is revised to read as follows:

PART 288—USER CHARGES

288.1	Reissuance and purpose.
288.2	Applicability.
288.3	Definitions.
288.4	Policy.
288.5	Responsibilities.
288.6	Charges and fees.
288.7	Collections.
288.8	Legislative proposals.
288.9	Examples of benefits not to be charged under 288.4(c) of this part.
288.10	Schedule of fees and rates.

Authority: 31 U.S.C. 483a; Title V, Pub. L. 137, 65 Stat. 290

§ 288.1 Reissuance and purpose.

This part reissues 32 CFR Part 288 and implements the DoD program under 31 U.S.C. 9701, and OMB Circular A-25 for establishing appropriate charges for authorized services provided by DoD organizations.

§ 288.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). None of the provisions in this part should be construed as providing authority for the sale or lease of property, or the rendering of special services. Actions to convey such special benefits must be authorized by separate authority. The user charge policy is applicable except when other statutes or directives specifically direct other practices or procedures.

§ 288.3 Definitions.

Recipient. One who requests or receives the benefits of the service(s) provided.

§ 288.4 Policy.

(a) *General.* It is DoD policy not to compete with available commercial facilities (see 32 CFR Part 169a) in providing special services or in the sale or lease of property to private parties and agencies outside the Federal Government. However, when a service or sale is made that conveys special benefits to recipients, above and beyond those accruing to the public at large, a reasonable charge shall be made to each identifiable recipient, except as otherwise authorized by the Secretary of Defense. A special benefit will be considered to accrue, and a charge shall be imposed when the service rendered:

(1) Enables the recipient to obtain more immediate or substantial gain or values (which may or may not be measureable in monetary terms) than those which accrue to the general public; or

(2) Is performed at the request of the recipient and is above and beyond the services regularly received by or available without charge to the general public.

(b) *Costing.* (1) A charge shall be imposed to recover the full cost to the Federal Government of rendering a service or the fair market value of such service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be made based on recovery of full costs to the Federal Government.

(2) When federally owned resources or property are leased or sold, a fair market value shall be obtained. Fair market value shall be determined by the application of sound business management principles and, so far as practicable and feasible, in accordance with comparable commercial practices. Charges based on fair market value need not be limited to the recovery of costs; they may produce net revenues to the Government.

(c) *Exclusions and Exceptions.* (1) The provisions of this part do not apply when other statutes or directives require different practices or procedures such as for:

(i) Morale, welfare, and recreation services to military personnel and civilian employees of the Department of Defense and other services provided in accordance with § 288.9.

(ii) Sale or disposal of surplus property under approved programs (See DoD Instruction 7310.1¹).

(iii) Services furnished the general public relating to, or in furtherance of, the U.S. Armed Forces recruiting program.

(iv) Services furnished to representatives of the public information media in the interest of public understanding of the U.S. Armed Forces.

(v) U.S. Armed Forces participation in public events. Charges for such participation are governed by the provisions of 32 CFR Part 238.

(vi) Records made available to the public, under the Freedom of Information Act, pursuant to 32 CFR Part 286. Charges for such record searches and copies of records are governed by § 286.61.

(vii) Services furnished to non-Federal audio-visual media. Charges for such services are governed by the provisions of DoD Instruction 5410.15.²

(viii) Government-developed computer programs released to non-Federal customers. Charges for software packages are governed by DoD Instruction 7930.2.³

(ix) Pricing of performance by industrial fund activities which shall be in accordance with DoD Directive 7410.4.⁴

(2) Charges may be waived or reduced when:

(i) The recipient of the benefits is engaged in nonprofit activity designed for public safety, health, or welfare.

(ii) Payment of the full fee by a state, local government, or nonprofit group would not be in the interest of the program.

(iii) Furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis with a foreign country.

(iv) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

§ 288.5 Responsibilities.

Head of DoD Components, or designees, shall:

(a) Identify each service or activity covered by this part.

(b) Determine the extent of the special benefit provided.

(c) Determine applicable cost and fair market value.

(d) Establish appropriate charges and collect from recipients of special services.

(e) Grant cost waivers or reductions consistent with guidance in this part.

(f) Recommend to the Assistant Secretary of Defense (Comptroller) necessary additions and revisions to § 288.10.

§ 288.6 Charges and Fees.

(a) *General.* (1) All charges and fees shall be based on total cost to the U.S. Government or fair market value, whichever is higher. Total cost shall be based on actual cost or replacement cost when property is to be replaced and expense data accumulated in accordance with DoD 7220.9-M.⁵ Estimates from the best available records may be used if actual cost or expense data is not available.

(2) Cost accounting systems shall not be established solely for the purpose of determining charges, but the results of existing cost accounting systems shall be used. Total cost shall include all direct and indirect costs (see Chapter 71, DoD 7220.9-M).

(3) Charges and fees established in advance must be projected to the midpoint of the future period. Projected amounts shall be reviewed annually or whenever significant changes in cost or value occur.

(4) Internal management controls (see DoD Directive 5010.38⁶) must be established to ensure that charges and fees are developed and adjusted, using current, accurate, and complete data, to provide reimbursement conforming to statutory requirements. Such controls also must ensure compliance with cash management and debt collection policies (see DoD Directive 7045.13⁷).

(b) *Services.*—(1) *Basic Requirements.* The maximum charge for a special service shall be governed by its total cost or fair market value, whichever is higher, and not by the value of the service, to the recipient. The cost computation shall include the direct and indirect costs to the Government of carrying out the activity. Typically, a service may involve the following:

(i) Civilian salaries or wages, including the full cost of benefits, such as leave, retirement, and medical and life insurance.

(ii) The full cost of military personnel services, including retirement, other personnel support, leave, and permanent change of station factors.

(iii) The cost of materials, supplies, travel expenses, communications, utilities, equipment and property rental, and, maintenance of property and equipment.

¹ Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Code 301, 5801 Tabor Avenue, Philadelphia, Pa 19120.

² See footnote 1 to § 288.4(c)(1)(ii).

³ See footnote 1 to § 288.4(c)(1)(ii).

⁴ See footnote 1 to § 288.4(c)(1)(ii).

⁵ See footnote 1 to § 288.4(c)(1)(ii).

⁶ See footnote 1 to § 288.4(c)(1)(ii).

⁷ See footnote 1 to § 288.4(c)(1)(ii).

(iv) Depreciation expense and interest of investment (currently at a 10 percent annual rate) (OMB Circular No. A-94) in DoD-owned, fixed assets.

(v) Other operational, administrative, and accessorial (DoD Instruction 7510.4⁸ costs incurred by the activity while establishing standards and regulations and research in support of the service performed, for example.

(2) *Fees and Rates:* Fees and rates shall be based on actual costs. The charges for services provided by data processing activities shall be determined by using the costs accumulated pursuant to OMB Circular No. A-121 and Federal Government accounting Pamphlet No. 4 requirements. Fees and rates for recurring services shall be established in advance, when feasible. Recurring services include, but are not limited to, copying, certifying, and researching records, except when those services are excluded or exempted from charges under § 228.4(c) or § 228.9.

(3) *DoD-wide Fees and Rates.* Section 228.10 provides a schedule of fees and rates for certain services for use throughout the Department of Defense. Recommendations for additions and revisions to the schedule will be made to the Assistant Secretary of Defense (Comptroller).

(c) *Lease or Sale of Property.* Charges for lease or sale of property shall be based on a determination of fair market value.

(1) In cases involving the lease or rental of military equipment, when there is no commercial counterpart, fair market value will be based on the computation of an annual rent which will be the sum of the annual depreciation plus interest on investment. The amount of interest on investment is determined by applying the interest rate to the net book value; that is, acquisition cost plus additions less depreciation. The current interest rate in OMB Circular No. A-94 shall be used. Support, if furnished, and applicable general administration expenses will be extra. In determining the value, consideration may be given to the responsibility of the lessee to assume the risk of loss or damage to the property and to hold the Government harmless against claims or liabilities by the lessee or third parties.

(2) In cases involving the sale of property when there is no known fair market value, costs shall be based on the total of the standard price of the item carried in inventory, or the reduced price when so authorized for sale within the Department of Defense and the

accessorial and administrative costs computed under DoD Instruction 7510.4.

§ 288.7 Collections.

(a) Collections of charges and fees shall be made in advance of rendering the service, except when preservation of life or property is involved, performance is authorized by law without advance payment, or advance payment is impractical because multiple requests for services are received on a continuing basis from a reliable requester (i.e., consistently prompt payments for services received). When an advance collection exception is approved, an accounts receivable will be established to control collections. The policies in DoD 7220.9-M, DoD Directive 5010.38, and DoD Directive 7045.13 shall be used in accounting, controlling, and managing cash and debt collections.

(1) Collections of fees and charges normally will be deposited to Miscellaneous Receipts of the Treasury unless otherwise authorized by law or regulation.

(2) Collections for utilities and services in connection with the lease of property will be deposited to the appropriation or fund responsible for financing the operations of the equipment or facility.

§ 288.8 Legislative proposals.

In cases where collections of fees and charges for services or property are limited or restricted by provisions of existing law, the DoD Component(s) concerned will submit appropriate remedial legislative proposals under applicable legislative procedures. (See DoD Instruction 5500.4.⁹)

§ 288.9 Examples of Benefits not to be charged under provisions of § 288.4(c)(D) of this Part.

(a) Services requested by members of the U.S. Armed Forces in their capacity as Service members.

(b) Services requested by members of the U.S. Armed Forces who are in a casualty status, or requested by their next of kin or legal representative, or requested by any source, when it relates to a casualty.

(c) The address of record of a member or former member of the U.S. Armed Forces when the address is available readily through a directory (locator) service, and when the address is requested by a member of the U.S. Armed Forces or by a relative or a legal representative of a member of the U.S. Armed Forces or when the address of record is requested by any source for the purpose of paying monies or

forwarding property to a member or former member of the U.S. Armed Forces.

(d) Services requested by or on behalf of a member or former member of the U.S. Armed Forces or, if deceased, his or her next of kin or legal representative that pertain to the following:

(1) Information required to obtain financial benefits regardless of the terms of separation from the Service.

(2) Document showing membership and military record in the Armed Forces if discharge or release was under honorable conditions, except as provided in paragraphs (1) and (2) of this section.

(3) Information relating to a decoration or award or required for memorization purposes.

(4) Review or change in type of discharge or correction of records.

(5) Personal documents, such as birth certificates, when such documents are required to be furnished by the member.

(e) Services that are furnished free in accordance with statutes or executive orders.

(f) Information from or copies of medical and dental records or X-ray films of patients or former patients of military medical or dental facilities, when such information is required and requests for such data are (1) submitted by an accredited medical facility, physician, or dentist; or (2) requested by the patient, his or her next of kin, or legal representative.

(g) Services involving confirmation of employment, disciplinary or other records, and salaries of active or separated civilian or military personnel, when requested by prospective employers or recognized sources of inquiry for credit or financial purposes.

(h) Services requested by and furnished to a Member of Congress for official use.

(i) Services requested by state, territorial, county, or municipal government, or an agency thereof, that is performing a function related to or furthering of a DoD objective.

(j) Services requested by a court, when the service will serve as a substitute for personal court appearance of a military or civilian employee of the Department of Defense.

(k) Services requested by a nonprofit organization that is performing a function related to or furthering an objective of the Federal Government or that is in the interest of public health and welfare, including education.

(l) Services requested by an individual or corporation that is performing a function related to or furthering an objective of the Federal Government,

⁸ See footnote 1 to § 228.4(a).

⁹ See footnote 1 to § 288.4(c)(1)(ii).

when the cost of such services would be chargeable to a Federal Government contract or grant held by the individual or corporation.

(m) Services requested by donors with respect to their gifts.

(n) Requests for occasional and incidental services (including requests from residents of foreign countries), that are not requested often, when it is determined administratively that a fee would be inappropriate for the occasional and incidental services.

(o) Requests from Federal employees for the completion of claims for reimbursement under the Federal Employees Health Benefit Act of 1959.

(p) Administrative services provided by reference or reading rooms to inspect public records, excluding copies of records or documents furnished.

(q) Requests for military locator service by financial organizations that are located on DoD installations.

(r) Requests for military locator service by financial organizations that are engaged in the direct deposit program and that are not located on DoD installations. Requests for an address of record shall include the following:

(1) A statement that the financial organization is listed as a direct deposit recipient in the current U.S. Treasury Bureau of Accounts, "Financial Organizations Directory."

(2) A statement that the individual, whose address is being requested, has his or her pay forwarded as a direct deposit by a DoD disbursing officer.

(3) The individual's financial organization's account number.

(s) Services rendered in response to requests for classification review of DoD classified records, submitted under Executive Order 12065 and implemented by 32 CFR Part 159. Such services consist of the work performed in conducting the classification review or in granting and completing an appeal from a denial of declassification following such review.

(t) Services of a humanitarian nature performed in such emergency situations as life-saving transportation for non-U.S. Armed Forces patients, search and rescue operations, and airlift of personnel and supplies to a disaster site. This does not mean that inter- and intra-Governmental agreements to recover all or part of costs should not be negotiated. Rather, it means the recipient or beneficiary will not be assessed a "user charge."

§ 288.10 Schedule of Fees and Rates.

This schedule applies to authorized services related to copying, certifying, and searching records rendered to the

public by DoD Components, except when those services are excluded or excepted from charges under subsection D.3. of the basic Instruction, or § 288.9. Except as provided in special cases prescribed below, a minimum fee of \$3.50 will be levied for processing any chargeable case. Normally only one copy of any record or document will be provided.

Requests Involving

(a) *Training and Education (copies of documents required for other than official purposes):*

(1) Transcripts:	
First copy.....	\$3.50
Each additional copy (includes requests for transcripts of graduation from military academies and schools).....	.45
(2) Certificates:	
First copy.....	3.50
Each additional copy (includes all requests for certificates, verification of attendance, and course completion from service schools and other facilities).....	.45

(b) *Medical and Dental Records of Patients and Former Patients (when requested for purposes other than further medical treatment).* Covers requests for information from or copies of medical records, including clinical records (inpatient records of military and non-military patients), health records (military outpatient records), outpatient records (non-Military outpatient records), dental records, and loan of x-rays.

(1) Searching and processing (per hour).....	\$13.25
Minimum charge.....	8.30
(2) Each typewritten page.....	3.50
(3) Office copy reproductions (per image).....	0.10
(4) Copy or loan of each x-ray.....	8.50

(c) *Military Membership and Record (Excluding Medical and Dental Records).*

(1) Address of record, each.....	\$3.50
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(2) Copies of releasable military personnel records (e.g., effectiveness reports for officers and enlisted personnel) reproduced for the personal use of active, retired, and former members, next of kin of missing-in-action or deceased members of the Armed Forces.	
Minimum charge (up to six reproduced images).....	\$3.50
Each additional image.....	.10
Statement of verification of Service or report of separation for individuals	

with other than honorable discharges..... 5.20

(d) *Photography.* (1) Still pictorial or documentary photographic prints. Unlisted standard sizes of prints may be furnished, if available, at prevailing contract or activity rates.

	Price per print (quantity)			
	1 to 9	10 to 20	21 to 50	50+
Single weight (RC type) paper:				
8"x10".....	\$4.50	\$3.25	\$2.50	\$1.75
11"x14".....	9.00	7.00	5.00	4.00
16"x20".....	19.00	15.00	12.00	9.50
20"x24".....	30.00	25.00	20.00	15.00
Single weight color paper:				
8"x10".....	11.00	7.50	3.50	3.00
11"x14".....	17.00	9.00	6.50	5.50
16"x20".....	35.00	25.00	14.00	11.50
35mm color transparency slide made from color negative.....	5.00	3.50	3.00	3.00
35mm duplicate from 35mm slide.....	1.00	.60	.50	.45
Print mounted on 16"x20" cardboard + unit price of print.....	8.00			
Print mounted on 20"x24" cardboard + unit price of print.....	12.00			
Color transparencies (first); 16.00 each additional:				
8"x10".....	20.00			
4"x5".....	4.50			
4"x5" B&W negative.....	2.00			
70mm color negative.....	7.50			

Note.—Prices may vary by 20% of these average charges based on local inhouse labor, equipment, and supply (raw stock) costs.

(2) *Motion Picture:*

	Price per foot contact
Color:	
16mm work print (positive work print from an original negative).....	\$0.20
16mm reversal work print.....	.20
16mm color master ("A" roll).....	.60
16mm duplicate negative (from master positive).....	.60
16mm reversal duplicate negative.....	.85
16mm internegative (from reversal original).....	.70
16mm short rolls (under 100 ft) + basic price.....	-.10
16mm tab-to-tab printing + basic price.....	.20
Black and white:	
16mm work print (negative/positive).....	.10
16mm master positive (fine grain).....	.25
16mm duplicate negative.....	.25
16mm short rolls (under 200 ft) + basic price.....	.10
16mm tab-to-tab printing + basic price.....	.10

(3) *Miscellaneous:*

Magnetic tape—dub from 16mm film + raw stock.....	\$65.00
Searching (per hour or fraction thereof).....	18.00
Minimum charge per film order (including search).....	35.00

16mm film to videotape (broadcast quality tape format per hour) + raw stock.....275.00
 Minimum charge for film to videotape transfer + raw stock.....140.00

Aerial photographic print processing prices will be determined by the local DoD-operated lab due to limited availability.

35mm film processing for motion pictures is not done in-house by the DoD. Charges for this type of processing will be at prevailing contract rates on a case-by-case basis.

(e) *Construction and Engineering Information.* Copies of aerial photograph maps, specifications, permits, charts, blueprints, and other technical engineering documents.

- (1) Searching, per hour or fraction thereof (including overhead costs).....\$13.25
- (2) First print.....2.50
- (3) Each additional print of same document.....0.85

(f) *Copies of Medical Articles and Illustrations.* Standards contained in the basic Instruction will be utilized in computing costs.

(g) *Claims, Litigation.* Copies of documents required for other than official purposes. (Includes court-martial records furnishing information from Report of Claims Investigations; e.g., automobile collision investigations and safety reports.) Requests pertaining to private litigation and to cases in which the United States is a party and where court rules provide for reproduction of records without cost to the Government (if not covered in 2. or 3., above).

- (1) Searching and processing (per hour).....\$13.25
- Minimum charge.....8.30

Note.—Charges for professional search or research will be made in accordance with 10.b., below.

- (2) Office copy reproduction (minimum for six pages or less).....\$3.50
- (3) Each additional image.....0.10
- (4) Certification and validation with seal, each.....5.20

(h) *Publications and Forms.* A search and/or processing fees, as described in 10.a., below, will be made for requests requiring extensive time (one hour or more).

(1) *Shelf Stock.* (Requesters may be furnished more than one copy of publication or form if it does not deplete stock levels below projected planned usage.)

- (i) Minimum fee per request (six pages or less).....\$3.50
- Plus:
- (A) Form, per copy.....\$1.00
- (B) Publications, per printed page.....0.02
- (C) Microfiche, per fiche......10

(ii) (Examples: Cost of 20 forms, \$5.50; cost of a publication with 100 pages, \$5.50; cost of microfiche publication consisting of 10 fiches, \$4.50)

(2) Office Copy Reproduction (when shelf stock is not available):

- (i) Minimum fee per request (six pages or less).....\$3.50
- (ii) Each additional page......10
- (iii) Minimum charge first fiche.....8.70
- (iv) Each additional fiche......20

(i) *Engineering Data (Microfilm).*—(1) *Aperture Cards.*

- (i) Silver duplicate negative, per card..... \$0.75
- When keypunched and verified, per card......85
- (ii) Diazo duplicate negative, per card......65
- When keypunched and verified, per card......75
- (2) 35mm roll film, per frame.....0.50
- (3) 16mm roll film, per frame.....0.45
- (4) Paper prints (engineering drawings), each.....1.50
- (5) Paper reprints of microfilm indices, each.....0.10

(j) *General.* Charges for any additional services not specifically provided above, consistent with the provisions of the basic Instruction, will be made by the respective DoD Components at the following rates:

- (1) Clerical search and processing, per hour.....\$13.25
- Minimum charge.....8.30
- (2) Professional search or researching (To be established at actual hourly rate prior to search. A minimum charge will be established at ½-hourly rates.).....
- (3) Minimum charge for office copy reproduction (up to six images).....3.50
- (4) Each additional image.....0.10
- (5) Each typewritten page.....3.50
- (6) Certification and validation with seal, each.....5.20
- (7) Hand-drawn plots and sketches, each hour or fraction thereof.....12.00

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
 April 24, 1986.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124 and 403

[EN-FRL-2956-9]

The National Pollutant Discharge Elimination System and General Pretreatment Regulations; Authority for Deciding Variance Requests Based on Fundamentally Different Factors and on Water Quality Factors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends certain portions of the National Pollutant Discharge Elimination System (NPDES) regulations in order to delegate authority to EPA Regional Administrators for deciding variance requests based on section 301(g) of the CWA and based on the presence of fundamentally different factors (FDF). In addition, this document amends the General Pretreatment regulations in order to delegate authority to EPA Regional Administrators for deciding variance requests based on the presence of fundamentally different factors (FDF).

These amendments will change present procedures to require headquarters involvement only where the variance request raise nationally significant or precedent-setting issues.

DATES: For judicial review purposes, in accordance with 40 CFR Part 23 (50 FR 7268) the time and date of the Administrator's action in issuing this rule shall be 1:00 P.M. Eastern Time on May 14, 1986.

These regulations shall become effective on May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Goode, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; (202) 475-9521.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 301(g) Variances

Section 301(g) of the CWA provides that variances from effluent limitations based on best available technology economically achievable (BAT) may be granted to certain direct dischargers of nonconventional pollutants. In order to obtain a variance under section 301(g), an applicant must demonstrate that his proposed modified effluent limitations (1) will meet water quality standards or best practicable control technology currently available, whichever is applicable; (2) will not result in any additional requirements on other point or nonpoint sources; (3) will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, the protection and propagation of a balanced population of shellfish, fish and wildlife, and recreational activities in and on the water and (4) cannot reasonably be anticipated to pose an unacceptable risk to human health and the environment.

The existing NPDES regulations (§ 124.62) allow the Regional Administrator or NPDES State Director

to deny all requests for section 301(g) variances for direct dischargers (these variances are not available to indirect dischargers). However, only the Deputy Assistant Administrator for Water Enforcement (now the Director of the Office of Water Enforcement and Permits [OWEP]) may approve such variances.

B. FDF Variances

The fundamentally different factors (FDF) variance is an administrative mechanism designed to allow alternative case-specific limitations in lieu of national effluent limitations guidelines and categorical pretreatment standards for existing direct or indirect dischargers of toxic, conventional, or nonconventional pollutants. In order to obtain an FDF variance, an applicant must demonstrate that the factors prevailing at his plant or facility are fundamentally different from the factors considered in establishing the national discharge limitations and standards, as specified in existing regulations (40 CFR 125.30-125.32 and 403.13).

In the case of direct dischargers, the existing NPDES regulations (§ 124.62) allow the Regional Administrator and the NPDES State Director to deny all requests for FDF variances. However, only the Deputy Assistant Administrator for Water Enforcement (now the Director of the Office of Water Enforcement and Permits [OWEP]) may approve such variances. In the case of indirect dischargers, the existing General Pretreatment regulations (§ 403.13) allow the State Director and the EPA Enforcement Division Director (now the Regional Water Management Division Director) to deny all requests for FDF variances. However, only the EPA Enforcement Division Director (now the Regional Water Management Division Director) may approve such requests.

C. Delegation Plan

In the case of section 301(g) and FDF variance requests from direct dischargers, the above procedures have brought about considerable duplication of effort between Headquarters and Regional offices, since they require the Regional Administrator to review and, where approval is recommended, submit the request to EPA Headquarters for further review. These reviews may also be in addition to a review by the State Director. Such multiple review has often made the issuance of timely decisions difficult. This is compounded by the fact that EPA Headquarters receive a relatively large number of these types of variance requests.

In light of the above, EPA has reexamined the need for routine Headquarters involvement in the approval of such variance requests. The Agency has concluded that Headquarters involvement should only be required where the variance request involves nationally significant or precedent-setting issues. Accordingly, EPA has decided to delegate to Regional Administrators the authority to grant as well as deny all requests for section 301(g) or FDF variances, with advance concurrence required from the Assistant Administrator for Water or his delegate only under certain circumstances. Such advance concurrence would be required only for FDF requests that raise nationally significant issues, or for the first 301(g) variance request dealing with a specific pollutant in a particular industry discharging to specific waters. Requests for which advance concurrence is required will be identified in guidance issued to EPA Regions. This delegation will not alter the authority of the State Director to deny such variance requests.

Because of the relatively small number of sections 301(c) and 302(b)(2) variance requests which have been received, the Agency is not currently amending the procedures applicable to variance requests under these provisions. The State Director and Regional Administrator will still retain authority to deny section 301(c) and 302(b)(2) variance requests while final approval authority will remain with the Director of the Office of Water Enforcement and Permits.

As noted above, in the case of FDF variances for indirect dischargers, decisions to grant requests are already made at the Regional level by the Water Management Division Director. However, to avoid confusion and for the sake of program consistency we are providing the Regional Administrator with the same authority to grant as well as deny these requests as for direct dischargers. As with direct discharges, this delegation will not alter the authority of the State Director to deny these variance requests.

EPA believes that the delegation accomplished today will simplify the present cumbersome process, result in speedier resolution of the relevant issues, and provide consistency in the treatment of direct and indirect dischargers.

In order to allow for the delegation discussed above, the Agency is today amending 40 CFR 124.62, 124.63, and 403.13 to provide that the Administrator, or his delegate, may grant or deny section 301(g) and FDF variance

requests. Concurrently with this rulemaking, the Administrator is implementing the actual delegation of this authority through the EPA delegations manual. This procedure is more appropriate than delegating authority to the Regional Administrators through the rulemaking process, since the regulations as amended to day will allow the Administrator to redelegate his authority in the future directly through the delegations manual as needed instead of through a new rulemaking procedure. EPA anticipates revising other regulations in the future to specify the Administrator as the decisionmaking authority in order to allow for delegations through the manual.

In the case of appeals from decisions on variance requests from indirect dischargers (see § 403.13(m)) the Agency wishes to point out that the petition for a hearing to reconsider or contest the Regional Administrator's decision would be submitted to the Regional Administrator, even though the Regional Administrator (as the Administrator's delegate) will also be responsible for making the initial decision on the variance.

The Agency is promulgating today's amendments in final form pursuant to section 553(b)(A) of the Administrative Procedure Act (APA). The rule change issued today merely changes the procedures for processing variance requests within the Agency. The substantive standards for review of the requests remain the same. Accordingly, the rule does not "alter the rights or interests of parties." *Batterton v. Marshall*, 648 F.2d 694 (D.C. Cir. 1980). As such, it fits squarely within the exemption from notice and comment requirements of the APA.

II. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it affects only internal Agency procedures. The requirements applicable to the regulated public are not affected.

III. Regulatory Flexibility Act

EPA has determined, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this regulation will not have a significant economic impact on a substantial number of small entities, since it affects only internal Agency operating procedures.

List of Subjects

40 CFR Part 124

Administrative practice and procedure, air pollution control, hazardous materials, waste treatment and disposal, water pollution control, water supply, Indian lands.

40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: March 31, 1986.

Lee M. Thomas,
Administrator.

PART 124—PROCEDURES FOR DECISIONMAKING

Subpart D—Specific Procedures Applicable to NPDES Permits

1. The authority citation for Part 124 continues to read as follows:

Authority: Resources Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Section 124.62 is amended by removing paragraphs (b) (1) and (3), redesignating paragraphs (b) (2) and (4) as paragraphs (b) (1) and (2) respectively, and adding new paragraphs (e) and (f) to read as follows:

§ 124.62 Decision on Variances.

(e) The State Director may deny or forward to the Administrator (or his delegate) with a written concurrence, or submit to the Administrator (or his delegate) without recommendation, a completed request for:

(1) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(2) A variance based upon certain water quality factors under CWA section 301(g).

(f) The Administrator (or his delegate) may grant or deny a request for a variance listed in paragraph (e) of this section that is forwarded by the State Director, or that is submitted to EPA by the requester where EPA is the permitting authority. If the Administrator (or his delegate) approves the variance, the State Director or Regional Administrator may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under § 124.64.

3. Section 124.63 is amended by revising paragraph (a)(1) to read as follows:

§ 124.63 Procedures for Variances When EPA Is the Permitting Authority.

(a) * * *

(1)(i) If, at the time, that a request for a variance based on the presence of fundamentally different factors or on section 301(g) of the CWA is submitted, the Regional Administrator has received an application under § 124.3 for issuance or renewal of that permit, but has not yet prepared a draft permit under § 124.6 covering the discharge in question, the Administrator (or his delegate) shall give notice of a tentative decision on the request at the time the notice of the draft permit is prepared as specified in § 124.10, unless this would significantly delay the processing of the permit. In that case the processing of the variance request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the processing of the permit shall proceed without delay.

(ii) If, at the time, that a request for a variance under sections 301(c) or 302(b)(2) of the CWA is submitted, the Regional Administrator has received an application under § 124.3 for issuance or renewal of that permit, but has not yet prepared a draft permit under § 124.6 covering the discharge in question, the Regional Administrator, after obtaining any necessary concurrence of the EPA Deputy Assistant Administrator for Water Enforcement under § 124.62, shall give notice of a tentative decision on the request at the time the notice of the draft permit is prepared as specified in § 124.10, unless this would significantly delay the processing of the permit. In that case the processing of the variance request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the processing of the permit shall proceed without delay.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority citation for Part 403 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1311; 1314(b), (c), (e), and (g); 1316(b) and (c); 1317; 1318; and 1361.

2. In 403.13, paragraph (g)(1), the introductory text of paragraph (h), paragraph (i), the introductory text of (j), (j)(3), (k)(2), (l)(1), the introductory text of (l)(2), (l)(2)(ii)(B), (l)(2)(ii)(C),

(l)(2)(ii)(D), and paragraph (m) are revised to read as follows:

§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

* * * * *

(g) *Application deadline.* (1) Requests for a variance and supporting information must be submitted in writing to the Director or to the Administrator (or his delegate), as appropriate.

* * * * *

(h) *Contents submission.* Written submissions for variance requests, whether made to the Administrator (or his delegate) or the Director, must include:

* * * * *

(i) *Deficient requests.* The Administrator (or his delegate) or the Director will only act on written requests for variances that contain all of the information required. Persons who have made incomplete submissions will be notified by the Administrator (or his delegate) or the Director that their requests are deficient and unless the time period is extended, will be given up to thirty days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the Administrator (or his delegate) or the Director, the request for a variance shall be denied.

(j) *Public notice.* Upon receipt of a complete request, the Administrator (or his delegate) or the Director will provide notice of receipt, opportunity to review the submission, and opportunity to comment.

* * * * *

(3) Following the comment period, the Administrator (or his delegate) or the Director will make a determination on the request taking into consideration any comments received. Notice of this final decision shall be provided to the requester (and the Industrial User for which the variance is requested if different), the POTW into which the Industrial User discharges and all persons who submitted comments on the request.

(k) * * *

(2) Where the Director finds that fundamentally different factors do exist, he shall forward the request, with a recommendation that the request be approved, to the Administrator (or his delegate).

(l) *Review of requests by EPA.*

(1) Where the Administrator (or his delegate) finds that fundamentally different factors do not exist, he shall deny the request for a variance and send a copy of his determination to the

Director, to the POTW, and to the requester (and to the Industrial User, where they are not the same).

(2) Where the Administrator (or his delegate) finds that fundamentally different factors do exist, and that a partial or full variance is justified, he will approve the variance. In approving the variance, the Administrator (or his delegate) will:

* * * * *

(ii) * * *

(B) The rationale for the adjustment of the Pretreatment Standard (including the reasons for recommending that the variance be granted) and an explanation of how the recommended alternative discharge limits were derived;

(C) The supporting evidence submitted to the Administrator (or his delegate); and

(D) Other information considered by the Administrator (or his delegate) in developing the recommended alternative discharge limits;

* * * * *

(m) *Request for hearing.* (1) Within 30 days following the date of receipt of the notice of the decision of the Administrator's delegate on a variance request, the requester or any other interested person may submit a petition to the Regional Administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the Industrial User the person shall simultaneously serve a copy of the request on the Industrial User.

(2) If the Regional Administrator declines to hold a hearing and the Regional Administrator affirms the findings of the Administrator's delegate the requester may submit a petition for a hearing to the Administrator within 30 days of the Regional Administrator's decision.

[FR Doc. 86-9522 Filed 4-29-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP4F2986/R777; FRL-3010-2]

Cypermethrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide cypermethrin in or on the raw agricultural commodity pecans. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was

requested pursuant to a petition by ICI Americas, Inc.

EFFECTIVE DATE: Effective on April 30, 1986.

ADDRESS: Written objections, identified by the document control number [PP4F2986/R777], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of December 21, 1983 (48 FR 56435), which announced that ICI Americas, Inc., Concord Pike and New Murphy Rd., Wilmington, DE 19897, had submitted a pesticide petition (PP4F2986) to EPA proposing to amend 40 CFR 180.418 by establishing a tolerance for residues of the insecticide cypermethrin [(±)alpha-cyano-(3-phenoxyphenyl)-methyl(±)-cis,trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] and its metabolites cis,trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and 3-phenoxybenzoic acid (3-PB Acid) (sum of cypermethrin plus metabolites) in or on the raw agricultural commodity pecans at 0.05 part per million (ppm).

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance as well as the risk of cypermethrin for previously established tolerances are discussed in a document on cypermethrin that appeared in the Federal Register of June 15, 1984 (49 FR 24865).

A full review of the data indicates that although cypermethrin increases the frequency of spontaneously occurring tumors in the lungs of female mice at high dose levels, the increased dietary risk would be extremely small from the proposed use of cypermethrin on pecans. The increased dietary risk associated with this tolerance, based on the highly conservative assumption that all units of the commodity would bear residues at the proposed tolerance level, is estimated to be 10⁻⁹-10⁻⁸. This value was calculated based on the proposed tolerance level.

The acceptable daily intake (ADI) is calculated to be 0.01 mg/kg/day based on a 1-year dog feeding study with a NOEL of 1.0 mg/kg/day and using a 100-fold safety factor. The maximum permissible intake (MPI) is calculated to be 0.60 mg/day for a 60-kg person. Published and pending tolerances result in a theoretical maximum residue contribution (TMRC) of 0.0408 mg/day based on a 1.5-kg diet and utilize 6.80 percent of the ADI. The establishment of this tolerance will add only 0.00002 mg/day (1-5 kg diet) to the TMRC, resulting in a total use of 6.81 percent of the ADI.

There are no regulatory actions pending against the registration of cypermethrin. The metabolism of cypermethrin in plants and animals is adequately understood for the purposes of the tolerances set forth below. An analytical method using electron capture gas-liquid chromatography is available for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual II, an interim analytical methods package is being made available to the State pesticide enforcement chemists when requested by mail:

By mail: Information Service Section (TS-757C), Program Management Support Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-3262).

Based on the above information, the Agency has determined that establishing the tolerance for residues of the pesticide in or on the commodity will protect the public health. Therefore, as set forth below, the tolerance is established for a period extending to December 31, 1989, to cover residues existing from this conditional registration of cypermethrin, and the tolerance may be made permanent if registration is continued based on information received in 1988 (see Federal Register notice on conditional registration of cypermethrin for use on cotton, published January 9, 1985 (50 FR 1112)).

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the

issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 22, 1986.

Steven Schatzow,
Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.418 is amended by adding, and alphabetically inserting, the raw agricultural commodity, to read as follows:

§ 180.418 Cypermethrin; tolerances for residues.

Commodity	Part per million
Pecans.....	0.05

[FR Doc. 86-9523 Filed 4-29-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 85-7]

Maritime Carriers; Independent Action; Notice and Meeting Provisions in Conference Agreements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This revises the Commission's regulations governing the

filing of agreements submitted to the Commission pursuant to the Shipping Act of 1984. The Final Rule requires conference agreements to: (1) Establish a maximum notice period of not more than 10 days for member lines taking independent action; (2) provide for a single notice to the conference of a member line's independent action; and (3) state that a member line taking independent action is not required to attend a meeting, or to comply with other procedures, for the purpose of explaining, justifying or compromising a proposed independent action. The Final Rule also makes technical changes based on the comments received.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT:

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

John Robert Ewers, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725

SUPPLEMENTARY INFORMATION:

I. Proceeding

This proceeding was initiated by a Notice of Proposed Rulemaking (Proposed Rule) published in the Federal Register, 50 FR 10810 (March 18, 1985), to revise "Part 572—Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984," 46 CFR Part 572, as it relates to conference independent action (IA) authority. The Proposed Rule would require conference agreements to establish a maximum notice period of not more than 10 days for member lines taking independent action, to provide for a single notice of independent action to the conference, and to state that a proponent of independent action is not required to attend a meeting, or to comply with other procedures, for the purpose of explaining, justifying or compromising a proposed independent action.

A total of 14 comments were received in response to the Commission's Notice of Proposed Rulemaking. The Proposed Rule was supported in comments filed by: (1) The Department of Justice (DOJ); (2) the Chemical Manufacturers Association (CMA); (3) PPG Industries, Inc. (PPG); and (4) Brown-Forman Distillers Corporation (Brown-Forman).

Comments seeking clarification, modification, or withdrawal of the Proposed Rule were filed by: (1) The Transpacific Westbound Rate Agreement (TWRA); (2) the Philippines North America Conference (PNAC); (3) the Inter-American Freight Conference

(IAFC); (4) the U.S-Flag Far East Discussion Agreement (Agreement No. 10050); (5) the North Europe-U.S. Pacific Freight Conference, the Pacific/Australia-New Zealand Conference, and the Pacific Coast European Conference (NEUSPAC *et al.*); (6) the 8900 Lines and the U.S. Atlantic & Gulf Ports/Italy, France & Spain Freight Conference (8900 Lines *et al.*); (7) the Atlantic and Gulf/West Coast of South America Conference, the United States Atlantic and Gulf/Colombia Conference, the United States Atlantic and Gulf/Ecuador Conference, the United States Atlantic and Gulf/Venezuela Freight Association, the United States Atlantic and Gulf/Southeastern Caribbean Conference, and the United States Atlantic and Gulf/Hispaniola Steamship Freight Association (Latin American Conferences); (8) the Trans-Pacific Freight Conference of Japan/Korea, the Japan/Korea-Atlantic & Gulf Freight Conference, the Trans Pacific Freight Conference (Hong Kong), the New York Freight Bureau, and the Japan-Puerto Rico & Virgin Islands Freight Conference (Trans-Pacific Conferences); (9) the United States-European Carrier Associations (USECA) consisting of the North Europe-U.S. Gulf Freight Association, the Gulf-European Freight Association, the North Europe-U.S. Atlantic Conference, the U.S. Atlantic-North Europe Conference, the Pan-Atlantic Carrier Trade Agreement, and the Trans-Atlantic American Flag Liner Operators Agreement; and (10) Sea-Land Service, Inc. (Sea-Land).

II. Comments and Discussion

A. The Right of Independent Action

Section 5(b)(8), 46 U.S.C. app. 1704(b)(8), of the Shipping Act of 1984 (the Act or the 1984 Act), 46 U.S.C. app. 1701-1720, states that each conference agreement must:

provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of this Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

Before addressing the specific issues raised with regard to particular provisions of the Proposed Rule, it is necessary to address a number of general issues raised by the comments

regarding the interpretation of section 5(b)(8) of the Act. One such issue concerns the proper role of independent action within the statutory scheme of the 1984 Act. A number of the conferences argue that collective ratemaking is the "normal" method for pricing ocean transportation services. It is asserted that in a well-functioning conference, differences over pricing will usually be resolved internally. Independent action is said to be a "safety valve," a "last resort," an "exception to the norm" that will rarely be used. These comments generally conclude that the Proposed Rule would distort the statutory scheme by elevating independent action above collective action.

This position, however, ascribes too peripheral a role to the independent action provision of the Act. Independent action is not merely a safety valve to be used on rare occasions whenever pricing decisions cannot be resolved internally and a member is allowed to act independently rather than be forced to leave the conference. It is a central provision designed to balance those provisions of the Act which facilitate collective action.

The independent action provision was a key feature of the compromise that led to the passage of the 1984 Act. Moreover, the independent action provision was one of the shipper-sponsored provisions. The 1984 Act represents a legislative effort to balance the interests of carriers and shippers. In order to fulfill that Congressional purpose, it is necessary to ensure that the right of independent action is fully preserved and that no restrictions, other than those permitted by the statute, are placed on its exercise.

Rather than distorting the statutory scheme, the Proposed Rule would appear to be in harmony with the purpose of the 1984 Act. The independent action provision of the 1984 Act is the counterbalance to the enhanced economic power of conferences. Congress could not have spoken more clearly on this issue than it did in the Conference Report:

A critical factor enabling the Conferees to agree on a more narrowly drawn general standard is the inclusion in this bill of numerous other provisions which address the nation's interest in competition in the ocean common carrier industry. . . . Even more importantly, the bill includes other specific and major procompetitive reforms that will affect the operation of ocean carriers and conferences—notably a strong requirement of independent action with a limited notice period. . . .

H.R. Rep. No. 98-600, 98th Cong., 2d Sess. 33-34 (1984).

As the Conference Report makes clear, Congress intended independent action to be a procompetitive balance to the more narrowly drawn general standard. Moreover, it is clear that Congress was aware that it would "affect the operation of ocean carriers and conferences . . ." including pricing. Furthermore, there is nothing in the legislative history which indicates that independent action is merely a safety valve rarely to be used or only as a last resort. Although Congress continued to allow for collective ratemaking by conferences, it provided for a strong, effective right of IA in the clearest of terms. Preserving an unburdened right of IA is in keeping with the Congressional purpose. Restricting, burdening, or making it more difficult to exercise independent action defeats the purpose of the Act and the legislative compromise that led to the Act's passage.

A number of conferences suggest further that the Proposed Rule is contrary to the Congressional purpose of continuing the conference system in order to address structural and competitive problems such as rate instability and overcapacity. While it is true that Congress did continue the conference system for such a purpose, this does not mean that independent action should be circumscribed or limited. Congress gave not only conferences but other types of carrier agreements the opportunity to deal with problems of overcapacity by providing for a relaxed general standard, expedited processing, and clear antitrust immunity. Restricting IA, however, is not a solution to the problem of overcapacity which is the fundamental cause of rate instability.

One conference comment argues that the Act's silence with regard to any other restrictions on independent action does not mean that all other conditions are *pe se* unlawful. Another comment argues that section 5(b)(8) does not prohibit other provisions in agreements which might result in reducing the frequency of independent action. This same comment criticizes the Proposed Rule as an administrative rulemaking which impermissibly adds to the statutory requirements of section 5(b)(8).

These comments misconstrue the nature of the right of independent action. Independent action means that a member line may act independently, and not collectively, with regard to any rate or service item required to be filed in a tariff. In order to take such action, the member line may only be required to provide notice of up to 10 days to the conference. To argue that the Act's alleged silence permits other

substantive requirements or conditions which would effectively add to the limited notice requirement, either as a precondition to or as a consequence of independent action, is contrary to the express language of the Act. Any condition, procedure or other mandatory requirement that in effect adds to the 10-day maximum notice requirement or places a mandatory burden on IA is, on its face, *per se* violative of section 5(b)(8).

The Proposed Rule does not add to the statutory requirements of section 5(b)(8). Its intent is merely to codify, by rulemaking, Commission policy concerning some of the conference-imposed conditions on the exercise of independent action which appear, on their face, to violate section 5(b)(8). These conference-imposed requirements specified in the Proposed Rule have been encountered in a number of agreement filings and have prompted negotiation with the parties to obtain their removal or modification. Continued case-by-case adjudication of such provisions, as suggested by one comment, is inappropriate, unnecessary, and an inefficient use of Commission resources. The Proposed Rule provides clear guidelines for conferences and avoids filings which otherwise would be rejected or require modification.

Finally, it should be noted that the Department of Justice believes that the Proposed Rule does not go far enough and that additional regulations are needed. DOJ urges the Commission to broaden the scope of this proceeding to include consideration of regulations requiring all conference agreements to expressly prohibit: (1) Any form of collusion in connection with any carrier's right of independent action; (2) the erection of any artificial procedural barriers to any carrier's exercise of its right of independent action; and (3) all forms of conference or collective retaliation against carriers who exercise their right of independent action. DOJ acknowledges that consideration of its proposals would require continuation of this proceeding. Whatever the merits of these proposals, they are beyond the scope of this rulemaking. DOJ's proposals will, however, be given consideration in a future rulemaking proceeding on this subject.

B. Specific Provisions of the Proposed Rule

1. Section 572.502(a)(4)(i)—Right of Independent Action

Section 572.502(a)(4)(i) of the Proposed Rule incorporates the requirement of section 5(b)(8) of the Act

that each conference agreement must provide for the right of independent action. The language of this paragraph is substantially the same as that of the existing rule which appears at 46 CFR 572.502(a)(4).

One comment contends that the language of this paragraph, which states "and shall otherwise be in conformance with section 5(b)(8) of the Act", is superfluous and should be deleted because the regulation already incorporates all of the requirements of section 5(b)(8) of the Act.

Section 572.502(a)(4)(i) paraphrases, but does not restate verbatim, the language of section 5(b)(8) of the Act. The language cited by the comment, therefore, assures that the rule is not interpreted as a delimitation of the statutory right of independent action. Moreover, it does not add any requirement which does not already exist in the Act itself. Therefore, this language shall be retained in the Final Rule.

The same comment proposes further that language be added to this paragraph which would provide expressly for notice to a section of a conference in lieu of notice to the conference itself where ratemaking is conducted on a sectional basis. If ratemaking authority resides exclusively within the particular sections of a conference and the business of agreeing on rates and publishing tariffs is done on a sectional basis, it would not appear to be inconsistent with the Act to allow for notice to the section since it, rather than the overall conference, is the ratemaking body. To the extent the comment has merit and shall be accommodated by adding a paragraph to the Final Rule which allows for notice to a ratemaking section in lieu of notice to the overall conference. As discussed more fully below, only a single notice to the section may be required.

2. Section 572.502(a)(4)(ii)—Notice Period

Section 572.502(a)(ii) of the Proposed Rule establishes a maximum notice period of 10 days which may either be required or permitted by the conference agreement. The Proposed Rule prohibits IA provisions which provide for a minimum notice period and leave open the possibility of voluntary notice in excess of 10 days. The effect of the Proposed Rule is, thus, to preclude an IA proponent from voluntarily providing more than 10 days' notice to the conference.

The Department of Justice fully supports this requirement of the Proposed Rule. DOJ contends that this rule regarding the notice period

warrants adoption because it gives full effect to the literal meaning of section 5(b)(8) of the Act and because it would prevent conference members from becoming participants in implicit understandings in which carriers would voluntarily give more advance notice of independent action than was intended under section 5(b)(8).

CMA also supports this provision. CMA contends that the language and intent of the Act are to prohibit a conference from requiring a conference member to give more than 10 calendar days' notice. Moreover, according to CMA, the restriction on voluntary notice would still allow an IA proponent to informally discuss a proposed independent action prior to giving formal notice or to withdraw a proposed independent action prior to effectiveness and resubmit it at any time.

The conference/carrier comments unanimously oppose the Proposed Rule's prohibition of voluntary notice of independent action in excess of 10 days. The comments advance various arguments to support the position that an IA proponent should be permitted to voluntarily provide notice of more than 10 days.

First, some comments argue that the plain meaning of the language of the Act places a limit only upon the conference agreement and not on the action of an individual member. The only purpose of section 5(b)(8) of the Act allegedly is to prohibit a conference from imposing a greater notice period upon a member line. Some comments argue further that the language of the Act, which states that the inclusion of the IA item in the tariff for use by the member shall be "effective no later than 10 calendar days after receipt of the notice", does not impose any restriction on the member line. This language, it is argued, merely requires the conference to file the notice within 10 days of receipt. Some comments argue that filing and effectiveness of the tariff must be distinguished from the effective date of the IA rate as specified in the tariff. The language of the Act is said merely to require filing of the tariff within 10 days. This filing requirement allegedly cannot be converted into a limitation on a member's right to give voluntary notice of more than 10 days. Thus, it is contended that an IA proponent can specify an effective date of more than 10 days and that this does not conflict with the requirement that the conference file the tariff within 10 days. Finally, some comments argue that the Proposed Rule would conflict with the minimum 30-day notice requirement of section 8(d) if the independent action rate is a new or

increased rate.¹ The comments conclude that the Commission may not prevent, or compel a conference to prevent, a member line from independently and unilaterally giving more than 10 days' notice, cancelling IA whether effective or pending, or extending the effective date of a pending IA.

Second, some conference comments contend that the legislative history makes clear that Congress intended only to place a limit on the maximum number-of-days notice which a conference could require a member line to give. They argue that the legislative history speaks only in terms of the maximum notice that may be required, and does not prohibit additional voluntary notice. It is also argued that if Congress had intended to impose such a requirement, it would have established minimum and maximum time periods.

Third, conference comments argue that the policy of the Act favors allowing carriers the freedom to structure their own affairs. In keeping with this policy, member lines should be allowed to provide longer notice.

Fourth, conference comments argue that the prohibition on voluntary notice of more than 10 days is unworkable and unneeded. Several conferences point out that the Proposed Rule could be circumvented in various ways. A member considering independent action could: (1) Announce an intended IA in advance of formal notice and discuss, withdraw or compromise it; (2) docket a rate proposal and give formal notice of IA only after the proposal is rejected by the conference; or (3) give notice of IA and then withdraw it prior to effectiveness and re-notice the IA. Another comment argues that a conference could completely disregard a notice given 11 days prior to the effective date under the Proposed Rule.

Fifth, some conference comments argue that there are positive benefits to be obtained from a rule which would allow voluntary notice of more than 10 days. It is argued that such voluntary notice would enhance communication among members which would in turn

¹ Section 8(d), 46 U.S.C. app. 1707(d), provides: No new or initial rate or change in an existing rate that results in an increased cost to the shipper may become effective earlier than 30 days after filing with the Commission. The Commission, for good cause, may allow such a new or initial rate or change to become effective in less than 30 days. A change in an existing rate that results in a decreased cost to the shipper may become effective upon publication and filing with the Commission.

The comments, in effect, argue that, if the Proposed Rule requires effectiveness of an IA rate within 10 days of filing, there would be a potential conflict with the 30-day notice requirement of section 8(d) in the case of new or increased rates.

support collective ratemaking and thereby promote rate stability. It is also stated that such voluntary notice would enable conference members to meet outside competitors' rates well in advance and allow time to take a possible second IA to meet outside competition.

Sixth, three conference comments contend that contract law permits a party that is required to give a specific notice to voluntarily give more notice than that required by the contract.

Seventh, one comment argues that the legal construction generally given to statutory provisions and agency rules requiring a notice period of a certain number of days supports voluntary additional notice. This comment argues that none of these statutes or rules prohibits the person bearing the notice burden from giving additional notice.

Eighth, two comments argue that the Proposed Rule is inconsistent with the Commission's previous interpretation of notice requirements made in the Final Rule issued in Docket No. 84-26, *Rules Governing Agreements By Ocean Common Carriers And Other Persons Subject To The Shipping Act of 1984*, 49 FR 45320 (November 15, 1984). There, the comments contend, the Commission recognized the right to give more than 10 days' notice by deleting an absolute 10-day limit from its interim rule.

A 10-day maximum notice requirement is consistent with section 5(b)(8) of the Act and shall be retained in the Final Rule. Section 5(b)(8) of the Act establish the mechanism by which independent decisions regarding tariffed price or service items may be made within the structure of the conference system. Section 5(b)(8) sets forth statutory requirements regarding notice, waiting period, conference filing obligations and effectiveness of IA items. These requirements affect both the collective action of the conference and the individual action of a conference member taking IA. The language of section 5(b)(8) is clear. "Each conference agreement must—(8) provide that any member of the conference may take independent action . . . upon not more than 10 calendar days' notice to the conference. . . ." This language requires each conference agreement to contain such a provision which establishes a maximum waiting period following notice of *not more than* 10 calendar days. The conference is then required to ". . . include the new rate or service item in its tariff for use by that member *effective* no later than 10 calendar days after receipt of the notice (emphasis added)." This language not only obligates the conference to *file* the IA item in the conference tariff after

receiving notice, but further specifies when the IA item shall become *effective*. This limit applies both to the conference and the individual member taking IA. Neither the conference nor the IA proponent may set an effective date beyond 10 calendar days. The language of section 5(b)(8), when read in its entirety, establishes a clear, certain, and predictable mechanism governing independent action which includes a 10 calendar day limit on IA notice. Once formal notice of independent action has been given, the Act establishes a definite scheme for filing of the IA item in the conference tariff and effectiveness of the IA item.

The legislative history, to the extent that it addresses the question of notice, waiting period and effective date, is not inconsistent with and in some instances supports the interpretation of section 5(b)(8) taken in the Final Rule. The Conference Report, for example, stated that:

The conferees agree that the notice period to be given to the conference before a member may take independent action cannot be more than ten calendar days. The House recedes from a provision that would have limited the notice period to 2 working days for independent action; the Senate recedes from a provision that would have limited independent action to certain trades and only when a loyalty contract is in effect.

H.R. Rep. No. 98-600, 98th Cong., 2d Sess. 29 (1984). Similarly, the House Committee on the Judiciary stated that the bill ". . . requires all conferences to permit independent action upon a maximum of ten days' notice to the conference." H.R. Rep. No. 98-53, Part 2, 98th Cong., 1st Sess. 30 (1983).

Moreover, as the legislative history acknowledges, the proper length of the waiting period was a matter of dispute:

The proper length of the waiting period has been a matter of some dispute. The chemical manufacturers advocate no waiting period, or a maximum of 48 hours; Sea-Land Industries argues that conferences need at least ten days; other carrier representatives believe a still longer period is necessary to allow conference members to meet before the rate takes effect. As approved by the Committee, the conference may shorten, but cannot lengthen, the ten-day notice period. While some carriers preferred a longer period, the Committee believes some concessions are warranted in the interest of a flexibility [sic] pricing mechanism that could significantly aid this nation's export performance.

H.R. Rep. No. 98-53, Part 2, 98th Cong., 1st Sess. 27 (1983). The 10-day waiting period thus represents a compromise between shipper interests which had advocated no waiting period or 48-hour notice and some carrier interests which had advocated a longer waiting period. Moreover, a 10-day ceiling was imposed

so that there would be more pricing flexibility for the benefit of U.S. shippers and exporters. A shorter waiting period before a rate or service item becomes effective also contributes to the stated intention to give U.S. shippers

" . . . greater flexibility in meeting price competition from foreign shippers and to enable them to respond more quickly to market opportunities." H.R. Rep. No. 98-53, Part 1, 98th Cong., 1st Sess. 31 (1983).

Although not directly addressing the question of voluntary notice, the extensive discussion in the legislative history of the appropriate period of notice would appear to have little value if a member line could voluntarily give more than 10 days' notice. Similarly, the compromise between carrier and shipper interests would appear to be disturbed if carrier members could voluntarily provide more notice. As noted above, the Conference Report states that the Act provides for a

" . . . strong requirement of independent action with a *limited notice period* (emphasis added)." H.R. Rep. No. 98-600, 98th Cong., 2d Sess. 33-34 (1984). The Final Rule implements the intended purpose of section 5(b)(8) by assuring that shippers will have the benefit of IA rates that become effective within 10 days after notice. The Final Rule also reduces the potential danger that, by allowing voluntary notice in excess of 10 days, conference members might become participants in implicit understandings in which carriers would always "voluntarily" give more than 10 days' advance notice of independent action.

The various objections raised by the conference comments do not warrant a change in this provision of the Proposed Rule. The alleged loopholes in the Proposed Rule which would allow effectively for longer periods of notice do not in any way undermine the purpose or value of a maximum 10-day requirement. The Proposed Rule was not intended to preclude advance discussions of possible independent actions or other rate actions or considerations that might be undertaken prior to formal notice. In fact, the availability of these procedures indicates that conference flexibility in considering IA proposals is not unduly impaired. Moreover, the Proposed Rule does not prevent an individual carrier that has given notice of IA from withdrawing the IA prior to its effectiveness. In this regard, the alleged positive benefits of allowing voluntary notice of more than 10 days (*i.e.*, better communications, conference stability, etc.) still would be largely available under various pre-formal notice

procedures. The Rule does ensure, however, that once formal notice is given, and unless withdrawn by the IA proponent, the filing of the tariff and effectiveness of the IA rate will occur in a predictable and certain manner.

Nor does the alleged inconsistency of the Proposed Rule with section 8(d) of the Act constitute a barrier to the issuance of a Final Rule precluding voluntary notice in excess of 10 days. The Final Rule has been harmonized with section 8(d) by expressly recognizing that new or increased rates are subject to the requirements of section 580.10(a)(2), 46 CFR 580.10(a)(2), of the Commission's tariff rules. Presumably, such instances would be rare because the vast majority of independent actions are rate decreases. In this regard it should be noted that at one point H.R. 1878 expressly provided that independent action would apply only to an action ". . . that results in a decreased cost to a shipper . . ." The accompanying Committee Report noted that: "Independent action must be limited to decreases in rates." H.R. Rep. No. 98-53, Part 2, 98th Cong., 1st Sess. 30 (1983). Although this language did not remain in the legislation which became law, it would appear to be consistent with the Act to allow IA on any tariffed rate or service item, including rate increases, but to make IA's which increase rates subject to tariff filing requirements. The approach also seems appropriate inasmuch as both section 5(b)(8) and section 8(d) are provisions of the Act which are intended to benefit shippers. The Final Rule reconciles the requirements of both provisions.

Neither the principles of contract law nor the construction given to notice periods in other statutes or agency rules are controlling in this instance. Section 5(b)(8) sets statutory limits on the waiting period before tariff filing and on rate effectiveness which apply both to the conference and the individual member.

Finally, the Proposed Rule is not inconsistent with the Commission's previous interpretation of notice requirements made in Docket No. 84-26, *Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject To The Shipping Act of 1984*, 49 FR 45320 (November 15, 1984), as alleged in some comments. In that proceeding, the Commission ultimately deleted the model independent action provision which had been in effect in the interim rule issued under the 1984 Act. See 46 CFR 572.801(e). The Commission retained unchanged § 572.502(a)(4) which specified the content of the independent action article of conference

agreements. In addressing the comments to § 572.502(a)(4), the Commission stated:

Section 572.502(a)(4) requires that conference agreements specify its (sic) independent action procedures. Comment 34 proposes that this section be revised to permit: (1) independent action procedures which allow for the exercise of such action on less than 10 calendar days' notice; and (2) a conference member to independently elect to provide more than 10 calendar days' notice of its intention to exercise independent action.

Section 572.502(a)(4) tracks the language of section 5(b)(8) of the Act which, in relevant part, provides that conference agreement independent action provisions may not impose a notice period of ". . . more than 10 calendar days . . ." for the exercise of independent action. The revisions suggested by Comment 34 are unnecessary because their intended purpose is presently being served by section 572.502(a)(4). Therefore, no change to this section has been made.

49 FR 45335.

One comment relies upon this discussion as support for the contention that the Commission has previously interpreted section 5(b)(8) of the Act to allow for voluntary notice of more than 10 days. This reliance is misplaced. Certainly nothing in the present rule itself (§ 572.502(a)(4)) in any way interprets section 5(b)(8) as allowing for voluntary notice of more than 10 days. Moreover, the accompanying discussion referred to above was intended merely to indicate that further changes in § 572.502(a)(4) were unnecessary inasmuch as conferences would be permitted to draft their own independent action provisions in accordance with section 5(b)(8) of the Act. The discussion did not expressly authorize voluntary notice of more than 10 days. To the extent that that discussion may have left any ambiguity on this issue, it is clarified by the Final Rule issued in this proceeding.

As indicated in the Notice of Proposed Rulemaking, § 572.502(a)(4)(ii) is intended to address provisions in conference agreements which are stated in terms of a minimum period of notice to the conference. An example of such a provision would be one which states that a conference member may take independent action "upon not less than 10 calendar days' notice to the conference." Such a provision requires a minimum period of notice but leaves open the possibility that a member line taking independent action may voluntarily provide notice which exceeds the required minimum, including notice in excess of 10 days. Such conference provisions which only establish a minimum notice period are prohibited by the Final Rule. The Final

Rule permits a conference to provide for a fixed period of notice not in excess of 10 calendar days, or a range of notice provided that the maximum permissible notice does not exceed 10 calendar days.

3. Section 572.502(a)(4)(iii)—Single Notice

Section 572.502(a)(4)(iii) of the Proposed Rule states that an IA proponent may only be required to give a single notice to a "conference official" or "designated representative." The Proposed Rule would codify by rule the Commission's established policy with regard to multiple notice provisions. Although not expressly stated, this section does not preclude an IA proponent from voluntarily giving notice to the other parties to the agreement.

DOJ contends that this section of the Proposed Rule warrants adoption because it prohibits a procedural obstacle to independent action that is inconsistent with the statutory language which requires notice "to the conference." CMA supports this section and states that the statute allows only for single notice.

Relying on the statutory definition of the term "conference," 46 U.S.C. app. 1702(7), four conference comments argue that the individual members of the conference are "the conference" and that a requirement of notice to each member therefore is permissible.

Two comments contend that the Act does not prohibit a conference from requiring direct notice to each conference member, provided that the conference does not refuse to publish an independent action in a tariff or otherwise withhold the right of independent action if the member fails to notify other members as well as the conference secretariat. Another comment adds that a multiple notice requirement is permissible provided that the notice to all members does not extend the notice period.

Other comments contend that: (1) Multiple notice imposes little if any burden on the IA proponent; (2) there is no evidence that multiple notice would deter IA; (3) many rate agreements operate without a secretariat and depend on the initiating party to communicate with all other participants; and (4) notice to all other members serves a legitimate commercial purpose by assuring that other members have a reasonable period of time to decide whether to exercise follow-up IA. Finally, two comments submitted by carrier interests take the position that the Act does prohibit a conference from requiring a member to give more than

one notice, but does not preclude a member from voluntarily doing so.

Section 5(b)(8) of the Act requires an IA proponent to provide notice "to the conference," the Act's definition of "conference," 46 U.S.C. app. 1702(7), states:

"conference" means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing, or transshipment arrangement.

This definition does not support the argument advanced in several comments that the conference is merely the sum of its members and therefore notice to each member may be required. Rather the definition makes clear that the conference is itself a distinct entity, namely an "association of ocean common carriers." It is the single entity, i.e. "association," to whom notice must be given. Section 5(b)(8) provides that "the conference" will include the new rate or service item in its tariff. Normally this is accomplished by the conference office or secretariat. The filing of the IA tariff item is not the responsibility of the other member lines. If there is no central conference office, then one member could be designated to file the tariff.

Other comments contend that a conference may require multiple notice as long as this requirement does not prevent or delay the publication of the IA item in the conference tariff. Such an interpretation, in addition to again ignoring that the Act speaks in terms of notice "to the conference," also, as a practical matter, lays a heavy collateral burden on the taking of IA since failure to provide multiple notice still would constitute a breach of the agreement in the view of these comments. Finally, it should be noted that the Proposed Rule does not preclude voluntary notice to other conference members. Thus, the alleged benefits of multiple notice still might be available through voluntary notice to the other members.

Section 572.502(a)(4)(iii) also requires each conference agreement to indicate which conference official or single designated representative is to receive the IA notice. One comment suggests that this requirement be modified to allow the conference to designate an office rather than a particular person. Another comment recommends that, if this requirement is retained, it be modified to take into account conferences which conduct ratemaking by sections and to allow notice to the section.

These suggested changes may be accommodated without imposing any

additional burden on the IA proponent and may facilitate the giving of IA notice. It is therefore appropriate to amend this section to allow a conference to designate a conference official, single designated representative, or conference office as the recipient of the IA notice. As discussed above, a new paragraph allowing for notice to the ratemaking section in lieu of notice to the overall conference would address the concerns of such conferences where ratemaking is by section.

Finally, it should be noted that § 572.404 of the Commission's rules, 46 CFR 572.404, allows for a waiver of any of the requirements of § 572.502 upon a showing of good cause. A waiver of the single notice requirement might be available, for example, to a conference with no formal administrative structure for receiving notice or to a conference made up of only a few lines.

4. Section 572.502(a)(4)(iv)—Mandatory Meetings, Etc.

Section 572.502(a)(4)(iv) of the Proposed Rule prohibits a conference from requiring attendance at conference meetings, submission of information other than that necessary to accomplish tariff filing, or compliance with any other procedures for the purpose of explaining, justifying, or compromising the proposed independent action. This section would codify current Commission policy in this area.

DOJ supports this section of the Proposed Rule and argues that such meeting, informational, or procedural requirements should be prohibited because they encourage intimidation, harassment, and coercion of carriers who attempt to take IA. CMA argues that such mandatory requirements should be prohibited because the Act provides for independent action, not action that must be discussed and considered collectively.

Two conference comments argue that the Act does not prohibit a requirement of mandatory meetings. TWRA, for example, states: "It is permissible . . . to require . . . meetings and even to treat failure to comply as a breach, so long as the IA is published as noticed within 10 days." TWRA and PNAC argue that the conference also may require additional information or data so long as failure to comply cannot be used as a basis for refusing to publish a tariff. Another comment argues that the conference may require a statement of the reasons motivating or underlying the independent action. Finally, one comment argues that conferences should be permitted to require a "post-IA exercise" explanation of the IA.

Several other conferences express no objection to this paragraph provided that it is clarified that voluntary meetings, voluntary submission of additional information or data, and voluntary procedures to explain or justify independent action are not precluded.

The argument that mandatory requirements beyond notice to the conference may be imposed upon an IA proponent, provided that the conference fulfills its filing obligation, is without merit. Simply because a requirement is not made a pre-condition to filing IA does not alter the fact that it places an obligation on the IA proponent once the proponent takes IA. Mandatory requirements which are absolute pre-conditions to the taking of IA are, of course, more offensive. But whenever the taking of IA means that the proponent must meet some other requirement, sometimes even at risk of violating the conference agreement if not done, that provision has gone beyond the permissible limits of section 5(b)(8) of the Act inasmuch as it may burden the use of independent action.

The Act merely requires an IA proponent to give notice. Once notice is given, the conference must carry out the ministerial task of tariff filing. An IA proponent has no other obligations under the Act. Any mandatory requirement beyond notice is impermissible. As some of the comments candidly acknowledge, failure to meet these conference-imposed mandatory requirements would be a breach of the agreement. Such a breach would presumably subject the IA proponent to penalties under the terms of the agreement, a circumstance which would clearly burden the taking of independent action. Therefore, any mandatory requirements, whether meetings, information, or procedures, appear to be prohibited under the Act. This prohibition is clarified by the Proposed Rule. Even post-IA mandatory explanations, although arguably less burdensome, are impermissible.

The Proposed Rule does not preclude voluntary attendance at meetings, submission of information, or observance of procedures. Such provisions do not, in themselves, burden the taking of independent action. There does not appear to be any reason at this time to prohibit IA proponents who wish to voluntarily accommodate the conference or its members from doing so.

5. Section 572.502(a)(4)(v)—Following IA

Section 572.502(a)(4)(v) of the Proposed Rule incorporates the

requirement under the Act that the conference file the IA item in the conference tariff for use by the member. It also provides for following IA by other members who wish to adopt an IA item as their own.

Several comments seek clarifications of this provision. One suggests that the language of this provision be modified to account for conferences in which ratemaking is done by sections. A similar change has been considered in connection with earlier paragraphs of the Proposed Rule and shall be accommodated here through the paragraph which allows for notice to the section in such conferences.

Several comments suggest that the Final Rule expressly state that an IA proposal may be amended, postponed, or cancelled during the notice period and prior to its effectiveness. The Proposed Rule did not preclude such action by an IA proponent. Nor does the Final Rule.

Finally, one comment states that the Final Rule should protect follow-up independent action by providing that a following IA continues to remain in effect after the original IA is withdrawn prior to its effective date unless the conference is instructed otherwise. Whatever the merit of this comment, such a provision was not put forth in the Proposed Rule and would appear to be beyond the scope of this rulemaking proceeding. In addition, this issue is currently being addressed in Commission Docket No. 86-3, *Modifications to the Trans-Pacific Freight Conference of Japan Agreement, et al.*

6. Section 572.502(a)(4)(vi)—Compliance

Section 572.502(a)(4)(vi) of the Proposed Rule provides for immediate compliance with a Final Rule by all new conferences and allows 90 days after effectiveness for compliance by other conferences.

One conference states that it needs 180 days to accomplish the changes which might be required by the Proposed Rule and requests that that rule allow the period of time for compliance.

It would appear that 90 days is not an unreasonable period of time in which to achieve compliance with the Final Rule. Indeed, only one conference expressed any difficulty with this provision. Therefore, a change in this section is not deemed necessary.

7. Section 572.502(a)(4)(vii)—Rejection

Section 572.502(a)(4)(vii) provides that any agreement which does not comply with the requirements of this section shall be rejected pursuant to section 572.601.

One comment argues that this provision is inconsistent with paragraph (vi) and should be deleted. A number of other comments argue that this paragraph exceeds the Commission's rejection authority. These comments argue that the Commission can only reject an agreement because it fails to meet the express requirements of section 5(b) of the Act.

Section 5(b) states that each conference agreement *must, inter alia*, provide a member line the right of independent action or not more than 10 days' notice. The Proposed Rule would prohibit only those provisions which, on their face, fail to comply with one of the requirements a conference agreement filed pursuant to section 5 must meet if it is to be made effective under section 6 and granted antitrust immunity under section 7 of the Act. Accordingly, this appears to be a proper use of the Commission's rejection authority and shall be retained in the Final Rule.

8. Section 572.502(a)(4)(viii)— Ratemaking Section

Section 572.502(a)(4)(viii) provides that, if ratemaking is done by sections within a conference, any notice required by the Final Rule may be to the section involved. This is a new paragraph which accommodates a concern expressed in a conference comment as discussed above.

III. Conclusion

This Final Rule is intended to give full effect to section 5(b)(8) of the Act in accordance with the Act's guiding policies. The changes made in the Proposed Rule accommodate as fully as is consistent with the requirements of the Act certain concerns expressed in the comments. The key substantive provisions of the Proposed Rule, however, have been retained in the Final Rule.

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on

competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that this Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The collection of information requirements contained in this Final Rule have been approved by the Office of Management and Budget under provisions of the Paperwork Reduction Act of 1980 (P.L. 95-511) and have been assigned OMB Control Number 3072-0045.

List of Subjects in 46 CFR Part 572:

Administrative practice and procedure, Antitrust, Contracts, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements.

PART 572—[AMENDED]

Therefore, pursuant to 5 U.S.C. 553 and sections 5, 6, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1704, 1705, 1716), Part 572 of Title 46, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 572 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701-1707, 1709, 1710, 1712, 1714-1717.

2. Paragraph (a)(4) of § 572.502 is revised to read:

§ 572.502 Organization of conference and interconference agreements.

(a) * * *

(4) Article 13—Independent action.

(i) Each conference agreement shall specify the independent action procedures of the conference which shall provide that any conference member may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(ii) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to

the conference. A conference agreement shall not require or permit a conference member to give more than 10 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the requirements of § 580.10(a)(2).

(iii) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(iv) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the filing of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action.

(v) A conference agreement shall specify that any new rate or service item proposed by a member under independent action shall be included by the conference in its tariff for use by that member effective no later than 10 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(vi) All new conference agreements filed on or after the effective date of this section shall comply with the requirements of this section. All other conference agreements shall be modified to comply with the requirements of this section no later than 90 days from the effective date of this section.

(vii) Any new conference agreement or any modification to an existing conference agreement which does not comply with the requirements of this section shall be rejected pursuant to § 572.601 of this part.

(viii) If ratemaking is by sections within a conference, then any notice to the conference required by § 572.502(a)(4) may be made to the particular ratemaking section.

* * * * *

By the Commission.

John Robert Ewers,
Secretary.
[FR Doc. 86-9605 Filed 4-29-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS

COMMISSION

47 CFR Part 1

[FCC 86-153]

Practice and Procedure; Improvement of the Efficiency and Clarity of Informal Complaint Procedures and Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has revised its procedures for handling informal complaints to reduce delay, improve processing efficiency, and clarify procedural requirements.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

EFFECTIVE DATE: May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Norberta Yurawecz, Enforcement Division, Common Carrier Bureau, (202) 632-7553.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's order, adopted April 7, 1986, and released April 18, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Library (Room 639), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Order

1. This action revises § 1.713 and §§ 1.716-1.718 of the Commission's Rules, dealing with informal complaints, in order to promote more efficient processing of such matters. The revisions include direct service of responses upon complainants by the affected carrier, modification of the form for informal complaints to include complainant's telephone number and a description of the relief sought, elimination of the requirement that carriers file duplicate responses with the Commission, and specification of those circumstances under which complainants will be contacted by the Commission regarding its review and disposition of the matters raised.

2. These revisions will reduce delay in informing complainants of the results of the carrier's investigation, improve processing, and clarify and simplify the Commission's handling of informal complaints.

Ordering Clause

3. Accordingly, it is ordered that, effective May 30, 1986, §§ 1.713, 1.716, 1.717 and 1.718 of the Commission's Rules, 47 CFR 1.713, 1.716, 1.717 and 1.718, are amended as set forth below.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.
Federal Communications Commission.
William J. Tricarico,
Secretary.

PART 47—[AMENDED]

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 continues to read:

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

§ 1.713 [Amended]

2. Section 1.713 is amended by removing the phrase "in duplicate".

3. Sections 1.716-1.718 are revised to read as follows:

Informal Complaints

§ 1.716 Form.

An informal complaint shall be in writing and should contain: (a) The name, address and telephone number of the complainant, (b) the name of the carrier against which the complaint is made, (c) a complete statement of the facts tending to show that such carrier did or omitted to do anything in contravention of the Communications Act, and (d) the specific relief of satisfaction sought.

§ 1.717 Procedure.

The Commission will forward informal complaints to the appropriate carrier for investigation. The carrier will, within such time as may be prescribed, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the carrier's report or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed, without response to the complainant. In all other cases, the Commission will contact the complainant regarding its review and disposition of the matters raised. If the complainant is not satisfied by the carrier's response and the Commission's disposition, it may file a formal

complaint in accordance with § 1.721 below.

§ 1.718 Unsatisfied informal complaints; formal complaints relating back to the filing dates of informal complaints.

When an informal complaint has not been satisfied pursuant to § 1.717, the complainant may file a formal complaint with this Commission in the form specified in § 1.721. Such filing will be deemed to relate back to the filing date of the informal complaint: Provided, that the formal complaint: (a) Is filed within 6 months from the date of the carrier's report, (b) makes reference to the date of the informal complaint, and (c) is based on the same cause of action as the informal complaint. If no formal complaint is filed within the 6-month period, the complainant will be deemed to have abandoned the unsatisfied informal complaint.

[FR Doc. 86-9651 Filed 4-29-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-110; RM-4776; RM-5059]

FM Broadcast Station in Willcox, AZ, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein substitutes FM Channel 275C1 for Channel 224A at Bayard, New Mexico and modifies the Class A license of Station KNFT-FM, in response to a petition filed by KNFT, Incorporated. In addition, Channel 224A is deleted at Silver City, New Mexico.

EFFECTIVE DATE: June 2, 1986.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

First Report and Order

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Willcox, Arizona, Silver City¹ and Bayard, New Mexico); MM Docket No. 85-110, RM-4776, RM-5059.

Adopted: April 10, 1986.

Released: April 24, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making* herein, 50 FR 16112, published April 24, 1985, which proposed the substitution of FM Class C Channel 300 for Channel 252A at Willcox, Arizona and modification of the license of Station KWCX(FM) accordingly, in response to a petition filed by Rex K. Jensen ("Jensen"). In addition, a counterproposal was filed by KNFT, Incorporated ("KNFT"), licensee of Station KNFT-FM,² (Channel 224A), Bayard, New Mexico, requesting the substitution of Class C FM Channel 300 for Channel 224A at Bayard and modification of its license.³

2. Since the distance between Willcox and Bayard is approximately 142 kilometers, whereas 290 kilometers is required between Class C co-channels, KNFT's petition at Bayard was accepted as a counterproposal.⁴ However, KNFT subsequently modified its request to specify Channel 275C1 in lieu of Channel 300 to avoid a conflict with Willcox. In the event other interests in the Bayard proposal were expressed, KNFT provided information reflecting that several other Class C1 channels could be allotted (See, *Modification of FM and TV Station Licenses*, 98 FCC 2d 916 (1984).)

3. Both Willcox, Arizona and Bayard, New Mexico are within 320 kilometers of the common U.S.-Mexico border, thus necessitating concurrence by the Mexican government in the proposals. At this time the Commission has obtained such approval with respect to Bayard. Therefore, and in the interest of expediting service to the Bayard area, we are severing the Bayard proposal since it no longer conflicts with the Willcox proposal. No oppositions nor other expressions of interest in the Bayard proposal were received.

4. KNFT's proposal is premised on its desire to increase service to the public by expanding its listening area to

¹ These communities have been added to the caption.

² KNFT is also the licensee of Station KNFT (AM), Bayard.

³ Channel 224A is allotted to Silver City, New Mexico, and licensed to Bayard under the former "10 mile" rule (Section 73.203(b)).

⁴ Public Notice of the counterproposal was given on June 26, 1985, Report No. 1523

include a greater portion of Grant County which it describes as "fast growing" having increased approximately 19% during the last census period.

5. We believe the public interest would benefit from the KNFT proposal since it could provide Bayard, New Mexico with its first wide-coverage area FM station. A staff engineering study reveals that Channel 275C1 may be allotted to Bayard at the present site of Station KNFT(FM), in conformity with § 73.207(b) of the Commission's Rules.

6. Accordingly, pursuant to the provisions of sections 5(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective June 2, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules is amended with respect to the communities listed below, as follows:

City	Channel No.
Silver City, NM.....	233A
Bayard, NM.....	275C1

7. It is further ordered, That, pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of KNFT, Incorporated for Station KNFT-FM, Bayard, New Mexico, is modified effective June 2, 1986, to specify operation on Channel 275C1 in lieu of Channel 224A. The license modification for Station KNFT-FM is subject to the following conditions:

(a) The licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facilities;

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

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

8. It is further ordered, that the Secretary of the Commission shall send a copy of this Order by certified mail, return receipt requested, to KNFT, Incorporated, Highway 180 East, Silver City, New Mexico 88061.

9. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.
Charles G. Schott,
Chief, Policy and Rules Division, Mass Media Bureau.
 [FR Doc. 86-9653 Filed 4-29-86; 8:45 am]
 BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-142; RM-4775]

FM Broadcast Station in St. George, UT

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of ESG Corporation, allots Class C Channel 259 to St. George, Utah, as that community's second FM service.
EFFECTIVE DATE: May 30, 1986.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations (St. George, Utah); MM Docket No. 85-142, RM-4775.

Adopted: April 9, 1986.
 Released: April 23, 1986.

By the Chief, Policy and Rules Division.

1. The Commission considers herein the *Notice of Proposed Rule Making*, 50 FR 23731, published June 5, 1985, proposing the allotment of Class C Channel 259 to St. George, Utah, as that community's second FM service. The *Notice* was issued in response to a petition filed by ESG Corporation ("petitioner"). Petitioner filed supporting comments and reply comments reaffirming its intention to apply for the channel. Simmons Family Inc., filed supporting comments stating its intention to apply for the channel.

2. The Commission believes that the public interest would be served by the allotment of Channel 259 to St. George, Utah, as that community's second FM

channel. The channel can be allotted in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 30, 1986, the FM Table of Allotments is amended with regard to the following community:

City	Channel No.
St. George, UT.....	228A, 259

4. The window period for filing applications will be open on June 2, 1986 and close on July 2, 1986.

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

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

Federal Communication Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-9654 Filed 4-29-86; 8:45 am]
 BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-250; RM-4981]

FM Broadcast Station in Twisp, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Broadcasters Northwest, Inc., allots Channel 292A to Twisp, Washington, as that community's first FM service.

EFFECTIVE DATE: May 30, 1986.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions

authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Twisp, Washington); MM Docket No. 85-250, RM-4981.

Adopted: April 9, 1986.
 Released: April 23, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 34520, published August 26, 1985, proposing the allotment of FM Channel 292A to Twisp, Washington, as that community's first FM channel, at the request of Broadcasters Northwest, Inc. Supporting comments and reply comments were filed by petitioner reaffirming its interest in the proposed channel.

2. Channel 292A can be allotted to Twisp, Washington in compliance with the minimum spacing requirements. Since Twisp is located 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence from the Canadian government has been obtained.

3. We believe the public interest would be served by the allotment of Channel 292A to Twisp, as its first FM service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, §§ 0.61, 0.204(b) and 0.282 of the Commission's Rules, it is ordered, that effective May 30, 1986, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Twisp, WA.....	292A

4. The window period for filing applications will open on June 2, 1986 and close on July 2, 1986.

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

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

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-9655 Filed 4-29-86; 8:45 am]
 BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE**48 CFR Parts 232 and 252****Department of Defense Federal Acquisition Regulation Supplement; Limitation of Progress Payments****AGENCY:** Department of Defense (DoD).**ACTION:** Final rule; correction.

SUMMARY: This document corrects the effective date contained in a final rule which was published April 21, 1986 (51 FR 13513).

FOR FURTHER INFORMATION CONTACT:

Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L), Room 3C841, The Pentagon, Washington, DC 20301-3062, telephone (202)697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

The Department of Defense is correcting the effective date to read as follows:

EFFECTIVE DATE: For solicitations issued on or after April 7, 1986.

[FR Doc. 86-9702 Filed 4-29-86; 8:45 am]

BILLING CODE 3810-01-M

48 CFR Parts 242 and 252**Department of Defense Federal Acquisition Regulation Supplement; Indirect Cost Certificate****AGENCY:** Department of Defense (DoD).**ACTION:** Final rule; correction.

SUMMARY: This document corrects amendatory language contained in a final rule which was published April 21, 1986 (51 FR 13517).

FOR FURTHER INFORMATION CONTACT:

Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P) / DARS, c/o OASD(A&L), Room 3C841, The Pentagon, Washington, DC 20301-3062, telephone (202)697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

The Department of Defense is correcting amendatory language to read as follows:

1. Numbered paragraph 2, appearing on page 13517, is corrected to read as follows:

Sections 242.770 and 242.770-1 are revised; and section 242.770-2 is removed, as follows:

2. Numbered paragraph 3, appearing on page 13518, is corrected to read as follows:

Section 252.242-7003 is revised to read as follows:

[FR Doc. 86-9701 Filed 4-29-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Final Rule To Determine the Sonora Chub To Be a Threatened Species and To Determine Its Critical Habitat****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: The Service determines a fish, the Sonora chub (*Gila ditaenia*), to be a threatened species and determines its critical habitat under the authority contained in the Endangered Species Act of 1973, as amended. A special rule allowing take in accordance with applicable Arizona State laws and regulations is also included. The Sonora chub occurs in Santa Cruz County, Arizona, and in Sonora, Mexico. It is threatened by the possible introduction of exotic fishes and their parasites into its habitat, and by potential mining activities. It is particularly vulnerable to these threats because of its very limited range, and because of the intermittent nature of the stream. This rule implements Federal protection provided by the Endangered Species Act of 1973, as amended, for the Sonora chub.

DATES: The effective date of this rule is May 30, 1986.

ADDRESSES: The complete file for this rule is available for inspection during normal hours, by appointment, at the Region 2 Office of Endangered Species, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT:

Mr. Gerald Burton, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:**Background**

The Sonora chub was first collected by E.A. Mearns in 1893 from Sycamore Creek, Arizona. It was described from fish collected by R.G. Miller (1945) from the Rio Magdalena near the town of La Casita in Sonora, Mexico. This fish is a member of the minnow family and is

generally less than 125 millimeters (5 inches) in total length. It is a moderately chubby, dark colored fish, with two prominent black lateral bands on the sides and a dark oval spot at the base of the tail. In breeding males, a red coloration develops at the bases of the lower fins and some orange coloration is present on the belly. The Sonora chub is primarily a pool dweller, but is highly secretive and little is known of its behavior and habitat preferences (Minckley, 1973).

In the United States, the Sonora chub occurs in Sycamore Canyon in Sycamore Creek proper, Yank's Spring, and in two of its tributaries, located on the Coronado National Forest northwest of Nogales, Santa Cruz County, Arizona. The tributaries include the lower 1.25 stream miles (sm) of Penasco Creek, and the lower .25 sm of an unnamed stream in an unnamed canyon that enters Sycamore Canyon from the west in the NW ¼ of Section 23, T. 23 S., R. 11 E. (Bell, 1984). Yank's Spring is a perennial spring which has been impounded in a concrete tank for many years. Sycamore Creek starts to flow about .5 mile below Yank's Spring and flows downstream 3.7 miles (USDA, 1982) in a series of pools and small riffles over a bedrock and rubble substrate. It is intermittent during part of the year, at which time it is a series of pools of varying depth (L. Miller, 1949; Brooks, 1982). When intermittent, pools are maintained in shaded areas against cut banks or the canyon walls by underground flow (Minckley, 1973). During years of heavy rainfall, water does reach to the International Border, some 5 miles downstream from Yank's Spring, at which time the Sonora chub presumably extends its range to that boundary, if not beyond. Pensaco Creek is a west-flowing tributary to Sycamore Creek. It drains a large portion of the east side of the Sycamore Creek watershed, but has only intermittent flow. The chub is found in the lower 1.25 sm of the creek in pools in bedrock or pools maintained by underground flow (Bell, 1984). The unnamed stream channel supports three perennial bedrock pools in the .25 sm just above its confluence with Sycamore Creek. The lower two pools support large numbers of Sonora chubs (Bell, 1984).

Available life history information is limited to food habit observations based on a few individuals and to spawning observations based on the presence of young in various collections (Minckley, 1973). Information on the riparian habitat is provided in earlier works by R.G. Miller (1945), L. Miller (1949), and Goodding (1961). Recent water quality

and habitat information is presented by Brooks (1982) in a brief characterization of the physio-chemical features of Sycamore Creek. This information is summarized in the 1983 status report on *Gila ditaenia* (Minckley, 1983).

Current threats to the United States population include the stocking of exotic fishes and their associated parasites, and possible uranium mining activities.

In the State of Sonora, Mexico, this fish is known from very few localities, and nothing is known about its biology. The 1940 type locality was the Rio Magdalena near La Casita, Sonora, Mexico. At that time the Rio Magdalena was a clear stream 4 to 5 feet wide, about 1 foot deep, and with a fairly swift current over a bottom of sand and gravel. The principal vegetation was watercress, found in backwaters along the stream (R.G. Miller, 1945). It is not known if habitat for *Gila ditaenia* still exists at this location, or if so, its condition. *Gila ditaenia* has been collected as recently as 1981 from the Rio Magdalena drainage at Campo Carretero and Cienega La Atascosa (D. Hendrickson, Arizona State University, pers. comm., 1983; and in press). These collections indicate the possibility of hybridization between *Gila ditaenia* and *Gila purpurea*, the Yaqui chub, in at least one locality.

In November 1982, the U.S. Fish and Wildlife Service contracted Mr. C.O. Minckley to prepare a report on the status of *Gila ditaenia*. Minckley recommended threatened status with critical habitat because of threats to the species from the introduction of exotic fishes and their associated parasites, and potential mining activities; and the fact that this fish occurs in a very limited area in Arizona and has an uncertain status in Mexico.

Gila ditaenia was included on the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454) in category 2. Category 2 includes those taxa that are thought to possibly warrant listing as threatened or endangered, but for which more information is needed to determine the status of the species and to support listing. That information is now available for *Gila ditaenia* in a status report (Minckley, 1983). On June 6, 1984, the Service published a proposed rule to determine *Gila ditaenia* to be a threatened species with critical habitat (49 FR 23402).

Gila ditaenia is listed by the State of Arizona as a threatened species, Group 3 (Arizona Game and Fish Commission, 1982), which comprises those species "... whose continued presence in Arizona could be in jeopardy in the foreseeable future."

Summary of Comments and Recommendations

In the June 6, 1984, proposed rule (49 FR 23402) and associated notifications, all interested parties were requested to submit factual reports or information that 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 *The Nogales Herald* in Nogales, Arizona, on July 3, 1984, that invited general public comment. Nine comments, all in support of the proposal, were received and are discussed below. No public hearing was requested or held.

The U.S. Forest Service supported the listing of *Gila ditaenia* as threatened and the designation of critical habitat. However, it recommended that the lower 1.25 sm of Penasco Creek, a small tributary of Sycamore Creek, be added to the critical habitat. It also requested that a recovery team be appointed as soon as possible. In light of additional biological information furnished by the Forest Service, the Fish and Wildlife Service agrees that Penasco Creek should be added to the designated critical habitat. This has been done in this final rule.

Letters in support of the listing and designation of critical habitat were received from the Arizona Game and Fish Department, the Board of Supervisors of Santa Cruz County, the International Union for Conservation of Nature and Natural Resources (IUCN), the Yuma Audubon Society, the American Society of Ichthyologists and Herpetologists, the Desert Fishes Council, and C.O. Minckley. In addition, the IUCN stated that if will include this species in the forthcoming edition of the IUCN Fish Red Data Book, probably in the vulnerable category.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Sonora chub should be classified as a threatened 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) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their

application to the Sonora chub are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Known present and historic range of *Gila ditaenia* in the United States consists of Sycamore Creek, Yank's Spring, the lower 1.25 sm of Penasco Creek, and the lower .25 sm of an unnamed tributary stream entering Sycamore Creek from the west. All are located on the Coronado National Forest in Santa Cruz County, Arizona. Its very limited distribution makes this fish quite susceptible to any habitat disturbances, especially during periods when the stream flow is intermittent. Habitat disturbances that could be detrimental to the species are increased siltation and runoff subsequent to mining or other activities, depletion of the stream flow, and the introduction of manmade pollutants into the stream. It is quite possible that this species could be extirpated throughout its small U.S. range in a relatively short time by such habitat damage and loss (Minckley, 1983).

Sycamore Canyon at present remains in a basically unaltered state, and present impacts of human activities in the area are relatively minor. A portion of Sycamore Creek (4.75 sm), Penasco Creek, and an unnamed tributary of Sycamore Creek are contained within the Pajarito Wilderness Area. The remaining 1.5 sm of Sycamore Creek and the lower portion of the unnamed tributary containing the Sonora chub are also contained within the Goodding Research Natural Area, which is a special use designation of the U.S. Forest Service. This area is withdrawn from mineral entry and is closed to grazing; Recreation is limited to non-developed and dispersed uses. The canyons that contain critical habitat, however, do receive heavy visitor use. Yank's Spring is the site of a trailhead parking lot for visitors, but the spring has been impounded in a concrete tank for many years and is resistant to habitat damage.

In addition to the Sonora chub, Sycamore Canyon supports several rare and unique plant and animal species. One of these, the Tarahumara frog, which is a candidate for Federal listing, experienced a catastrophic die-off in Sycamore Canyon in 1974 and has not been found there since. The factors causing its disappearance are not fully known.

At present no mining is occurring anywhere within the Sycamore Creek watershed and none is expected in the near future (R.B. Tippecanoe, U.S. Forest Service, pers. comm., 1983);

however, active mining is ongoing in California Gulch, just one watershed to the west. Exploration for uranium occurred in 1981 on the upper eastern slopes of the Sycamore drainage on mining claims occupying approximately 4 to 5 square miles. Uranium was found and the claims are being maintained; however, no active mining is presently planned there. The Sycamore Creek drainage contains valuable minerals, and the development of mining activity within the watershed would have the potential for severe adverse effects on *Gila ditaenia* through such activities as increased water demand and withdrawal, habitat disturbance, siltation, and pollution.

Although the canyon is included in a livestock grazing allotment, there is little direct effect on the Sonora chub habitat, due in part to steep, rocky streambank topography. Indirect effects of grazing, such as erosion and siltation, are minor at present, but could have significant effects on the Sonora chub habitat if grazing were increased.

Very little is known about the habitat of *Gila ditaenia* in Mexico. Hendrickson (Arizona State University, pers. comm., 1983) noted that the habitat near Cienega La Atascosa was in good condition in 1981; however, there is no protection for habitat or species in Mexico and the current or proposed uses in the area are not fully known. There is irrigated agriculture along the river, but very little groundwater pumping seems to be occurring. The amount of land under cultivation, the amount of water diversion, the pollution, and the riparian and channel damage appear to have remained fairly constant in the past (G. Nabhan, University of Arizona, pers. comm., 1983).

B. Overutilization for commercial, recreational, scientific, or educational purposes. There is no indication that this species is overused for any of these purposes.

C. Disease or predation. Predation by introduced exotic fishes could prove disastrous for *Gila ditaenia*, leading to its extirpation in the United States. The introduction of exotic fishes, particularly game fish, into Sycamore Canyon would undoubtedly result in predation of the Sonora chub. Currently, predatory green sunfish occur in small numbers in the lower portions of Sycamore and Penasco Canyons; however, the extent of their impact is unknown. In 1983, mosquitofish were observed in an ephemeral pool in Penasco Canyon. The source of these fish was not determined and it is not known if they survived. The spread of mosquitofish into Penasco and Sycamore Canyons could be damaging to the Sonora chub since they are an

aggressive predator. Both green sunfish and mosquitofish have been shown to be contributing factors in the decline of other southwestern native fishes. The adverse impacts of parasites, introduced along with exotic fishes, on other species of *Gila* have been documented (James, 1983; Minckley *et al.*, 1981; Wilson *et al.*, 1966) and would probably occur with *Gila ditaenia*.

D. The inadequacy of existing regulatory mechanisms. The State of Arizona lists this species under Group 3 of the "Threatened Native Wildlife in Arizona." Group 3 includes "Species or subspecies whose continued presence in Arizona could be in jeopardy in the foreseeable future. Serious threats to the occupied habitats have been identified and populations (a) have declined or (b) are limited to a few individuals in few locations" (AGFC, 1982). No protection of the habitat is included in such designation and no management plan exists for this species. The State of Arizona requires a scientific collecting permit for taking individuals of the Sonora chub. In Mexico no protection exists for either the species or its habitat.

E. Other natural or manmade factors affecting its continued existence. Although unlikely, the United States population could be extirpated by natural phenomena (drought), if the water supply for Sycamore Creek should fail. The possibility of this occurring is increased by human activities which are likely to occur in the area. Watershed disturbances within the basin, such as poor grazing practices, mining, roads, or ORV use, can contribute to erosion, lowering water tables, and disturbed runoff patterns, and may affect the amount of flow in Yank's Spring, Sycamore Creek, and Penasco Canyon. Direct manipulation of water within the basin, such as stock tank construction and groundwater pumping, could also affect the flows.

In Mexico, Hendrickson (pers. comm., 1983; and in press) found that *Gila purpurea*, the Yaqui chub, which is native to the drainages of the Rios Yaqui, Matape, and Sonora, is now present in the Rio Magdalena along with *Gila ditaenia*. His collections indicate that hybridization may be occurring between the two species in at least one location. Spread of *Gila purpurea* in the Rio Magdalena could result in extensive losses of *Gila ditaenia* through hybridization.

The Service has carefully assessed the best scientific and commercial 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 the Sonora chub as threatened with critical habitat. It was apparent that not listing this species would probably result in its becoming endangered in the foreseeable future because of:

(1) The small size of the U.S. population and its habitat and its resultant vulnerability to damage from a single or multiple sources,

(2) The potential for mineral development in the area, and

(3) The uncertain status of the Mexican population, its lack of any legal protection, and increasing water demand in its range. However, the status of the United States population of *Gila ditaenia* is presently stable, and at least some populations exist in Mexico. The U.S. population currently receives some protection through State regulations and by management policies of the U.S. Forest Service. Therefore, endangered status seems inappropriate.

Critical Habitat

Section 3 of the Act defines "critical habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is designated for *Gila ditaenia* to include the entire area where the species is known to occur in the United States. This consists of Sycamore Creek, starting from and including Yank's Spring, downstream to the International Border with Mexico, plus the lower 1.25 miles of Penasco Creek, and the lower .25 miles of an unnamed stream that enters Sycamore Creek from the west in the NW ¼ of Section 23, T.23S., R.11E. in Santa Cruz County, Arizona. This critical habitat includes a 25 foot wide riparian area along each side of Sycamore and Penasco Creeks. This riparian zone is essential to the maintenance of the creek ecosystems and the stream channels, and thus to the conservation of the species. The riparian zone around the Yank's Spring has been removed from the critical habitat

designation because the spring is impounded in a concrete tank and does not have a riparian zone. No riparian zone is designated for the unnamed stream because this portion of critical habitat consists of bedrock pools that are relatively unaffected by the riparian zone. All of the designated area is located within the Coronado National Forest.

Yank's Spring, Sycamore Creek, and two of its tributaries were chosen for critical habitat designation for the Sonora chub because they presently support the only U.S. population of this species. The area provides all of the ecological, behavioral, and physiological requirements necessary for the survival of this chub. The remaining portion of the range is in Mexico. Critical habitat is not designated in areas outside U.S. jurisdiction (50 CFR 424.12(h)).

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public and private) that may adversely modify such habitat or may be affected by such designation. Activities in Sycamore Canyon during times of intermittent flow, such as mining activities, could be detrimental to the critical habitat. Any activities that would deplete the flow or would significantly alter the natural flow regime in Yank's Spring, the unnamed tributary, or Sycamore or Penasco Creeks, such as excessive groundwater pumping, impoundment, or water diversion, would adversely impact the critical habitat. Any activities that would extensively alter the channel morphology of Sycamore or Penasco Creeks, Yank's Spring, or the unnamed tributary, such as mining, excessive sedimentation, impoundment, or riparian destruction, would adversely impact the critical habitat. Any activities that would significantly alter the water chemistry of Yank's Spring, Sycamore or Penasco Creeks, or the unnamed tributary, such as release of chemical or biological pollutants at a point source or by dispersed release, would adversely impact the critical habitat. Additionally, the introduction of exotic fish may prove detrimental to the Sonora chub's critical habitat due to predation and to competition for food and space. Any parasites associated with such introduction would also be detrimental. As no Federal activities are currently planned for this area, critical habitat designation is not expected to cause an impact in the near future. If, in the future, activities are planned, the critical habitat of the Sonora chub

would have to be considered in such planning.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has evaluated the proposed critical habitat designation for the Sonora chub, taking into consideration all additional comments received. The critical habitat, except Yank's Spring, is contained within a natural area and a wilderness area. Forest Service management of these areas is apparently compatible with the critical habitat designation. Livestock grazing is not expected to affect or be affected by the critical habitat designation since the steep topography of the critical habitat generally precludes grazing access. There are mining claims in the vicinity of the critical habitat; however, no mining activities are currently ongoing or planned within or in the vicinity of the critical habitat designation. Recreational activities in the vicinity of Yank's Spring are not expected to affect or be affected by the critical habitat designation because the spring is impounded in a concrete tank and is resistant to habitat damage. No information was brought forward on economic or other impacts which warranted adjusting the boundaries of the critical habitat designation. Additional biological information from the U.S. Forest Service, however, did warrant adjustment of the proposed critical habitat designation to include an additional 1.5 miles of tributary streams containing the Sonora chub. The additional area is entirely on U.S. Forest Service lands and no significant economic or other impacts are expected from the adjustment of the 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 the results in conservation actions by other 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 and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. 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 or to destroy or adversely modify its critical habitat. If a Federal activity may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The only known United States population of the Sonora chub, and all critical habitat for the species, are located on the Coronado National Forest. Sycamore Canyon and the adjacent canyons containing critical habitat are fairly remote and approximately 1.5 miles of Sycamore Creek is included in a natural area and a wilderness area. Present management of these areas is compatible with the critical habitat designation. Therefore, apparently Federal activities are not expected to affect or be affected by the critical habitat designation.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of

the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has discretion under section 4(d) of the Act to issue special regulations for a threatened species that are necessary and advisable for its conservation. *Gila ditaenia* is threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species or by commercialization. Given this fact and the fact that the State currently regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collection permit system is more than adequate to protect the species from excessive taking, so long as taking is limited to: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, a special rule is issued that allows take to occur for the above-stated purposes without the need for a Federal permit if a State collecting permit is obtained and all other State wildlife conservation laws and regulations are satisfied. The special rule also acknowledges the fact that incidental take of the species by State-licensed recreational fishermen is not a significant threat to this species. In fact, angling is an unlikely method of capture of the species. Therefore, under this special rule such incidental take would not be a violation of the Act if the fishermen immediately returned the individual fish taken to its habitat. Any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule, all of the prohibitions of 50 CFR 17.31 would apply. This special rule will allow for more efficient management of the species, and thus will enhance the conservation of the species. For these reasons, the Service concludes that this regulation is necessary and advisable for the conservation of the Sonora chub.

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).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation 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.*). No significant economic or other impacts are expected to result from the critical habitat designation. This conclusion is based on Forest Service management of recreational and other activities within the Coronado National Forest, the absence of any mining activities or plans to mine the claims within or in the vicinity of the critical habitat, and the unquantifiable benefits that may result from the critical habitat designation. In addition, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation of critical habitat. These findings are based on a Determination of Effects that is available at the Region 2 Office of Endangered Species, U.S. Fish and Wildlife Service (See ADDRESSES).

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Authors

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List of Subjects in 50 CFR Part 17

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

Regulations 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 continues to read 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 § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Chub, Sonora	<i>Gila ditaenia</i>	U.S.A. (AZ), Mexico	Entire	T	227	17.95(e)	17.44(o)

3. Add the following paragraph (o) as a special rule to § 17.44.

§ 17.44 Special rules—fishes.

(o) Sonora chub, *Gila ditaenia*.

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) For educational purposes; scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or, (ii) incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (o) (1) through (3) of this section.

4. Amend § 17.95(e) by adding the critical habitat of the Sonora chub as follows (the position of the following critical habitat entry under § 17.95(e) will follow the same sequence as the species occurs in 17.11):

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

Sonora Chub (*Gila ditaenia*)

Arizona, Santa Cruz County. An area of land and water in the Coronado National Forest, consisting of the following:

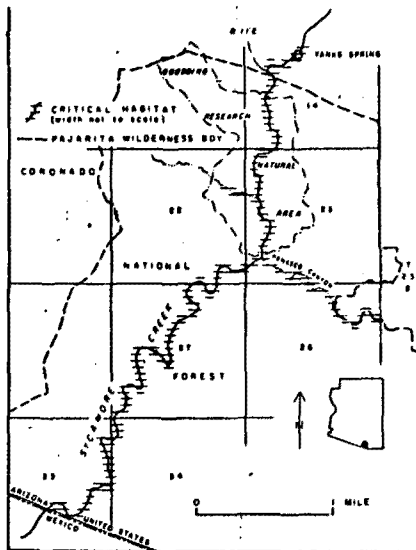
1. Sycamore Creek, and a riparian zone 25 feet wide along each side of the creek, from Yank's Spring downstream approximately 5 stream miles to the International Border with

Mexico within sections 14, 22, 23, 27, 33, and 34, T. 23 S.; R. 11 E.

2. Yank's Spring in the SE¼ of the NW¼ of sec. 14, T. 23 S.; R. 11 E.

3. Penasco Creek, including a riparian zone 25 feet wide along each side of the creek, from its confluence with Sycamore Creek (SW¼ of the SW¼ of sec. 23, T. 23 S.; R. 11 E.) upstream approximately 1¼ miles to the east boundary of sec. 26, T. 23 S.;

4. An unnamed tributary to Sycamore Creek, from its confluence with Sycamore Creek (SW¼ of the NW¼ of sec. 23, T. 23 S.; R. 11 E.) upstream approximately ¼ mile to the west boundary of the NE¼ of the SE¼ of the NE¼ sec. 22, T. 23 S.; R. 11 E.



Known primary constituent elements include clean permanent water with pools and intermediate riffle areas and/or intermittent pools maintained by bedrock or by subsurface flow in areas shaded by canyon walls.

Dated: March 25, 1986.

P. Daniel Smith,
Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-9669 Filed 4-29-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 41152-6061]

Designated Critical Habitat; Hawaiian Monk Seal

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

ACTION: Final rule.

SUMMARY: By this rule NOAA designates critical habitat for the Hawaiian monk seal (*Monachus schauinslandi*) under the Endangered Species Act of 1973 (ESA). The habitat designated includes all beach areas, lagoon waters, and ocean waters out to a depth of 10 fathoms around Kure Atoll, Midway Islands (except Sand Island), Pearl and Hermes Reef, Lisianski Island, Laysan Island, Gardner Pinnacles, French Frigate Shoals, Necker Island, and Nihoa Island. The designation of critical habitat will benefit the Hawaiian monk seal by requiring Federal agencies to ensure that their actions are not likely to result in the destruction or adverse modification of the critical habitat.

DATE: This rule become effective on May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Eugene T. Nitta, Western Pacific Program Office, Southwest Region, National Marine Fisheries Service, P.O. Box 3830, Honolulu, HI 96812, Telephone (808) 955-8831; James H. Lecky, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, Telephone (213) 548-2518; or Margaret Lorenz, Protected Species Division, National Marine Fisheries Service, Washington, D.C. 20235; Telephone (202) 634-7529. Copies of the final environmental impact statement prepared for this rule are also available from these offices.

SUPPLEMENTARY INFORMATION:**Background**

The NMFS listed the Hawaiian monk seal as an endangered species under the ESA in November 1976. In December 1976, the Marine Mammal Commission recommended designating certain portions of the Hawaiian monk seal's range as critical habitat. The NMFS prepared an environmental assessment to evaluate the need for the action and to identify alternatives.

On March 7, 1980, the NMFS published a Draft Environmental Impact Statement (DEIS) on the proposed designation of critical habitat, and incorporated three boundary options in the preferred alternative (to designate critical habitat). These options were to place the seaward limit at the 10-fathom isobath, at the 20-fathom isobath, or at three miles from shore. The 10-fathom option included pupping beaches, beaches used for hauling out (coming ashore), water inhabited by females and young during nursing and post-weaning, and a portion of the foraging habitat used by monk seals while they are near the islands. The 20-fathom option was developed to incorporate additional foraging habitat. The three-mile option was essentially the original recommendation from the Marine Mammal Commission.

Thirty comments were received during the public comment period on the DEIS. Twenty-three commenters favored the designation of critical habitat, but there was no consensus for a preferred boundary option. Seven commenters opposed designation of critical habitat because they felt that data substantiating a need for critical habitat were lacking, existing regulatory mechanisms were providing adequate protection, and the designation would impede development of commercial fisheries. Those in opposition included the State of Hawaii, the Western Pacific Fishery Management Council, and the Hawaii Fishing Coalition.

The NMFS postponed further action until the Hawaiian Monk Seal Recovery Team (Recovery Team) had reviewed the DEIS and submitted its recommendations. On October 9, 1980, the Recovery Team supported the 20-fathom option and recommended including Nihoa Island, Gardner Pinnacles, and Maro Reef in the designation. The NMFS deferred the designation process pending the completion of the Hawaiian Monk Seal Recovery Plan (Recovery Plan). The Recovery Plan was submitted to NMFS in March 1983, with a recommendation to designate critical habitat out to 20-fathoms including Nihoa Island, Gardner Pinnacles, and Maro Reef.

Based on an evaluation of the need for critical habitat, the NMFS published a proposed rule for designating Hawaiian monk seal critical habitat in the **Federal Register** on January 9, 1985 (50 FR 1088-1095). A Supplemental Environmental Impact Statement (SEIS) regarding the proposed action was published on December 21, 1984. Comments on the proposed rule and SEIS were accepted until March 11, 1985.

A combined public meeting and public hearing was held on February 5, 1985, in Honolulu, Hawaii, regarding the proposed rule and the SEIS for the Proposed Designation of Critical Habitat for the Hawaiian Monk Seal in the Northwestern Hawaiian Islands (NWHI). Nine individuals representing the Hawaii Audubon Society, Greenpeace Hawaii, the Sierra Club—Hawaii Chapter, the Sierra Club Legal Defense Fund, Life of the Land, the University of Hawaii Environmental Center, and interested members of the general public presented testimony. Eight of the nine were in favor of designation of critical habitat out to 20 fathoms. One individual, speaking for himself, testified in favor of no action, noting that his interpretation of the information presented in the SEIS was that there would be no appreciable benefits to monk seals from the proposed designation of critical habitat.

Twenty-eight organizations and individuals provided written comments on either the proposed rule or SEIS. Twelve commenters recommended designation of critical habitat out to 20 fathoms based on their interpretation of the information presented in the SEIS. Six commenters recommended 10 fathoms for critical habitat. Two commenters supported designation of critical habitat with no preference for boundaries. Three indicated no comments on the proposal and another suggested that a more precise definition of the inland boundary of critical habitat was necessary. Four comments were received against designation based on lack of sufficient data to support critical habitat designation, no demonstrated advantage of designation versus no action, and/or the fear of Federal pre-emption in resource management activities.

The NMFS has decided to proceed with the designation of critical habitat for the Hawaiian monk seal basically as described in the SEIS and proposed rule because the NMFS believes the area designated is consistent with the criteria established by the definition of critical habitat (16 U.S.C. 1532(5)(A)). No significant new information regarding Hawaiian monk seal biology,

commercial fishing activities, or Federal agency activities in the NWHI was received during the comment period.

The specific written and oral comments requiring a response are summarized below.

Comment: Twenty commenters recommended designating critical habitat out to 20 fathoms.

Response: The ESA defines critical habitat as " * * * the specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species, and (II) which may require special management considerations or protection." The comments in favor of the 20-fathom alternative address the first criterion for designation, but not the second. The NMFS reviewed the Recovery Team's recommendation to designate critical habitat out to 20 fathoms, but determined that only the habitat out to 10 fathoms is in need of special management considerations or protection. This conclusion was reached after the NMFS reviewed recommendations for management measures in the Recovery Plan, the record of section 7 consultations on Federal activities potentially affecting monk seals in the NWHI, and information on the biology of the monk seal. These sources indicate that the habitat which may be in need of special management considerations or protection is that habitat used by monk seals for pupping and nursing, where weaned pups learn to swim and forage, and major hauling out areas where growth has been substantial and pupping is imminent. Designating critical habitat to 10 fathoms will include all habitat utilized for these purposes, and is consistent with the criteria is the definition of critical habitat.

Comment: Seven commenters stated that Maro Reef should be included in the critical habitat designation.

Response: The NMFS has determined that the portion of the monk seal's habitat consistent with the definition of critical habitat is the portion used for pupping and nursing pups, and the shallow nearshore waters where weaned pups learn to swim and forage (see previous response). Maro Reef contains no emergent land and, therefore, no pupping habitat. It provides foraging habitat for transient seals from atolls with emergent land. There has been no indication that the foraging habitat at Maro Reef might be in need of special management considerations or protection, as is required by the definition of critical

habitat. Therefore, the NMFS has decided not to include Maro Reef in the final designation.

Comment: Three commenters stated that Sand Island at Midway should be included in the critical habitat designation.

Response: Sand Island was excluded from the proposed designation because it has been substantially modified by the military. The Marine Mammal Commission stated that excluding Sand Island is reasonable because it has been developed and human activity limits monk seal use of its beaches.

Comment: Four commenter stated that critical habitat is redundant to the other consultation requirements of section 7 of the ESA.

Response: A critical habitat designation may enhance the section 7 process by requiring Federal agencies to consult in instances where their activities may modify or destroy habitat without directly affecting the species. The benefit provided by the designation is the clear and early notification to Federal agencies and the public of the existence of critical habitat and the importance of the area to the Hawaiian monk seal.

Comment: The Minerals Management Service suggested that the harbors at Midway should be excluded from critical habitat to eliminate potential controversy in the event that Midway is used to support deep ocean mining efforts near the NWHI. They noted that this activity would be subject to a formal consultation under section 7 whether or not the harbors were included in critical habitat.

Response: Sand Island and its harbor are excluded from the designation of critical habitat.

Comment: The State of Hawaii commented that there is insufficient data to support designation of critical habitat.

Response: Based on the best scientific information available, the NMFS has determined that there is sufficient justification to define and designate critical habitat for the Hawaiian monk seal. The components of monk seal habitat identified as critical habitat in the Final Environmental Impact Statement (FEIS) include breeding areas, pupping and major haul-out sites, and nearshore waters used by females and pups.

Comment: The State of Hawaii indicated that available information does not show that the area proposed for critical habitat is any more critical than the seals' entire habitat.

Response: Critical habitat, as defined in the ESA, is habitat that is essential to the conservation of a species and that

may be in need of special management considerations or protective measures to conserve the habitat. The best available information concerning the Hawaiian monk seal, the management recommendations in the Recovery Plan, and the concerns raised in section 7 consultations indicate that the habitat utilized by monk seals for pupping and nursing and where weaned pups learn to swim and forage is critical habitat as defined by the ESA.

Comment: Two commenters suggested that critical habitat designation would also provide increased habitat protection for other species of plants and animals found in the NWHI.

Response: Although there may be habitat protection for other species, this is not a factor in the decision to designate critical habitat.

Comment: The Fish and Wildlife Service and Hawaii Chapter of the Sierra Club comments that the 20-fathom contour provides a more cohesive and recognizable administrative boundary for critical habitat that would be easier to enforce than the 10-fathom contour line which is highly irregular.

Response: The point regarding smoothness and continuity of bottom contours is well taken. However, our review of the best available information indicates that habitat within 10 fathoms is the only habitat in need of special management considerations or protection.

Comment: The State of Hawaii, Department of Land and Natural Resources (DLNR) and the U.S. Coast Guard suggested that the inshore extent of critical habitat be defined more precisely.

Response: Vegetation behind pupping beaches is important because it provides shade from intense solar radiation for nursing females, pups, and other seals. It may also screen seals on the beach from potentially disturbing stimuli behind the vegetation. The extent of vegetation is so variable that a more precise definition is difficult to construct. However, the NMFS has clarified the description in the final rule.

Critical Habitat

The ESA defines critical habitat as " * * (i) the specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species, and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination

by the Secretary that such areas are essential for the conservation of the species" (16 U.S.C. 1532(5)(A)). "Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied" by the species (16 U.S.C. 1532(5)(C)).

The criteria to be considered in making a critical habitat designation are included in 50 CFR 424.12. The following biological requirements must be considered in designating critical habitat:

- (1) Space for individual and population growth, and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally,
- (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of listed species.

Regulations designating critical habitat must be based on the best available scientific data and to the maximum extent practicable must be accompanied by a brief description and evaluation of those activities that may adversely modify such habitat or may be affected by such designation. Economic and other relevant impacts of specifying critical habitat must also be considered when designating habitat, and any area may be excluded from a critical habitat designation if a determination is made that the benefits of the exclusion outweigh the benefits of designation. The only exception to this provision is where the failure to designate such habitat will result in the extinction of the species.

In order to determine what portion of the monk seal's range contains habitat that is consistent with the definition of "critical habitat", the NMFS reviewed the available biological information, responses to the requests for comments on the SEIS and proposed rule, the management recommendations in the Recovery Plan, and the record of section 7 consultation on Federal activities in the NWHI with a potential for affecting monk seals.

There are no inherent restrictions on human activities in an area designated as critical habitat. A critical habitat designation affects only those actions authorized, funded, or carried out by Federal agencies. It provides notification to Federal agencies that a listed species is dependent on a particular area for its continued existence and that any

Federal action that may affect that area is subject to the consultation requirements of section 7 of the ESA. Certain activities such as commercial fisheries that are Federally regulated, scientific research conducted under Federal permits or funding, Federal management of other resources, and military operations may be conducted within an area designated as critical habitat if the authorizing Federal agency determines through the section 7 consultation process that the activity is not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat. Activities that are conducted by state agencies or the private sector without Federal involvement may be carried out without regard to section 7, although other provisions of the ESA may impose prohibitions on activities resulting in the taking of endangered or threatened species.

Hawaiian Monk Seal Biology

The biology of the Hawaiian monk seal is discussed in the SEIS and FEIS. The discussion includes the history of exploitation, trends in population size, current status of the population, life history parameters, habitat requirements, and biological problems confronting the species. Further information is available from the DEIS, the Recovery Plan, and the Status Review for the Hawaiian Monk Seal. The pertinent habitat requirements are summarized below.

Habitat Requirements

Existing data indicate that all beach areas used by the Hawaiian monk seal for pupping, nursing, and rearing pups and some haul-out areas where pupping is imminent (e.g. Tern Island, French Frigate Shoals) are essential for the continued existence of the species. This critical area includes the first line of vegetation backing these beaches which provides shelter from the wind and other elements. Lava bench and boulder beach habitat found at Necker and Nihoa Islands also constitute pupping and haul-out areas. Because of the limited terrestrial habitat available to the Hawaiian monk seal, any loss of pupping, nursing, and major haul-out areas could affect the conservation of the species adversely.

Shallow, protected water immediately adjacent to beaches is also important to the Hawaiian monk seal. With the exception of undisturbed dry sand beaches, this nearshore protected water habitat is the most important factor for a successful pupping area. Pregnant females use beaches adjacent to shallow

protected waters for pupping, apparently to have a protected shallow area to take their pups when they first enter the water.

Studies have shown that, for three months after weaning, pups make daily sorties from the beaches, presumably to feed. They are seen in the water close to shore, and it is assumed that the critical stage of learning to feed is carried out in nearshore waters. During the first month, the pups lose weight, then stabilize, and finally begin to gain weight. By four months post-weaning, pups begin spending up to 10 days at a time away from the island.

Further observations indicate that adult female monk seals leave the islands for about two to three weeks upon weaning their pups. They leave in an emaciated condition and return in relatively good condition, remain for a few days on the islands, then depart for an additional period of a few weeks before reappearing well nourished. Since they do not haul out during these protracted periods away, it is assumed that they are feeding at least beyond the inner reef and probably a considerable distance from shore.

Information on foraging habitat is available from studies on food habits and surveys of nearshore fish resources. Watson and Peiterson (1984), analyzed hard parts recovered from scats and spewings to define the prey base exploited by monk seals. They found that monk seals feed on octopus, squid, and a diverse list of fishes which were identified to family. They did not report lobster as a prey species, although it has been reported elsewhere (e.g. DeLong *et al.* 1982). Studies on the distribution of fishery resources within 10 fathoms in the NWHI show that octopus and the families of fish preyed upon by monk seals occur in nearshore waters at most of the NWHI (Okamoto and Kanemaka 1984).

Information on foraging behavior is available from observations of monk seals and depth of dive studies. Rauzon *et al.* (1977) observed 301 dives in the channel off the western end of Tern Island, French Frigate Shoals. They did not observe consumption of prey but concluded from the regularity of the dives that the seals were foraging. Water depths in the area of observation varied from less than one fathom to five fathoms. Studies of depth of dive for the seals were conducted at Lisianski Island in 1980 (DeLong *et al.* 1982) and 1982 (Schlexer 1984) to provide additional information on habitat use. DeLong *et al.* (1982) attached depth-of-dive recorders to seven adult male monk seals. Over 4,800 dives by six animals (one recorder

failed) were recorded. Fifty-nine percent of the dives were in the range of 5.5 to 21.9 fathoms (10-40 meters). No information was collected on diving in water less than 5.5 fathoms, and maximum dives ranged beyond 66.2 fathoms (121 meters). Schlexer (1984) placed recorders on five adult males, one subadult female, one juvenile male, and one juvenile female. The dive recorders malfunctioned, so that the dive profiles recorded may not be a true reflection of habitat use (Schlexer 1984). In spite of the malfunction, Schlexer reported that his data were generally consistent with the data collected by DeLong *et al.* (1982) for adult males. The subadult and juvenile females made dives in excess of 80 fathoms (150 meters) extending the known diving range of monk seals.

Thus, the biological information shows that monk seals forage from near shore waters (<0.5 fathoms) (Rauzon *et al.* 1977) to some depths down the reef slope beyond 80 fathoms (Schlexer 1984). Monk seals have also been reported to be absent from the breeding beaches for an extended period of time (Johnson and Johnson 1978). Feeding habits of monk seals during these absences have not been studied. They may be attracted to forage resources over sea mounts and submerged reefs. Monk seals have been reported at Maro Reef which has no emergent land (Gilmartin 1983).

The only observed monk seal matings have been in the nearshore and shallow offshore waters around Laysan Island. Critical habitat delineated by the 10-fathom isobath would include the known breeding habitat as well as a portion of foraging habitat for the Hawaiian monk seal.

Based on available information, habitat requirements for the health, well being, and continued viability of the Hawaiian monk seal population, listed in order of probable importance, consist of the following:

1. Pupping and major hauling beaches including the vegetation immediately backing the beaches (coral sand beaches and lava benches).
2. Shallow protected water adjacent to the above (tide pools, inner reef waters, shoal areas, and near shore shallows).
3. Deeper inner reef areas and lagoon waters.
4. Other waters surrounding the NWHI to at least 80 fathoms.
5. Banks and shoals without emergent lands and pelagic waters.

To define the portion of the monk seal's habitat that might be in need of special management considerations or

protection, the NMFS reviewed recommendations for management measures in the Recovery Plan, the record of section 7 consultations on Federal activities potentially affecting monk seals in the NWHI, and information on the biology of the monk seal. These sources indicate that nearshore and terrestrial habitat constitute the areas in need of special management considerations or protection.

Most of the management measures recommended in the Recovery Plan are directed at limiting access to terrestrial habitat to minimize the adverse effects of human-caused disturbance. Other management measures identified in the plan include improved monitoring of the population, emergency response plans, activities to promote the survival of seals, and the implementation of management measures that may be indicated by future research. These other measures are either not directed at the conservation of habitat or are likely to be directed at terrestrial habitat.

As of December 1985, the NMFS had completed eight formal consultations and three informal consultations on Federal activities potentially affecting monk seals in the NWHI. Of the formal consultations, two concluded in "jeopardy" opinions, five concluded in "no jeopardy" opinions, and one concluded that there was insufficient information available to ensure "no jeopardy". The informal consultations concluded with determinations that the proposed activities would not affect the monk seal population. "Jeopardy" opinions were issued for activities that would result in increased levels of disturbance of monk seals on the beaches or in the water adjacent to the beaches used for pupping. "No jeopardy" opinions were issued for activities offshore or that could be conducted on shore without increased levels of disturbance.

The one consultation in which NMFS concluded there was insufficient information to make a determination of either "jeopardy" or "no jeopardy" was a consultation with the Western Pacific Fisheries Management Council on implementation of the Spiny Lobster Fishery Management Plan. In the biological opinion on this activity, the NMFS stated that monk seals could be affected by disturbance, incidental mortality, and reduction of a prey population. The concern for adverse effects of disturbance were centered on the need to protect beaches used for pupping. No incidental mortality has been reported since the consultation was initiated in January 1980. The

effects of competing with a commercial fishery for a food resource remain undetermined. However, studies on food habitats verify that the monk seal exploits a variety of species and does not depend on lobster.

The NMFS believes that the section 7 record through December 1985 provides a comprehensive overview of Federal activities in the NWHI and that the level of activity in the NWHI is likely to remain stable into the future. There may be some growth in commercial fisheries, and there may be leasing of the deep sea floor for exploration and development of manganese crust resources. Growth in commercial fisheries will be managed under fishery management plans which provide protective measures for monk seals. Leasing of the deep sea floor is the responsibility of the Minerals Management Service (MMS). The MMS is drafting an environmental impact statement for leasing in the NWHI and has initiated the section 7 processes informally. Development of a manganese crust mining industry is likely years away because the technology for mining at the depths at which manganese crusts occur (>1,000 meters) is still developing. Therefore, the NMFS believes that activity generated by the MMS decision to proceed with leasing will be minimal and in locations not likely to affect monk seal habitat.

Studies of trends in distribution and abundance indicate that special management measures may be necessary to control the adverse effects of human activity on land and near pupping beaches. Kenyon (1972) attributed the decline in the number of monk seals at Kure and Midway during the 1960's to frequent human disturbance of hauled out seals. The increase in use of Tern Island (French Frigate Shoals) by monk seals as a hauling out site subsequent to the closure of the Coast Guard Station there (Itfner unpublished observation cited in Gilmartin 1983) supports Kenyon's hypothesis.

Information on the susceptibility of monk seals to disturbance in water is limited to anecdotal reports that monk seals approach fishing vessels to rob fishermen's lines of hooked fish. These reports are supported by a photograph of a monk seal with a fish hook in its mouth. Other pinniped species that are known to be sensitive to disturbance on land (e.g. California sea lions, and harbor seals) are relatively bold in the water. They approach fishing boats to take hooked fish off of fishermen's lines (Miller *et al.* 1983) and they approach divers closely. Since thresholds for disturbance are likely higher in the

water than on land, management measures to control human presence in the offshore environment are not critical.

The recommended management measures in the Recovery Plan and the biological opinions resulting from formal consultations, and information on trends in abundance indicate that the habitat which may be in need of special management considerations or protection is that habitat utilized by monk seals for pupping and nursing, where weaned pups learn to swim and forage, and major hauling out areas where growth has been substantial and pupping is imminent. A precise boundary to the area in need of special management considerations or protection is difficult to draw, but designating critical habitat out to 10 fathoms will include all such areas. The depth-of-dive studies and other available information do not indicate that any portion of the foraging habitat is more important than other portions, and no need for special management measures to protect any of the foraging habitat has been identified.

Therefore, the NMFS designates as critical habitat for the Hawaiian monk seal; all beach areas, including all beach crest vegetation to its deepest extent inland, lagoon waters, and ocean waters out to a depth of 10 fathoms around Kure Atoll, Midway Islands (except Sand Island and its harbor), Pearl and Hermes Reef, Lisianski Island, Laysan Island, Gardner Pinnacles, French Frigate Shoals, Necker Island, and Nihoa Island. Many of the habitat components such as beach areas, vegetation, nearshore shallow water areas, and offshore banks and shoals cannot be simply delineated as specific stretches of beach or specific offshore areas. Therefore, it is necessary to designate entire areas without piecemeal delineations. For example, monk seals use all of the beaches on Green Island at Kure as hauling areas and certain other areas for pupping areas. Additionally, the various sand spits and islets grow, shrink, disappear, change shape, and even change location. In some cases, new islets appear after storms or strong tide conditions. Therefore, references to beaches or beach areas should be assured to include all sand spits and islets.

If ongoing or future research or other new information indicates that habitat beyond 10 fathoms is essential and that special management considerations or protective measures may be needed to protect the habitat, the NMFS will initiate rulemaking to make the

appropriate changes in the critical habitat boundaries.

Effect of the Rulemaking

This action only directly affects Federal agencies. It does not affect State and local government activities or private actions which are not dependent on or limited by Federal authority, permits, or funds; however, many of the activities in the NWHI are subject to some Federal control and could potentially be affected. Section 7 requires Federal agencies to consult with the NMFS to ensure that any activity funded, authorized, or undertaken by them is not likely to jeopardize the continued existence of endangered species or result in the destruction or adverse modification of its critical habitat.

Currently, Federal agencies are required to consult on actions that may affect Hawaiian monk seals. The designation of critical habitat will require Federal agencies to evaluate their activities with respect to critical habitat and consult with the NMFS on any action which may affect critical habitat to ensure that it is not likely to result in the destruction or adverse modification of the critical habitat. In most situations consultation would be required even without a critical habitat designation because actions that affect critical habitat are also likely to affect the monk seal. Designating critical habitat will assist Federal agencies in evaluating the potential effects of their activities on monk seals or their critical habitat and in determining when consultation with the NMFS would be appropriate. The additional consultations that will be required are minimal. Therefore, the designation of critical habitat will not substantially add to the Federal agencies' responsibilities, and will not have any significant adverse economic impacts on State or private entities, including small businesses. The Federal agencies most likely to be affected by critical habitat designation include the U.S. Coast Guard, U.S. Navy, U.S. Fish and Wildlife Service (FWS), Western Pacific Regional Fishery Management Council, and the NMFS.

The final rule is not expected to have any direct impact on existing fisheries in the NWHI. The only direct economic costs will be those associated with more extensive monitoring of Federal activities by the NMFS and those from administrative actions by Federal activities resulting from reviews of their activities in the NWHI. The additional costs are expected to be minimal since Federal agencies would have had to conduct section 7 consultations for

activities that may affect Hawaiian monk seals and/or conform to National Environmental Policy Act (NEPA) requirements for actions that significantly affect the quality of the human environment.

Future activities which may require evaluation under section 7 of the ESA include (1) construction activities of the Coast Guard on Green Island at Kure Atoll, the Navy on Sand Island at Midway Islands, and the FWS on Tern Island at French Frigate Shoals; (2) habitat manipulation/enhancement by the FWS within the Hawaiian Islands National Wildlife Refuge; (3) deep ocean mining; (4) ocean dumping of wastes and chemicals; (5) Federally funded or regulated fishing activities; and (6) fisheries and wildlife research conducted, funded, supported, or controlled by Federal agencies in the NWHI.

Classification

For reasons discussed in *Effect of the Rulemaking* above, the NOAA Administrator has determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The regulations are not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the General Counsel of the Department of Commerce has certified that the final rule will not have a significant economic impact on a substantial number of small business entities as described in the Regulatory Flexibility Act; therefore, a regulatory flexibility analysis is not required. This rule does not contain a collection of information requirements for purposes of the Paperwork Reduction Act of 1980.

National Environmental Policy Act

This action is categorically excluded from the requirements to prepare an environmental assessment and environmental impact statement under NEPA by NOAA Directive 02-10 (49 FR 29644; July 23, 1984). This final rule will not have any adverse environmental consequences. However, since a DEIS and SEIS were prepared, the NMFS has elected to continue with the NEPA process. Accordingly, an FEIS has been prepared for this action and copies are

available upon request from the NMFS (see "For Further Information Contact" section for address).

Coastal Zone Management Consistency Statement

The Assistant Administrator for Fisheries, NOAA, determined that the designation of critical habitat for the Hawaiian monk seal is consistent with the approved State of Hawaii Coastal Zone Management Program.

The relevant Coastal Zone Management Objective is to "(p)rotect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems". State of Hawaii Coastal Zone Management Program and Federal Environmental Impact Statement (Hawaii Program; p. 37, HRS section 205 A-2(b)(4)). One of the supporting policies is to protect endangered species which includes the Hawaiian monk seal (Hawaii Program pp. 38-39, HRS Chapter 195D).

The purpose of designating critical habitat is to protect the area, a valuable coastal ecosystem, from disruption and adverse impacts. The ultimate purpose is to protect and conserve the monk seal. Therefore, the critical habitat designation is consistent with the approved Hawaii Coastal Zone Management Plan.

This determination was submitted to the State of Hawaii's Department of Planning and Economic Development for review under section 3.7 of the Coastal Zone Management Act. The State agency agreed with the consistency determination.

List of Subjects in 50 CFR Part 226

Endangered and threatened wildlife, Marine mammals.

Dated: April 24, 1986.

Carmen J. Blondin,

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

PART 226—[AMENDED]

Accordingly, Part 226 of Chapter II of Title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 226 is revised to read as follows:

Authority: 16 U.S.C. 1533.

2. A new Subpart B is added to Part 226 to read as follows:

Subpart B—Critical Habitat for Marine Mammals

§ 226.11 Northwestern Hawaiian Islands.

Hawaiian Monk Seal

(Monachus schauinslandi)

All beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 10 fathoms around the following:

Kure Atoll (28°24' N., 178°20' W.)

Midway Islands, except Sand Island and its harbor (28°14' N., 177°22' W.)

Pearl and Hermes Reef (27°55' N., 175° W.)

Lisianski Island (28°04' N., 173°58' W.)

Laysan Island (25°46' N., 171°44' W.)

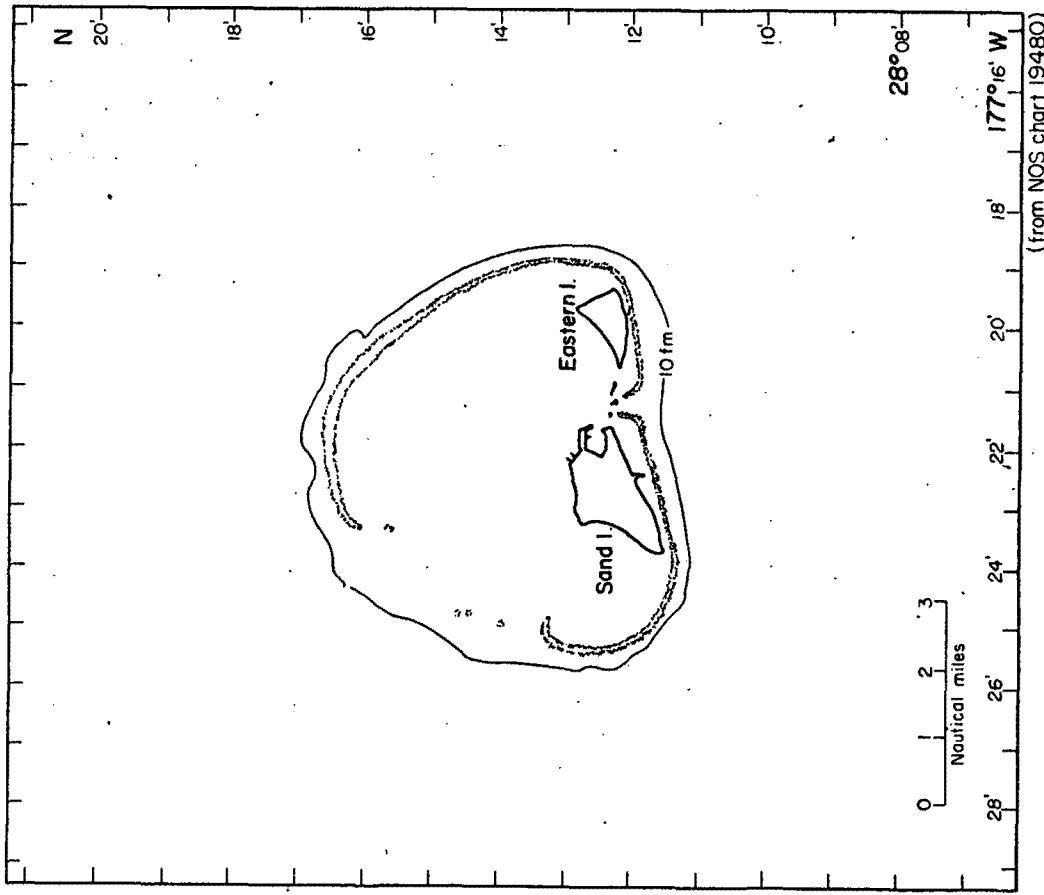
Gardner Pinnacles (25°00' N., 168°00' W.)

French Frigate Shoals (23°45' N., 166°00' W.)

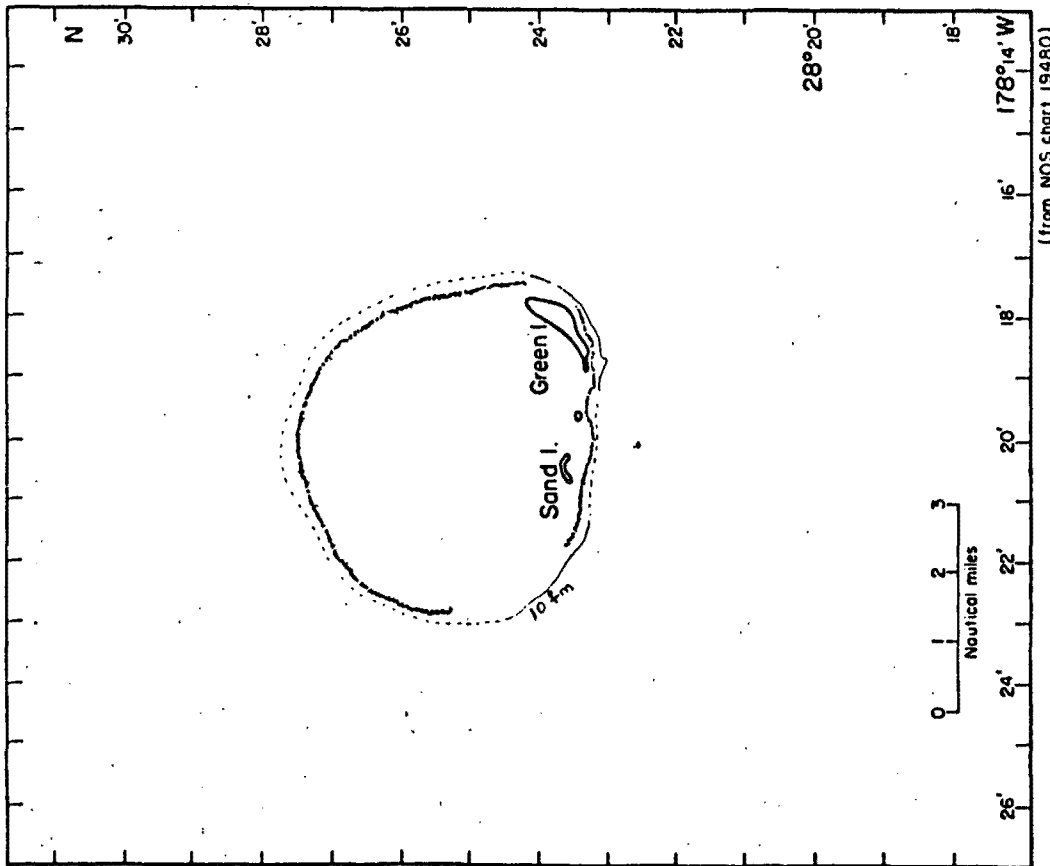
Necker Island (23°34' N., 164°42' W.)

Nihoa Island (23°03.5' N., 161°55.5' W.)

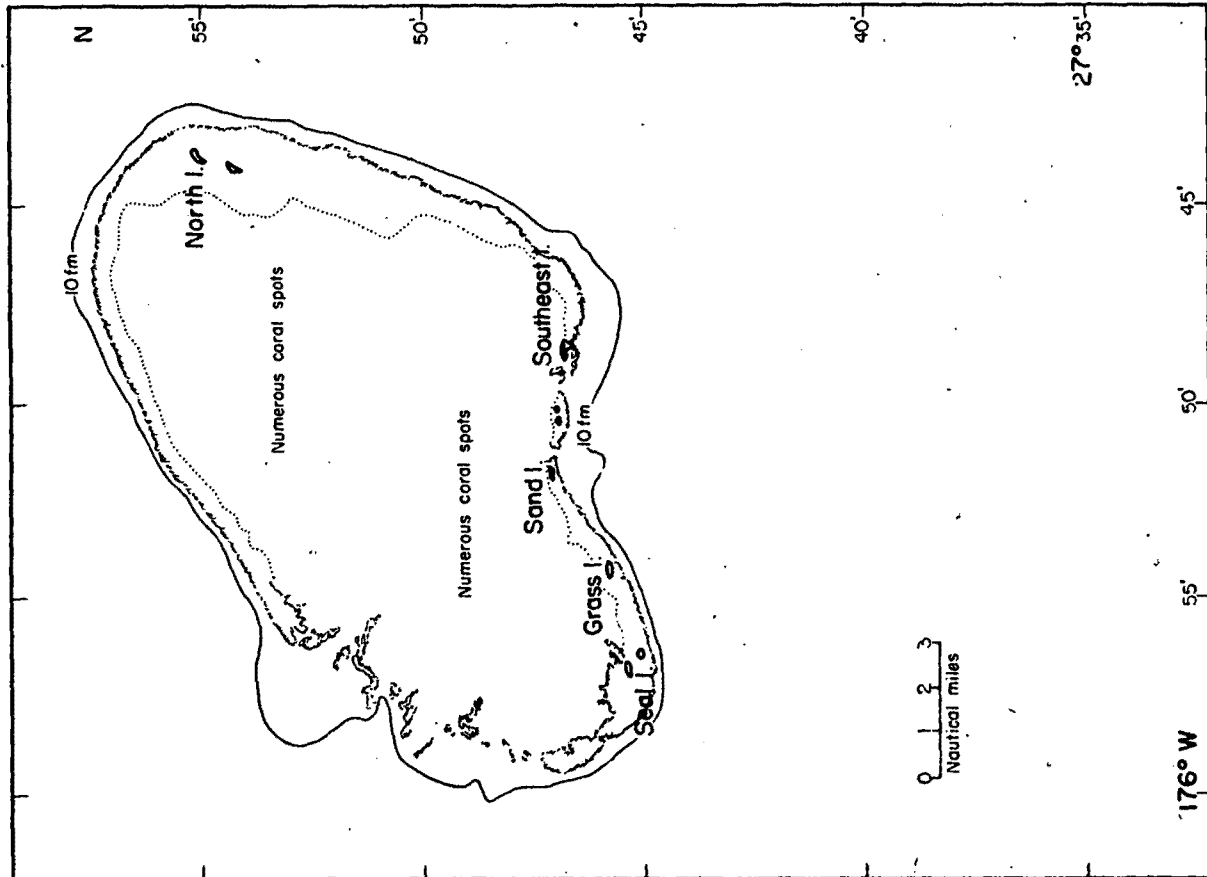
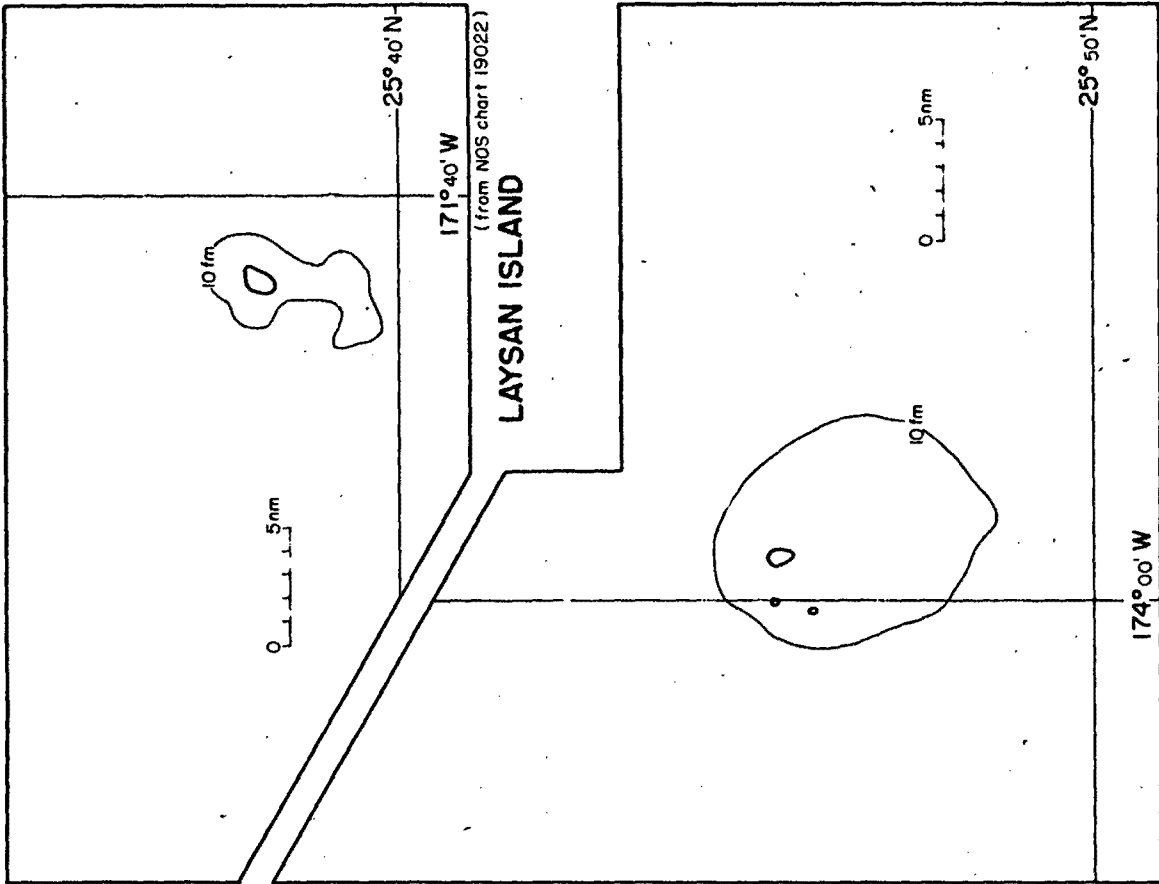
BILLING CODE 3510-22-M



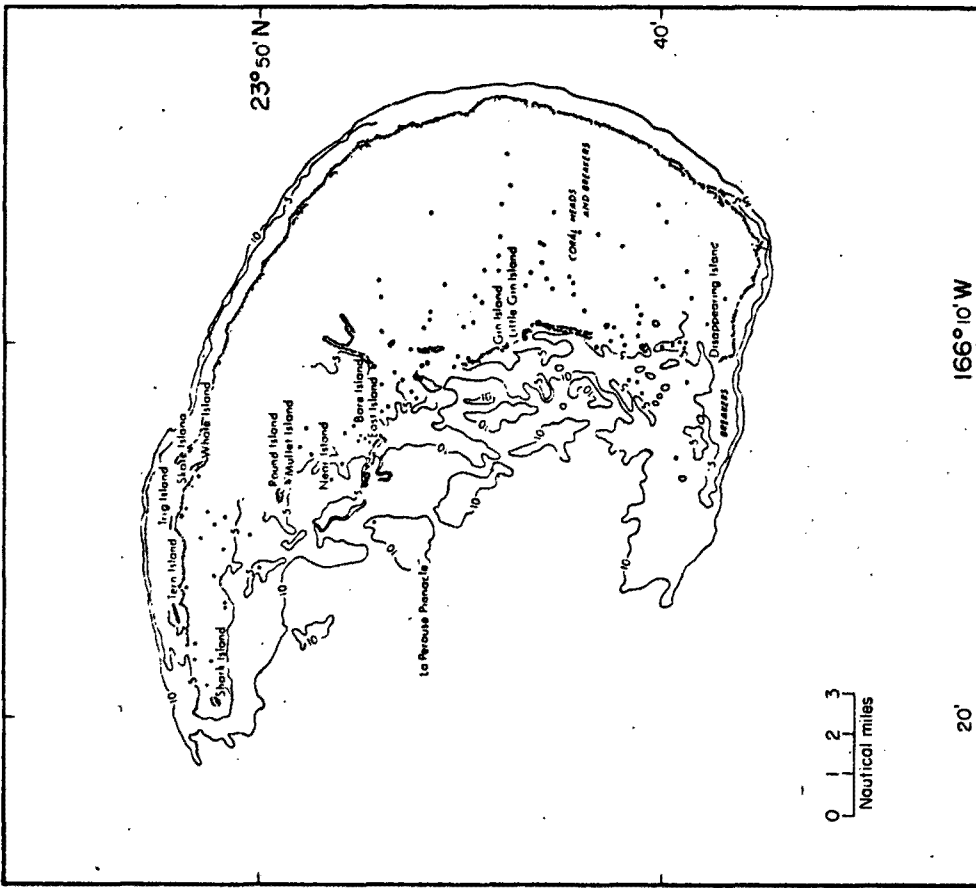
MIDWAY ISLANDS



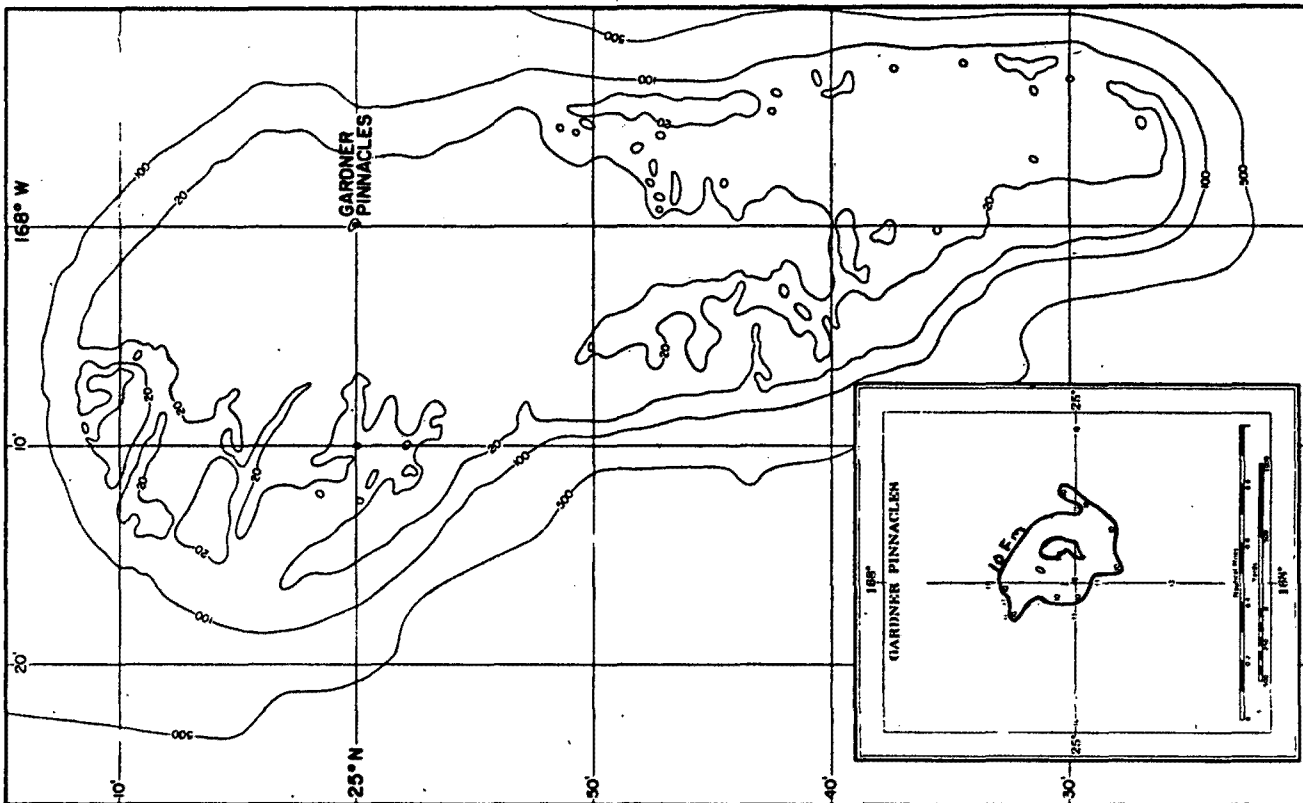
KURE ATOLL



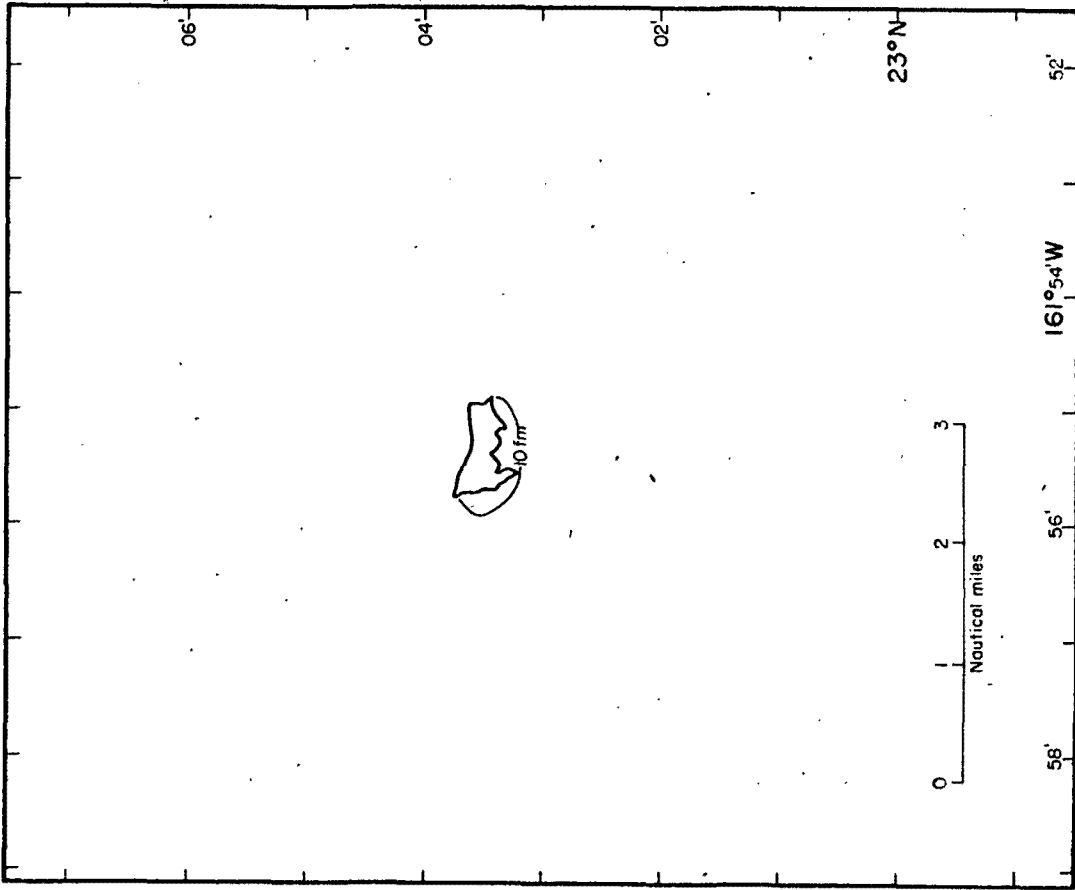
PEARL and HERMES REEF



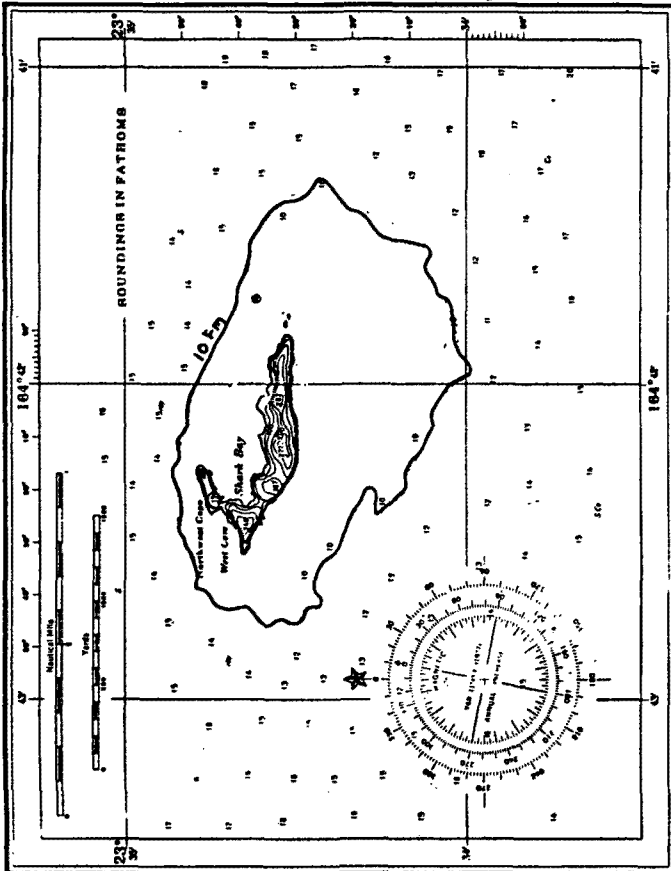
(from U.S.F.W.S.)
FRENCH FRIGATE SHOALS



(from NOS chart 19421)
GARDNER PINNACLES



NIHOA ISLAND



(from NOS chart 19016)

NECKER ISLAND

50 CFR Parts 611, 672, and 675

[Docket No. 51180-5180]

Foreign Fishing, Groundfish of the Gulf of Alaska, and Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) under provisions of the fishery management plans (FMPs) for Groundfish of the Gulf of Alaska and for Groundfish of the Bering Sea and Aleutian Islands Area. Groundfish are apportioned according to the regulations implementing those FMPs. The intent of this action is to assure optimum use of these groundfish by allowing the domestic and foreign fisheries to proceed without interruption.

EFFECTIVE DATE: April 25, 1986.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, Alaska Region, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

Optimum yields (OYs) for groundfish species in the Gulf of Alaska are established by the FMP for Groundfish of the Gulf of Alaska. This FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act and are implemented by regulations at 50 CFR 611.92 and Part 672.

Total allowable catches (TACs) for various groundfish species in the Bering Sea and Aleutian Islands area are established under the FMP for Groundfish of the Bering Sea and Aleutian Islands Area. This FMP was also developed under the Magnuson Act and is implemented by regulations at 50 CFR 611.93 and Part 675. The TACs and OYs are apportioned initially among DAH, reserves, and TALFF. Each reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.92(c) and 672.20(c) for the Gulf of Alaska, and 611.93(b) and 675.20(b) for the Bering Sea and Aleutian Islands area. In addition, surplus amounts of both components of DAH [DAP (domestic processed fish) and JVP (joint venture processed fish)] may be apportioned to TALFF during the fishing year under those same regulations.

The initial DAPs and JVPs for 1986 were based in part on the projected needs of the U.S. industry as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director) to fishermen and processors in October 1985. The Regional Director intends to resurvey the industry in April or May 1986.

Because most U.S. fisheries have just commenced, insufficient fishing time has elapsed to determine what amounts of DAH, if any, will prove excess to the needs of U.S. fishermen and reapportioning any DAH to TALFF in this action is therefore not timely. Reapportionment of DAH along with any reserves not released by this action will be considered upon completion of analysis of the industry survey.

1. Gulf of Alaska.
2. Bering Sea and Aleutian Islands area.

As soon as practicable after April 1, June 1, and August 1, or on other dates considered necessary, the Secretary of Commerce will apportion to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, and will apportion to TALFF any remaining reserve that is not apportioned to DAH. When the initial DAH and TALFF for

1986 were established (51 FR 956, January 9, 1986); DAH and TALFF were supplemented with 29,857 mt from the initial 300,000-mt reserve, thereby reducing it to 270,143 mt. This action supplements DAH and TALFF by taking an additional 135,072 mt from the reserve and reducing it to 135,071.

Apportionments to DAH:
To provide for increased amounts requested by several JVP operators, 17,000 mt of the nonspecific reserve is transferred to the yellowfin sole JVP and 9,300 mt of the nonspecific reserve is transferred to the flatfish JVP. In the Aleutians area, an unprecedented JVP fishery on pollock early in the year resulted in a harvest that severely reduced the opportunities for continuing the fishery through the year. In order to provide for continued JVP fisheries in the area, 8,000 mt of unallocated TALFF is transferred to JVP (Table 1).

Apportionments to TALFF:
In the Bering Sea area, 108,772 mt of the nonspecific reserve is transferred to the pollock TALFF. This amount is determined excess to the 1986 needs of U.S. fishermen.

Apportionments to DAH and TALFF will be considered at a later date pending reevaluation of DAP and JVP needs for 1986.

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

		Current	This action	Revised
Pollock (Bering Sea Area only, TAC=1,200,000; EY=1,200,000).....	DAP	141,755		141,755
	JVP	690,000		690,000
	TALFF	188,245	+ 108,772	297,017
Pollock (Aleutians Area only, TAC=100,000; EY=100,000).....	DAP	18,039		18,039
	JVP	10,804	+ 8,000	18,804
	TALFF	56,157	- 8,000	48,157
Yellowfin sole (TAC=209,500; EY=230,000).....	DAP	1,030		1,030
	JVP	127,300	+ 17,000	144,300
	TALFF	49,745		49,745
Other flatfish (TAC=124,200; EY=137,500).....	DAP	4,192		4,192
	JVP	89,550	+ 9,300	98,850
	TALFF	11,828		11,828
Total (TAC=2,000,000).....	DAP	325,099		325,099
	JVP	1,014,083	+ 34,300	1,048,383
	RES	270,143	- 135,072	135,071
	TALFF	390,675	+ 100,772	491,447

Comments and Responses

In accordance with 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), aggregated reports on U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection to facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit comments on the extent of which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. One comment was received.

Comment: The entire reserve in the Bering Sea and Aleutian Islands area

(BSA) should be apportioned to TALFF on April 1 since the DAH amounts for all groundfish species are clearly adequate to account for any unanticipated expansion of the domestic fishery in 1986.

Response: Traditionally, no more than 50 percent of the reserves in the BSA have been released in April, and then only following analysis of the DAH resurvey. Without the results of this survey, and in view of recent unanticipated expansion of proposed JVP fisheries, it is not appropriate to reapportion reserves to TALFF other than Bering Sea pollock, for which a considerable buffer remains.

Classification

This action is taken under 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), and complies with Executive Order 12291.

In view of the prior notice provided in the authorizing regulations regarding the dates after which apportionment of reserves and reassessment of DAH are to occur, together with the need to avoid disruption of foreign and U.S. fisheries and to afford a reasonable opportunity to achieve OY, NOAA has determined that delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: April 24, 1986.

Carmen J. Blondin,

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

[FR Doc. 86-9635 Filed 4-25-86; 3:33 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 41276-4176]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish optimum yield (OY) allocated to trawl gear in the Central Regulatory Area of the Gulf of Alaska will be achieved on April 26, 1986. A closure of the sablefish fishery by trawl gear is necessary to limit the harvest of sablefish by trawl gear to the 20 percent of the OY that is permissible by Federal law in this area. This closure is a management measure intended to allocate the sablefish resource among trawl, hook-and-line, and pot gear in the Central Regulatory Area as required by Amendment 14 to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP).

DATES: This notice is effective from 12:00 noon, Alaska Standard Time, April 26, 1986, until 12:00 midnight, Alaska Standard Time, December 31, 1986. Public comments are invited on this closure until May 11, 1986.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries

Service, P.O. Box 1668, Juneau, Alaska 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act) provides for inseason adjustments of fishing seasons and areas. Implementing rules at 50 CFR 672.22(a) specify that these adjustments will be made by the Secretary of Commerce (Secretary) under procedures set out in that section.

Section 672.2 defines three regulatory areas of the Gulf of Alaska. One of these is the Central Regulatory Area for which current regulations specify the sablefish OY to be 3,060 metric tons (mt). However, the North Pacific Fishery Management Council (Council), at its December 10-14, 1985, meeting, determined that the OY should be 6,150 mt. The Council recommended that NOAA promulgate an emergency interim rule under Magnuson Act Section 305(e) to implement the new OY, pending amendment of the FMP. The Regional Director has submitted an emergency interim regulation to implement the 1986 OY as recommended by the Council. This emergency interim regulation is expected to be promulgated in the near future.

As a result of implementation of Amendment 14 to the FMP (October 24, 1985; 50 FR 43193), § 672.24(b)(2) of the regulations allows directed fishing, defined at § 672.2, for sablefish in the Central Regulatory Area with trawl gear, as well as with hook-and-line and pot gear. Under this section, fishing for sablefish with trawl gear is allowed until trawl vessels have harvested 20 percent of the sablefish OY. Thus, 1, 230 mt of sablefish in the Central Regulatory Area is allocated to vessels using trawl gear.

This regulation also requires the Regional Director to close all fishing for groundfish with a gear type in an area when the sablefish share allocated by Amendment 14 to that gear type has been taken. At its January 15-17, 1986, meeting, the Council recommended, however, that NOAA amend this regulation to allow the Regional Director to prohibit directed fishing for sablefish

by that gear type in that area and thus leave a bycatch to support other directed groundfish fisheries. Fishing for other groundfish species could thus continue. The Regional Director has submitted an emergency interim rule that would amend the regulation cited above to implement the Council's recommendation.

The requirement of § 672.24(b) that all groundfish fishing by a gear type in an area to be closed when its sablefish allocation for that area has been taken conflicts with Amendment 14 as interpreted by the Council and NMFS. The Regional Director is, therefore, not obliged even before promulgation of the new rule to impose such a closure, provided that continued fishing by that gear type will not cause overfishing of sablefish.

An estimated 15 shorebased trawl vessels and 4 catcher/processor trawl vessels have made sablefish landings during the fishing season, which began on January 1, 1986. The total sablefish share allocated to trawl gear has been harvested. Therefore, further sablefish directed fishing, as defined at § 672.2, with trawl gear is prohibited after 12:00 noon April 26, 1986. This closure is a management measure intended to implement the allocation of the sablefish resource as provided for by Amendment 14 to the FMP. The Regional Director has reviewed the necessary bycatches of sablefish that might be taken in other directed groundfish trawl fisheries in the Central Regulatory Area and finds that continued trawling for other groundfish species will not cause overfishing of sablefish.

This closure will be effective upon filing of this notice for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through Alaska Department of Fish and Game procedures under § 672.22(a). Public comments on this notice of closure may be submitted to the Regional Director at the address stated above for 15 days following the effective date. The necessity of this closure will be reconsidered in view of comments received, and a subsequent notice will be published in the Federal Register, either confirming this closure's continued effect, modifying it, or rescinding it.

Other Matters

Allocation of the sablefish resource among trawl, hook-and-line, and pot gear in the Central Regulatory Area of the Gulf of Alaska as required by Amendment 14, and the continued health of that resource will be jeopardized unless this order takes

effect promptly. The agency therefore finds for good cause that advance notice and public comment on this order is contrary to the public interest and that the effective date should not be delayed.

This action is authorized under §§ 672.22 and 672.24 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: April 24, 1986.

Carmen J. Blondin,

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

[FR Doc. 86-9634 Filed 4-25-86; 3:38 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 51, No. 83

Wednesday, April 30, 1986

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

(Airspace Docket No. 86-AGL-12)

Proposed Alteration of Transition Area, New Ulm, MN

Correction

In FR Doc. 86-8608 beginning on page 13527 in the issue of Monday, April 21, 1986, make the following corrections:

1. On page 13528, second column, second complete paragraph; second line, "§ 71-181" should read "§ 71.181". In the fourth complete paragraph, second line, "as" should read "an".

2. On the same page, third column, in the Authority", in the third and fourth lines, "Pub. 97-449" should read "Pub. L. 97-449" and "1.69" should read "11.69". Also, in the same column, under "New Ulm, MN", eighth line, insert "bearing" after "162".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

(SW-FRL-3010-5)

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at five facilities from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any

provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated four of the petitions which are discussed in today's notice. Based on our review at that time, these petitioners were granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions as well as the other petition for which we propose to grant an exclusion have been evaluated both for the factors for which the wastes were originally listed, and for other factors and toxicants reasonably expected to be present in these wastes.

DATES: EPA will accept public comments on these proposed exclusions until May 30, 1986. Any person may request a hearing on these proposed exclusions by filing a request with Eileen B. Claussen, whose address appears below, by May 15, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send two copies of your comments to EPA. One copy should be sent to the Docket Clerk, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A second copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Identify your comments at the top with this statement: "Section 3001—Delisting Petition; Proposed Exclusions Beginning with Northern Metal; April 30, 1986."

Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The public docket for these proposed exclusions is located in Room S-212, U.S. Environmental Protection Agency,

401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that his waste does not

exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); Section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics. In addition, if substantial changes are made to the manufacturing or treatment process or to the raw materials used, the waste once again is hazardous (*i.e.*, the exclusion does not apply). To become excluded, the generator must file a new petition so that a determination can be made as to whether the new waste is non-hazardous.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3(c) and 261.3(d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine whether these residues exhibit any of the hazardous waste characteristics on a periodic basis.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the factors for which the waste was listed, it

then will evaluate the waste with respect to any other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste at levels of regulatory concern, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of the

waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste is a candidate for delisting. If the value at the compliance point is greater than this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.¹

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.² The Agency believes this to be a reasonable outcome since a larger quantity of waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the greater the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) for wastes that are typically landfilled yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will

¹ The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 FR 1802, January 14, 1986). The Agency, however, has not yet evaluated the comments on this proposal. If this approach is promulgated, the Agency will consider revising the delisting analysis.

² Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

generate a toxicant concentration at the receptor well equal to or less than same level). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes proposed for exclusion in today's publication. As a result of this evaluation, the Agency is proposing to grant the petitions discussed in this notice.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. In addition, the Agency conducts a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting an exclusion. All of the exclusions proposed today will not be made final until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Northern Metal Specialty Division of Western Industries, Inc., Osceola, Wisconsin;
Plastene Supply Company, Portageville, Missouri;
Reynolds Metals Company, Sheffield, Alabama;
Universal Oil Products, Decatur, Alabama;
Whirlpool Corporation, Fort Smith, Arkansas.

I. Northern Metal Specialty Division

A. *Petition for Exclusion*

Northern Metal Specialty Division of Western Industries, Inc., (NMSD), located in Osceola, Wisconsin, manufactures steel cavities for microwave ovens and steel tops and oven cavities for ranges. NMSD has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste Nos. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric

acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum, and EPA Hazardous Waste No. K062—Spent pickle liquor from steel finishing operations. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed), while the listed constituents for EPA Hazardous Waste No. K062 are hexavalent chromium and lead.

Based upon the Agency's review of their petition, NMSD was granted a temporary exclusion on December 27, 1982.³ The Agency's basis for granting the temporary exclusion was the low migration potential of the constituents of concern—namely, cadmium, hexavalent chromium, lead, nickel and complexed cyanides. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, these Amendments required the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of these changes, and as a result of these new requirements, the Agency requested additional information from NMSD. This information was submitted on February 2 and December 17, 1985. The Agency, therefore, has re-evaluated NMSD's petition to: (1) Determine whether the petition should be granted based on the toxicants and factors for which it was originally listed; and (2) evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. Today's notice is our re-evaluation of this petition.

In support of their petition, NMSD has submitted a detailed description of their manufacturing processes and wastewater treatment system, including lists of raw materials and schematic toxicity test results of the waste for all EP metals and nickel; distilled water leachate and total constituent analyses for cyanide; total oil and grease content

of the waste; and reactivity test data for sulfide. NMSD also submitted test results for ignitability and corrosivity.

NMSD's manufacturing process of the microwave oven cavities involves alkaline cleaning, and iron phosphating followed by sealing and plating. The final seal and deionized water rinse of the phosphating process contains chromic acid. This manufacturing line operates continuously. The manufacture of the range tops and cavities involve alkaline cleaning, acid pickling, and immersion nickel coating followed by porcelain enameling. The nickel immersion line operates intermittently, approximately 20% of the total 1985 production time. NMSD claims that the wastewater treatment sludge resulting from these operations is non-hazardous because the constituents of concern are present either in insignificant concentrations or, if present at significant levels, are essentially in immobile forms. NMSD also claims that the waste is not hazardous for any other reason.

Effluent from the chromium containing tanks is pretreated with sodium hydrosulfite to reduce the hexavalent chromium to trivalent chromium. The pretreated chromium effluent, pickle liquor wastewaters, rinse waters, and wastewater from the nickel immersion process are pumped into NMSD's waste treatment facility where lime neutralization, metal hydroxide precipitation, flocculation, clarification, and pressure filtration take place. The clarifier sludge (1-2% solids) is dewatered to 15-20% solids by the filter press. The effluent pH is maintained between 8 and 8.5.

NMSD has collected a total of 16 composite samples from the filter press on four separate occasions over the course of four and one-half years. Equal volumes of sludge were collected from the filter press three times per day and combined into a daily composite. NMSD's demonstration was originally based on five daily composite samples collected between February and June of 1981 and on three daily composite samples collected during one week in March of 1982 when only the phosphating process was in operation. In response to the Agency's request for additional information, NMSD provided the Agency with four additional composite samples (collected in the same manner) during one week in November 1984. At this time, both the iron phosphating and nickel immersion production lines were in operation. NMSD claims that since the nickel immersion process is operated only on an intermittent basis, the sample

³ This exclusion was not published in the Federal Register. Since the Assistant Administrator for Solid Waste and Emergency Response approved the decision, however, we have concluded that Northern Metal was granted a temporary exclusion. See public docket for specific documentation.

collected in November 1984, represented a worst-case of the sludge generated during the year. Subsequently, NMSD resampled their filter cake in October of 1985. Increments were collected at two-hour intervals to form a daily composite. Each of the four samples represented two production days. Eighty percent of the sample was collected on a day when only the phosphating process was in operation. Twenty percent of the sample was collected on a day when both the phosphating and nickel immersion process was in operation. NMSD claims that the samples thus collected are representative of their processes and reflect any variation of constituent concentrations in the waste.

Total constituent analyses on the filter cake for the listed and non-listed inorganic toxicants revealed the maximum concentrations reported in Table 1. Also included in Table 1 are oil and grease test results, number of samples that were analyzed, and total cyanide.

TABLE 1.—TOTAL CONSTITUENT CONCENTRATIONS

Toxicant	Maximum total constituent concentration (mg/kg)	Number of samples analyzed
As	<67	9
Ba	36	8
Cd	49	9
Cr	8700	9
Pb	67	9
Hg	<17	8
Ni	2700	9
Se	<900	8
Ag	1.8	8
CN (total)	0.6	8
oil & grease	2220	4

The results of the leachate analyses for both the listed and non-listed inorganic toxicants are presented in Table 2.

TABLE 2.—EP LEACHATE CONCENTRATIONS

Toxicant	Maximum EP leachate concentration (ppm)	Number of samples analyzed
As	¹ 0.025	9
Ba	<0.25	
Cd	² 0.01	10
Cr	^{3,4} 0.05	14
Pb	0.4	14
Hg	<0.005	9
Ni	20	12
Se	0.08	8
Ag	<0.04	8
CN	⁵ <0.02	4

¹ Analytic results on the four samples collected during 1981 did not detect As at a detection limit of 0.05 ppm. Subsequent analyses used a lower detection limit.

² One sample out of the ten contained Cd at a concentration of 0.18 ppm. The concentration of Cd in all of the other 9 samples were less than or equal to 0.01 ppm. Thus, we consider the one high sample on outlier and have not considered it in our evaluation.

³ One sample out of 14 contained Cr at a concentration of 0.85 ppm. The concentration of Cr in all of the other 13 samples was less than or equal to 0.05 ppm. Thus, we consider the one high sample an outlier and have not considered it in our evaluation.

⁴ Hexavalent chromium is listed as the constituent of concern for this waste. The concentration of total chromium is low enough, however, to make a determination of hexavalent chromium unnecessary.

⁵ Cyanide was extracted in distilled water only.

NMSD also submitted a list of raw materials used in their process. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and, thus, would not be expected to be present in the waste. Ignitability test results indicated that the samples exhibited no flash point at 200 °F. Total sulfide concentration was reported at less than 75 ppm. NMSD claims that the maximum volume of sludge generated from its filter press is 150 tons annually.

B. Agency Analysis and Action

The Agency believes that NMSD's wastewater treatment sludge should be considered non-hazardous, as conditioned below. The Agency believes that the 16 composite samples were non-biased and adequately represent any variations which may occur in NMSD's processes. The key factor that would cause a variation in toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Variations in raw materials can be expected when the facility either performs as a job shop or when the product line changes on a seasonal basis. Although NMSD's phosphating line operates continuously, the nickel immersion line operates intermittently. The nickel immersion line operated 20% of the time in 1985. NMSD, however, collected eight of their 16 composite samples when the nickel immersion line was in operation. The Agency, therefore, believes that NMSD's samples encompassed any seasonal variation in product line, and, therefore, are representative of NMSD's waste.

The Agency has evaluated the toxic constituents in NMSD's waste using the vertical and horizontal spread (VHS) model.⁴

This evaluation, using the total volume of waste (150 tons) and the maximum reported EP leachate concentrations as input parameters, resulted in the maximum predicted compliance point concentrations reported in Table 3. (When leachate concentrations were below the detection limits, the value of the detection limit

was used to predict these concentration.)

TABLE 3.—PREDICTED MAXIMUM CONCENTRATIONS AT THE COMPLIANCE POINT

Toxicant	Maximum compliance point concentration (mg/l)	Regulatory standard (mg/l)
As	0.0008	0.05
Ba	0.008	1.0
Cd	0.006	0.01
Cr	0.03	0.05
Pb	0.01	0.05
Hg	0.0002	0.002
Ni	0.62	0.35
Se	0.002	0.01
Ag	0.001	0.05

As indicated in Table 3, the maximum predicted concentrations of the EP toxic metals are all below the National Interim Primary Drinking Water Standards. The presence of these constituents at the reported concentrations is therefore not of regulatory concern. The predicted maximum concentration of nickel, however, exceeds the Agency's interim criteria of 0.35 ppm.⁵ The Agency is particularly concerned about the high and variable concentrations of leachable nickel. When both the nickel immersion and phosphating process were operating, the EP leachate values ranged from 1.0 ppm up to 20 ppm while the total constituent concentrations ranged from 88–2700 ppm. When only the phosphating process was in operation (approximately 80% of the time) the maximum nickel leachate concentration was 6.5 ppm, which corresponds to a compliance point concentration of 0.2 ppm, well below the Agency's interim criterion of 0.35 ppm.

Distilled water leachate levels for cyanide are below the U.S. Public Health Services suggested drinking water standard and are, therefore, not of regulatory concern.⁶ The total sulfide concentration was reported to be less than 75 ppm. We do not believe, however, that this is the actual level since: (1) Sulfides are not used in the process; and (2) a strong positive interference results when sulfite is analyzed in the presence of sulfite (sulfite is used to reduce chromium during wastewater treatment). We,

⁵ The Agency previously used 632 ppb as the regulatory standard for nickel. Pending the completion of current EPA studies on the health effects of nickel, the Agency is using 350 ppb for the purpose of evaluating delisting petitions. The basis for this standard are explained at 50 FR 20239-48, May 15, 1985.

⁶ Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

⁴ See FR 7882, Appendix I, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

therefore, believe that the actual concentration of sulfide is very low and not of regulatory concern. The Agency has also reviewed the Material Safety Data sheets and has concluded, that no other hazardous constituents are present in NMSD's waste.

The Agency believes, that based upon the constituents and factors evaluated, NMSD's phosphating process produces a non-hazardous waste and as such should be excluded from hazardous waste management. On the other hand, the sludge produced when both the phosphating process and nickel immersion process are operating is of concern. Since the nickel immersion process only operates intermittently (20%), however, the Agency has decided to grant a conditional exclusion when both processes are in operation. In particular, NMSD must test weekly composites of the dewatered sludge for nickel when the nickel immersion line is in operation. If nickel leachate values exceed 10 ppm, (resulting in 300 ppb at the compliance point) the waste will have to be disposed of as a hazardous waste; if the nickel leachate value is less than 10 ppm, the waste will be considered non-hazardous. NMSD can, however, demonstrate to the Agency that nickel leachate levels are typically and frequently below 10 ppm by weekly composites, and then petition the Agency to remove this contingency to their exclusion. The Agency, therefore, proposes to grant an exclusion to NMSD, pursuant to the conditions described above, for its facility located in Osceola, Wisconsin, for its filter press sludge, as described in their petition. (The Agency notes that any changes to the manufacturing or treatment processes will require NMSD to file an addendum to their petition or a new petition.⁷ Any future changes to these characteristics of the sludge will require a redemonstration of the hazard of the waste.)

II. Plastene Supply Company

A. Petition for Exclusion

Plastene Supply Company (Plastene), located in Portageville, Missouri, electroplates plastic parts for the automotive and small appliance industries. Plastene has petitioned the Agency to exclude its filter cake, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1)

Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for this waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, Plastene was granted a temporary exclusion on December 31, 1981 (see 46 FR 61279). The basis for granting the exclusion was the low concentration of cadmium and cyanide, and the low migration potential of chromium and nickel in the waste. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which they were originally listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Plastene. This information was submitted on May 6, 1985 and December 4, 1985. As a result, the Agency has re-evaluated Plastene's petition to: (1) determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) determine whether the waste is non-hazardous with respect to factors and toxicants other than the original listing criteria. Today's notice is the result of our re-evaluation of their petition.

Plastene has submitted a detailed description of its manufacturing and treatment processes, including schematic diagrams; total constituent analyses and EP toxicity test results of the filter cake for cadmium, total chromium, and nickel; and analytical results for total, amenable, and leachable cyanide.⁸ Plastene also submitted total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver, and total oil and grease analyses on representative waste samples. Plastene further submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as noted above, to determine whether toxicants, other than

the original listing criteria, are present in the waste at levels of regulatory concern.

Plastene's manufacturing process includes ABS[®] plastic injection molding, chrome etching, electroless nickel plating, and copper, nickel, and chromium electroplating. Plastene claims that cadmium and cyanide are not used in their process. Treatment of the rinse water from the plating operations involves chromium reduction using sulfur dioxide and sulfuric acid; lime, calcium carbonate, and sodium hydroxide neutralization; polymer flocculation; clarification; and rotary vacuum filtration. Plastene claims that its treated wastewater sludge is non-hazardous due to the immobile nature of chromium and nickel and negligible levels of cadmium and cyanide in the sludge. Plastene also believes that their waste is not hazardous for any other reason.

Plastene presented analytical data on 182 composite samples which were collected from the filter press. Each composite sample was comprised of grab samples collected from three discrete areas of the filter press on each sampling date. The grab samples were collected at random times over a one-year period. (See petition for specific dates that samples were collected.) Plastene claims that the samples collected are representative of any variation of the listed and unlisted constituent concentrations in the waste. Plastene further claims that although the facility could be considered a job shop, the manufacturing processes used at the facility are uniform and the use of raw materials does not vary substantially over time. In addition, the petitioner claims that the sampling period was long enough to cover any scheduled changes in the product line and, therefore, all raw materials used in the process are represented by the samples collected.

Total constituent and leachable analyses of the filter cake for the listed constituents revealed the maximum concentrations reported in Table 1. (See "Agency Analysis and Action" for a more detailed explanation of why maximum levels were used.)

TABLE 1.—MAXIMUM CONCENTRATIONS (PPM)

	Total constituent analyses	EP leachate analyses
Cd	0.3	0.03
Cr (total) ¹	200	0.36
Ni	399	1.13
CN	<0.2	² <0.02

⁷ Once a final decision on this petition is made, a significant process change would require submission of a new petition or treatment of the waste as hazardous.

⁸ Leachable cyanide was determined using a distilled water extractant in the EP Toxicity test without pH adjustment.

¹ Hexavalent chromium is listed as the constituent of concern for this waste. The concentration of total chromium,

however, is low enough to make a determination of hexavalent chromium unnecessary.
 * From distilled water leach test.

Total constituent and leachate analyses of the filter cake for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS (PPM)¹

	Total constituent analyses	EP leachate analyses
As	<0.1	<0.01
Ba	9.0	5.0
Pb	3.5	0.26
Hg	<0.01	<0.001
Se	<0.1	<0.01
Ag	0.1	0.02

¹ The EP leachate values and maximum constituent analyses reported in Table 2 represent the maximum levels reported for the particular metal and do not necessarily represent the same sample.

The maximum total oil and grease content reported was 0.028 percent. Plastene also submitted a list of raw materials used in their manufacturing and wastewater treatment processes. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Plastene also provided test data indicating that the filter press cake is not ignitable, corrosive, or reactive. Plastene claims to generate a maximum of 2664 tons of filter cake per year.

B. Agency Analysis and Action

Plastene has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the 182 composite samples collected from the filter press over a one-year period were non-biased and adequately represent any variations that may occur in the waste stream petitioned for exclusion. The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Variation in the raw materials can be expected either when the facility performs as a job shop or when the product line changes on a seasonal basis. The Agency believes that the sampling period used by Plastene was long enough to cover any scheduled changes in the product line, since the petitioner has verified that all of the plating lines were in operation during the sampling period. The samples, therefore, are representative of the waste generated by Plastene.

The Agency has evaluated the mobility of the listed constituents from Plastene's waste using a vertical and

horizontal spread (VHS) model.⁹ The VHS model generated compliance point values using the 2664 tons per year generation rate and the maximum reported extract levels as input parameters. These compliance point concentrations are exhibited in Table 3. The Agency has evaluated this petition using the maximum reported extract levels rather than the mean extract level even though there was a large sample population (*i.e.*, 182 data points) due to the variability exhibited by the original data set of samples submitted by the petitioner. In addition, since variability is expected in wastes generated from job shops, it is inappropriate to average these data points.

TABLE 3.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

	Filter press	Regulatory standard
Cd	0.004	0.01
Cr (total)	0.048	0.05
Ni	0.150	0.35
Cn	<0.003	0.2

The filter cake exhibited cadmium and chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standards; cyanide levels below the U.S. Public Health Service's suggested drinking water standard;¹⁰ and nickel levels below the Agency's Interim Health Advisory.¹¹ The total cyanide levels in the waste are also below the air threshold limit set by the American Conference of Governmental Hygienists.¹² These constituents are, therefore, not of regulatory concern.

The Agency also concluded, through the use of the VHS model, that no other EP toxic metals are present in the filter cake at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The Compliance point values generated from these extract levels are displaced in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

	Filter press	Regulatory standard
As	<0.001	0.005
Ba	0.663	1
Pb	0.034	0.05
Hg	<0.0001	0.002

⁹ See footnote 4.

¹⁰ See footnote 6.

¹¹ See footnote 5.

¹² See American Conference of Governmental Hygienists: *Documentation of the Threshold Limit Values for Substances in Workroom Air*, Third Edition, 1971, Cincinnati, Ohio.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)—Continued

	Filter press	Regulatory standard
Se	<0.001	0.01
Ag	0.003	0.05

The Agency also reviewed Plastene's raw material lists and material safety data sheets for each component in the raw materials lists. The Agency has concluded from this review that no other Appendix VIII toxicants, other than those tested for, are present in the waste.

The Agency believes that the treatment process used by Plastene generates a non-hazardous waste. The Agency, therefore, proposes to grant an exclusion to Plastene's facility, located in Portageville, Missouri, for its filter cake, as described in its petition. (The Agency notes that any changes to the manufacturing or treatment processes will require Plastene to file an addendum to their petition or a new petition.¹³ Any future changes to these processes that could effect the physical or chemical characteristics of the sludge will require a redemonstration of the hazards of the waste.)

III. Reynolds Metals Company

A. Petition for Exclusion

Reynolds Metals Company's Sheffield Plant (Reynolds), located in Sheffield, Alabama uses a chromating process in the coating of coiled aluminum stock. Reynolds has petitioned the agency to exclude its wastewater treatment sludge from the chemical conversion of aluminum, presently listed as EPA Hazardous Waste No. F019. The listed constituents of concern for EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide (complexed).

Based upon the Agency's review of their petition and supplementary data submitted on October 27, 1981, Reynolds was granted a temporary exclusion on November 22, 1982 (See 47 FR 52668). The basis for granting the exclusion was the low migration potential for the constituents of concern (*i.e.*, chromium and cyanide). On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which

¹³ Once a final decision on this petition is made a significant process change would require submission of a new petition or treatment of the waste as hazardous.

the waste was listed, if the Agency has a reasonable basis to believe that such factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Reynolds. This additional information was submitted on December 14, 1984 and November 5, 1985. As a result, the Agency has re-evaluated Reynolds' petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) evaluate the waste for factors (other than those for which the waste was originally listed) to determine whether the waste is non-hazardous. Today's notice is the result of our re-evaluation of their petition.

In support of their petition, Reynolds has submitted descriptions of their manufacturing and wastewater treatment processes, including schematic diagrams and lists of raw materials. Reynolds also submitted analytical data to characterize the sludge in its as-disposed condition. This includes the results of EP leachate tests and total constituent analyses for the EP toxic metals and nickel; distilled water leach tests and total constituent analyses for cyanide; and results of tests for the wastes sulfide and oil and grease content. Much of this information was provided, as noted above, to demonstrate that no additional hazardous constituents (*i.e.*, constituents other than those for which the waste was listed) are present in the waste.

Reynolds' waste is the result of a chromate chemical conversion process whereby the aluminum is prepared for subsequent coating. Spent chromate solutions are chemically treated to convert the hexavalent chromium to trivalent chromium, which is precipitated out of the solution and separated in a clarifier. The resultant metal hydroxide sludge is dewatered through vacuum filtration.

The characterization of the sludge was based upon samples collected during two sampling periods.¹⁴ In both

¹⁴ Samples collected during the first sampling period (in 1981) were used in Reynolds' initial petition. Since the petition was submitted prior to the Hazardous and Solid Waste Amendments of 1984, analysis was restricted to the constituents for which the waste was listed and the factors which could cause the waste to meet the hazardous waste characteristics. The second set of samples (collected in 1984) were analyzed for EP leachate and total constituent concentration of the EP toxic metals, nickel, and cyanide as well as the waste's oil and grease content.

cases, the samples were composites, collected from the filter press, which represented the sludge generated during a four-week period. Specifically, increments¹⁵ were collected at random times during each day of filter press operation and, at the end of the week, composited to produce a sample. This procedure was followed during each of the four weeks, resulting in four samples.

Total constituent analysis of the samples revealed the maximum concentrations (reported in Table 1) for the EP toxic metals, nickel cyanide, sulfide, and oil and grease content. Table 1 also presents the maximum values from leachate tests.

TABLE 1.—MAXIMUM CONCENTRATIONS¹

	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
As	0.091	<0.05
Ba	239	22
Cd	<0.2	<0.1
Cr	64589	<0.5
Pb	<2.0	<0.2
Hg	<0.004	0.004
Se	0.058	<0.05
Ag	<0.2	<0.1
Ni	<0.2	<0.01
CN	<4	² <0.05
Sulfide	66	³
Oil and Grease	22	³

¹ The EP leachate values and maximum constituent analyses reported in Table 1 represent the maximum levels reported for the particular metal and do not necessarily represent the same sample.

² Results from distilled water leaching test.

³ Not applicable.

Reynolds' description of their manufacturing and wastewater treatment processes, along with the submitted lists of raw materials indicated that no other Appendix VIII hazardous constituents, other than those tested for, would be expected, nor would they likely be formed in their waste. Test results also indicated that the waste is not ignitable or corrosive. Reynolds estimates the maximum generation rate of the dewatered sludge to be 400 yd³ yr.

B. Agency Analysis and Action

Reynolds has demonstrated that their wastewater treatment system produces a non-hazardous sludge. The Agency believes that the samples collected during the four-week sampling period are non-biased and adequately reflect any variations which may occur in the subject wastestream. The key factor that could vary the constituent concentration in this waste would be the use of different raw materials or different processes in the manufacturing process

¹⁵ An "increment" refers to an individual sample which is subsequently composited.

that contribute to the wastestream. While the type of coating that Reynolds ultimately applies does vary, the source of the subject waste is a preliminary process which is uniform regardless of variations in subsequent processes (*i.e.*, wastes from the coating operation are not discharged to the wastewater treatment system). The Agency, therefore, believes that Reynolds' claim of uniformity of the subject waste is substantiated and that, given this uniformity, a four-week sampling period is sufficient to characterize the waste.

The Agency has evaluated the mobility of toxicants from Reynolds' waste using the vertical and horizontal spread (VHS) model.¹⁶ This evaluation, using the maximum values for the estimated annual sludge generation and leachate concentrations as input parameters, has resulted in the maximum predicted compliance point concentration exhibited in Table 2. Table 2 also presents, for each toxicant, the regulatory standard to which the compliance point concentration is compared.¹⁷

TABLE 2.—CALCULATED MAXIMUM COMPLIANCE POINT CONCENTRATION

	Compliance point concentration	(mg/l)
As	<0.002	0.05
Ba	0.68	1.0
Cd	<0.003	0.01
Cr	<0.015	0.05
Pb	<0.008	0.05
Hg	-0.0001	0.002
Se	<0.002	0.01
Ag	<0.003	0.05
Ni	<0.001	0.35
CN	<0.002	0.2

As indicated in Table 2, the predicted maximum compliance-point concentrations of these toxicants are all less than their regulatory standards. The presence of these toxicants at the reported levels, is therefore, not of regulatory concern. In addition, the Agency's evaluation of the processes and raw materials used at Reynolds' facility indicates that no other Appendix VIII hazardous constituents are present, or are likely to be formed, in Reynolds' waste.

The waste's maximum sulfide and cyanide content (66 mg/kg and <4 mg/kg, respectively) is low enough so as not

¹⁶ See Footnote 4.

¹⁷ For the EP toxic metals, these values are equal to the National Interim Primary Drinking Water Standards. For nickel, the Agency has adopted an interim delisting standard of 0.35 mg/l (see footnote 6). For cyanide, the value is equal to the U.S. Public Health Service's recommended drinking water standard.

to be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases. In particular, total cyanide levels in the waste are below the air threshold limit set by the American Conference of Governmental Hygienists¹⁸ while sulfide levels are not of regulatory concern based upon the results of air dispersion calculations.¹⁹ (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.)

The Agency believes, based upon the constituents and factors evaluated, that Reynolds' waste is non-hazardous and should be excluded from hazardous waste control. The Agency, therefore, proposes to grant a final exclusion to Reynolds Metals Company's Sheffield Plant, located in Sheffield, Alabama, for their dewatered wastewater treatment sludge from the conversion coating of aluminum, as described in their petition. (The Agency notes that any changes to the manufacturing or treatment processes will require Reynolds to file an addendum to their petition or a new petition.²⁰ Any future changes to these processes that could effect the physical or chemical characteristics of the sludge will require a redemonstration of the hazard of the waste.)

IV. Universal Oil Products Company

A. Petition for Exclusion

Universal Oil Products, Wolverine Division (Universal), located in Decatur, Alabama, is involved in the manufacture of aluminum and copper tubing. Universal has petitioned the Agency to exclude its treated sludge presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

Universal discontinued their electroplating operations in August 1983. The subject of Universal's petition is the

sludge that was generated before August 1983, which is contained in two holding lagoons. One of the lagoons is inactive; the other lagoon is still in use but has not received any listed hazardous waste since August 1983. Universal has petitioned to exclude their previously generated sludge, contained in the two holding lagoons, because it does not meet the criteria for which it is listed.²¹

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Universal's sludge resulted from the lime treatment and precipitation of solids from wastewaters from the alkali rinse, acid cleaning, and plating operations. Universal claims that their wastewater treatment system produced a non-hazardous sludge because the constituents of concern are present in either insignificant concentrations (*i.e.*, Universal states that cadmium and cyanide are not used in their process) or in essentially an immobile form. Universal further claims that this waste is not hazardous for any other reason.

Universal has submitted detailed information to describe their electroplating and wastewater treatment processes, including schematic diagrams; total constituent analyses, and EP toxicity and EP for oily waste test results of the sludge for cadmium, chromium, hexavalent chromium, and nickel; and total constituent analyses and distilled water leach tests for cyanide.

Universal also submitted total constituent analyses of the waste and EP and oily toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease content for representative waste samples. In addition, Universal provided ground water monitoring data in support of its delisting petition. Universal further submitted a list of raw materials used in manufacturing process and test results for Total Toxic Organics on their wastewater for the organic priority pollutants.²² The Agency requested this

²¹ Universal originally submitted their petition on March 3, 1982. A supplement to the original petition was received on November 19, 1982. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Universal. This additional information was submitted on February 2, 1984 and March 8, 1985.

²² Universal has NPDES permits for their outfalls. The facility was re-permitted in 1984 under

information, as noted above, to determine if hazardous constituents other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

Universal currently manufactures aluminum and copper tubing, in several alloys, for various final products. Previously, Universal produced a plated copper tubing, but discontinued this operation in August 1983. This plating process generated the listed waste. The plating process involved wrapping the copper tubes with a porous conductive tape and lowering them into a copper sulfate solution for plating. The wastewaters from the electroplating operations (*i.e.*, the rinsewater from electroplating operations, the rinsewater from alkali washings, and the rinsewater from acid cleaning) resulted in the production of the generically listed sludge. This process also involved a vapor degreasing step using 1,1,1-trichloroethane, before plating. Universal claims that no solvent from the degreasing operation entered the wastewater treatment system, and thus this solvent would not be expected to be found in the petitioned sludge.²³

Universal's waste treatment system consisted of lime slurry neutralization of the acidic wastewater, precipitation, and polymer addition. A high molecular weight polymer was added to precipitate metals not adequately treated by lime. The sludge is contained in two 1.25 million gallon settling lagoons, labeled the active and inactive lagoon. The active lagoon is currently receiving non-listed waste.

To ensure collection of representative samples, a sampling strategy was employed which used composites of randomly collected samples. Each of the two impoundments (called the active lagoon and inactive lagoon) measures 525 x 55 feet; however, significant sludge accumulation is limited to the first 150 feet from the influent points. Less than two inches of waste covers the remainder of the lagoons. Sampling was therefore limited to the 150 x 55 foot area to the influent pipe. This 150 x 55 foot area of each lagoon was divided

categorical standards. This required Universal to submit a Baseline Monitoring Report which included a test for Total Toxic Organics (TTO). The TTO were not detected at Outfall 004, the outfall which receives the effluent from the wastewater treatment lagoons which is the subject of this notice.

²³ Process diagrams and waste treatment schematics provided by Universal in support of their delisting petition show that spent solvents resulting from the degreasing step of the electroplating process were treated in a separate waste treatment system and did not enter the petitioned wastestream.

¹⁸ See footnote 12.

¹⁹ A copy of these calculations is available in the public docket for this notice.

²⁰ Once a final decision on this petition is made, a significant process change would require submission of a new petition or treatment of the waste as hazardous.

into quadrants. Using a core sampling, five core samples representing the total depth of the impoundments (4½ feet) were randomly collected from each quadrant. The five cores from each quadrant were composited to produce four separate composite samples for each impoundment. Cores from each quadrant were kept separate. Universal claims that the samples collected are representative of any variation of the listed and unlisted constituent concentrations in the waste. The petitioner further claims that the listed wastes, generated prior to August 1983, and the unlisted wastes, currently being generated, are both from manufacturing processes that operate(d) in a consistent manner and that the use of raw materials do (did) not vary over the time periods that these individual wastestreams were generated.²⁴

Total constituent analyses of the sludge for the EP toxic metals, nickel, and cyanide revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT ANALYSIS (mg/kg)

Constituent	Active sludge lagoon	Inactive sludge lagoon
As	4.4	4.8
Ba	12	78
Cd	0.1	0.1
Cr	170	840
Pb	26	29
Hg	<0.1	<0.1
Ni	200	250
Se	<0.1	<0.1
Ag	1.0	1.6
CN	<1	<1

Total oil and grease values reported for the active lagoon ranged from 0.27 to 0.40 percent while values for the inactive lagoon ranged from 0.60 to 1.15 percent.²⁵

The EP toxicity and the EP for Oily Waste leachate analyses for these same constituents revealed the maximum concentrations reported in Table 2.²⁶

²⁴ According to Universal, the wastes generated by prior electroplating operations were from processes which operated in a consistent manner and which used raw materials that did not vary over time (i.e., the waste currently stored from these operations, which ceased in August 1983, is representative of the waste generated by that process). In addition, the unlisted waste currently being generated and stored in the active lagoon is representative of the waste generated by current manufactured processes at this facility since these processes operate in consistent manner and the current use of raw materials does not change over time.

²⁵ Three of the four sludge samples analyzed from the inactive lagoon exhibited total oil and grease levels less than or equal to 0.70 percent.

²⁶ Although Universal Oil performed the oily waste EP, the Agency does not believe its use is appropriate in this instance. Only 1 out of 8 of the composite samples had an oil and grease content

Universal also submitted a list of raw materials used in their process. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. (As indicated earlier, 1,1,1-trichloroethane is used at the facility; however, this solvent is not expected to be found in the sludge which is the subject of this delisting petition.)

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS (MG/L)

Constituent	Active sludge lagoon	Inactive sludge lagoon
As	<0.1	<0.1
Ba ¹	11	7
Cd	<0.01	<0.01
Cr ³	<0.1	<0.1
Pb	<0.1	0.2
Hg	<0.01	<0.01
Ni	1.9	1.6
Se	<0.02	<0.02
Ag	<0.2	<0.2
CN ²	0.02	<0.005

¹ The maximum concentration of Ba reported in the sludge was 78 ppm. If fully extracted, the calculated concentration in the leachate would be 3.8 ppm. This is less than the reported EP leachate concentrations. Universal claims that these high EP leachate levels result from the high level of calcium in the waste which overwhelms the Ba standard additions. The intensity of the Ba emissions is secondary to the calcium intensity, causing the depressed standard addition recovery. This problem was not encountered with the Ba total constituent analysis.

² Hexavalent chromium is listed as the constituent of concern for this waste; however, since the concentration of total chromium is low, a determination of the concentration of hexavalent chromium is unnecessary.

³ The maximum Ag leachate concentration is greater than predicted based on total constituent analysis. The Agency believes, however, that these values are within the range of the experimental precision of the test methods (i.e., total digestion and EP leachate procedure.)

⁴ Distilled water leachate analysis.

Ground water monitoring data indicated excessive levels (1.2 mg/l) of hexavalent chromium in downgradient monitoring wells. The Agency, therefore, requested additional information from Universal to determine the source of the hexavalent chromium. Information provided by Universal revealed that during the period from 1960 to 1970, the facility stored neutralized chromic acid sludge (sodium dichromate dissolved in sulfuric acid) in their on-site lagoons. Records of analytical test data of this waste show it to be approximately 6 percent chromium, and based on the raw materials used at the time, all of the chromium content was in the form of hexavalent chromium. It was further shown that the hexavalent chromium bearing sludge was completely removed during 1973 and 1974. (Recent analyses of soil samples taken near the storage lagoons show that soil in the lagoon walls still contain excessive levels of hexavalent chromium.) Universal,

above 1% (i.e., 1.15%). The calculated 95% confidence interval for oil and grease was 0.76%, below the level of 1% at which we currently require the oily waste EP.

therefore, claims that the source of contamination is not from the sludge which they request to be listed, but rather the contamination source, Universal claims, is from the chromic acid sludge that was disposed of in the 1960's.

Universal claims that the maximum volume of waste generated typically does not exceed 7,000 pounds per year; however, Universal has approximately 55,690 cubic feet of waste (30,940 cubic feet in the inactive lagoon and 24,750 cubic feet in the active lagoon) currently stored on-site.

B. Agency Analysis and Action

Universal has demonstrated that its wastewater treatment sludge, currently contained in both the active and inactive lagoons, is non-hazardous. The Agency believes that the eight composite samples (four collected from each of the lagoons) were non-biased and adequately represent any variations which may occur in the waste petitioned for exclusion. The Agency believes that, since the samples were complete cores and were taken randomly throughout the section of the lagoons which had significant sludge accumulation, any stratification occurring vertically due to settling or horizontally as a function of distance from the inlet pipe would be represented by the sampling scheme used. The key factor which would vary constituent concentrations in continuously generated sludge would be the use of different raw materials, due to changes in the product line being manufactured. Variations in raw materials used can be expected when a facility either performs as a job shop or when the product line changes on a seasonal basis. Since this facility did not perform as a job shop or have seasonal product variations, the Agency believes that Universal has substantiated their claim that the manufacturing and treatment processes were uniform and consistent.

Although electroplating operations ceased in August of 1983, representative samples were taken from both the inactive lagoon (which contains only the previously generated listed waste) and the active lagoon (which contains both the listed waste and the currently generated unlisted waste). The Agency believes that the samples taken and the analytical data presented from these samples are sufficient to accurately characterize the petitioned waste.

The Agency has evaluated the mobility of the constituents from Universal's waste using a vertical and

horizontal spread (VHS) model.²⁷ The Agency's evaluation of Universal's 55,690 cubic feet of lagooned sludge and the maximum extract levels for the constituents using the VHS model has generated the compliance point concentrations exhibited in Table 3.

TABLE 3—MAXIMUM CONCENTRATIONS

Constituent	Calculated compliance point concentration	Regulatory standard
As	0.01	0.05
Ba	1.3	1.0
Cd	0.001	0.01
Cr	0.01	0.05
Pb	0.02	0.05
Hg	0.001	0.002
Ni	0.22	0.350
Se	0.002	0.01
Ag	0.02	0.05
CN	0.002	0.20

With the exception of barium, the predicted maximum concentrations of the metals (at the compliance point) are below the National Interim Primary Drinking Water Standards (NIPDWS); nickel values were less than the interim Health Advisor;²⁸ and cyanide levels were less than the U.S. Public Health Service's suggested drinking water standards.²⁹

Although the predicted maximum concentration of barium at the compliance point exceeds the NIPDWS, the Agency believes that the results may be spurious. Analysis of the raw data on barium revealed suppressed standard addition results at the highest spike level (60 ppm), resulting in depressed recovery values and in a high calculated concentration. These results are questionable because: (1) Total constituent concentrations are very low (ranging from 7 to 76 ppm); (2) recoveries were good for total analyses; and (3) barium is not used in the manufacturing process or wastewater treatment process.

Cyanide levels in the waste are also not expected to be present at levels of regulatory concern from an air contamination route. Total cyanide levels in the waste are well below the air threshold limit of 10 ppm as set by the American Conference of Governmental Industrial Hygienists.³⁰

The Agency also has concluded that no other hazardous constituents are present in the waste at levels of regulatory concern. The raw materials currently used by Universal in their manufacturing process do not contain

any additional hazardous constituents, such as organic toxicants. Before August 1983, Universal produced a product which required a vapor degreasing step before plating. No solvent from this operation entered the wastestream.³¹ Universal has submitted TTO data for three samples from the active lagoon outfall. No organic priority pollutants, however, were detected in the effluent. In addition, the Agency's evaluation of the processes and raw materials used at Universal indicates that no other Appendix VIII hazardous constituents are present, or are likely to be formed, in Universal's waste.

With respect to the ground water monitoring data, the Agency has a number of concerns. Based on the information and data provided, as well as analytical test results of the sludges currently generated and/or stored however, the Agency believes that Universal has substantiated their claim that the excessive levels of hexavalent chromium found near the storage lagoons and found in the walls are the result of waste previously generated, stored, and removed and that these constituent levels are not the result of wastes currently being generated and included in their petition. Universal detected up to 3600 ppm of hexavalent chromium in the walls of the lagoons. Based on the total constituent analysis, the maximum level of hexavalent chromium measured in Universal's waste is less than 1 ppm. EP data indicated that less than 0.1 ppm of chromium would leach. Accordingly, the Agency believes that the hexavalent chromium in the walls of the lagoon did not come from the waste. It must be noted, that today's proposed rule does not exclude the contaminated soils that have resulted from the previous practice of storing chromic acid sludge in the on-site lagoons. Universal, therefore, remains obligated to remove and dispose of these soils pursuant to the requirements of section 3008 of the Resource Conservation and Recovery Act (RCRA). In addition, pursuant to section 3004(u), Universal is still subject to the corrective action provisions of RCRA.

The Agency believes that the waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, proposes to grant a one-time exclusion to Universal Oil Products Company, Wolverine Division, located in Decatur, Alabama, for their wastewater treatment sludge generated from

electroplating operations and contained in two on-site holding lagoons.

V. Whirlpool Corporation

A. Petition for Exclusion

Whirlpool Corporation (Whirlpool), located in Forth Smith, Arkansas, manufactures household refrigerators and freezers. Whirlpool has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical-etching and milling of aluminum. The listed constituents of concern for this waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, Whirlpool was granted a temporary exclusion on August 6, 1981 (see 46 FR 40156). The basis for granting the exclusion was the low concentration and/or the immobile form of the constituents of concern (cadmium, hexavalent chromium, nickel, and cyanide in the waste. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous waste. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Whirlpool. This information was submitted on December 2, 1983, and January 15, 1986. As a result, the Agency has re-evaluated Whirlpool's petition to: (1) Determine whether the temporary exclusion should be made final based on the criteria for which it was originally listed and (2) evaluate the waste for factors (other than those for which the waste was originally listed) to determine whether the waste is non-hazardous. Today's notice is the result of our re-evaluation of their petition.

Whirlpool has submitted a detailed description of its manufacturing and wastewater treatment processes, including schematic diagrams; total constituent analyses and EP toxicity test

²⁷ See footnote 4.

²⁸ See footnote 5.

²⁹ See footnote 6.

³⁰ See footnote 12.

³¹ See footnote 22.

results of the sludge for cadmium, total chromium, and nickel; and results of total constituent analyses and distilled water leach test for cyanide. Whirlpool also submitted total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver, and total oil and grease analyses on representative waste samples. Whirlpool further submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as noted above, to determine whether hazardous constituents, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

In Whirlpool's manufacturing process, metals are coated with an alkaline phosphate, rinsed with chromic acid, and then pickled in preparation for painting and enameling. Whirlpool claims that cadmium and cyanide are not used in their process. Treatment of the rinse water from the phosphating system primarily involves neutralization with lime and the reduction of hexavalent chromium to trivalent chromium. The rinse waters from the pickling stages enter a pH adjustment tank (lime or sulfuric acid is added), a flocculant tank, and then flows to a clarifier. The sludge from the clarifier then joins the phosphating wastes to undergo batch lime treatment before the mixture is dewatered to approximately a 40 percent solids content, using a filter press. Whirlpool claims that its treated wastewater sludge is non-hazardous due to the immobile nature and negligible levels of cadmium, chromium, cyanide, and nickel in the sludge. Whirlpool also believes that their waste is not hazardous for any reason.

Grab samples were collected from the filter press conveyor belt each time the press was dumped (approximately every hour). Six weekly composite samples were formed from these grab samples. The sludge samples that were collected from November 4, 1985 to January 10, 1986 represent sludge that has been treated with approximately three percent lime. Whirlpool's original petition was based on four samples collected within a seven-month period. As noted above, additional information was submitted in December 1983, in anticipation of the Hazardous and Solid Waste Amendments; four additional daily composite samples, taken over a one-week period, were included with this submission. Whirlpool claims, however, that they plan to continue the additional lime treatment demonstrated in their most recent submittal. Whirlpool believes that these samples (collected

from November 4, 1985 to January 10, 1986) therefore, are best representative of the listed and unlisted constituent concentrations in the waste.³²

The petitioner further claims that the manufacturing processes used at the facility are operated in a consistent manner and that the use of raw materials does not vary over time. Consequently, they believe that the samples collected adequately characterize their waste.

Total constituent analyses and EP toxicity test results of the treatment sludge for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Cd.....	5.1	0.02
Cr (total) ¹	663	<0.05
Ni ²	314	1.75
Cn ³	2.5	0.02

¹ Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

² A nickel concentration of 1.75 ppm in the leachate was found in 1 of the 5 samples analyzed. In the remaining samples nickel was not detected at 0.05 ppm.

³ From distilled water leach test.

The total constituent analyses and EP toxicity test results of the treatment sludge for the on-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
As.....	0.14	<0.01
Ba.....	<5.2	<0.1
Pb.....	29	<0.2
Hg.....	0.3	<0.01
Se.....	<5	<0.01
Ag.....	<0.52	<0.05

The maximum total oil and grease value reported was 0.72 percent. Whirlpool also submitted a list of all raw materials used in their manufacturing and wastewater

³² In previous submittals, Whirlpool's waste demonstrated nickel EP leachate levels ranging from 0.11 to 8.26 ppm. When these values were used in the evaluation of Whirlpool's petition, it was determined that they were too high to allow for a delisting. The regulatory standard for nickel, however, is an interim number, and the nickel levels demonstrated in Whirlpool's waste were just slightly too high. The Agency stated that a petition would not be denied based solely on the waste's nickel content (see 50 FR 20247, May 15, 1985) until a final regulatory standard was set. Rather than wait for this standard, Whirlpool decided to modify their treatment process. It was determined that 3% lime addition sufficiently bound all of the EP toxic metals, and nickel.

treatment processes. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Whirlpool also provided test data indicating that the filter press cake is not ignitable, corrosive, or reactive. Whirlpool claims to generate a maximum of 4000 cubic yards per year of waste from the filter press.

B. Agency Analysis and Action

Whirlpool has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the six weekly composite samples collected from the filter press were non-biased and adequately represent any variations that may occur in the waste stream petitioned for exclusion.³³ The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Whirlpool is not a job shop nor does it have seasonal product variations. The Agency, therefore, believes that Whirlpool substantiated their claim that the manufacturing and treatment processes are uniform and consistent. The Agency believes that the samples collected are representative of the waste generated by Whirlpool.

The Agency has evaluated the mobility of the constituents from Whirlpool's waste using a vertical and horizontal spread (VHS) model.³⁴ The Agency's evaluation of Whirlpool's waste, using the maximum values for the estimated annual sludge generation and reported leachate concentrations as input parameters, has resulted in the maximum predicted compliance point concentrations for the listed constituents exhibited in Table 3.

TABLE 3.—COMPLIANCE POINT CONCENTRATIONS (mg/l)

	Filter press	Regulatory standard
Cd.....	0.003	0.01
Cr (total).....	0.008	0.05
Ni.....	0.27	0.35
CN.....	0.003	0.2

The filter press sludge exhibited cadmium and chromium levels (at the compliance point) below the National Interim Primary Drinking Water

³³ The Agency only considered the samples collected after the 3% lime treatment had begun, since these samples represent the waste as Whirlpool now intends to generate it. This treatment is, therefore, considered necessary for the exclusion to be valid.

³⁴ See footnote 4.

Standards and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.³⁵ The predicted maximum nickel value is below the Agency's interim standard.³⁶ These constituents are, therefore, not of regulatory concern.

The Agency has concluded that no other inorganic hazardous constituents are present in the filter press sludge at levels of regulatory levels (*i.e.*, none are above any regulatory standard at the compliance point in the VRS model, see Table 4. Where concentrations were below the detection limit for the constituent, the detection limit was used in the VHS calculations). In addition, the Agency also finds that no hazardous organic constituents are present in the waste. The Agency reviewed the list of raw materials used by Whirlpool, as well as the material safety data sheets for these materials, and concluded that no other Appendix VIII toxicants are present in the waste.

TABLE 4.—COMPLIANCE POINT CONCENTRATIONS (mg/l)

	Filter press	Regulatory standard
As	0.002	0.05
Ba	0.015	1
Pb	0.031	0.05
Hg	0.0015	0.002
Se	0.002	0.01
Ag	0.008	0.05

The Agency believes that, based upon the constituents and factors evaluated, Whirlpool's waste is non-hazardous and should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Whirlpool Corporation, located in Fort Smith, Arkansas, for its dewatered electroplating wastewater treatment sludge, as described in its petition. (The Agency notes that any changes to the manufacturing or treatment processes will require Whirlpool to file an addendum to their petition or a new

petition.³⁷ Any future changes to these processes that could effect the physical or chemical characteristics of the sludge will require a redemonstration of the hazards of the waste.)

IX. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of Section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

X. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's list of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

XI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general

notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: April 24, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922]

2. In Appendix IX, add the following wastestreams in alphabetical order in table 1.

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Northern Metal Speciality Division of Western Industries, Inc.	Osceola, Wisconsin.....	Dewatered wastewater treatment sludge (EPA Hazardous Waste Nos. F006 and K062) generated from their electroplating operations and steel finishing after [date of publication]. When the nickel immersion process is in operation with the Phosphating process, NMSD must test weekly composites of the waste for nickel. If nickel leachate values exceed 10 ppm the waste must be managed as a hazardous waste.
Plastene Supply Company.....	Portageville, Missouri.....	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [date of publication].
Reynolds Metals Company.....	Sheffield, Alabama.....	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F019 generated from the chemical conversion of aluminum after [date of publication].
Universal Oil Products, Wolverine Division.....	Decatur, Alabama.....	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations and contained in two holding lagoons on [date of publication]. This is a one time exclusion.

³⁵ See footnote 6.

³⁶ See footnote 5.

³⁷ Once a final decision on this petition is made, a significant process change would require

submission of a new petition or treatment of the waste as hazardous.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Whirlpool Corporation	Fort Smith, Arkansas	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [date of publication].

[FR Doc. 86-9624 Filed 4-29-86; 8:45 am]
BILLING CODE 6560-50-M

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**
44 CFR Part 67
[Docket No. FEMA-6706]
**Proposed Flood Elevation
Determinations**
Correction
In FR Doc. 86-8413 beginning on page

12890 in the issue of Wednesday, April 16, 1986, make the following corrections:

1. On pages 12893 and 12894, the entires beginning with "Little Patuxent River" through "Clark's Creek" were printed in the wrong columns and should have appeared as set forth below:

State	City/Town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Little Patuxent River	At county boundary	*140	*133
			Approximately 1 mile upstream of U.S. Route 1	*184	*186
			At confluence of Middle Patuxent River	None	*180
			Upstream side of Interstate 95 southbound	None	*252
			At confluence of Lake Elkhorn Branch	None	*281
			Upstream side of U.S. Route 29	None	*308
			At confluence of Clark's Creek	None	*325
			At confluence of Stream LRP-6	None	*342
			Upstream side of Bethany Lane	None	*355
			Upstream side of Turf Valley Road	None	*409
			Approximately 1.48 miles upstream of Turf Valley Road	None	*439
		Beaver Run Branch	At confluence with Little Patuxent River	None	*281
			Upstream side of Seneca Drive	None	*308
			Upstream side of U.S. Route 29	None	*335
			Upstream side of Owen Brown Road	None	*370
			Approximately 300 feet upstream of Bright Plume Road	None	*400
		Tributary to Beaver Run Branch	At confluence with Beaver Run Branch	None	*317
			Approximately 200 feet upstream of footbridge	None	*356
		Lake Elkhorn Branch	At confluence with Little Patuxent River	None	*282
			Upstream side of Lake Elkhorn Dam	None	*299
			Upstream side of Oakland Mills Road	None	*310
			Upstream side of Old Montgomery Road	None	*340
			Approximately 0.47 mile upstream of Old Montgomery Road	None	*357
		Stream LPR-1	At confluence with Little Patuxent River	None	*307
			Approximately 0.38 mile upstream of Old Columbia Road	None	*321
			Approximately 0.76 mile upstream of Old Columbia Road	None	*339
			Approximately 1 mile upstream of Old Columbia Road	None	*356
		Wilde Lake Branch	At confluence with Little Patuxent River	None	*308
			Upstream side of Wilde Lake Dam	None	*338
			Approximately 250 feet upstream of Hesperus Drive	None	*365
		Stream LPR-2	At confluence with Little Patuxent River	None	*314
			Approximately 100 feet upstream of U.S. Route 29	None	*332
			Approximately 100 feet upstream of Lighting View Road	None	*349
		Stream LPR-3	At confluence with Little Patuxent River	None	*318
			Approximately 100 feet upstream of U.S. Route 29	None	*341
			Approximately 75 feet upstream of Old Annapolis Road	None	*370
		Stream LPR-4	At confluence with Little Patuxent River	None	*319
			Approximately 1,700 feet upstream of Ten Mills Road	None	*335
		Clark's Creek	At confluence with Little Patuxent River	None	*325
			Upstream side of Centennial Lane	None	*350
			Approximately 1.1 miles upstream of Centennial Lane	None	*378

2. On page 12896, in the second entry for Ohio, in the second column, the entry should read "Unincorporated areas of Franklin county."

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5b

Privacy Act of 1974; Proposed Exempt System

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services proposes to exempt a new system or records, 09-37-0019, "National Medical Expenditure Survey (NMES) Records," to be maintained by National Center for Health Services Research and Health Care Technology Assessment (NCHSR), from the subject access and amendment requirements of the Privacy Act to maintain the statistical nature of these documents.

DATE: Comments on the proposed amendment must be received on or before May 30, 1986.

ADDRESS: Address comments in writing to Carl C. Coleman, Acting Director, Freedom of Information/Privacy Division, Office of the Assistant Secretary for Public Affairs, Room 410 B, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Comments will be available for public inspection at this address on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Walden, Senior Research Manager, Division of Intramural Research, NCHSR, (301)-443-4836.

SUPPLEMENTARY INFORMATION: Section 304 of the Public Health Service (PHS) Act, 42 U.S.C. 242b, authorizes the Secretary, acting through the National Center for Health Service Research and Health Care Technology Assessment (NCHSR), to conduct and support research demonstrations, evaluations, and statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

The National Medical Expenditure Survey (NMES) succeeds a series of national medical expenditure surveys, most notably the 1977 National Medical Care Expenditure Survey (NMCES) and

the 1980 National Medical Care Utilization and Expenditures Survey (NMCUES). The new survey will collect information on health status, use of health care services, expenditures and sources of payment, insurance coverage, employment, and demographic information for a sample of civilian non-institutionalized as well as institutionalized populations. The data from this survey will be used solely for statistical purposes and for health policy research and analysis. No use will be made of the data which will affect the subject individuals or any of their rights, benefits or privileges.

The data collection activities of NCHSR are governed by 42 U.S.C. 242(d), section 308(d) of the PHS Act. Under this provision, information collected which can be identified with an individual may not be used for any purpose other than the purpose for which it is collected, i.e., statistical and health policy research. Further, no information may be released from health statistical data which might identify individuals or institutions unless the individuals or institution or authorized representative has given specific consent for such release.

Records on identifiable households, health care providers, employers, residents, and next of kin of such residents, of nursing and personal care homes, psychiatric hospitals, facilities for the mentally retarded, will be collected for NMES. Names, addresses and telephone numbers of individuals who respond on behalf of health care facilities and insurers will also be collected. Together, these records will constitute a "system of records" as that term is defined by the Privacy Act. Records will be retrieved by identifier as necessary to corroborate, complete or correct responses. Initially, the records were to be included under the broad National Center for Health Statistics (NCHS) systems of records 09-37-0010 and 09-37-0013 both of which contain prior medical expenditure survey data from the National Medical Care Expenditure Survey (NMCES) and the National Medical Care Utilization and Expenditure Survey (NMCUES). All data in these two systems are exempt from subject access and amendment requirements. However, the PHS has established a separate system of records for new NMES records (09-37-0019) which are to be administered by NCHSR and has published a notice in the Federal Register to this effect, 51 FR 2762, January 21, 1986.

It is herein proposed, in accordance with paragraph (k)(4) of the Privacy Act, that the new NMES material compiled by NCHSR and its contractor(s) be

maintained solely for health statistical research purposes and, like the original NMCES and NMCUES data, that it be exempted from paragraphs (c)(3), (d), (e)(4) (G) and (H), and (f) of the Privacy Act which essentially pertain to subject access and amendment rights.

The Department has determined that notice of the authorized exemption of this system of records from the above-cited subject access and amendment requirements of the Privacy Act is not a major rule within the meaning of Executive Order 12291, nor will it have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Finally, the proposal does not impose any new information collection requirements within the Paperwork Reduction Act.

List of Subjects in 45 CFR Part 5b Privacy.

Accordingly, the Department of Health and Human Services proposes to amend 45 CFR Part 5b as set forth below.

Dated: February 18, 1986.

Donald Ian Macdonald,

Acting Assistant Secretary for Health.

Approved: March 24, 1986.

Otis R. Bowen,

Secretary, Department of Health and Human Services.

PART 5b—PRIVACY ACT REGULATION

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

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11 is amended by adding paragraph (b)(2)(iii)(F) as follows:

§ 5b.11 Exempt systems.

* * * * *
(b) * * *
(2) * * *
(iii) * * *

(F) National Medical Expenditure Survey Records, HHS/OASH/NCHSR
* * * * *

[FR Doc. 86-9619 Filed 4-29-86; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-151; RM-4930]

FM Broadcast Station in Hyden, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot FM Channel 222A to Hyden, KY as that community's first FM channel in response to a petition filed by Ayers Shortt Sales, Inc.

DATES: Comments must be filed on or before June 16, 1986, and reply comments on or before July 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-8530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.
The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of amendment of § 73.202(b) Table of Allotments FM Broadcast Stations. (Hyden, Kentucky); MM Docket No. 86-151 RM-4930.

Adopted: April 14, 1986.

Released: April 24, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Ayers Shortt Sales, Inc. ("petitioner") requesting the allotment of FM Channel 222A to Hyden, Kentucky as that community's first FM allotment. Petitioner has expressed an intention to apply for the channel, if allotted. The channel can be allocated in compliance with the Commission's minimum distance separation requirements.

PART 73—[AMENDED]

2. In view of the fact that the proposed allotment could provide a first FM channel to Hyden, Kentucky, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules for the following community:

City	Channel No.	
	Present	Proposed
Hyden, KY.....		222A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in

the attached Appendix and are incorporated by reference herein.

Note. A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before June 16, 1986, and reply comments on or before July 1, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Mark E. Fields, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel to petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.
Charles G. Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in section 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel, if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-9661 Filed 4-29-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-150; RM-5232]

FM Broadcast Station in Loudon, TN**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: Action taken herein, at the request of Loudon Broadcasters, Inc., proposes the allotment of Channel 256A to Loudon, Tennessee, as that community's second FM service.

DATES: Comments must be filed on or before June 16, 1986, and reply comments on or before July 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION:**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of amendment of § 73.303(b), Table of Allotments, FM Broadcast Stations. (Loudon, Tennessee); MM Docket No. 86-150 RM-5232.

Adopted: April 10, 1986.

Released: April 23, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Loudon Broadcasters, Inc., ("petitioner") licensee of AM Station WLOD, Loudon, Tennessee, seeking the allotment of Channel 256A to Loudon, Tennessee, as that community's second FM service. Petitioner has expressed its intention to apply for the channel, if allotted.

2. The channel can be allotted consistent with the Commission's minimum distance separation requirements provided a site restriction of 3.5 kilometers (2.1 miles) northeast of Loudon is imposed to avoid a short spacing to Station WAHR(FM), Channel 256, Huntsville, Alabama.

PART 73—[AMENDED]

3. In view of the fact that the proposed allotment could provide a second FM service to Loudon, Tennessee, the

Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Loudon, TN	287A	256A, 287A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. **Note:** A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before June 16, 1986, and reply comments on or before July 1, 1986, and are advised to read the appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Rudolph L. Ennis, McCampbell & Young, 2021 Plaza Tower, P.O. Box 550, Knoxville, TN 37901.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counter proposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four

copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC

[FR Doc. 86-9862 Filed 4-29-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-153; RM-5185]

FM Broadcast Station in Kingsville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: Action taken herein, at the request of Whitlock Communications, Inc., proposes the substitution of Channel 248C1 for Channel 249A at Kingsville, Texas, and modification of the license of Station KDUV(FM), Kingsville, Texas, to specify operation on Channel 248C1, as that community's first wide coverage area FM service.

DATES: Comments must be filed on or before June 16, 1986, and reply comments on or before July 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.
The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations Kingsville, Texas; MM Docket No. 86-153, RM-5185.

Adopted: April 11, 1986.
Released: April 24, 1986.
By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Whitlock Communications, Inc. ("petitioner"), licensee of FM Station KDUV, Channel 249A at Kingsville, Texas, proposing the substitution of Class C1 Channel 248 for

Channel 249A and modification of its license to specify operation on Channel 248C1. Petitioner submitted information in support of the proposal and states the improved service would provide a new fulltime broadcast service to a substantial population.

2. The substitution can be made in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 kilometers (3.2 miles) southeast of Kingsville. This restriction is necessary to avoid short spacing to the buffer zone for Station KAJA(FM), Channel 247, San Antonio, Texas. Additionally, the proposal must conform with the technical requirements of § 73.1030(c)(1)-(5) of the Rules regarding protection to the Commission's monitoring station at Kingsville, Texas. Further, since Kingsville is located within 320 kilometers (200 miles) of the U.S.-Mexican border, concurrence must be obtained from the Mexican government before the channel can be allotted.

3. In accordance with our established policy, we shall propose to modify the license of Station KDUV(FM) to specify operation on Channel 248C1. However, if another party should indicate an interest in the Class C1 allotment, the modification may not be implemented unless an additional equivalent channel is allotted.⁴ See, *Modification of FM and TV Station Licenses*, MM Docket No. 83-1148, 98 F.C.C. 2d 916 (1984).

PART 73—[AMENDED]

4. Accordingly, in order to provide Kingsville with its first wide coverage FM station, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the community listed below, as follows:

City	Channel No.	
	Present	Proposed
Kingsville, Texas	224A, 249A	224A, 248C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

⁴ Pending before the Commission is the *Notice of Proposed Rule Making* in MM Docket No. 85-313, 50 FR 45439, published Octobr 31, 1985, proposing to permit FM stations to upgrade to adjacent superior classes of channel in their communities without having to demonstrate the availability of an equivalent channel in this type of proceeding. Parties should consider this proposal when commenting herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before June 16 1986, and reply comments on or before July 1, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Barry D. Wood, Kenneth D. Shirley, Wiley & Rein, Suite 1100, 1776 K Street, NW., Washington, DC 20006, (Counsel for petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For Further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply, comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in section 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, §73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or the other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-9663 Filed 4-29-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-148; RM-4931]

TV Broadcast Station in Grand Junction, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of VHF television Channel 13 to Grand Junction, Colorado, in response to a petition filed by KOB-TV, Inc.

DATES: Comments must be filed on or before June 16, 1986, and reply comments on or before July 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, or Stanley Schmulewitz, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Grand Junction, Colorado); MM Docket No. 86-148, RM-4931.

Adopted: April 9, 1986.

Released: April 23, 1986.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed on behalf of KOB-TV, Inc. ("petitioner") requesting the assignment of VHF television Channel 13¹ to Grand Junction, Colorado, as that community's sixth local television service. Petitioner indicates that if the channel is assigned to Grand Junction, as requested, it will file an application for a construction permit to build a television station primarily as a satellite of Station KOB-TV, Albuquerque, New Mexico.

2. Grand Junction (population 28,144),² the seat of Mesa County (population

¹ Petitioner initially requested Channel 11 but subsequently amended its proposal to specify consideration of Channel 13.

² Population figures were extracted from the 1980 U.S. Census.

81,530), is located in western Colorado, approximately 320 kilometers (200 miles) west of Denver. Currently, it is served by Station KREX-TV (Channel 5), KJCT (TV) (Channel 8), and Channel *18 (vacant). Additionally, Channels 2 and 4 have been proposed for assignment to Grand Junction in MM Docket No. 84-892.

3. A staff engineering study reveals that VHF television Channel 13 can be assigned to Grand Junction with a site restriction 12.3 miles south of the community to avoid short-spacing to Station KWWY-TV (Channel 13), Rock Springs, Wyoming. Moreover, the proposal will require a carrier offset.

PART 73—[AMENDED]

4. In consideration of the above, we believe it is appropriate to elicit comments on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed ¹
Grand Junction, CO.....	5-, 8-, 18+*	2+, 4+, 5-, 8-, 13-, and 18+*

¹ Channels 2 and 4 are proposed for assignment in MM Dkt. 84-892, 49 FR 38673, October 1, 1984.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before June 16, 1986, and reply comments on or before July 1, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Marvin Rosenberg, Esq., Richard S. Myers, Esq., Fletcher, Heald and Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036, (Counsel for Petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the*

Commission's Rules, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as

they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

(4) *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-9664 Filed 4-29-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-152; RM-5004]

TV Broadcasting Station in Waterville, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF Television Channel 23 to Waterville, Maine, in response to a petition filed by Kennebec Valley Television. The proposal could provide a first commercial service to the community.

DATES: Comments must be filed on or before June 16, 1986, and reply comments on or before July 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television Broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Waterville, Maine); MM Docket No. 86-152 RM-5004.

Adopted: April 14, 1986.

Released: April 24, 1986.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Kennebec Valley Television ("petitioner"), requesting that UHF Television Channel 35 (vacant) be reassigned from Lewiston, Maine to Waterville. The assignment could provide a first commercial television service to Waterville. Petitioner has submitted information in support of the assignment and stated its intention to apply for the channel, if allocated.

2. Waterville (population 17,179)¹, Maine, in Kennebec County (population 109,889), is located approximately 110 kilometers (70 miles) northeast of Portland.

3. A staff study has found that UHF Television Channel 23 could be assigned to Waterville with no change required at Lewiston. Channel 23 can be assigned to Waterville, Maine, in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules. Concurrence of the Canadian government is required since Waterville is located within 199 miles of the common U.S.-Canadian border.

PART 73—[AMENDED]

4. Comments are invited on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Waterville, ME.....		23-

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in

¹ Population figures are from the 1980 U.S. Census.

the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before June 16, 1986, and reply comments on or before July 1, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: David J. Kaufman, Mahn, Franklin & Goldenberg, 1718 Connecticut Avenue, NW., Washington, DC 20009.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.
Charles G. Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Allotments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposal allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposal Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-9665 Filed 4-29-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-149; RM-5171]

TV Broadcast Station in Corning, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF Channel 41 to Corning, New York, as the community's first local commercial television service, at the request of Clarence Smith.

DATES: Comments must be filed on or before June 16, 1986, and reply comments on or before July 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Corning, New York); MM Docket No. 86-149 RM-5171.

Adopted: April 10, 1986

Released: April 23, 1986

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Clarence Smith ("petitioner") requesting the assignment of UHF TV Channel 54 to Corning, New York, as the community's first local commercial television service. Petitioner states that he will apply for the channel, if assigned:

2. Corning (population 12,953)¹ in Steuben County (population 99,217), is located in south central New York, approximately 95 kilometers (60 miles) west of Binghamton, New York. Corning currently has assigned to it unoccupied and unapplied for UHF TV Channel *30, which is reserved for noncommercial educational use.

¹ Population figures are taken from the 1980 U.S. Census.

3. Channel 54 can be assigned to Corning in compliance with the Commission's minimum distance separation requirements but would require an excessive site restriction of 36.3 kilometers (22.7 miles) south in order to avoid short-spacings to existing stations in Erie, Pennsylvania, and Binghamton, New York, and to an unused channel assignment at Peterborough, Ontario, Canada.³ The staff has found that Channel 41 can be assigned to Corning, with a site restriction of only 20.6 kilometers (12.8 miles) southwest to avoid short-spacings to Station WMGC-TV, Binghamton, and to Station WENY-TV, Elmira, New York. Therefore, in light of the less restrictive site requirement, we will propose the assignment of Channel 41 rather than the requested Channel 54.

4. Canadian concurrence in the assignment must be obtained since Corning is located within 400 kilometers (250 miles) of the U.S.-Canada border.

PART 73—[AMENDED]

5. We believe the public interest would be served by proposing to assign a first local commercial channel to Corning. Accordingly, we propose to amend the Television Table of Assignments, § 73.202(b) of the commission's rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Corning, NY.....	*30	*30, 41+

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file

³ The assignment of Channel 41 at Corning would also avoid a conflict with the assignment of a first local television service at Williamsport, Pennsylvania (MM Docket 85-284, 50 FR 41176, published October 9, 1985). While the Notice therein proposed the assignment of Channel 32, the staff as found that there is a possible conflict with the use of that channel at Williamsport and existing land mobile operations at Philadelphia. The staff has performed an engineering study and one possible solution to the conflict would be the assignment of Channel 53 to Williamsport. However, first adjacent channel assignments are not possible here since Williamsport and Corning are located only 33 miles apart instead of the required 55 miles.

comments on or before June 16, 1986, and reply comments on or before July 1, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner as follows: Clarence Smith, SELMARK USA, P.O. Box 151, Buffalo, New York 14205.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will

be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-9666 Filed 4-29-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

50 CFR Part 23

Information Requested on Changes in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for information.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates trade in certain animal and plant species, which are listed in appendices to this treaty. Any nation that is a Party to CITES may propose amendments to Appendices I and II for consideration by the other Parties.

This notice announces plans by the Fish and Wildlife Service (Service) to develop proposals for the United States to amend Appendices I and II. The Service invites information and comments from the public on animal or plant species that should be considered as candidates for U.S. proposals. Such proposals may concern the addition of species to Appendix I or II, the transfer of species from one appendix to another, or the removal of species from Appendix I or II. A proposal may also concern the addition or exemption of parts and derivatives of plant species in Appendix II. The Service will use the information and comments received in determining whether to develop proposals for the next regular meeting of CITES Party nations.

DATE: The Service will consider all information and comments received by August 1, 1986, in determining whether it should develop proposals on particular species.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, Mail Stop: Room 527, Matomic Building, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in room 537, 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, at address given above, or telephone (202) 653-5948.

SUPPLEMENTARY INFORMATION: This is the first in a series of Federal Register notices about proposals to amend CITES Appendix I or II that will be considered at the sixth regular biennial meeting of the Parties. The purpose of this notice is to solicit information that will help the

Service to identify species that are candidates for addition, removal, or reclassification in the appendices, and parts and derivatives of Appendix II plants that warrant regulation. This request is not limited to species occurring in the United States. Any Party may submit proposals concerning wild animal or plant species occurring anywhere in the world.

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. The term "species" is defined in CITES as "any species, subspecies, or geographically separate population thereof." Each species for which trade is controlled is included in one of three appendices. The basic standards for including species in the appendices, as set forth below, are contained in Article II of CITES. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened species from other species at ports of entry.

For animals in Appendix I or II and plants in Appendix I, any readily recognizable part or derivative thereof is automatically included, by language in CITES, when the species is listed in the Appendices. For any plants added to Appendix II, readily recognizable parts and derivatives thereof must be specified to be included. All readily recognizable parts and derivatives of plants already listed on Appendix II were included, with certain exceptions, by amendment at the last Conference of the Parties held in Buenos Aires in 1985. See 50 FR 48212, 48219 (Nov. 22, 1985), to be codified at 50 CFR 23.23(d).

Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade. The present notice concerns only Appendices I and II.

The Parties have adopted a format for proposals to amend Appendix I or II, in order to ensure that certain types of information are provided. It is as follows:

A. Proposal

B. Proponent (nation)

C. Supporting statement

1. Taxonomy

11. Class

12. Order

13. Family

14. Genus, species or subspecies, including author(s) and year

15. Common name(s), including English common name(s), when applicable, and French and Spanish common names, if known

16. Code numbers, when applicable, e.g., International Species Inventory System (ISIS) number

2. Biological data

21. Distribution (current and historical)

22. Population (estimates and trends), and relevant information on population dynamics

23. Habitat (trends)

3. Trade data

31. National utilization

32. Legal international trade

33. Illegal trade

34. Potential trade threats

341. Live specimens

342. Parts and derivatives

4. Protection status

41. National

42. International

43. Additional protection needs

5. Information on similar species (addressing the issue of similarity in appearance)

6. Comments from countries of origin (other than proponent)

7. Additional remarks

8. References (to published literature and other documents)

Future Actions

The next regular meeting of the Parties is scheduled to be held in Ottawa, Canada, on July 12-24, 1987. Any proposals to amend Appendix I or II at the meeting must be submitted to the CITES Secretariat at least 150 days prior to the meeting (i.e., to be received by the Secretariat no later than February 12, 1987), and the Service plans to send any such proposals to the Secretariat in late January 1987.

The Service plans to publish a Federal Register notice in early November 1986 to announce tentative U.S. species proposals and to invite information and comments on them. Another notice in January 1987 will announce the Service's final decisions on species proposals to be submitted to the CITES Secretariat. In future notices, the Service also will address the development of U.S. negotiating positions on other issues and on proposals by other Parties to amend Appendix I or II.

Persons having comments and information on species that might be potential candidates for CITES proposals are urged to contact the Service's Office of Scientific Authority

This notice was prepared by Dr. Charles W. Dane, Chief, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et. seq.)

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Endangered and threatened plants, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Dated: April 23, 1986.

Susan E. Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-9589 Filed 4-29-86; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Parts 26, 36, and 96

Alaska National Wildlife Refuges, Management Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal of previously proposed rules.

SUMMARY: The Fish and Wildlife Service (Service) proposes to issue regulations applicable to all national wildlife refuges (NWRs) in Alaska. These proposed rules will further define and clarify two existing regulations and liberalize another. It is also the intent of this action to propose to remove 50 CFR 26.37, and Part 96, and withdraw proposed Parts 97-107 which were superseded by the enactment of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 3101) and the subsequent development of 50 CFR Part 36. No new or additional restriction or closures are proposed in these regulations.

DATE: Comments on these proposed rules must be submitted on or before June 30, 1986.

ADDRESS: Send comments to: Regional Director, (ATTN: William Knauer, Wildlife Resources), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3399.

FOR FURTHER INFORMATION CONTACT: Mr. William Knauer (address above) or the respective refuge manager at the address or telephone number listed below:

Refuge Manager, Alaska Maritime National Wildlife Refuge (NWR), P.O. Box 3069, Homer, AK 99603, (907) 235-6546

Refuge Manager, Alaska Peninsula NWR, P.O. Box 277, King Salmon, Alaska 99613, (907) 246-3339

Refuge Manager, Arctic NWR, Federal Building and Courthouse, 101 12th Ave. Box 20, Fairbanks, Alaska 99701 (907) 456-0250

Refuge Manager, Becharof NWR, P.O. Box 277, King Salmon, Alaska 99613, (907) 246-3339

Refuge Manager, Innoko NWR, General Delivery, McGrath, Alaska 99827 (907) 524-3251

Refuge Manager, Izembek NWR, Pouch 2, Cold Bay, Alaska 99571, (907) 532-2445

Refuge Manager, Kanuti NWR, Federal Building and Courthouse, 101 12th Ave., P.O. Box 20, Fairbanks, Alaska 99701, (907) 456-0329

Refuge Manager, Kenai NWR, P.O. Box 2139, Soldotna, Alaska 99669, (907) 262-7021

Refuge Manager, Kodiak NWR, P.O. Box 825, Kodiak, Alaska 99615, (907) 487-2600

Refuge Manager, Koyukuk NWR, P.O. Box 287, Galena, Alaska 99741, (907) 658-1231

Refuge Manager, Nowitna NWR, P.O. Box 287, Galena, Alaska 99741, (907) 658-1231

Refuge Manager, Selawik NWR, P.O. Box 270, Kotzebue, Alaska 99752, (907) 442-3799

Refuge Manager, Tetlin NWR, P.O. Box 155, Tok, Alaska 99780, (907) 883-5312

Refuge Manager, Togiak NWR, P.O. Box 10201, Dillingham, Alaska 99576, (907) 842-1063

Refuge Manager, Yukon Delta NWR, P.O. Box 346, Bethel, Alaska 99559, (907) 543-3151

Refuge Manager, Yukon Flats NWR, Federal Building and Courthouse, 101 12th Ave., Box 20, Fairbanks, Alaska 99701, (907) 452-0407.

SUPPLEMENTARY INFORMATION: These proposed rules are to further define and clarify two sections and liberalize another in the Management Regulations for Alaska National Wildlife Refuges (50 CFR Part 36, 48 FR 31827, June 17, 1981). They are proposed in accordance with the requirement for public participation found in 50 CFR 36.42.

The definition of off-road vehicles (ORV) is clarified to reduce confusion and more closely conform to the definitions used by other federal agencies.

The relaxation of regulations governing the use of live standing timber for subsistence purpose is based on a request by the Interior Regional Council Committee in the Annual Report to the Secretary for 1983 and on field examinations, which show the existing regulation to be burdensome and overly restrictive.

To make the present regulation (§ 36.21(e)) prohibiting the harassment of wildlife by aircraft more consistent with the general National Wildlife Refuge System's regulation (§ 27.34), certain terminology will be deleted.

The two rulemaking documents in 50 CFR 26.37 (finalized 3/4/80) and Part 96 (finalized 12/26/78 and amended 3/14/79), have been superseded by 50 CFR Part 36 and are no longer necessary. Proposed Parts 97-106 (general land management regulations for Yukon Flats and Becharof National Wildlife Monuments) (44 FR 37754, June 28, 1979) and Part 107 (mining on the two Monuments) (45 FR 2616, January 11, 1980) address monuments which since have become National Wildlife Refuges and therefore the proposals are no longer relevant.

Corrections include the listing of current Office of Management and Budget (OMB) information collection approval numbers and the listing of new refuge headquarters locations for permit applications and submissions.

The policy of the U.S. Fish and Wildlife Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments, suggestions, or objections regarding the proposal to the regional office at the address provided above. Public hearings to receive comments will be held in Anchorage, Fairbanks, Fort Yukon, and Galena, Alaska. Prior local notice will be provided in the major affected areas. All relevant comments will be considered prior to the issuance of final rules.

Conformance With Statutory and Regulatory Authorities

Section 304 of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 requires the Secretary to prescribe such regulations as may be necessary and appropriate to ensure that any activities carried out on a national wildlife refuge in Alaska are compatible with the purposes of that refuge.

The purposes of all 16 Alaska NWRs are specified in Sections 302 and 303 of ANILCA. The refuges that will be affected by these regulations were all established for the following purposes: (a) Conservation of fish and wildlife populations and habitats, (b) fulfillment of international treaty obligations, and (c) protection of water quality and quantity. All the Alaska refuges except Kenai NWR also have as a purpose the opportunity for continued subsistence use when consistent with purposes (a) and (b) above. In addition to the first

three purposes mentioned above, Kenai NWR is to provide opportunities for scientific research, interpretation, environmental education, land management training and fish and wildlife oriented recreation. An additional purpose of the Alaska Maritime NWR is to provide a program of scientific research on marine resources.

The proposed regulations were generated because of direct requests by the public to clarify certain sections of the Management Regulations and to alleviate the overly burdensome regulation on tree cutting.

The Service has analyzed the impacts of public use and access on certain Alaska refuges in the following final environmental impact statements: Proposed Alaska Coastal National Wildlife Refuge (October 1974); Proposed Alaska Peninsula National Wildlife Refuge (1976); Proposed Arctic National Wildlife Refuge (October 1974); Proposed Selawik National Wildlife Refuge (1975); Proposed Koyukuk National Wildlife Refuge (1974); Proposed Togiak National Wildlife Refuge (October 1974); Proposed Yukon Delta National Wildlife Refuge (October 1976); Operation of the National Wildlife Refuge System (November 1976); Alternative Administrative Actions, Alaska National Interest Lands (1978); and the Final Comprehensive Conservation Plans, Environmental Impact Statements, and Wilderness Reviews for Kenai, Becharof, Izembek, and Alaska Peninsula National Wildlife Refuges.

Public use and access were also evaluated for compatibility with refuge purposes in an environmental assessment on proposed rules for management of Alaska NWRs in May 1981. Adequately regulated public use is consistent with and will not interfere with the refuge purposes delineated above.

The proposed regulations have also been evaluated as to the impact on subsistence as required by ANILCA Section 810. Based on the determination that the proposed public use and access would not be significantly different from that currently allowed, these proposed regulations are consistent with the purposes and intent of Section 810 and will result in no significant restrictions on subsistence activities.

Environmental Considerations

The Final Environmental Statement for Operation of the National Wildlife Refuge System was filed with the Council on Environmental Quality on November 12, 1976. A notice of availability was published in the

Federal Register on November 19, 1976 (41 FR 51131). An environmental assessment and finding of no significant impact for the proposed interim rules for Alaska National Wildlife Refuges was approved on May 13, 1981. These proposed regulations do not involve a significant change in the level of use previously permitted. A thorough review was made of the existing environmental impact statements and assessments. A finding of no significant impact for these proposed rules was executed on May 23, 1985.

Information Collection

The Paperwork Reduction Act (Pub. L. 96-511) requires each information collection requirement to display an OMB clearance number and contain a statement to inform the person receiving the request why the information is being collected, how it will be used, and whether a response is voluntary, mandatory, or required to obtain a benefit. The Service has received approval from OMB for the information collection requirements of these regulations under the approval number cited below.

Type of information collection	OMB approval No.
Special use permits on Alaska refuges.....	1018-0061

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities requiring that public uses be compatible with the primary purposes for which the areas were established. The information will be used to award benefits. A response is required to obtain a benefit.

Economic Effects

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of a regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include

small businesses, organization or governmental jurisdictions.

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This rule is expected to cost the National Wildlife Refuge System less than \$1,000 annually for permit processing and is expected to cost the users of refuge resources who need permits less than \$1,700 annually (a cost of \$20 per individual for time and information to develop a permit application).

This rulemaking will impose no costs on small entities. The exact number of businesses and the amount of trade that will be affected by the rulemaking is unknown since the permits are generally issued to individuals. The aggregate effect will be a positive economic effect on a number of small entities that will be seasonal in nature and will, in most cases, merely continue pre-existing uses of refuge areas.

William Knauer, Wildlife Resources, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska, is the primary author of this proposed rulemaking document.

List of Subjects

50 CFR Part 26

National Wildlife Refuge System, Recreation, Wildlife refuges.

50 CFR Part 36

Alaska, National Wildlife Refuge System, Public land-mineral resources, Public lands-rights-of-way, Recreation, Traffic regulations, Wildlife refuges.

50 CFR Part 96

Alaska, Recreational areas, Wildlife refuges.

Accordingly, the proposed rule on Parts 97-107 is withdrawn, and 50 CFR is proposed to be amended as shown below:

PART 26—[AMENDED]

1. The authority for § 26.37 continues to read as follows:

Authority: National Wildlife Refuge Administration Act, 16 U.S.C. 668dd et seq.; Fish and Wildlife Act of 1956, 16 U.S.C. 742 et seq.; Federal Land Policy and Management Act, 204(j), 43 U.S.C. 1714(j).

§ 26.37 [Removed]

2. Section 26.37 is removed from 50 CFR Part 26.

PART 36—[AMENDED]

3. The authority for Part 36 continues to read as follows:

Authority: The Alaska National Interest Lands Conservation Act, Pub. L. 96-487 (December 2, 1980); the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. 668dd et seq.; Fish and Wildlife Act of 1956, 16 U.S.C. 742(a) et seq.; Refuge Recreation Act, 16 U.S.C. 460k et seq.; Paperwork Reduction Act of 1980, 94 Stat. 2812, Pub. L. No. 96-511.

§ 36.2 [Amended]

4. Amend § 36.2(h) by adding the sentence "It includes, but is not limited to, four-wheel drive or low-pressure-tire vehicles, motorcycles and related two-, three- or four-wheel vehicles, amphibious machines, ground-effect or air-cushion vehicles, airboats, recreation vehicle campers, and any other means of transportation deriving motive power from any source other than muscle or wind," immediately after the words "as defined in this section."

§ 36.3 [Amended]

5. Revise the first sentence of § 36.3 to read as follows: "The information collection requirements contained in §§ 36.15, 36.21, 36.22, 36.23, 36.24, 36.33, 36.39 and 36.41 of these regulations have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1018-0061."

§ 36.15 [Amended]

6. Amend § 36.15(a) by revising paragraphs (a)(1) and (2), and adding a new paragraph (a)(3), to read as follows: "(1) For live standing timber greater than six inches diameter at breast height (4½ feet above ground level), the refuge manager may allow cutting in accordance with the specifications of a special use permit if such cutting is determined to be compatible with the purposes for which the refuge was established; (2) For live standing timber between three and six inches diameter at breast height, cutting is allowed on the Arctic National Wildlife Refuge south of the divide of the Brooks Range and on the Innoko, Kanuti, Koyukuk, Nowitna, Selawik, Tetlin, and Yukon Flats National Wildlife Refuges unless restricted by the refuge manager. No more than 20 trees may be cut within any 20 acre block without a special use permit. On the remainder of the Arctic National Wildlife Refuge and on all other Alaska National Wildlife Refuges, the refuge manager may allow cutting in accordance with the specifications of a special use permit if such cutting is determined to be compatible with the purposes for which the refuge was established;

(3) For live standing timber less than three inches diameter at breast height, cutting is allowed unless restricted by the refuge manager.

§ 36.21 [Amended]

7. Revise § 36.21(e) to read as follows: "The operation of aircraft resulting in the harassment of wildlife is prohibited".

§ 36.41 [Amended]

8. Revise Subpart F, § 36.41(a)(1), to read as follows: "(1) These regulations and other regulations generally applicable to the National Wildlife Refuge System require that permits be obtained from the refuge manager. For activities on the Arctic, Kanuti, and Yukon Flats Refuges, permits are to be obtained from the respective refuge office in Fairbanks, Alaska. For activities on the Alaska Peninsula and Becharof Refuges, permits are to be obtained from the refuge office in King Salmon, Alaska. For activities on the Koyukuk and Nowitna Refuges, permits are to be obtained from the refuge office in Galena, Alaska. For activities on the Alaska Maritime, Innoko, Izembek, Kenai, Kodiak, Selawik, Tetlin, Togiak, and Yukon Delta Refuges and for the Aleutian Islands Unit of the Alaska Maritime Refuge, permits are to be obtained from the refuge manager, headquartered, respectively, in Homer, McGrath, Cold Bay, Soldotna, Kodiak, Kotzebue, Tok, Dillingham, Bethel, and Adak, Alaska. In all cases where a permit is required, the permittee must abide by the conditions under which the permit was issued."

PART 96—[REMOVED]

9. In 50 CFR, Part 96 is removed.

Dated: March 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish, Wildlife and Parks.

[FR Doc. 86-9600 Filed 4-29-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 216**

[Docket No. 51203-5203]

Regulations Governing the Taking and Importing of Marine Mammals

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

ACTION: Denial of a Petition to Undertake Rulemaking.

SUMMARY: On June 21, 1985, the National Marine Fisheries Service (NMFS) published a Notice of Receipt of a petition to undertake rulemaking (50 FR 25725). The petition received from Safari Club International requested several modifications to the U.S. marine mammal regulations that would require periodic review of the status of marine mammal species and a determination on whether the moratorium on the taking and importation of any of these species should be waived. Under the Marine Mammal Protection Act, there is a moratorium on taking marine mammals unless an exception has been made. Under the Safari Club proposal, waivers, if not implemented within two years of publication of the proposed rulemaking, would be withdrawn not later than thirty days thereafter. NMFS is required to publish notice of receipt of a rulemaking petition, solicit comments on its merit, determine whether or not to propose a rule within 120 days of receipt and publish notice of the determination in the Federal Register. This notice of denial of the petition completes these requirements.

ADDRESS: Requests for information on this Notice should be addressed to the Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: K. R. Hollingshead (Marine Resource Management Specialist) 202/634-7529.

SUPPLEMENTARY INFORMATION:**Background**

On May 7, 1985, the Safari Club International petitioned the Secretary of Commerce, as provided under the Administrative Procedure Act (APA) (5 U.S.C. 553(e)), for rulemaking requiring NMFS to conduct a periodic review of the status of marine mammal species and to determine whether the moratorium on any of these species should be waived. The NOAA Directives require NMFS to publish notice of the receipt of this petition and solicit public comment.

Specifically, the petitioner requested that NMFS implement six changes to 50 CFR Part 216. The proposed changes are as follows: (1) Add a new Subpart J to 50 CFR Part 216 requiring a review of the status of marine mammal species at least once every five years to determine whether the Marine Mammal Protection Act (16 U.S.C. 1361-1407) (MMPA) moratorium on the taking and importing of marine mammals and marine mammal products should be waived for any species;

(2) With respect to the five-year review, amend § 216.73 of Chapter 50 by adding a new paragraph (c) requiring the Director (Assistant Administrator for Fisheries) to offer the substance of the Federal Register notice required by this section for publication in appropriate scientific journals;

(3) Amend § 216.90(c) by adding the requirement that final regulations waiving the moratorium with respect to any species of marine mammal, or part thereof, will be published in the Federal Register not later than two years after the date of publication of the notice of proposed waiver;

(4) If a final regulation is not adopted within this two-year period, the Director will publish a notice of withdrawal in the Federal Register not later than 30 days after the end of this period;

(5) The Director will not prepare a regulation waiving the moratorium with respect to any species of marine mammals, or part thereof, for which a proposed regulation has been withdrawn unless he receives sufficient new information to warrant the proposal of a regulation, or unless three years have elapsed since the withdrawal of a prior proposed regulation to waive the moratorium; and

(6) Publication in the Federal Register of any final regulation waiving the moratorium will include a summary of the data on which the regulation is based and must show the relationship of the data to the regulations.

Public Comments

NMFS received three letters commenting on the petition. Comment: The Eskimo Walrus Commission stated it agreed that a periodic review of regulations governing marine mammals should be required. They also advocated public hearings in Alaska with the user group protected by the "Native exemption". The Walrus Commission also stated that regulations for importing marine mammals and marine mammal products should be a little less stringent.

Response: Since NMFS has denied the rulemaking petition for the reasons given below, holding a public hearing would serve no purpose at this time. We regard these comments to be more pertinent to consideration of Management Authority to States, under 50 CFR Part 403, than to the petitioned action.

Comment: The Center for Environmental Education (CEE) stated that a waiver of the moratorium is clearly the intention of the petitioner, that the petitioner should justify such a waiver and that the legislative history of the MMPA is clear in placing this burden of justification on those seeking

a waiver to the moratorium. The CEE believes that the cost for conducting such a review, holding hearings and promulgating regulations should be borne by the petitioner. Additionally, CEE recommended that NMFS consult with Fish and Wildlife Service (FWS) which also has responsibilities under the MMPA.

Response: NMFS agrees with the comment that the legislative history of the MMPA places the evidentiary burden on the person seeking a waiver of the moratorium to justify the need for and the appropriateness of the waiver. NMFS did consult with FWS which received an identical rulemaking petition (see 50 FR 32099, August 8, 1985).

Comment: The Marine Mammal Commission provided extensive comments on each aspect of the petition and recommended that the petition be denied in its entirety. The Commission's discussion of the six elements of the petition is summarized below.

1. "The Marine Mammal Protection Act does not require status reviews to be conducted on a set schedule. Instead, it 'authorizes' and 'directs' the Secretary to conduct reviews on the status of species 'from time to time . . . ' 16 U.S.C. 1371(a)(3)(A). The apparent intent of this section is to provide the Secretary with flexibility to take action whenever it comes to his attention that it is appropriate to do so and to waive the moratorium. Under this flexible approach, the Secretary is free to initiate steps to waive the moratorium when a legally sufficient request to do so has been submitted by another party or when, based upon agency review of a particular fact situation, it is determined that such action would be consistent with the Marine Mammal Protection Act. Petitioner has set forth no compelling reason why this workable statutory scheme should be abandoned in favor of the more inflexible procedure they propose."

2. "Even if the Service grants Petitioner's five year status review request, we consider it unnecessary to publish notice in scientific journals. Federal Register notice should suffice for purposes of notifying interested parties of agency action under the Marine Mammal Protection Act, and there is no apparent reason to depart from this practice in the case of a five year status review. Such a requirement also could establish an undesirable precedent requiring journal publication of other Marine Mammal Protection Act and Endangered Species Act actions. The request to amend 50 CFR Part 216 for this purpose should therefore be denied."

3. "There is no requirement in the Marine Mammal Protection Act that proceedings on a waiver be completed within a specified time period. Sufficient time limitations on conducting a waiver rulemaking are already contained in the Service's regulations in 50 CFR Part 216, Subpart G. Provided that scheduling problems do not arise, it is likely that most waiver proceedings would be completed within Petitioner's requested two year time frame. It is possible, however, that complicated waiver proceedings would require more time to complete. In such a situation, it would be contrary to section 101(a)(3)(A) of the Act to require by regulation that a waiver review be terminated before the Secretary has had an opportunity to 'determine when, to what extent, if at all, and by what means, it is compatible with this chapter to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product . . . ' 16 U.S.C. 1371(a)(3)(A). For this reason, and because there is no apparent benefit to be derived from such a limitation, the Commission recommends that this request be denied."

4. "As noted above, it is possible that adequate review of a waiver request will require more than two years. In such an instance, it would be inappropriate, if not contrary to the requirements of section 101(a)(3)(A) of the Marine Mammal Protection Act, to mandate withdrawal of a waiver request at the end of the two year period. Section 101(a)(3)(A) requires the Secretary to adopt suitable regulations, issue permits, and make determinations in accordance with section 102, 103, 104, and 111 of the Marine Mammal Protection Act with respect to each proposed waiver 16 U.S.C. 1371(a)(3)(A). This mandatory administrative review and decision-making procedure should be allowed to run its course, regardless of the amount of time required. The request to amend 50 CFR Part 216 for this purpose should therefore be denied."

5. "There is no apparent need for such a regulation [to require that a proposed waiver may not be proposed unless new information is received or unless three years has elapsed from proposal.] Moreover, as Petitioner has noted, section 101(a)(3)(A) authorizes and directs the Secretary 'from time to time' to take action, in appropriate cases, to waive the moratorium. *Id.* Petitioner's proposed amendment could produce a result that is inconsistent with these requirements by imposing a mandatory three year period, instead of the Act's

more flexible 'from time to time' authorization. Moreover, section 101(a)(3)(A) requires that such action be taken on the basis of the best scientific evidence available. Petitioner would replace this requirement with a 'sufficient new information standard' which also could produce a result that is inconsistent with the Act. The request to amend 50 CFR Part 216 for this purpose should therefore be denied."

6. "This requirement [that a final rule include a summary of the data supporting the waiver] is unnecessary. Section 101(a)(3)(A) requires that the procedures of section 103 of the Marine Mammal Protection Act be followed when promulgating waiver regulations. Section 103(d)(3) requires that the Secretary publish and make available to the public at the time of publication of a notice to waive the moratorium 'a statement describing the evidence before the Secretary upon which he proposes to waive such regulation . . . 16 U.S.C. 1373(d)(3). Such publication should satisfy Petitioner's request on this point. In addition to this Marine Mammal Protection Act requirement, the general rulemaking requirements of the Administrative Procedure Act also would require that a summary similar to that requested by the petitioner be

included in the proposed and final regulations. Petitioner's request on this point would therefore achieve no useful purpose and should be denied."

Response: NMFS agrees with the comments of the Marine Mammal Commission.

Discussion

NMFS has denied the Safari Club International's petition based on the determination that the MMPA does not require that status reviews be conducted on a specific schedule, rather it directs that such reviews be conducted 'from time to time.' This aspect of the statute gives NMFS authority to initiate waiver proceedings prescribed in the MMPA at any time. NMFS believes that administrative resources can best be utilized if waiver proceedings are initiated only when there is an indication that a waiver may be appropriate or when a specific proposal is under consideration. The existing procedures have served in eight previous considerations of waivers of the moratorium, and NMFS has determined that the existing statutory scheme should not be abandoned in favor of the more inflexible procedures proposed in the petition.

NMFS has determined that the existing regulations regarding section 103(d) hearings on waivers of the moratorium are in conformance with the MMPA and the APA. The proposed change to require status reviews of each species to be published in scientific journals has no legal basis and the editorial boards of scientific journals are not under any legal obligation to publish government proceedings. The existing regulatory requirement of publishing waiver proceedings in the *Federal Register* provides for public participation in the process and preserves due process required by the APA. The petitioner's recommendation to include a "summary by the Director of the data on which such regulations are based. . .", is provided for by the MMPA and has been adhered to by NMFS in all previous waiver proceedings.

For these reasons, the petition of Safari Club International is denied.

Dated: April 25, 1986.

Carmen J. Blondin,

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

[FR Doc. 86-9636 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 51, No. 83

Wednesday, April 30, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 25, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250 (202) 447-2118.

Comments on any of items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Packers and Stockyards Administration "Clear Title" Regulations to implement Section 1324 of the Food Security Act of 1985

One time only for each respondent, however, program ongoing State or local governments; 50 responses; 600 hours; not applicable under 3504(h)

James L. Smith (202) 447-7063

Extension

- Agricultural Stabilization and Conservative Service 7 CFR Parts 726 and 728-MQ-108-1—Report of Unmarketed Tobacco MQ-108-1

Annually

Farms; 300,000 responses; 20,000 hours; not applicable under 3504(h)

Donald M. Blythe, (202) 447-2715

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc 86-9673 Filed 4-29-86; 8:45 am]

BILLING CODE 3410-01-M

Soil Conservation Service

Environmental Statements; Hancock Cove Watershed, UT

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969; as amended; the Council on Environmental Quality NEPA Regulations (40 CFR Part 1500-1508); and the Soil Conservation Service NEPA Procedures (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hancock Cove Watershed, Duchesne County, Utah.

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, Room 4402, Federal Building, 125 South State Street, Salt Lake City, Utah 84147, telephone 801-524-5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on

the environment. As a result of these findings, Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for irrigation water conservation and improvement of soil resources. The planned works of improvement include 14 structures for water control, 18,000 feet of conveyance pipelines, and lining about 300 feet of Hancock Lateral. Land treatment includes 24 side-roll sprinkler systems on 1,509 acres along with conservation cropping systems and irrigation water management, installing 15,000 feet of group pipelines, and other onfarm conservation practices.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Francis T. Holt.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: April 22, 1986.

Francis T. Holt,

State Conservationist.

[FR Doc. 86-9593 Filed 4-29-86; 8:45 am]

BILLING CODE 3410-16-M

Environmental Statements; North Deer Creek Watershed, OK

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: Roland R. Willis, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of Oklahoma, is hereby providing notification that a record of decision to proceed with the installation of the North Deer Creek watershed project is available. Single copies of this record of decision may be obtained from Roland R. Willis at the address shown below.

FOR FURTHER INFORMATION CONTACT:

Roland R. Willis, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma 74074, telephone (405) 624-4360.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs and projects are applicable)

Dated: April 22, 1986.

Donald R. Vandersypen,

Assistant State Conservationist (WR).

[FR Doc. 86-9594 Filed 4-29-86; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS**Michigan Advisory Committee; Agenda and Notice of Public Meeting**

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m., on May 15, 1986, at the Ann Arbor Hilton, Victorian Room, 610 Hilton Blvd. (I-94 & State St.), Ann Arbor, Michigan. The purpose of the meeting is to discuss the status of civil rights in Michigan and committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles H. Tobias, or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86-9591 Filed 4-29-86; 8:45 am]

BILLING CODE 6335-01-M

Oregon Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 9:45 a.m. and adjourn at 5:30 p.m., on May 8, 1986, at the Kah-Nee-Ta Conference Facility, Warm Springs,

Oregon. A factfinding meeting will be held on Indian school dropouts.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Huffman or Susan McDuffie Director of the Northwestern Regional Office at (206) 442-1246, (TTD 206/442-4744). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The Meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-9590 Filed 4-29-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE**International Trade Administration****Export Trade Certificate of Review**

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Pacific Northwest Fish Export Association, Inc. (PNFEA). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the *Federal Register*. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the

determination on the ground that the determination is erroneous.

Description of Certified Conduct**Export Trade**

Products: fish and fish products including salmon (fresh, frozen, canned and roe), herring roe, tanner crab, king crab, and black cod (sablefish).

Services: consulting; international market research; advertising; marketing; insurance; product research and design, exclusively for export; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods in connection with the export of fish and fish products.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. PNFEA may compile for, collect from, and disseminate to its members the following information regarding the export of fish and fish products to the Export Markets:

a. sales and marketing efforts and opportunities in the Export Markets for fish and fish products, including, but not limited to, the pricing of exports and selling strategies, sales, projected demand, standard terms of sale, financing, insurance, transportation, foreign competition and customers' specifications, all in the Export Markets;

b. quality and quantity of fish and fish products available for export by its members, including, but not limited to, export inventory levels and geographic availability; and

c. U.S. and foreign legislation, regulations and policies affecting export sales.

2. The members may, in meetings conducted by PNFEA, discuss information regarding the export of fish and fish products to the Export Markets as enumerated in paragraph 1 above.

3. PNFEA and the members may prescribe the following conditions on the acquisition and sale of PNFEA stock:

a. each new shareholder must execute and accede to the PNFEA shareholders' agreement on the same terms as the original shareholders, and

b. any shareholder desiring to sell its stock shall offer such stock to PNFEA at book value for thirty (30) days, and after thirty (30) days, shall offer such stock to any other shareholder of the corporation at book value for fifteen (15) days. After such fifteen (15) day period, the shares may be sold to anyone, subject to the same restriction on any subsequent retransfer of shares.

Definitions

For purposes of this certificate, "member" shall have the meaning set forth in § 325.2(e) of the Regulations and does not denote ownership of stock in PNFEA. The following entities are "members" of PNFEA: Icicle Seafoods, Inc., Seattle, WA; Ocean Beauty Seafoods, Inc., Seattle, WA; Peter Pan Seafoods, Inc., Seattle, WA; and Sea-Alaska Products, Inc., Seattle, WA.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 24, 1986.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 86-9670 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance; Deluxe Craft Manufacturing Co., et al.

Petitions have been accepted for filing on the dates indicated from the following firms: (1) DeLuxe Craft Manufacturing Company, 1945 North Fairfield Avenue, Chicago, Illinois 60647, producer of photo albums, scrap books, binders and desk accessories (December 19, 1985); (2) L.E. Jones Company, 1200 34th Avenue, Menominee, Michigan 49858, producer of valve seat inserts (December 20, 1985); (3) U.S. Repeating Arms Company, P.O. Box 30-300, New Haven, Connecticut 06511, producer of firearms (December 23, 1985); (4) Medko, Inc., 4500 Quebec Avenue North, Minneapolis, Minnesota 55428, producer of metal electronic components (December 23, 1985); (5) Coronet Leather Finishing Corporation, 201 Central Street, Georgetown, Massachusetts 01833, processor of leather (December 26, 1985); (6) The Harry Gill Company, P.O. Box 428, Urbana, Illinois 61801, producer of track and field equipment (December 27, 1985); (7) Jerome

Industries Corporation, 730 Division Street, Elizabeth, New Jersey 07201, producer of transformers (December 30, 1985); (8) The Carpenter Shoe Company, Inc., P.O. Box 1387, Green Cove Springs, Florida 32043, producer of children's footwear (December 30, 1985); (9) Rochester Button Company, 107 Norris Drive, Rochester, New York 14610, producer of buttons (December 31, 1985); (10) Amtec Enterprises, Inc., 645 North 3rd Street, Newark, New Jersey 07107 (December 31, 1985).

In addition, the following petitions were accepted on April 18, 1986, following the reauthorization of the trade adjustment assistance program: (11) Acme United Corporation, 425 Post Road, Fairfield, Connecticut 06430, producer of scissors, shears, rulers, yardsticks, letter openers, nail clippers, medical instruments and hospital supplies; (12) The American Fabrics Company, 1069 Connecticut Avenue, Bridgeport, Connecticut 06609, producer of lace and embroideries; (13) American Ventures International, 9449 West Jefferson, Culver City, California 90230, producer of fabric; (14) Amkey, Inc., 220 Allardvale Street, Wilmington, Massachusetts 01887, producer of electronic keyboards; (15) Better Coil & Transformer Corporation, 90 East Union Street, Goodland, Indiana 47948, producer of transformers; (16) Bigg Electronics, Inc., 1227 Walt Whitman Road, Melville, New York 11747, producer of audio equipment; (17) Chautauqua Vineyards, Inc., 10001 Route 60, Fredonia, New York 14063, producer of wine and wine jelly; (18) Colloid Chemicals, Inc., P.O. Box 240238, Charlotte, North Carolina 28224, producer of dyestuffs; (19) Crown-Globe, Inc., P.O. Box 226, Philadelphia, Pennsylvania 19528, producer of men's, women's, and children's shirts and underwear (20) Devar, Incorporated, 706 Bostwick Avenue, Bridgeport, Connecticut 06605, producer of computer components and process control instruments; (21) Elkhart Cases, Inc., P.O. Box 1414, Elkhart, Indiana 46515, producer of musical instrument cases and other plastic articles; (22) Flair Manufacturing Corporation, 600 Old Willets Path, Hauppauge, New York 11788, producer of heating and air conditioning controls; (23) Hoskins Lumber Company, 23888 Highway 20, Philomath, Oregon 97370, producer of lumber; (24) J&K Sales Company, Inc., 10 Front Street, Pawtucket, Rhode Island 02860, producer of jewelry; (25) J.W. Bray Company, Inc., 305 East Hawthorne Street, Dalton, Georgia 30720, producer of women's footwear; (26) Keystone Electronics Corporation, 49 Bleecker Street, New York, New York

10012, producer of electronic components and hardware; (27) LeBow Jewelry, Ltd., 50 Vision Boulevard, East Providence, Rhode Island 02914, producer of jewelry and jewelry chains; (28) Letisse, Inc., 330 Fifth Avenue, New York, New York 10001, producer of handbags and belts; (29) P/A Industries, Inc., 522 Cottage Grover Road, Bloomfield, Connecticut 06002, producer of metal stamping and web processing equipment; (30) P.B. Machine Company, Inc., 2 Elm Street, Holcomb, New York 14469, producer of fasteners; (31) Power Systems, Inc., 12 Tobey Road, Bloomfield, Connecticut 06002, producer of electronic voltage regulators; (32) Rochester Metal Products Corporation, P.O. Box 2505, Muncie, Indiana 47302, producer of iron castings; (33) Russell Aives Mills, Ltd., 13 Lucon Drive, Deer Park, New York 11729, producer of men's, women's and children's sweaters; (34) S. Howes Company, Inc., Howard Street, Silvercreek, New York 14136, producer of processing equipment; (35) San Juan Manufacturing, Inc., 3102 B Street Northwest, Auburn, Washington 98001, producer of sailboats; (36) Styletek, Inc., 1857 Middlesex Street, Lowell, Massachusetts 01851, producer of footwear components; (37) Suncook Woven Label Company, Inc., P.O. Box 234, Suncook, New Hampshire 03275, producer of fabric labels; (38) Topco, Inc., 107 Trumbull Street, Elizabeth, New Jersey 07206, producer of lamps, lamp parts and waste receptacles; (39) Transco Products Corporation, 609 West Elizabeth Avenue, Linden, New Jersey 07036, producer of blank recording discs; and (40) Windstreamers, Inc., 1045 12th Northwest, Issaquah, Washington 98027, producer of wind banners.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618), as amended. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the

tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Insofar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Charles L. Smith,

Acting Chief, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 86-9656 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical advisory Committee will be held May 20, 1986, at 9:30 a.m., the Herbert C. Hoover Building, Room B841, 14th and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

General Session

1. Opening remarks by the Chairman.
2. Comments by the public.
3. Up-date on delay in announcement of floppy disk de-control.
4. Up-date on the foreign availability submission re: Floppy disks.
5. ECCN 1572—1" Video Tape: Status of re-defining advisory note 6(C)(3). Video Tape Recorders.
6. ECCN 1565—Plotters: Status of re-defining Supp. No. 1 to 399.1 CCL58.
7. Section 378—Tech Data Regulations: Discussion regarding clarity of recent changes.
8. Public Rule-Making—Discussion regarding practical use within D.O.C.
9. Election of Chairmen: Tech Regulations Sub-Committee and Foreign Availability Sub-Committee.
10. Tutorial Presentation—Tektronix.
11. Introduction of guest attendees.
12. 1986 Charter of CP-TAC.
13. Recommendations for de-control submitted by CDC: Floppy Disks, Mag. Tape, Graphic Displays, Disk Drives.
14. Update on the status of the automated licensing process.
15. New Business.

Executive Session

16. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217. For further information or copies of the minutes contact Margaret A. Cornejo, (202) 377-5535.

Dated: April 25, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-9660 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong To Review Trade in Category 651

April 24, 1986.

On April 1, 1986, the Government of the United States requested consultations with the Government of Hong Kong with respect to man-made fiber textile products in Category 651 (pajamas and nightwear of man-made fiber). This request was made on the basis of the agreement, effected by exchange of notes dated June 23, 1982, as amended, between the governments of the United States and Hong Kong relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations between the two governments, the United States may request the Government of Hong Kong to limit exports in Category 651, produced or manufactured in Hong Kong and exported to the United States during 1986. The United States reserves the right to control imports at the established level.

Anyone wishing to comment or provide data or information regarding the treatment of Category 651 under the

agreement with Hong Kong, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-9631 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Combining Import Limits Established for Certain Cotton Textile Products Produced or Manufactured in India

April 24, 1986.

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 May 1, 1986. For further information contact Claudia Wolfe, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 27, 1985 a notice was published in the *Federal Register* (50 FR 52985), which announced the restraint limits for certain specified categories of

cotton, wool, and man-made fiber textile products, including gingham and other yarn-dyed fabrics in Categories 310 and 318, produced or manufactured in India and exported to the United States during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. Under the terms of their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, as amended, the Governments of the United States and India have agreed to combine the individual limits of 749,000 square yards and 4,066,000 square yards established, respectively, for Categories 310 and 318 into an overall limit of 4,815,000 square yards for Categories 310 and 318 for the 1986 agreement period. There are no sublimits. Accordingly, in the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to establish the combined limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.
April 24, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 23, 1985 which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in India.

Effective on May 1, 1986, the directive of December 23, 1985 is hereby further amended to combine the previously established limits for cotton textile products in Categories 310 and 318 into a single limit, as follows:

Category	12-month restraint level ¹
310/318	4,815,000 square yards.

¹The limit has not been adjusted to reflect any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Leonard A. Mobley,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 86-9627 Filed 4-29-86; 8:45 am]
BILLING CODE 3510-DR-M

Amending Export Visa Requirement for Certain Cotton Textile Products Produced or Manufactured in India

April 24, 1986.

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 May 1, 1986. For further information contact Claudia Wolf, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, as amended, the Governments of the United States and India have agreed to further amend the existing export visa requirement to permit the use on the visas of either the merged Category 310/318, or one or the other of the individual categories in the merger. This amendment will apply to cotton fabrics in Category 310/318 which have been produced or manufactured in India and exported to the United States during the twelve-month period which began on January 1, 1986 and until further notice. Merchandise in Category 310/318, exported before January 1, 1986, may be visaged using the merged Category 310/318, provided all other requirements established under this visa arrangement have been met.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF

SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

Leonard A. Mobley

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 24, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of November 26, 1979, as amended, which established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in India.

Effective on May 1, 1986 and until further notice, the existing export visa requirement established by directive of November 26, 1979, as amended, is hereby further amended to permit entry for consumption, or withdrawal from warehouse for consumption, in the United States of cotton textile products in Category 310/318 which have been visaged as Category 310/318, or either one of the categories in the combination, if imported on and after January 1, 1986. Cotton textile products in Category 310/318, exported before January 1, 1986, may be visaged using the merged Category 310/318, provided all other requirements established under this visa arrangement have been met.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Leonard A. Mobley,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 86-9628 Filed 4-29-86; 8:45 am]
BILLING CODE 3510-DR-M

Import Restraint Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Korea

April 24, 1986.

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 May 1, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 18, 1985, a notice was published in the *Federal Register* (50 FR 52356) which established import control

limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. In the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to also control imports of man-made fiber textile products in Category 649 (brassieres and body-supporting garments), produced or manufactured in Korea and exported during the same twelve-month period, at 500,752 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 24, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 18, 1985 which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Korea.

Effective on May 1, 1986, the directive of December 18, 1985 is hereby further amended to include a limit for man-made fiber textile products in Category 649 of 500,752 dozen.¹

To the extent that there is any unfilled balance in the limit for Category 649, goods exported during the 1985 agreement period should be charged to that limit. Goods in excess of that limit should be charged to the limit established for the category during the 1986 agreement period.

Textile products in Category 649 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.

The Committee for the Implementation of Textile Agreements has determined that this

¹ The limit has not been adjusted to account for any imports exported after December 31, 1985. Charges for Category 649 for the period January 1, 1986 through February 28, 1986 are 3,734 dozen.

action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

FR Doc. 86-9632 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Limit for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

April 25, 1986.

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 May 1, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On March 3, 1986, a notice was published in the *Federal Register* (51 FR 7314), which established an import restraint limit for cotton skirts in Category 342, produced or manufactured in Sri Lanka and exported during the 90-day period which began on January 31, 1986 and extends through April 30, 1986.

During consultations held under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, the Governments of the United States and Sri Lanka have agreed to further amend their agreement to establish a specific limit of 59,671 dozen for cotton skirts in Category 342, produced or manufactured in Sri Lanka and exported during the period which began on January 31, 1986 and extends through May 31, 1986. The letter to the Commissioner of Customs which follows this notice implements the agreed amendment.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff

Schedules of the United States annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 25, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 26, 1986 which directed you to prohibit entry of certain cotton textile products, produced or manufactured in Sri Lanka and exported during the 90-day period which began on January 31, 1986 and extends through April 30, 1986.

Effective on May 1, 1986, the letter of February 26, 1986 is hereby amended to establish a specific limit of 59,671 dozen¹ for cotton skirts in Category 342, produced or manufactured in Sri Lanka and exported during the period beginning on January 31, 1986 and extending through May 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-9633 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Officials Authorized To Issue Export Visas for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

April 24, 1986.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, the Government of Sri Lanka has notified the United States Government that Mr. R.M.C. Ranasinghe and Mr. Y.A. Dayaratne have been named to sign export visas issued by the Ministry of Textile Industries in place of Mr. H.B. Herath and Mrs. P.G.P. Abeyratna, who will no longer sign export visas. The purpose of this notice is to advise the public of this change.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-9629 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-DR-M

¹ The limit has not been adjusted to account for any imports exported after January 30, 1986.

Announcing Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products, Produced or Manufactured in Taiwan

April 24, 1986.

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 May 1, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the bilateral agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan, a decision has been reached to convert to specific limits in 1986 the levels for certain cotton, wool and man-made fiber textile products in Categories 301, 310/318, 352, parts of 359 (cotton headwear, vests, and infants' sets), 360, 361, 363, 369pt., 436, 440, 442, 443, 611, part of 614, 632, 649, and 651, exported to the United States during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. The letter to the Commissioner of customs which follows this notice establishes the new specific limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,
Acting Chairman, Committee for the
Implementation of Textile Agreements.
April 24, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC
20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20,

1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the bilateral textile agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, in excess of the indicated restraint limits:

Category	Twelve-mo. restraint limit ¹
301	427,433 pounds.
310/318	5,740,000 square yards.
352	878,397 dozen.
359 pt. ²	4,100,000 pounds.
359 pt. ³	1,250,500 pounds.
359 pt. ⁴	971,423 pounds.
360	809,324 numbers.
361	1,019,900 numbers.
363	12,117,070 numbers.
369 pt. ⁵	2,205,023 pounds.
436	4,394 dozen.
440	10,100 dozen.
442	37,471 dozen.
443	3,924 dozen.
611	1,205,481 square yards.
614 pt. ⁶	14,273,125 square yards.
632	4,202,500 dozen pairs.
649	659,075 dozen.
651	393,344 dozen.

¹ The restraint limits have not been adjusted to reflect any imports exported after December 31, 1985.

² In Category 359, only T.S.U.S.A. numbers 702.0600, 702.1200.

³ In Category 359, only T.S.U.S.A. numbers 384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.3445, 384.3446, 384.3447, 384.3448, 384.5162, 384.5163, 384.5167, 384.5169, 384.5172.

⁴ In Category 359, only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0648, 384.0652, 384.4300, 384.4420.

⁵ In Category 359, only T.S.U.S.A. numbers 706.3210, 706.3650, 706.4111.

⁶ In Category 614, only T.S.U.S.A. numbers 338.5040, 338.5045, 338.5051, 338.5056, 338.5061, 338.5065, 338.5069, 338.5072, 338.5075, 338.5079, 338.5084, 338.5087, 338.5092, 338.5095, and 338.5098.

Sincerely,

Leonard A. Mobley,
Acting Chairman, Committee for the
Implementation of Textile Agreements.
[FR Doc. 86-9630 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Malaysia

April 28, 1986.

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 April 30, 1986. For further information contact Claudia Wolfe, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce,
(202) 377-4212.

Background

On February 25, 1986, a notice was published in the *Federal Register* (51 FR 6578) which established an import restraint limit for cotton playsuits and sunsuits in Category 337, produced or manufactured in Malaysia and exported during the ninety-day period which began on January 30, 1986 and extends through April 29, 1986. The notice also stated that, if no mutually satisfactory solution is reached on a level for this category during consultations, the United States Government, pursuant to the agreement, may establish a prorated specific limit for the period immediately following the ninety-day consultation period. Inasmuch as no solution has been reached, the United States Government has decided to establish a prorated specific limit of 22,989 dozen for Category 337 for the period beginning April 30, 1986 and extending through December 31, 1986. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Malaysia, further notice will be published in the *Federal Register*. In the event the limit established for the ninety-day period has been exceeded, such excess amount, if allowed to enter, will be charged to the level established for the designated prorated period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982, (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57884), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1986).

Leonard A. Mobley,
Acting Chairman, Committee for the
Implementation of Textile Agreements.
April 28, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and

December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and July 11, 1985, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 30, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 337, produced or manufactured in Malaysia and exported during the period beginning April 30, 1986 and extending through December 31, 1986, in excess of 22,989 dozen.¹

Textile products in Category 337 exported during the ninety-day period which began on January 30, 1986 and which are in excess of the level established for that period shall be charged to the prorated level beginning on April 30, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-9741 Filed 4-28-86; 10:58 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of

submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for a Department of the Army Permit. This program regulates the alteration and quality of U.S. waters. The public submits the application to obtain permission to undertake construction related activities that would affect navigation channels and other U.S. waters. The impacts on navigation, water quality, the environment, and other factors are considered in the Corps review.

Individual or firms making structural changes affecting the navigational waters of the U.S.

Responses: 14,000.

Burden Hours: 70,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

FOR FURTHER INFORMATION CONTACT:

A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, DAIM-ADI-M, Room 1C638 The Pentagon, Washington, DC 20310-0700, telephone (202) 695-1671.

Patricia H. Means,

*OSD Federal Register Liaison Officer
Department of Defense.*

April 24, 1986.

[FR Doc. 86-9578 Filed 4-29-86; 8:45 am]

BILLING CODE 3810-01-M

Military Traffic Management Command Directorate of Personal Property; International Program

AGENCY: Military Traffic Management Command (MTMC), Army, DOD.

ACTION: Notice of invitation to comment on the solicitation for movement of unaccompanied baggage and crated household goods under the Direct Procurement Method (DPM) between

installation transportation offices and water and aerial ports within the continental United States.

SUMMARY: The MTMC is planning to solicit rates for movement of unaccompanied baggage and crated household goods moving between installations and ports. Your comments are requested for inclusion in our final solicitation. Comments from the freight forwarders/carriers, as well as any other interested persons or agencies, are being solicited for the following proposed provisions:

a. Freight forwarders/carriers will be requested to submit a single factor rate to include the following services:

(1) Pickup shipment at local contractor at origin installation, or from origin port.

(2) Surface transportation to meet desired delivery dates.

(3) Delivery to destination shown on Government Bill of Lading as directed by the installation transportation office.

b. Traffic moving under the DPM method of shipment between ports and installation transportation offices will be offered based on the most favorable rate submitted for each traffic channel. The Government reserves the right to use the method of shipment serving the best interest of the Government and service member.

c. Rates submitted will be for a 6-month period with an option for cancellation at designated periods within the cycle.

This invitation consists of ideas and issues identified by MTMC. Any freight forwarder/carrier interested in participating in the program must write to this office in order to receive a copy of the solicitation.

DATE: submit written comments by May 30, 1986.

FOR FURTHER INFORMATION CONTACT:

Mrs. Naomi King or Mr. Russell MacDonald, HQ, Military Traffic Management Command, ATTN: MT-PPC (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041-5050, Commercial Phone (202) 756-2385.

Address Comments To: HQ, Military Traffic Management Command, ATTN: MT-PPC (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041-5050, (FILE: DPM SURFACE).

This request for comments and the resulting determinations are being made under the authority of 10 USC 2301-2314 and DOD Directives 4500.9 and 4500.34.

Joseph R. Marotta,

Colonel, General Staff, Director of Personal Property.

[FR Doc. 86-9595 Filed 4-29-86; 8:45 am]

BILLING CODE 3710-08-M

¹ The limit has not been adjusted to account for any imports exported after April 29, 1986.

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) on Permit Application 85-021 for the Proposed Pamo Dam and Reservoir Project, San Diego County, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: a. *Proposed Action.* The San Diego County Water Authority (SDCWA) has applied to the Corps of Engineers for a permit under Section 404(b)(1) of the Clean Water Act for a proposed emergency water supply project. The SDCWA proposes to construct a dam and reservoir in the Pamo Valley, northeast San Diego County, to supplement the existing emergency and dry year water supply capability of the San Diego Aqueduct system by providing additional local storage capacity for imported water. In addition to its role in regional storage, the Pamo Reservoir would provide the Miramar Water Filtration Plant, the largest in the SDCWA service area, with an adequate emergency supply; presently, this facility has only a minimal emergency supply.

The reservoir would store imported water as well as capture winter runoff from the local watershed and would have a total storage volume of 130,000 acre-feet (af). 100,000 af of this volume would be utilized for storage of imported water for emergency dry-year use, while the remaining 30,000 af would be utilized for storage of local runoff which is expected to produce an average yield of 11,300 af/year. A 66-inch pipeline would be constructed between the reservoir and the First and Second San Diego Aqueducts to pump imported water to the reservoir and to deliver water by gravity to the Miramar Filtration Plant.

The SDCWA also proposes to construct a pipeline between the upstream Sutherland Reservoir and the Pamo Reservoir. The purpose of the pipeline would be to regulate flows from Sutherland Reservoir more efficiently in order to avoid situations where spills over Sutherland Dam occur. A second feature of this portion of the project is the construction of a hydro-electric plant which would be powered by water transported through the pipeline between the Sutherland and Pamo Reservoirs. This facility would produce an estimated 9.3 million kilowatt hours (kwh) of electricity per year. Electricity

generated by this project would more than compensate for the energy consumed in pumping imported water to the Pamo Reservoir and would produce a surplus of up to 7.8 million kwh/year which would be sold to the San Diego Gas and Electric Company.

A fishing concession to be operated by the City of San Diego Water Utilities Department is also expected to be located at the Pamo Reservoir. The specific design and opening date for a fishing operation have not been determined at this time.

b. *Alternatives.* The SDCWA has considered several alternatives to the proposed Pamo Dam and Reservoir. They include:

- (1) No project,
- (2) Improvement of the existing local water delivery system,
- (3) Impoundment of natural flow with a new dam in Pamo Valley, with an intertie to San Vicente Reservoir,
- (4) Increased storage capacity of Lake Henshaw,
- (5) Use of groundwater storage,
- (6) Water transfer from the Imperial Irrigation District to the Metropolitan Water District.
- (7) Development of a "water banking" system on Lake Mead, and
- (8) Storage of excess water in the Chino Basin.

These alternatives will be addressed in the EIS, as would any other reasonable alternatives which could be formulated during the scoping process.

c. *Scoping Process.* The SDCWA prepared an EIR on the proposed project which was completed in March 1984. Public comments were received on this document through letters of comment and verbal comments in public and agency meetings. The Corps released a Public Notice of permit application, dated October 4, 1986, and has received to date approximately 100 letters of comment in response. All of this public input will be considered in the scoping process for the EIS. A range of concerns have been identified thus far, and include:

- (1) Potential use of stored water for purposes other than emergencies,
- (2) Relationship to other water projects in the region,
- (3) Potential growth inducing effects,
- (4) Impacts to biological resources and mitigation needs, and
- (5) Impacts to cultural resources and mitigation needs.

d. *Future Public Meetings.* A public scoping meeting will be scheduled in the near future to further discuss concerns and identify significant issues for consideration in the DEIS.

e. *Availability of DEIS.* The DEIS is anticipated to be circulated for public review in October 1986.

f. *Address.* Questions and comments about the proposed action and DEIS can be addressed to: Glenn Lukos, Regulatory Functions Branch, U.S. Army Corps of Engineers, P.O. Box 2711, Los Angeles, California 90053.

John O. Roach, II

Army Liaison Officer with the Federal Register.

[FR Doc. 86-9596 Filed 4-29-86; 8:45 am]

BILLING CODE 3710-KF-M

To Prepare a Draft Supplemental Environmental Impact Statement; Atchafalaya Basin Floodway System, Morgan City, LA

AGENCY: U.S. Army Corps of Engineers, DOD, New Orleans District; DOD.

ACTION: Notice of Intent to Prepare a Draft Supplemental Environmental Impact Statement (EIS).

SUMMARY: 1. *Proposed Action.* The New Orleans District, Corps of Engineers, is conducting a reevaluation study of the extension of the authorized East Atchafalaya Basin Protection Levee (Avoca Island Levee) feature of the Atchafalaya Basin Floodway System, Louisiana project. The purpose of this study is to evaluate possible solutions to flooding problems in the Morgan City, Louisiana vicinity, that are directly related to operation of the Atchafalaya Basin Floodway.

2. *Alternatives.* a. Two primary approaches to flood control are being considered. One consists of further extension of the existing Avoca Island Levee beyond the Avoca Island cutoff channel. The other consists of construction of a barrier levee and pumping station system that would lie generally along or parallel to the new U.S. Highway 90 presently being built from Houma to Morgan City. This alternative would also include ring levees around the industrial sections of the Morgan City-Amelia area that lie outside of the protected area of the barrier levee.

b. Where appropriate, nonstructural measures such as flood proofing of building, relocation of structures, and regulation of use of the flood-plain are also being evaluated. To offset any significant environmental losses that would be caused by flood control measures, appropriate fish and wildlife or cultural resources mitigation measures are being studied. The alternative of no action, or future conditions without Federal action, is

also being evaluated and will serve as the base line for determination of the effects of alternative plans developed.

3. Scoping Process. a. Public Involvement. Since initiation of the study in 1983, numerous contacts have been made in person and by letter with various local, state, or Federal governmental groups, private interest groups, and individuals to solicit input regarding issues that should be considered in this study. Major emphasis has been given to meeting with interested groups in Terrebonne Parish and the Morgan City area, the locations likely to be affected most by any flood control alternative eventually implemented.

b. Significant Issues to be Analyzed in the EIS. A Cost-effective and publicly acceptable solution to flooding problems in the Morgan City vicinity has been sought for many years. Proposed extension of the Avoca Island Levee has stimulated much controversy, with public and agency opinions being split over the potential wisdom of such an action. Many citizens in Terrebonne Parish and some environmental groups believe levee extension would be harmful to their interests in the rich marsh-estuarine region of the Parish. On the other hand, many citizens and businesses in the Morgan City vicinity continue to suffer from damaging floods related to increasingly high water levels in the Lower Atchafalaya River. Increasingly high water levels in the areas northeast of Morgan City also appear to be causing decreased timberland productivity and loss of income to landowners in that zone. To further complicate the issues, apparent land subsidence appears to be aggravating flooding problems. The reevaluation study and Draft Supplemental EIS will attempt to analyze all of these issues and demonstrate how alternative flood control plans would affect both the human and natural environment. It will also show how proposed fish and wildlife or cultural resource mitigation measures may be used to offset or compensate for significant adverse environmental impacts.

c. Environmental Review and Consultation Requirements. The Draft Supplemental EIS will be made available to the public and interested state and Federal agencies for a minimum review period of 45 days. Throughout the study process, consultation has occurred with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Louisiana Department of Wildlife and Fisheries, and other interested local, state and

Federal parties. Such consultation will continue in the future.

4. Scoping Meeting. Due to the large amount of public involvement that has already occurred during the initial phases of this study, no plans have been made for an additional formal public scoping meeting. Public input will be solicited regarding any additional issues that should be addressed in the EIS by means of Public Scoping Notice requesting submission of written comments.

5. Availability. The Draft EIS is currently scheduled to be available to the public in early 1987.

ADDRESS: Questions about the proposed action and Draft Supplemental EIS can be directed to Dr. Thomas M. Pullen, Jr., U.S. Army Corps of Engineers, Environmental Analysis Branch (LMVPD-R), Lower Mississippi Valley Division, P.O. Box 80, Vicksburg, Mississippi 39180-0080, telephone (601) 634-5851 or Mrs. Sue Hawes, U.S. Army Corps of Engineers, Environmental Quality Section (LMNPD-RE), New Orleans District, P.O. Box 60267, New Orleans, Louisiana 70160-0267, telephone (504) 862-2518.

Dated: April 18, 1986.
Eugene S. Witherspoon,
Colonel, Corps of Engineers, District Engineer.
[FR Doc. 86-9618 Filed 4-29-86; 8:45 am]
BILLING CODE 3710-84-M

DEPARTMENT OF EDUCATION

Vocational Education National Council Meeting

AGENCY: National Council on Vocational Education, Education.

ACTION: Notice of Public Meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: May 21st and 22nd, 1986.

ADDRESS: Holiday Inn, Crowne Plaza, Los Angeles International Airport, 5985 Century Boulevard, Los Angeles, California 90045, (213) 642-7500.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under Section 104 of the Vocational Education

Amendments of 1968, Pub L. 90-576. The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under the title and publish and distribute the results thereof.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Edwards, Executive Assistant, 2000 L Street, NW., Suite 580, Washington, DC 20036, (202) 634-6110.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 A.M. to 4:30 P.M.

Signed at Washington, DC, on April 23, 1986.

James W. Griffith,
Executive Director.
[FR Doc. 86-9585 Filed 4-29-86; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. C186-372-000]

Chevron U.S.A. Inc. and Texas Eastern Transmission Corp.; Application

April 24, 1986.

Take notice that on April 22, 1986, Chevron U.S.A. Inc. ("Chevron") 575 Market Street, San Francisco, California 94105, and Texas Eastern Transmission Corp. ("Texas Eastern"), Post Office Box 2521, Houston, Texas 77252, filed a Joint Application (i) for any necessary Certificates of Public Convenience and Necessity authorizing or an order otherwise approving Chevron to sell quantities of natural gas from certain designated fields to Texas Eastern upon expiration of the contract between Gulf Oil Corporation ("Gulf") and Texas Eastern dated January 6, 1964 ("1964 Contract") and an order approving the

arrangements described therein for the transportation of such natural gas from the designated fields to Texas Eastern's pipeline system and (ii) for an order or orders amending the order of the Federal Power Commission of December 19, 1963, issuing a certificate of public convenience and necessity to Gulf to sell natural gas to Texas Eastern pursuant to the 1964 Contract and "Opinion No. 780 and Order on Deliveries of Gas Under Certificate and Warranty Contract" issued October 15, 1976, in Docket No. C164-26, to authorize Chevron to sell and deliver natural gas to Texas Eastern in accordance with an amendment dated April 11, 1986, ("1986 Amendment") to the 1964 Contract, all as more fully described in the Joint Application on file with the Commission and open for public inspection.

The proposal of Chevron and Texas Eastern are contained in four agreements, of which the two basic agreements are the 1986 Amendment and the Tail End Agreement, entered into by them on April 11, 1986. It is alleged that these two agreements constitute an arrangement under which the rate of delivery of natural gas under the 1964 Contract will continue at the current level of approximately 400,000 Mcf per day until its expiration, while providing Texas Eastern with substantial additional natural gas supplies from certain designated fields upon expiration of the 1964 Contract.

The Tail End Gas Agreement sets forth in Appendix A the fields and oil and gas leases which Chevron will commit to Texas Eastern for the delivery of natural gas to Texas Eastern upon expiration of the 1964 Contract. It provides the mechanism for executing and the terms and conditions of the Gas Purchase Contracts under which the natural gas underlying those fields and leases will be sold to Texas Eastern upon expiration of the 1964 Contract. Each Gas Purchase Contract will have a term or provide for extension(s) of term which extends from the expiration of the 1964 Contract until the natural gas reserves underlying the field are depleted. If the price of the natural gas is regulated, it will not be more than the applicable maximum price. The terms and conditions will be representative of the terms and conditions of gas purchase contracts being entered into by willing Sellers and willing Buyers of natural gas for offshore natural gas supplies in the Gulf of Mexico in comparable arms-length transactions. It is the intention of the parties that each Gas Purchase Contract be representative of competitive terms and

conditions of the market existing during that period. In addition, each Gas Purchase Contract will contain a provision permitting Texas Eastern to reduce the price payable thereunder to the market clearing level of its markets.

The Tail End Gas Agreement also provides the mechanism for entry into and the terms and conditions of the agreements to transport the remaining natural gas reserves from the delivery point in each of the designated fields to Texas Eastern's pipeline system. It is contemplated that such transportation of natural gas will be through Chevron-owned facilities or pursuant to Chevron third-party transportation and/or exchange agreements that are currently transporting natural gas from these fields for delivery to Texas Eastern under the 1964 Contract. The Tail End Gas Agreement provides that each transportation of the remaining natural gas reserves from the designated fields to Texas Eastern's pipeline system will be at just and reasonable rates determined in accordance with the ratemaking methodology used by FERC under the Natural Gas Act for comparable transportation service.

The 1986 Amendment changes the 1964 Contract solely in respect of the daily and annual take quantities thereunder. It does not change, *inter alia*, the price, the total quantity of approximately 4.4 Tcf of warranty natural gas deliverable under the 1964 Contract, the fixed term thereof, or the force majeure provisions. Under the 1986 Amendment the Daily Contract Quantity will be reduced from 500,000 to 400,000 Mcf of natural gas, Texas Eastern will be required to take 400,000 Mcf of natural gas per day averaged over each year and 350,000 Mcf of natural gas each day, and Texas Eastern will have the right to take quantities of natural gas in excess of 400,000 Mcf per day if Chevron determines it has excess quantities of natural gas to sell to Texas Eastern. If Chevron fails to deliver quantities of natural gas up to 50,000 Mcf per day in excess of the Daily Contract Quantity of 400,000 Mcf as requested by Texas Eastern, then Texas Eastern's yearly take obligation will be reduced by the quantity of such excess natural gas which Chevron fails to deliver. The eighty percent take or pay provision and the right of Texas Eastern to call for 625,000 Mcf of natural gas deliveries per day will no longer be applicable.

Texas Eastern and Chevron allege that their proposal as set forth in the 1986 Amendment to the 1964 Contract and the Tail End Gas Agreement are in the public interest. Under the 1986

Amendment deliveries will continue under the 1964 Contract at the current level of approximately 400,000 Mcf of natural gas per day which is expected to be maintained until delivery of all of the natural gas under the 1964 Contract. At that delivery rate all of the approximately 4.4 Tcf of natural gas will be delivered in November, 1989, which is approximately one year before the end of the fixed term of the 1964 Contract, assuring that Texas Eastern will be able to take all of the natural gas before the expiration of the fixed term of the 1964 Contract. Under the Tail End Gas Agreement, deliveries of natural gas will continue without interruption from the dedicated fields under market sensitive agreements upon expiration of the 1964 Contract. Texas Eastern estimates that upon expiration of the 1964 Contract, the natural gas reserves underlying the dedicated fields will range from 300 to 500 Bcf and will have a deliverability of between 200,000 and 400,000 Mcf per day. Texas Eastern and Chevron allege that the proposal is clearly beneficial to Texas Eastern and its customers since they will continue to receive the same benefits they have been recently receiving under the 1964 Contract, while receiving the additional substantial benefit of the continuation without interruption upon termination of the 1964 Contract of estimated deliveries ranging from 200,000 to 400,000 Mcf per day from dedicated natural gas reserves estimated to range from 300 to 500 Bcf.

Two other agreements are part of the overall transaction between Chevron and Texas Eastern. They are the Termination of the 1967 Contract and a Transportation Letter Agreement, both dated April 11, 1986. The 1967 Agreement is a surplus gas purchase contract dated July 1, 1967 covering fields utilized to service the 1964 Contract which has been dormant for many years. No natural gas has been delivered under this contract for approximately seventeen years. Chevron is concurrently filing a separate application with FERC for permission and approval to abandon service under this terminated contract. Authorization to abandon this service is a condition to the effectiveness of the 1986 Amendment and the Tail End Gas Agreement.

Under the Transportation Letter Agreement Texas Eastern agrees to cooperate with Chevron in a good faith effort to minimize Chevron's third-party transportation costs under the 1964 Contract to the extent it is operationally feasible and Texas Eastern's commitments permit it to receive gas at

other receipt points and Texas Eastern does not incur any third-party costs. Any necessary authorizations in respect of specific transportation or exchange arrangements will be applied for as such arrangements are entered into.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 12, 1986, file with the Federal Energy regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211), as amended. 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.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-9694 Filed 4-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C186-340-000 et al.]

Cities Service Oil and Gas Corp.; Application

April 24, 1986.

Take notice that on April 17, 1986, Cities Service Oil and Gas Corporation (Applicant), of P.O. Box 300, Tulsa, Oklahoma 74102, filed an application as successor in interest, and pursuant to § 157.23(b) for Certificates of Public Convenience and Necessity to render service previously authorized by the Commission under Small Producer Certificate of Public Convenience and Necessity heretofore issued by Oxy Petroleum, Inc., et al., all as more fully shown on Exhibit "A" and on file with the Commission and open to public

inspection. Applicant also requests to be substituted for Oxy Petroleum, Inc., in any related proceedings presently pending before the Commission.

Any person desiring to be heard or to make any protest with reference to said application should, on or before May 12, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

EXHIBIT A

Docket No.	Purchaser	Contract date	Property covered
C186-365-000.....	ANR Pipeline Co.....	Contract 9/28/79; supplement 1/1/86 (Contract #865).....	OCSG-2409, High Island 312, Offshore Texas.
C186-364-000.....	.....do.....	Mesa Petroleum Co., Contract 4/23/79; ratification 9/26/79, supplement 1/1/86 (Contract #893).	OCSG-2398, High Island 273, Offshore Texas.
C186-362-000.....	.....do.....	Contract 12/31/74; supplements 12/30/74, 7/11/75, 2/21/79, 1/1/86 (Contract #899).	OCSG-2619, Ship Shoal 115, Offshore Louisiana.
C186-361-000.....	Columbia Gas Transmission Corp.....	Contract 3/22/79; supplement 1/1/86 (Contract #862).....	OCSG-2591, S. Marsh Island, 146, Offshore Louisiana.
C186-360-000.....	.....do.....	Contract 3/22/79; supplement 1/1/86 (Contract #869).....	OCSG-2910, Eugene Island 327, Offshore Louisiana.
C186-358-000.....	.....do.....	Contract 12/8/78; supplement 1/1/86 (Contract #896).....	OCSG-3171, S. Pelto 13, Offshore Louisiana.
C186-366-000.....	Northern Natural Gas Co.....	Contract 2/14/78; supplement 1/1/86 (Contract #855).....	OCSG-3374, Galveston 144-L, Offshore Texas.
C186-363-000.....	Northwest Pipeline Corp.....	Contract 1/3/58; supplements 2/26/60, 7/14/60, 11/30/61, 9/1/64, 9/1/64, 9/11/64, 10/15/64, 3/21/72, 11/18/73, 2/21/74, 10/30/75, 1/1/86 (Contract #912).	San Juan Basin, Rio Arriba County, New Mexico.
C186-359-000.....	Sea Robin Pipeline Co.....	Contract 11/10/69; supplements 1/1/75, 6/2/76, 1/1/86 (Contract #861).	OCSG-1525, Ship Shoal 222, Offshore Louisiana.
C186-358-000.....	Southern Natural Gas Co.....	Contract 7/22/82; supplements 7/22/82, 1/1/85, 4/23/85, 1/1/86 (Contract #902).	OCSG-3416, S. Pass 57, Offshore Louisiana.
C186-343-000.....	Texas Eastern Transmission Corp.....	Contract 11/20/64; supplements 11/20/64, 1/19/66, 3/1/67, 5/1/67, 10/31/68, 8/13/73, 12/9/74, 8/7/79, 11/30/84, 1/1/86 (Contract #849).	W. Grand Cane Field, DeSoto Parish, Louisiana.
C186-342-000.....	Texas Gas Transmission Corp.....	Contract 11/24/81; supplements 1/5/82, 2/3/82, 4/26/82, 1/1/86 (Contract #903).	OCSG-3411, Ship Shoal Area, Blk. 15, Offshore Louisiana.
C186-357-000.....	Transco Gas Supply Co.....	Contract 11/13/78; supplements 9/29/82, 4/13/83, 6/28/85, 1/1/86 (Contract #872).	OCSG-2426, High Island 340; OCSG-2739, High Island 339, Offshore Texas.
C186-355-000.....	.....do.....	Contract 6/3/79; supplements 9/29/82, 4/13/83, 6/28/85, 1/1/86, (Contract #875).	OCSG-2410, High Island 313, Offshore Texas.
C186-354-000.....	.....do.....	Contract 4/20/79; supplements 9/29/82, 4/13/83, 6/28/85, 1/1/86 (Contract #878).	OCSG-2366, High Island 474, OCSG-2372, High Island 489, Offshore Texas.
C186-341-000.....	.....do.....	Contract 9/29/82; supplements 9/29/82, 1/1/86 (Contract #881).....	OCSG-2388, High Island 563; OCSG-2389, High Island 564; OCSG-2719, High Island 582, Offshore Texas.
C186-352-000.....	.....do.....	Contract 5/10/79; supplements 9/29/82, 4/13/83, 6/28/85, 1/1/86 (Contract #883).	OCSG-2412, High Island 317, Offshore Texas.
C186-351-000.....	.....do.....	Contract 6/25/76; supplements 9/29/82, 4/13/83, 6/28/85, 1/1/86 (Contract #884).	OCSG-2421, High Island 330; OCSG-2743, High Island 349, Offshore Texas. OCSG-2557, W. Cameron 612, Offshore Louisiana.
C186-350-000.....	.....do.....	Contract 8/1/79; supplements 9/29/82, 4/13/83, 6/28/85, 1/1/86 (Contract #890).	OCSG-2398, High Island 273, Offshore Texas.
C186-346-000.....	Transcontinental Gas Pipe Line Corp.....	Contract 4/20/79; supplements 9/29/82, 4/13/83, 6/28/85, 1/1/86 (Contract #887).	OCSG-2367, High Island 475, Offshore Texas.
C186-353-000.....	.....do.....	Contract 4/19/79; supplements 9/29/82, 4/13/83, 6/28/85, 1/1/86 (Contract #895).	OCSG-3286, W. Cameron 613, Offshore Louisiana.
C186-349-000.....	.....do.....	Contract 5/17/71; supplements 2/20/74, 2/25/74, 6/25/84, 1/1/86 (Contract #904).	OCSG-1984, Ship Shoal 225, Offshore Louisiana.
C186-348-000.....	Trunkline Gas Co.....	Contract 3/11/80; supplement 1/1/86 (Contract #874).....	OCSG-2409, High Island 312, Offshore Texas.
C186-347-000.....	United Gas Pipe Line Co.....	Contract 8/3/79; supplements 2/13/80, 1/1/86, (Contract #863).....	Do.
C186-345-000.....	.....do.....	Contract 9/14/79; supplement 1/1/86 (Contract #889).....	OCSG-2398, High Island 273, Offshore Texas.
C186-344-000.....	.....do.....	Contract 3/31/82; supplement 1/1/82 (Contract #898).....	OCSG-3118, High Island 499, Offshore Texas.

[Docket No. ER86-398-000]

Florida Power Corp.; Amended Filing

April 24, 1986.

Take notice that on April 17, 1986, Florida Power Corporation (Florida Power) tendered for filing information intended to supplement its April 9, 1986 filing in the above docket number. The information includes the second of two agreements between Florida Power and the Florida Municipal Power Agency which was omitted from the original filing.

Any person desiring to be heard or to protest the application 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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 1, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-9646 Filed 4-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA83-20-001]

Frontier Oil and Refining Co., Petition for Exemption From Incremental Pricing Provisions and for Interim Relief

Issued: April 24, 1986.

On March 27, 1986, Frontier Oil and Refining Company (Frontier) filed with the Federal Energy Regulatory Commission (Commission) a petition for an adjustment from the incremental pricing provisions of Title II of the

Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3341-3348 (1982). Frontier seeks an interim and permanent exemption from incremental pricing surcharges for its Cheyenne, Wyoming refinery, to be effective August 1, 1985. 18 CFR 385.1101(a)(2) and 385.1113 (1985).

In its petition, Frontier requests the Commission to grant interim relief immediately, pending further review by the Commission, to grant relief for a minimum period of two years after review by the Commission, and to waive the filing fee set for such petitions, since the basis for the petition is out-of-pocket losses. In its petition, Frontier notes that it is a small, independent oil refiner owning only one refinery with an operating capacity of 35,000 barrels per day in Cheyenne, Wyoming. The refinery is classified as an industrial boiler fuel facility using natural gas for boiler fuel use. 15 U.S.C. 3341 (1982). Frontier notes that the Commission has granted similar relief to Husky Oil Company (Husky), Frontier's predecessor-in-interest in the Cheyenne refinery. The Commission's relief to Husky covered billing months from August 1984 through July 1985.

Frontier argues that interim relief is warranted not only because it is in the public interest but also because denial of the interim relief will result in irreparable injury, special hardship, and inequity to Frontier. Frontier also argues that the permanent relief from the Commission's incremental pricing procedures is warranted to prevent and alleviate special financial hardship. According to Frontier, the facility's out-of-pocket costs, including incremental pricing surcharges, exceed the facility's total sales revenues.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. 18 CFR Part 385, Subpart K (1985). Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the

provisions of Subpart K. All motions to intervene must be filed within fifteen days after publication of this notice in the Federal Register.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-9647 Filed 4-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C186-324-000]

Gillring Oil Co.; Application for Abandonment of Service

April 25, 1986.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C186-324-000, B, Apr. 9, 1986	Gillring Oil Co.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc. Agua Dulce Field, Nueces County, Texas	(*)	

¹ Additional information received April 21, 1986.

² Applicant, a small producer certificate holder in Docket No. CS71-683, requests authorization to abandon its sale of gas to Tennessee from twenty wells which produce NGPA section 108 and section 104-replacement, biennium, and Post-1974 gas. Applicant states that the gas purchase contract dated July 22, 1948, and the amendment dated March 1, 1971, expired by their own terms on January 1, 1983. Applicant states that the wells should be prudently produced at 1,729 MCF per day. Tennessee advised it is willing to take only 70 MCF per day from the field and Tennessee further advised it is not willing to take any gas beyond June 1, 1986. Applicant states that Tennessee is not paying for gas not taken. Applicant desires to secure another market for its gas so it may continue gas sales in a prudent and efficient manner without interruption in order to maintain valid leases.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-9696 Filed 4-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-32-000]

**Northwest Central Pipeline Corp.;
Conference**

April 24, 1986.

Take notice that a conference will be convened in this proceeding on May 13, 1986, at 1:00 p.m. at the offices of the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC, for the purpose of discussing Order No. 436 transportation services.

The parties and the Commission Staff are invited to attend. Persons wishing to become parties must move to intervene pursuant to the Commission's regulations (18 CFR 385.214 (1985)) and have their motion granted.

For additional information contact Dennis H. Melvin (202-357-8076) or Peter Hirst (202-357-8419).

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-9699 Filed 4-29-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ER86-316-000 and EL86-21-000]

**Southern California Edison Co.; Order
Accepting for Filing and Suspending
Rates, Noting Intervention, Denying
Requests for Summary Disposition,
Denying Request for Declaratory
Order, Consolidating Dockets,
and Establishing Hearing Procedures**

Issued: April 23, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

This order pertains to two related submissions for consideration by this Commission: (1) A petition for declaratory order and complaint filed by the City of Vernon, California (Vernon) in Docket No. EL86-21-000 regarding integration of its interest in Palo Verde Nuclear Generating Station Unit No. 1 (PVNGS 1)¹ as provided by the integrated operations agreement (IOA) between Vernon and Southern California Edison Company (SCE); and (2) two unexecuted agreements submitted for filing by SCE in Docket No. ER86-316-000 to implement the IOA between Vernon and SCE.

A. Docket No. ER86-316-000

On February 24, 1986, SCE submitted for filing two unexecuted agreements: (1) a supplemental agreement providing for the integration of Vernon's entitlement

in Palo Verde Nuclear Generating Station No. 1 (PVNGS 1) into the SCE system; and (2) a rate schedule providing for firm transmission service to Vernon of power from PVNGS 1.²

The IOA was accepted for filing by the Commission on November 4, 1982, in Docket No. ER82-814-000. The IOA provides for the integration of Vernon's entitlement in PVNGS 1 (including replacement capacity acquired by Vernon from SCR and other parties), and commits SCE to provide replacement energy to Vernon when its resources are unavailable. The IOA also provides for credits to Vernon on its partial requirements bill from SCE for the capacity and energy made available from Vernon's PVNGS 1 interest.³ SCE's proposed supplement to the IOA provides certain procedures and details relating to the integration of Vernon's PVNGS entitlement and revises the computation of incremental cost to track the resources which will provide the energy. The transmission rate schedule provides for firm wheeling of Vernon's entitlement over SCE's system. The proposed transmission rates are based on SCE's tariff contract rate TN (230 kV network transmission service) and contract rate TP (point-to-point transmission service). SCE also proposes scheduling and dispatching charges for service related to integration of Vernon's interest.

SCE requests waiver of the notice requirements to permit an effective date that corresponds to the date of the Commission's order accepting the agreements for filing.⁴

Notice of SCE's filing was published in the *Federal Register*⁵ with comments due on or before March 13, 1986. On March 5, 1986, Vernon filed a motion to intervene. Vernon supports SCE's request for waiver of the notice requirements, and requests a one day suspension and a hearing. Further, Vernon requests consolidation of this docket with its submission in Docket No. EL86-21-000. Vernon specifically objects to the following aspects of SCE's filing: (1) The computation of Vernon's

² See Attachment for rate schedule designations.

³ PVNGS 1 commenced commercial operation on January 27, 1986. SCE and Vernon have, for contractual reasons, agreed upon February 1, 1986, as the date of commercial operation.

⁴ Both of the proposed agreements state that they shall become effective on the date following their execution by both parties when accepted for filing by the Commission, or such later date, following a hearing, when the agreements are no longer subject to judicial review. However, in its transmittal letter and subsequent pleadings, SCE states that it will recognize as an effective date the date on which the Commission accepts the agreements for filing.

⁵ 51 FR 7997 (1986).

capacity credits; (2) the revised determination of incremental cost for replacement energy; (3) the charges for scheduling and dispatching services; and (4) use of gross, rather than net, plant for purposes of determining the proposed transmission charges. Vernon also requests that summary disposition be granted to assign an effective date of February 1, 1986, to the filing, and that the Commission direct Edison to effect Vernon's capacity credits as of that date; in the alternative, Vernon requests that the submittals be effective upon acceptance for filing by the Commission. Finally, Vernon expresses concern about the effect of the agreements with regard to the future integration dates of units 2 and 3 of PVNGS.

On March 24, 1986, SCE responded to Vernon's pleading and stated that it does not oppose Vernon's intervention, a one day suspension, evidentiary hearing, or consolidation of this proceeding with Docket No. EL86-21-000. SCE, however, does oppose the request for summary disposition regarding the imposition of an effective date earlier than the date on which the Commission accepts the agreements for filing. In support, SCE states that the IOA requires that the supplemental and transmission agreements be accepted for filing and made effective before Vernon's entitlement in PVNGS may be deemed integrated, and that the integration of this entitlement was conditioned on the execution by both parties of the agreements. Because the parties have been unable to agree upon the terms of these agreements, SCE filed them immediately. SCE states that it is willing to accede to Vernon's alternative request that the effective date of the agreements be the date of acceptance for filing by the Commission provided that this is not construed as a waiver by SCE of its right to later seek to terminate or cancel the rate schedules, if necessary, under section 205 of the FPA.⁶ Further, SCE states that the supplemental agreement pertains to all three of the units of PVNGS, including those yet to be activated.

B. Docket No. EL86-21-000

On February 3, 1986, Vernon submitted for filing a complaint⁷ and

⁶ SCE states that the purpose of this reservation is to provide it with the opportunity to terminate or cancel either schedule without having to meet the "public interest" standard of the *Mobile-Sierra* doctrine. (*United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 356 (1956).)

⁷ Vernon's complaint alleged that SCE has failed to file the proposed supplemental integration and

Continued

¹ Vernon owns a 0.28959% interest in each of the three units of PVNGS, including PVNGS 1.

petition for declaratory order regarding the integration of its ownership interest in PVNGS 1 as of February 1, 1986, pursuant to the IOA between Vernon and SCE. Vernon states the SCE has refused to recognize Vernon's interest in PVNGS under the IOA until the Commission takes action on the filings in Docket No. ER86-316-000. Vernon adds that, since February 1, 1986, the City has been deprived of valuable capacity credits associated with PVNGS on its partial requirements bills rendered by SCE. Vernon also seeks a finding from the Commission that Edison is required to perform services provided for in the IOA in connection with integrating into its operation Vernon's share of PVNGS. Vernon maintained that, absent a timely filing, SCE should have provided service from February 1, 1986, and requested waiver of notice to effect this agreement as of that date. Vernon also alleges discrimination on the ground that SCE has taken no similar action to deprive other municipalities with interests in PVNGS from timely integration into SCE's system.

Notice of Vernon's filing was published in the *Federal Register*, with comments due on or before February 25, 1986.⁸ On February 25, 1986, SCE responded to Vernon's petition, requesting that the Commission deny it. SCE contends again in this docket that the IOA contemplates that the supplemental agreements are to be executed and in place prior to the integration of Vernon's interest into SCE's system and that, since the parties could not agree on these contracts, integration could not take place as of February 1, 1986. SCE claims that providing service prior to filing would place a utility at risk that waiver will not be granted, that it will not be entitled to recover charges for service rendered, and that it will be in violation of the Federal Power Act's and the Commission's notice and filing requirements. With regard to Vernon's claim that it has been prejudiced because SCE has not provided services since February 1, 1986, SCE noted that on February 18, 1986, the parties executed an Interim Purchase Agreement for the purchase by SCE of Vernon's entitlements in PVNGS 1 should the Commission not issue an order providing that the entitlement was

integrated as of February 1, 1986. Under the agreement, SCE will pay Vernon an amount equal to the economic benefits which Vernon would have achieved through integration of its PVNGS interest on the commercial operation date of the project. SCE also argues that it would be liable to a claim of discrimination against its other customers if, with respect to Vernon, it alters its position against providing service prior to filing. Finally, SCE claims that it gave Vernon ample opportunity for alternatives to prevent adverse economic impact resulting from delays in integration of PVNGS.

On March 5, 1986, Vernon submitted a motion for summary disposition as to its claim that SCE must integrate the PVNGS 1 resource as of February 1, 1986. Vernon states that no issues of material fact exist which warrant a hearing. Vernon further states that SCE has overstated the risks inherent in providing service prior to filing, suggesting that it has been Commission practice to grant such prior effective dates when supported by the customer.

On March 24, 1986, SCE filed an answer in opposition to Vernon's motion. SCE essentially repeats arguments contained in its answer and its pleadings filed in Docket No. ER86-316-000; *i.e.*, that service should not be effected as of February 1, 1986. SCE contends that Vernon's requested relief be denied and that factual issues be resolved at an evidentiary hearing.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely, unopposed motion to intervene in Docket No. ER86-316-000 serves to make Vernon a party to that docket.

The Commission will consolidate Docket Nos. ER86-316 and EL86-21, given the common issues of fact and law raised in both dockets and the support for consolidation by both parties.

We shall deny, without prejudice, Vernon's request for a declaratory order, and its motions for summary disposition in both dockets to establish a February 1, 1986 effective date for the supplemental and transmission agreements. Contrary to Vernon's claim, there appear to be numerous issues of material fact that need to be resolved at an evidentiary hearing. We are not prepared to impose a retroactive effective date for the filings in Docket Nos. ER86-316-000, based on our initial review of the IOA, the proposed supplemental and transmission agreements, and the pleadings in these dockets. The Commission is not at this

point satisfied that the IOA clearly resolves the effective date question in either party's favor. Further, it is conceivable that other arrangements (such as the February 18 Interim Purchase Agreement) may have provided alternative relief to Vernon. Because of the uncertainty surrounding the IOA, the proposed agreements, and the negotiations between the parties regarding the effective date, we conclude that this matter is an appropriate issue for a hearing. However, given the apparent acquiescence by the parties (without abandoning their principal claims) to an effective date coincident with acceptance for filing by the Commission, we shall assign as an effective date, the date of this order, subject to refund, and to resolution of this matter at hearing.

Our review of the company's filings in Docket No. ER86-316-000 and the pleadings indicates that the submittals have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the submittals for filing and we shall suspend as ordered below.

In West Texas Utilities Co., 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that the proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed rates in Docket No. ER86-316-000 may not yield substantially excessive revenues. Further, the customer desires to have the integration arrangement in effect at the earliest possible date. Therefore, we shall impose a nominal suspension and grant waiver of the notice requirements. SCE's submittal in Docket No. ER86-316-000 will be suspended it to become effective as of the date of this order, subject to refund and to final resolution of the issue of an effective date following an evidentiary hearing. As suggested by SCE, this order has no effect on the company's ability to seek to terminate or cancel its rate schedules, in accordance with section 205 of the FPA and the Commission's regulations.

The Commission orders

(A) Vernon's requests for summary judgment are hereby denied without prejudice.

(B) Vernon's request for a declaratory order with respect to an effective date for integration of its PVNGS interest in

transmission agreements pursuant to the IOA. Vernon subsequently stated, however, that the complaint portion of its pleading need not be resolved at this time in light of SCE's submission of these documents for filing in Docket No. ER86-316-000.

SCE's system is hereby denied without prejudice.

(C) SCE's request for waiver of the notice requirements is hereby granted.

(D) SCE's submittals in Docket No. ER86-316-000 are hereby accepted for filing and suspended to become effective, subject to refund and to final determination of an effective date, on the date of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of SCE's rates and the effective date for SCE's rate schedules.

(F) Docket Nos. ER86-316-000 and EL86-21-000 are hereby terminated. The evidentiary proceedings established herein are designated as Docket Nos. ER86-316-001 and EL86-21-001 and the latter dockets are consolidated for purposes of hearing and decision.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Such conference shall be held for purposes of establishing a procedural schedule, including the submission of a case-in-chief by Edison. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.
Kenneth F. Plumb,
Secretary.

**Southern California Edison Company,
Rate Schedule Designations, Docket No.
ER86-316-000**

Designation and Description

- (1) Supplement No. 6 to Rate Schedule FERC No. 154—Supplemental Agreement to IOA
- (2) Supplement No. 7 to Rate Schedule FERC No. 154—Transmission Service Agreement

(3) Supplement No. 1 to Supplement No. 7 to Rate Schedule FERC No. 154—Appendix A—Interest Charge Computation:

[FR Doc. 86-9448 Filed 4-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP86-26-000]

Sunshine Mining Co.; Petition for Declaratory Order

Issued: April 24, 1986.

On April 11, 1986, Sunshine Mining Company (Sunshine) filed a petition for declaratory order pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207 (1985), requesting that the Commission determine and declare that for purposes of Section 12 of the Natural Gas Act (NGA), 15 U.S.C. 717k (1982), (i) Sunshine is not a "natural gas company;" (ii) a director of Sunshine, who in fact is not a director of Woods Petroleum Corporation (Woods), will not be deemed to be a director or officer of Woods; and (iii) a director of Sunshine who in fact is not a director of Woods, will not be deemed to be a director or officer of Woods Petroleum Partners (WPP) or Woods Petroleum Operating Partners (WPOP).

In its petition, Sunshine states it is a corporation primarily engaged in the business of mining, refining and marketing precious metals. Sunshine also owns all of the outstanding common stock of four subsidiary corporations that sell or market natural gas in interstate commerce. Sunshine recognizes that these subsidiary corporations are natural gas companies within the meaning of section 2(b) of the NGA, 15 U.S.C. 717a(b) (1982).

Sunshine proposes to combine the oil and gas properties owned by these four subsidiaries into a limited partnership through an offering to exchange units of the limited partnership interests for these oil and gas properties. However, Sunshine states that this limited partnership, WPP, will not own the properties or make any sales of natural gas. Rather, all of the oil and gas properties will be owned, and the business will be conducted, by a second limited partnership, WPOP, of which the initial limited partnership will be the sole limited partner. Sunshine and Woods will be general partners of these two limited partnerships, owning 0.01 percent and 0.99 percent interest in each partnership, respectively. Sunshine notes in its petition that it will have no management powers in either of these limited partnerships. Rather, Woods will

be the managing general partner for these two limited partnerships.

According to Sunshine, three national investment banking firms will be retained to provide financial advice and to manage the solicitation of the initial offering for these limited partnerships. Sunshine notes in its petition that one of its directors is an officer for one of these investment banking firms. Sunshine expects this director's investment banking firm may be involved in the future to render services in the offerings of various securities in which Sunshine may be involved either as an acting issuer, as parent to one of its natural gas company subsidiaries acting as issuer, or as non-managing general partner to the limited partnerships acting as issuer.

Therefore, concerned with the absence of applicable judicial and Commission precedent on section 12 of the NGA, Sunshine requests the Commission to declare that present and future securities offerings which may involve Sunshine, or certain of its affiliates, will not result in a violation of section 12 of the NGA by Sunshine's director.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, not later than 30 days following publication of this notice in the Federal Register. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-9649 Filed 4-29-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-175-004, 005, 006]

**Transwestern Pipeline Co.; et al.;
Notice**

April 24, 1986.

Take notice that on April 8, 1986, Exxon Corporation (Exxon), Pennzoil Company and Pennzoil Producing Company (Pennzoil) and Mobil Oil Corporation, Mobil Producing Texas & New Mexico, Inc. and the Superior Oil

Company (collectively Mobil), filed with the presiding judge motions to appeal the presiding judge's ruling of March 24, 1986, denying them late intervention in this proceeding. Pennzoil also filed on the same date an exception and brief on exception to the judge's ruling. The judge issued his order denying late intervention simultaneously with an order certifying to the Commission an offer of settlement of Transwestern Pipeline Company (Transwestern).

With the certification of the settlement, the judge transferred to the Commission jurisdiction over the proceeding. Accordingly, the Commission will treat the foregoing April 8, 1986, motions to appeal, which were addressed to the judge, and Pennzoil's brief on exception, as motions to the Commission for reconsideration of the judge's order denying late intervention. Any party wishing to respond to the April 8, 1986, motions will have until May 9, 1986, to do so.

Kenneth F. Plumb,
Secretary.

[FR Doc 86-9697 Filed 4-29-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP83-75-002, et al.]

Natural Gas Certificate Filings; Consolidated System LNG Co., et al.

Take notice that the following filings have been made with the Commission:

1. Consolidated System LNG Company

[Docket No. CP83-755-002]

April 23, 1986.

Take notice that on April 10, 1986, Consolidated System LNG Company (Consolidated LNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP83-75-002, pursuant to section 7(b) of the Natural Gas Act of 1938, its second amendment to its application for an order permitting and approving the abandonment of facilities and services filed in Docket No. CP83-75-000, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

By its application filed in Docket No. CP83-75-000, Consolidated LNG seeks permission and approval to abandon certain facilities and services appurtenant to the liquefied natural gas (LNG) facilities at Cove Point, Maryland. By its first amendatory application filed in Docket No. CP83-75-001 on November 1, 1985, Consolidated LNG deleted from its application its wholly-owned pipeline for transportation of regasified LNG from

Loudoun, Virginia, to Perulack, Pennsylvania, known as Line No. PL-1 and related facilities. By this second amendment, Consolidated LNG proposes to delete from its application, its undivided one-half interest in the Loudoun measuring station, located in Loudoun County, Virginia.

The amendment states that Consolidated Gas Transmission Corporation (Consolidated Transmission), an affiliate of Consolidated LNG, has found a use to which these facilities can be put, and, therefore, their abandonment no longer appears to be necessary. The amendatory application states that Consolidated Transmission proposes to utilize the Loudoun measuring station in connection with its proposal in the pending proceeding in Docket No. CP85-756-000 to render sales and transportation services for Baltimore Gas & Electric Company (Baltimore) and Washington Gas Light Company (Washington). The amendment states that Consolidated LNG's share of the Loudoun measuring station had a net book value of \$906,928.39 as of December 31, 1985. The amendment further states that in the near future, Consolidated LNG and Consolidated Transmission would file an amendment to their joint application in Docket No. CP86-208-000 for authorization to transfer Consolidated LNG's undivided one-half interest in the Loudoun measuring station to Consolidated Transmission, and Consolidated Transmission would file an amendment to its application in Docket No. CP85-756-000 for authorization, *inter alia*, to operate the facilities in connection with its proposal to serve Baltimore and Washington.

Comment date: May 16, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Great Lakes Gas Transmission Company

[Docket No. CP86-422-000]

April 21, 1986.

Take notice that on April 8, 1986, Great Lakes Gas Transmission Company (Applicant), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP86-422-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing natural gas transportation services for TransCanada PipeLines Limited (TransCanada), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to modify its existing amended gas transportation contract with TransCanada, dated September 12, 1967. Applicant states that the total contract quantity would be increased from a currently authorized 825,000 Mcf of natural gas per day to 887,500 Mcf per day. It is explained that the additional 62,500 Mcf per day would be received near Emerson, Manitoba, and would be delivered by Applicant to TransCanada at an interconnection located near St. Clair, Michigan. Applicant states that the rate would be the effective T-4 contract rate that was filed on February 28, 1986, in Docket No. RP86-35-002. Applicant also states that no new facilities would be required.

Comment date: May 14, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP86-416-000]

April 23, 1986

Take notice that on April 3, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-416-000, an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible basis for HNG/ Inter North Gas Marketing, Inc. (HIGMI), as agent for various purchasers (purchasers), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport natural gas for HIGMI, as agent for purchasers, under the terms of a March 24, 1986 gas transportation agreement produced from Eugene Island (EI) Block 372, offshore Louisiana. Applicant states that HIGMI, as agent for purchasers, has contracted to purchase 65 percent of the reserves attributable to EI Block 372, offshore Louisiana, from Cotton Petroleum, Zapata Exploration Company, and Pennzoil Producing Company. Said reserves are subject to drainage from adjacent blocks which are currently producing, it is stated.

Applicant proposes to accept and transport on a best-efforts basis 30,000 Mcf per day for HIGMI, as agent for purchasers. Applicant states that it would receive the gas in EI Block 372 and redeliver such gas to Texas Eastern Transmission Corporation and/or Columbia Gulf Transmission Company in EI Block 342. Applicant states that it would charge HIGMI, as agent for purchasers, 8.71 cents per Mcf received

in EI Block 372 for the proposed transportation service. This rate, it is stated, is consistent with the Gulf Coast transportation methodology in Applicant's pending Section 4 rate proceeding in Docket No. RP85-206-000. Applicant states that it would ultimately charge the initial transportation rates approved by the Commission in Docket No. RP85-206-000.

Comment date: May 16, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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 filing 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 the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-9643 Filed 4-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-681-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status, Certificate Applications, etc.; Ormesa Geothermal II, et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.
April 24, 1986.

Take notice that the following filings have been made with the Commission.

1. Ormesa Geothermal II

[Docket No. QF86-681-000]

On April 17, 1986, Ormesa Geothermal II (Applicant), of 500 Dermody Way, Sparks, Nevada 89431, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at East Mesa KGRA, Imperial County, California. The primary energy source will be geothermal resources. The net electric power production capacity will be 15 megawatts.

2. Johnson Cogeneration, Inc.

[Docket No. QF86-674-000]

On April 10, 1986, A. Johnson Cogeneration, Inc. (Applicant), of 110 East 59th Street, New York, New York 10022, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at or adjacent to the Newington Terminal of C. H. Sprague & Son Co. at Newington, New Hampshire. The facility will consist of either a fluidized bed combustor or stoker-fired boilers, and an extraction steam turbine-generator. The extracted steam will be used for petroleum process application at the Newington Terminal of C. H. Sprague & Son Co. The net electric power production capacity of the facility will be 31.5 MW. The primary energy source will be coal. The installation of the facility will commence in 1987.

3. Mobil Joliet Refining Corporation

[Docket No. QF86-682-000]

On April 18, 1986, Mobil Joliet Refining Corporation (Applicant), of P.O. Box 874 Joliet, Illinois 60434 submitted for filing an application for certification of a facility as a qualifying cogeneration

facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The bottoming cycle cogeneration facility will be located at the Joliet Refinery, Route 55 and Arsenal Road, Joliet, Illinois. The facility consists of an expander turbine and motor/generator to operate in tandem with the existing Fluidized Catalytic Cracker (FCC) unit's air blower and steam turbine. The expander turbine will drive the air blower in place of the steam turbine reducing refinery steam and fuel usage. The motor/generator will utilize horsepower in excess of air blower requirements to produce electricity. The maximum power production capacity of expander turbine motor/generator is 11,190 kW. The primary energy source of the cogeneration facility will be waste pressure from the FCC unit. The facility is scheduled for operation in June 1986.

4. Pyropower Corporation and General Electric Company

[Docket No. QF86-664-000]

On April 1, 1986, Pyropower Corporation and General Electric Company (Applicant), of 5120 Shoreham Place, San Diego, California 92122 and 1 River Road, Schenectady, New York 12345 respectively, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Santa Maria, California. The facility will consist of a circulating atmospheric fluidized bed boiler and a multi-extraction steam turbine generating unit. Extraction steam produced by the facility will be used at the Unocal refinery to meet the steam requirement of its two diethanolamine stripper reboilers. The primary energy source of the facility will be petroleum coke. The net electric power production capacity will be 49.9 MW. The installation of the facility will begin in late 1986.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment period. 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. 86-0644 Filed 4-29-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-450; FRL-3009-2]

Pesticide Tolerance Petitions; Ciba Geigy Corp. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and food additive petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-450] and the petition number, attention Product Manager (PM-21), at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby, (PM-21), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 229, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), feed, and food additive petitions (FAP), relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial filings

1. *PP 6F3387*. Ciba Geigy Corp., P.O. Box 18300, Greensboro, NC 27419. Proposes amending 40 CFR 180.408 by establishing tolerances for the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester], and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine methyl ester each expressed as metalaxyl in or on the following raw agricultural commodities, fruiting vegetables (except cucurbits) at 1.0 part per million (ppm), sugar beets at 0.1 ppm, and sugar beets tops at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography using an alkali flame ionization detector in the nitrogen-specific mode.

2. *FAP 6H5499*. Ciba Geigy Corp. Proposes amending 21 CFR 193.277 (food) and 561.273 (feed) by establishing regulations permitting residues of metalaxyl in or on the commodity tomato pomace (dry) at 20.0 ppm.

II. Amended Petition

PP 5F3250. EPA issued a notice, published in the Federal Register of May 24, 1985 (50 FR 21502), which announced that Janssen Pharmaceuticals P.O. Box 344, Bear Tavern Road, Washington Crossing, NJ 08560, proposed amending 40 CFR 180.413 by establishing tolerances for the combined residues of the fungicide imazalil [1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1*H*-imidazole and its metabolite 1-(2,4-dichlorophenyl)-2-(1*H*-imidazole-lyl)-1-ethanol in or on commodities barley (forage), and wheat (forage) at 2.0 ppm.

Janssen Pharmaceuticals has amended the petition by decreasing the tolerance level on barley and wheat forage from 2.0 to 0.5 ppm and by adding barley and wheat hay and straw at 0.5 ppm.

The proposed analytical method for determining residues is gas liquid chromatography.

Authority: 21 U.S.C. 346a and 348.

Dated: April 18, 1986.

Douglas D. Camp, Jr.

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-0412 Filed 4-29-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100036; FRL-3010-7]

Pesticide Program; Life Systems, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Life Systems, Inc. has been awarded a contract to perform work for the EPA Office of Toxic Substances, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Life Systems, Inc. consistent with the requirements of 40 CFR 2.307(h) and 40 CFR 2.308(h)(2) respectively. This action will enable Life Systems, Inc. to fulfill the obligations of the contract and serves to notify affected persons.

DATE: Life Systems, Inc. will be given access to this information no sooner than May 5, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-02-4228, Life Systems, Inc., 24755 Highpoint Road, Cleveland, OH 44122, will provide technical support to EPA's Office of Toxic Substances by performing ground water vulnerability assessments, peer review reports and provide expert advice concerning ground water vulnerability and ground

water contamination potential of specific chemicals. Chemicals currently identified for review by the contractor are alachlor, aldicarb, carbofuran, cyanazine, and metribuzin. This contract involves no subcontractors.

The Office of Toxic Substances and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Life Systems, Inc. prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, Life Systems, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Toxic Substances. All information supplied to Life Systems, Inc. by EPA for use in connection with this contract will be returned to EPA when Life Systems, Inc. has completed its work.

Dated: April 14, 1986.

Susan H. Sherman,
Acting Director, Office of Pesticide Programs.
[FR Doc. 86-9625 Filed 4-29-86; 8:45 am]
BILLING CODE 6560-50-M

[OW-FRL-3010-4]

Water Quality Criteria; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.
ACTION: Extension of public comment period.

SUMMARY: In the Federal Register of March 11, 1986 (51 FR 8361), the

Environmental Protection Agency (EPA) announced the availability for public comment of water quality criteria for aluminum, chloropyrifos, nickel, and pentachlorophenol and asked that public comments be submitted by May 12, 1986. Because of the amount of data to be reviewed and the complexity of the subject, EPA determined that additional time should be allowed for public comment.

DATE: The deadline for submitting written public comments is hereby extended to June 11, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, U.S. Environmental Protection Agency, Criteria and Standards Division (WH-585), 401 M Street, SW., Washington, DC 20460, (202) 245-3042.

Dated: April 23, 1986.

Edwin L. Johnson,
Acting Assistant Administrator for Water.
[FR Doc. 86-9626 Filed 4-29-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Northampton Media Associates et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Kenneth R. Carberry et al, d/b/a Northampton Media Associates; Northampton, MA;	BPH-831216AJ	86-120.
B. Joseph John Jarjoura, d/b/a Northeast Communications; Northampton, MA.	BPH-840419IA	
C. Nonctuck Broadcasting Company, Inc.; Northampton, MA.	BPH-840518IA	
D. Cutter Broadcasting, Inc.; Northampton, MA.	BPH-840518IB	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-8334.

W. Jan Gay,
Assistant Chief, Audio Services Division,
Mass Media Bureau.
[FR Doc. 9668 Filed 4-29-86; 8:45 am]
BILLING CODE 6712-01

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

April 24, 1986.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submissions are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202)395-7231.

OMB Number: 3060-0332
Title: Section 76.614, Cable television system regular monitoring
Action: Revision
Respondents: Cable television system operators
Estimated Annual Burden: 1,550

Recordkeepers; 969 Hours
OMB Number: 3060-0331
Title: Section 76.615, Notification requirements

Action: Revision
Respondents: Cable television system operators
Estimated Annual Burden: 1,550 Responses; 775 Hours

OMB Number: None
Title: Section 76.619, Grandfathered operation in the frequency bands 108-136 and 225-400 MHz
Action: Existing collection in use without an OMB control number
Respondents: Cable television system operators

Estimated Annual Burden: 250

Responses: 6,000 Recordkeepers; 4,375 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-9667 Filed 4-29-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-763-DR]

Major Disaster and Related Determinations; Texas

AGENCY: Federal Emergency
Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-763-DR), dated April 23, 1986, and related determinations.

DATED: April 23, 1986.

FOR FURTHER INFORMATION CONTACT:

Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice is hereby given that, in a letter of April 23, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Texas resulting from severe storms and tornadoes, on April 19, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of Texas.

You are authorized to provide Individual Assistance in the affected areas. In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration. Notice is hereby given that, pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Robert D. Broussard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Texas to have been affected adversely by this declared major disaster and is designated eligible as follows:

Nolan County for Individual Assistance only.
(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-9602 Filed 4-29-86; 8:45 am]

BILLING CODE 6717-02-M

FEDERAL HOME LOAN BANK BOARD

[86-425]

Financial Data Reporting System; Agency Information Collection Activities Under OMB Review

Dated: April 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Bank Board" or "Board") has requested Office of Management and Budget approval, pursuant to CFR 1320.12 pertaining to clearance of information requests, of the following changes in the financial reporting requirements for institutions whose accounts are insured by the Federal Saving and Loan Insurance Corporation ("insured institutions"):

(a) Discontinuation of both the Universal Monthly Financial Report, FHLBB Form 1337 and the Sample Monthly Financial Survey, FHLBB Form 1312B after their use to report September 1986 data.

(b) Redesignation of the "Quarterly Financial Report" as the "Thrift Financial Report" containing Sections A, B, C, D, E, F, G, H, I and K corresponding to the same Sections in the present Quarterly Financial Report.

(c) Submission of Thrift Financial Report Sections A through F on a Monthly basis rather than a quarterly basis beginning with data for the month of October 1986. Sections A through F shall be submitted 15 days following the end of the reporting month to the Federal Home Loan Banks.

(d) Minor revisions to Sections A through F to incorporate data items previously contained on either the to-be-discontinued Universal Monthly Financial Report or Sample Monthly Financial Survey.

(e) Continued collection of Sections G, H and K on the same quarterly basis, and section I on the same annual basis

as at present. These Sections shall also be submitted 15 days following the end of the reporting month.

Comment: Comments on this information collection request are welcome and must be submitted on or before May 30, 1986. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Bank Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT:

Parker Jayne, Assistant Deputy Director, Office of Examinations and Supervision (202-377-6486); or Richard C. Pickering, Deputy Director, Office of Policy and Economic Research (202-377-6770), Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION:

In October 1983, the Federal Home Loan Bank Board modified its financial reporting requirements to provide for detailed financial reporting by insured institutions quarterly rather than semiannually. Coincidentally, the Board indicated its intention to eliminate universe (i.e., reporting by all institutions in the industry) monthly financial reporting by insured institutions but to retain sample surveys.

In November 1984 (Resolution Number 84-660), the Board indicated the need to retain universal monthly reporting by all insured institutions because of the rapid pace of deterioration in financial condition which could be experienced by individual insured thrifts during the three-month period between quarterly reports. At the same time, the Board acknowledged the need to minimize reporting burden on the industry. The Board consequently adopted a new abbreviated Universal Monthly Financial Report form in August 1985 for reporting of July 1985 data.

Subsequent experience has confirmed the key role of monthly financial reporting in the early detection of emerging problem conditions in thrifts. The Board has determined, however, that the current abbreviated Monthly

Report does not collect sufficient information to permit adequate monthly monitoring of the financial condition of insured members.

In addition, the Board has become concerned with data reported in error on the Monthly Report as determined by comparisons with reported Quarterly Report data. Correcting these errors have required significant staff effort on the part of the Federal Home Loan Banks, the Federal Home Loan Bank Board and individual institutions.

To address these problems, the Board has decided to discontinue use of the current Universal Monthly Financial Report after reporting of September 1986 data and to begin collecting on a monthly basis Sections A through F of the current Quarterly Report beginning with reporting of October 1986 data. The current Sample Monthly Financial Survey will also be discontinued. Certain data items from this survey and from the current universe monthly report will be incorporated in Section F. (Before implementation in October 1986, other changes to Sections A through F may be required to reflect changes in regulations adopted during that time.)

Under the Board's plan, the Board will redesignate the Quarterly Financial Report as the Thrift Financial Report which will contain Sections A, B, C, D, E, F, G, H, I, and K (corresponding to the same sections of the present Quarterly Financial Report). All institutions will report Sections A through F 15 days following the close of the reporting month. Sections D, E and F will contain income and expense data and activity data each month for the reporting month only (i.e., not for a cumulative period).

As at present, all institutions will report Sections G, H and K quarterly with respect to the quarters ending in March, June, September and December. Similarly, all institutions will report Section I on an annual basis for the calendar year. These Sections will also be reported to the Federal Home Loan Banks 15 days following the close of the reporting period.

These new reporting requirements will not affect or change the type of institution-specific information which is now released under the Freedom of Information Act. Only the type of information which is currently releasable will continue to be releasable using 3-month aggregations where necessary to produce quarterly data. Data which is not releasable will continue to include institution-specific monthly data and institution-specific data for non-quarter end months.

As a result of these changes, thrifts will have one monthly reporting system, rather than overlapping monthly and

quarterly systems, for reporting statements of condition, operations and activity data to the Board. This will eliminate duplicative reporting of the same data in different formats and the possibility of inconsistent reporting on two different reports. In particular, institutions will not be required to subtotal detail information prior to submission.

As an alternative, the Board considered adopting an expanded monthly form while at the same time retaining the current Quarterly Financial Report. The Board rejected this option because it did not reduce the potential for inconsistent reporting as exists under the current system of overlapping monthly and quarterly reports. The Board also felt that the extra burden of reporting Sections A through F on a monthly basis was less than the burden associated with creating and maintaining a new, expanded separate monthly report so long as data items in the monthly report must equate to specific data items in a quarterly report.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
 [FR Doc. 86-9690 Filed 4-29-86; 8:45 am]
 BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Application for Certificate [Performance]

Notice is hereby given that the following persons have applied to the Federal Maritime Commission for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Dated: April 25, 1986.

Agean Cruises, S.A. (d/b/a Epirotiki Lines), c/o Epirotiki Lines, Inc., 551 Fifth Avenue, New York, NY 10017
 Sun Coast Cruises, Inc., 101 South Jefferson Street, Pensacola, FL 32501.

John Robert Ewers,
Secretary.
 [FR Doc. 86-9606 Filed 4-29-86; 8:45 am]
 BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of; Acquisition by; and Mergers of Bank Holding Companies; Bellwood Bancorp., Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 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 May 22, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bellwood Bancorporation, Inc.*, Bellwood, Illinois; to acquire 60 percent or more of the voting shares of First National Bank of Wheaton, Wheaton, Illinois.

2. *The First State Bank of Thornton, Iowa Employee's Stock Ownership Plan and Trust*, Thornton, Iowa; to become a bank holding company by acquiring 51 percent of the voting shares of Thornton Bancshares, Inc., Thornton, Iowa, and thereby indirectly acquire The First State Bank of Thornton, Iowa, Thornton, Iowa.

3. *Ogle County Bancshares, Inc.*, Rochelle, Illinois; to acquire 10 percent of the voting shares of Leland National Bancorp, Inc., Leland Illinois.

4. *Summcorp*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of the successor by merger of Kendallville Bank & Trust Co., Kendallville, Indiana.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens Fidelity Corporation*, Louisville, Kentucky; to acquire 100 percent of the voting shares of the successor by merger of Madison National Bank of Richmond, Richmond, Kentucky.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dakota Bankshares, Inc.*, Fargo, North Dakota; to acquire 26.32 percent of the voting shares of Bankers Financial Corporation, Drake, North Dakota, thereby indirectly acquiring First Bank in Drake, Drake, North Dakota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Garden Plain Bancshares, Inc.*, Garden Plain, Kansas; to become a bank holding company by acquiring 80 percent or more of the voting shares of Garden Plain State Bank, Garden Plain, Kansas.

2. *Madison Bancshares, Inc.*, Madison, Nebraska; to become a bank holding company by acquiring 94 percent of the voting shares of The Bank of Madison, Madison, Nebraska.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Extraco Bankshares, Inc.*, Temple, Texas; to acquire 100 percent of the voting shares of Texana Bank, N.A., Waco, Texas.

2. *Southwest Bankers, Inc.*, San Antonio, Texas; to acquire 80 percent of the voting shares of Bank of San Antonio/Medical Center, San Antonio, Texas.

Board of Governors of the Federal Reserve System, April 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9685 Filed 4-29-86; 8:45 am]

BILLING CODE 6210-01-M

Applications of Company Engaged in Permissible Nonbanking Activities; Dakota Bancshares, Inc.

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank

holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that 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 May 16, 1986.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dakota Bankshares, Inc.*, Fargo, North Dakota; to acquire Dakota First Trust Company, Fargo, North Dakota, and thereby engage in activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9686 Filed 4-29-86; 8:45 am]

BILLING CODE 6210--M

Applications To Engage de Novo in Permissible Nonbanking Activities; Fleet Financial Group, Inc., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to engage *de novo* through its subsidiary Consumer Life Insurance Company, Atlanta, Georgia, in underwriting, as a reinsurer, of credit life and credit accident and health insurance that is directly related to extensions of credit by Fleet Financial Group, Inc., or its subsidiaries, pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Alabama, Colorado, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, Oklahoma, Utah, and Wisconsin.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Keystone Bancshares, Inc.*, Monona, Iowa; to engage directly in lending activities for the purpose of purchasing loans from its subsidiary, Peoples State Bank, Elkader, Iowa, and its affiliate Union State Bank of Monona, Iowa, and its correspondent

banks, National Bank of Waterloo, Waterloo, Iowa and National Bank of Minneapolis, Minnesota. These loans will be farm loans, commercial loans and real estate loans.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Zions Utah Bancorporation*, Salt Lake City, Utah; to engage *de novo* through its subsidiary *Zions Mortgage Company*, Salt Lake City, Utah, in mortgage banking activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9687 Filed 4-29-86; 8:45 am]

BILLING CODE 6210-M

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies; Marshall & Ilsley Corp., et al.

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that 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 and questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin, to acquire 100 percent of the voting shares of *M&I Thunderbird Acquisition Corp.*, Phoenix, Arizona.

M&I Thunderbird Acquisition Corp., Phoenix, Arizona; has applied to become a bank holding company by acquiring 100 percent of the voting shares of *Thunderbird Capital Corporation*, Phoenix, Arizona, and thereby indirectly acquire *Thunderbird Bank*, Phoenix, Arizona.

Marshall & Ilsley Corporation and M&I Thunderbird Acquisition Corp., have also applied to acquire the following nonbanking subsidiaries: *Thunderbird Equities, Inc.*, Phoenix, Arizona, *Thunderbird Mortgage Corp.*, Phoenix, Arizona, and *Thunderbird Leasing, Inc.*, Phoenix, Arizona, and thereby engage in making or acquiring secured and unsecured loans and other extensions of credit; purchasing or acquiring receivables or chattel paper (including consumer receivables and paper); issuing letters of credit; and accepting drafts; servicing loans and other extensions of credit pursuant to § 225.25(b)(1) and providing portfolio investment and financial advice to any individual, firm, corporation, partnership or other entity pursuant to § 225.25(b)(4); provide mortgage services pursuant to § 225.25(b)(1)(iii); and engage in leasing services pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9688 Filed 4-29-86; 8:35 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Research Grants on Alcohol and Immunology Including Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: National Institute on Alcohol Abuse and Alcoholism, HHS.

ACTION: Issuance of a Special Program Announcement for Research Grants on Alcohol and Immunology including Acquired Immunodeficiency Syndrome (AIDS).

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces the availability of a special program announcement for Research Grants on Alcohol and Immunology including Acquired Immunodeficiency Syndrome (AIDS). These awards will be to support research grants to study the role of heavy alcohol consumption in lowering resistance to infectious diseases. Areas of research interest include epidemiology, immunology, bacteriology, nutrition, virology, and pathology as well as other relevant clinical and biomedical disciplines. In addition, studies of the relation of alcohol consumption as a potential cofactor in the development of AIDS are encouraged. Support may be requested for up to 5 years. It is anticipated that up to \$1 million per year will be available to support research grants under this announcement.

Receipt Date for Applications: February 1, June 1, and October 1 of each year.

For a Copy of the Announcement, contact: The National Clearinghouse for Alcohol Information (NCALI), Box 2345, Rockville, Maryland 20852, Telephone: (301) 468-2600.

Robert L. Trachtenberg,
Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-9658 Filed 4-29-86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 86E-0064]

Determination of Regulatory Review Period for Purposes of Patent Extension; Suprol

Correction

In the document concerning Suprol appearing on page 12570 in the issue of

Friday, April 11, 1986, make the following corrections:

1. In the first column, under **FOR FURTHER INFORMATION CONTACT**, the zip code in the last line should read "20857".
2. In the second column, in paragraph 1, "date and exemption" should read "date an exemption".
3. In the third column, the FR Document number was incorrect and should read "FR Doc. 86-8094".

BILLING CODE 1505-01-M

Health Resources and Services Administration

Redesignation of Illinois Health Service Areas 7 and 8; Settlement Agreement

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: On July 25, 1985, a notice was published in the *Federal Register* (50 FR 30301) announcing the Secretary's decision to redesignate Illinois health service areas 7 and 8. The effective date was to have been September 13, 1985. Subsequent to that announcement, an action was filed in the U.S. District Court, District of Columbia, seeking to have the Secretary's area redesignation decision set aside. On August 30, 1985 (50 FR 35324), it was announced that in order to allow that litigation to proceed in an orderly manner, the Department had agreed to postpone the effective date until October 15, 1985. On October 18, 1985, a notice was published (50 FR 42227) announcing postponement of the effective date of the Secretary's decision to redesignate Illinois health service areas 7 and 8 until further notice, pending the outcome of the litigation.

The Department hereby announces that pursuant to a Settlement Agreement, signed February 27, 1986, between the Secretary and Suburban Cook County-DuPage County Health Systems Agency, Inc., through their respective counsel, the decision to redesignate the two Illinois health service areas has been set aside. DuPage County, Illinois, will continue to be part of Illinois Health Service Area 7, served by Suburban Cook County-DuPage County Health Systems Agency, Inc. The two health systems agencies presently serving Illinois health service areas 7 and 8 will continue to be designated Health Systems Agencies for their respective areas.

FOR FURTHER INFORMATION CONTACT: John H. Heyob Acting Director, Division of Agency Operations and Management, OHP, BRD, 5600 Fishers Lane, Room 9A-

19, Rockville, Maryland 20857, 301-443-6680.

Dated: April 11, 1986.
John Kelso,
Acting Administrator.
[FR Doc. 86-9597 Filed 4-29-86; 8:45 am]
BILLING CODE 4160-15-M

National Institutes of Health

Division of Research Resources; Meeting of the Animal Resources Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Animal Resources Review Committee, Division of Research Resources, starting at 9:00 a.m. on May 20, 1986, in Conference Room 3 and continuing to adjournment in Conference Room 4 on May 21, National Institutes of Health, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on May 20 from 1:00 p.m. to approximately 3:00 p.m. in Conference Room 3, for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9:00 a.m. to approximately 12:00 noon and from approximately 3:00 p.m. to 5:00 p.m. on May 20 and from 8:30 a.m. to approximately 12:00 noon on May 21 for the review, discussion, and evaluation of individual grant applications submitted to the Animal Resources Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. Carl E. Miller, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496-5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs NO. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: April 24, 1986.
Betty J. Beveridge,
NIH Committee Management Officer.
[FR Doc. 86-9724 Filed 4-29-86; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on May 19-20, 1986, Conference Room 4, Building 31A, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:00 a.m. to 3:00 p.m. on May 19 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on May 20 from 9:00 a.m. to adjournment for the review, discussion and evaluation of individual grant applications and individual programs and projects conducted by the NIDR Intramural Program. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and Program, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

In accordance with the provisions set forth in section 552b(c)(9)(B), Title 5, U.S. Code, the Council meeting will be closed to the public from 3:00 p.m. to recess on May 19 for discussion and preparation of comments Council wishes to submit to the Director, NIH, for inclusion in the biennial report to Congress.

Dr. Marie U. Nysten, Executive Secretary, National Advisory Dental Research Council, and Director, Extramural Programs, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 503, Bethesda, Maryland 20892, (telephone 301 496-7723) will furnish roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth

and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior; Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institutes; National Institutes of Health.)

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-9725 Filed 4-29-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on May 19-20, 1986, at the National Institutes of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20892.

The meeting will be open to the public on May 19 from approximately 9:00 a.m. to 9:30 a.m. for opening remarks of the Institute Director and again from 1:30 p.m. to approximately 5:00 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program discussions will be on Tropical Medicine and International Health. On May 20 the meeting will be open to the public from approximately 8:30 a.m. to 9:30 a.m. for the reports of the Director of the Microbiology and Infectious Diseases Program and the Director of the Immunology, Allergic and Immunologic Diseases Program.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the meeting of the NAAIDC Allergy and Immunology Subcommittee and of the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for the review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 9:30 a.m. until approximately 12:30 p.m. on May 19. The meeting of the full Council will be closed from approximately 9:30 a.m. until adjournment on May 20 for the review, evaluation, and discussion of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Ms. Lynn Tribble, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A-32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496-5717, will provide summaries of the meetings and rosters of the committees members.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301) 496-7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: April 24, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-9723 Filed 4-29-86; 8:45 am]

BILLING CODE 4140-07-M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for May through June 1986, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details

relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquires Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contract the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	May-June 1986 meetings	Time	Location
Allergy & Immunology, Dr. Eugene Zimmerman, Rm. 320, Tel. 301-496-7380.	June 19-21	8:30	Holiday Inn, Georgetown, DC.
Bacteriology & Mycology-1, Dr. Milton Gordon, Rm. 304, Tel. 301-496-7340.	June 11-13	8:30	Holiday Inn, Georgetown, DC.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Rm. 306, Tel. 301-496-7681.	June 4-6	8:30	Holiday Inn, Georgetown, DC.
Behavioral Medicine, Dr. Joan Ritterhouse, Rm. 232, Tel. 301-496-7109.	June 11-13	9:00	Holiday Inn, Georgetown, DC.
Biochemical Endocrinology, Dr. Norman Gold, Rm. 226, Tel. 301-496-7340.	June 16-19	8:30	Wellington Hotel, Washington, DC.
Biochemistry-1, Dr. Adolphus P. Toliver, Rm. 318B, Tel. 301-496-7516.	June 5-7	8:30	Linden Hill Hotel, Bethesda, MD.
Biochemistry-2, Dr. Alex Liacouras, Rm. 318A, Tel. 301-496-7515.	June 12-14	8:30	Wellington Hotel, Washington, DC.
Bio-Organic & Natural Products Chemistry, Dr. Michael Rogers, Rm. 5, Tel. 301-496-7107.	June 26-28	9:00	Holiday Inn, Georgetown, DC.
Biophysical Chemistry, Dr. John B. Wolff, Rm. 236B, Tel. 301-496-7070.	June 19-21	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Bio-Phychology, Dr. A. Keith Murray, Rm. 220, Tel. 301-496-7058.	May 19-22	9:00	Ramada Inn, Bethesda, MD.
Cardiovascular & Pulmonary, Dr. Anthony C. Chung, Rm. 2A-04, Tel. 301-496-7316.	June 11-13	8:30	Linden Hill Hotel, Bethesda, MD.
Cardiovascular & Renal, Dr. Rosemary Morris, Rm. 321, Tel. 301-496-7901.	June 16-18	8:30	Holiday Inn, Georgetown, DC.

Study section	May-June 1986 meetings	Time	Location
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301-496-7396.	June 4-6	8:30	Room A, Landow Bldg., Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Evelyn Horenstein, Rm. 306, Tel. 301-496-7681.	June 18-20	8:30	Linden Hill Hotel, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Rm. 353, Tel. 301-496-7078.	June 18-20	8:00	Sheraton-Potomac, Rockville, MD.
Diagnostic Radiology, Dr. Catharine Wingate, Rm. 219B, Tel. 301-496-7650.	June 9-11	8:30	Linden Hill Hotel, Bethesda, MD.
Endocrinology, Dr. Harry Brodie, Rm. 333, Tel. 301-496-7346.	June 16-18	8:30	Dupont Plaza Hotel, Washington, DC.
Epidemiology & Disease Control-1, Dr. Phyllis B. Eveleth, Rm. 203C, Tel. 301-496-7246.	June 3-5	8:30	Linden Hill Hotel, Bethesda, MD.
Epidemiology & Disease Control-2, Dr. Ann Schuederberg, Rm. 203B, Tel. 301-496-7246.	June 3-5	8:00	Linden Hill Hotel, Bethesda, MD.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 234, Tel. 301-496-7940.	June 10-12	8:00	Linden Hill Hotel, Bethesda, MD.
Experimental Immunology, Dr. David Lavrin, Rm. 222B, Tel. 301-496-7238.	June 18-20	9:00	Keystone Intern'l. Resort, Keystone, CO.
Experimental Therapeutics, Dr. Morris Kelsey, Rm. 221, Tel. 301-496-7597.	June 11-13	8:30	Holiday Inn, Bethesda, Md.
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301-496-7474.	June 9-11	8:30	Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A-1, Dr. Harold Davidson, Rm. 354A, Tel. 301-496-7797.	May 27-30	8:30	Linden Hill Hotel, Bethesda, MD.
General Medicine A-2, Dr. Donna J. Dean, Rm. 354B, Tel. 301-496-7140.	June 18-20	8:30	Room 8, Bldg. 31C, Bethesda, MD.
General Medicine B, Dr. Raymond Bahor, Rm. 322, Tel. 301-496-7730.	June 4-6	8:30	Marbury House, Georgetown, DC.
Genetics, Dr. David Remondini, Rm. 349, Tel. 301-496-7271.	June 12-14	9:00	Holiday Inn, Bethesda, MD.
Hearing Research, Dr. Joseph Kimm, Rm. 225, Tel. 301-496-7494.	June 17-20	8:30	Georgetown Hotel, Washington, DC.
Hematology-1, Dr. Clark Lum, Rm. 355A, Tel. 301-496-7508.	June 12-14	8:00	Holiday Inn, Georgetown, DC.
Hematology-2, Dr. Bruce Maurer, Rm. 355B, Tel. 301-496-7508.	June 18-20	8:30	Holiday Inn, Georgetown, DC.
Human Development & Aging-1, Dr. Teresa Levitin, Rm. 303, Tel. 301-496-7025.	June 18-20	9:00	Marbury House, Georgetown, DC.
Human Development & Aging-2, Dr. Samuel Rawlings, Rm. 305, Tel. 301-496-7640.	June 9-11	8:30	Dupont Plaza Hotel, Washington, DC.
Human Development & Aging-3, Dr. Susan C. Streufert, Rm. 203, Tel. 301-496-9403.	June 12-13	8:30	The Omni Shoreham, Washington, DC.
Human Embryology & Development, Dr. Arthur Hoversland, Rm. 319A, Tel. 301-496-7839.	June 17-20	8:00	Marbury House, Georgetown, DC.
Immunobiology, Dr. William Stylos, Rm. 222A, Tel. 301-496-7780.	June 11-13	8:30	Holiday Inn, Bethesda, MD.
Immunological Sciences, Dr. Hugh Stamper, Rm. 233A, Tel. 301-496-7179.	June 11-13	8:30	Crowne Plaza, Rockville, MD.
Mammalian Genetics, Dr. Jerry Roberts, Rm. 349, Tel. 301-496-7271.	June 12-14	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Medicinal Chemistry, Dr. Ronald Dubois, Rm. 5, Tel. 301-496-7170.	June 26-27	8:00	Holiday Inn, Chevy Chase, MD.
Metabolism, Dr. Krish Knshnan, Rm. 339A, Tel. 301-496-7091.	June 11-13	8:30	Holiday Inn, Bethesda, MD.
Metallobiochemistry, Dr. John A. Beisler, Rm. 310, Tel. 301-496-7733.	June 19-21	8:30	Georgetown Hotel, Washington, DC.
Microbial Physiology & Genetics-1, Dr. Martin Slater, Rm. 238, Tel. 301-496-7183.	June 12-14	8:30	Linden Hill Hotel, Bethesda, MD.
Microbial Physiology & Genetics-2, Dr. Gerald Liddell, Rm. 357, Tel. 301-496-7130.	June 11-13	8:30	Hyatt Regency, Bethesda, MD.
Molecular & Cellular Biophysics, Dr. Patricia Straal, Rm. 236A, Tel. 301-496-7060.	June 12-14	8:30	Holiday Inn, Chevy Chase, MD.
Molecular Biology, Dr. Donald Disque, Rm. 328, Tel. 301-496-7830.	June 5-7	8:30	Holiday Inn, Georgetown, DC.

Study section	May-June 1986 meetings	Time	Location
Molecular Cytology, Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149.	June 5-7	8:30	Quality Inn, Washington, DC.
Neurological Sciences-1, Dr. Allen C. Stoolmiller, Rm. 437B, Tel. 301-496-7280.	June 18-20	8:00	Crowne Plaza, Rockville, MD.
Neurological Sciences-2, Dr. Stephen Gobel, Rm. 154, Tel. 301-496-8808.	June 17-19	8:30	Holiday Inn, Bethesda, MD.
Neurology A, Dr. Catherine Woodbury, Rm. 326, Tel. 301-496-7095.	June 11-14	8:30	Dupont Plaza Hotel, Washington, DC.
Neurology B-1, Dr. Jo Ann McConnell, Rm. 152, Tel. 301-496-7846.	June 17-20	8:30	The Omni Shoreham, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 152, Tel. 301-496-7422.	June 17-20	8:30	Holiday Inn, Chevy Chase, MD.
Neurology C, Dr. Kenneth Newrock, Rm. 154, Tel. 301-496-8808.	June 17-20	8:30	Room 4, Bldg. 31A, Bethesda, Md.
Nutrition, Dr. Ai Lien Wu, Rm. 204, Tel. 301-496-7178.	June 4-6	8:30	Holiday Inn, Bethesda, MD.
Oral Biology & Medicine-1, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818.	June 2-5	8:30	Crowne Plaza, Rockville, MD.
Oral Biology & Medicine-2, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818.	June 10-13	8:30	Crowne Plaza, Rockville, MD.
Orthopedics & Musculoskeletal, Dr. Ileen Stewart, Rm. 350, Tel. 301-496-7581.	June 11-13	8:30	Crowne Plaza, Rockville, MD.
Pathobiochemistry, Dr. Sharon Johnson, Rm. A-26, Tel. 301-496-7820.	June 5-7	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Pathology A, Dr. John L. Meyer, Rm. 337, Tel. 301-496-7305.	June 11-13	8:00	Keystone Intern'l Resort, Keystone, CO.
Pathology B, Dr. Martin Padarathsingh, Rm. 352, Tel. 301-496-7244.	June 18-20	8:30	Keystone Intern'l Resort, Keystone, CO.
Pharmacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408.	June 24-26	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Rm. 218B, Tel. 301-496-7120.	June 25-27	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Physiological Chemistry, Dr. Stanley Burrous, Rm. 339B, Tel. 301-496-7837.	June 13-15	8:00	Georgetown Hotel, Washington, DC.
Physiology, Dr. Michael A. Lang, Rm. 219-A, Tel. 301-496-7878.	June 11-14	9:00	Holiday Inn, Chevy Chase, MD.
Radiation, Dr. John Zimbrick, Rm. 219A, Tel. 301-496-7073.	June 16-18	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318.	June 21-24	8:30	Ramada Inn, Anaheim, CA.
Respiratory & Applied Physiology, Dr. Nathan Watzman, Rm. 218A, Tel. 301-496-7320.	June 11-13	8:30	Ramada Inn, Bethesda, MD.
Safety & Occupational Health, Dr. Richard Rhoden, Rm. 3A10, Tel. 301-496-6723.	June 24-26	8:30	Holiday Inn, Bethesda, MD.
Sensory Disorders & Language, Dr. Michael Halasz, Rm. 3A-07, Tel. 301-496-7550.	June 18-20	8:30	Holiday Inn, Bethesda, MD.
Social Sciences & Population, Dr. Carol Campbell, Rm. 210, Tel. 301-496-7906.	June 5-7	9:00	Marbury House, Georgetown, DC.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Rm. 303A, Tel. 301-496-7506.	June 16-17	8:00	Crowne Plaza, Rockville, MD.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Rm. 319B, Tel. 301-496-7771.	June 18-19	8:30	Westpark Hotel, Rosslyn, VA.
Toxicology, Ms. Faye J. Calhoun, Rm. 205, Tel. 301-496-7570.	June 18-20	8:00	Marbury House, Georgetown, DC.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Rm. 334, Tel. 301-496-1190.	June 12-14	8:30	Holiday Inn, Bethesda, MD.
Virology, Dr. Claire Winestock, Rm. 309, Tel. 301-496-7605.	June 12-14	8:30	Room 6, Bldg. 31C, Bethesda, MD.
Visual Sciences A-1, Dr. Luigi Giacometti, Rm. 207, Tel. 301-496-7000.	June 11-13	9:00	Linden Hill Hotel, Bethesda, MD.
Visual Sciences A-2, Dr. Jane Hu, Rm. 439A, Tel. 301-496-7310.	June 18-20	8:30	Holiday Inn, Georgetown, DC.
Visual Sciences B, Dr. Earl Fisher, Jr., Rm. 325, Tel. 301-496-7251.	June 4-7	8:30	Linden Hill Hotel, Bethesda, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306 13.333, 13.337, 13.393-13.396, 13.837-13.844, 13.846-13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: April 24, 1986.

Betty J. Beveridge,

Committee Management Office, NIH.

[FR Doc. 86-9726 Filed 4-29-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-14017, AA-6699-A]

Alaska Native Claims Selection; Shumagin Corp.

In accordance with Department regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Shumagin Corporation for approximately 3 acres. The lands involved are in the vicinity of Sand Point, Alaska, within T. 56 S., R. 73 W., Seward Meridian.

A notice of the decision will be published once in the ALEUTIAN EAGLE and once a week for four (4) consecutive weeks, in the ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until May 30, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-9588 Filed 4-29-86; 8:45 am]

BILLING CODE 4310-JA-M

[CA-16538]

Proposed Issuance of Recordable Disclaimer of Interest for Lands in San Diego County, CA

Correction

In FR Doc. 86-8407 appearing on page 12932 in the issue of Wednesday, April 16, 1986, make the following correction:

In the second column, first complete paragraph, eighth line, "54°42'30"" should read "54°41'03"".

BILLING CODE 1505-01-M

Coos Bay District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR, Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Friday, June 13, 1986, beginning at 10:00 a.m. The meeting will be held in the conference room of the Coos Bay District Office, 333 South Fourth Street, Coos Bay, Ore.

Agenda

The agenda for the meeting will include:

1. Election of officers.
2. Introduction and orientation for new members.
3. BLM Oregon/Washington land exchange policy.
4. Planning for the 1990s land-use and timber-management plan process.
5. The Department of Interior's "Pride in America" program.
6. Updates on the status of old business issues including: The Coos Bay North Spit, The Coos Bay District Road Management Plan, Coos Head, New River, and the BLM/Forest Service management interchange.
7. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the council from 1:00 p.m. to 1:30 p.m. on Friday, June 13, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Monday, June 2, 1986 (Telephone 503-269-5880).

ADDRESS: Bureau of Land Management, Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR 97420.

Summary minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public

inspection or reproduction at the cost of duplication.

Dated: April 25, 1986.

Richard M. Popp,

Acting District Manager.

[FR Doc. 86-9659 Filed 4-29-86; 8:45 am]

BILLING CODE 4310-33-M

[A-20346K]

Realty Actions; Public Land Exchange in Mohave and Coconino Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange, Public Land, Mohave and Coconino Counties, Arizona.

SUMMARY: The public land and interests therein contained in the sections described below are being considered for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

- T. 27 N., R. 9 E., Secs. 6 and 24.
- T. 27 N., R. 10 E., Secs. 6, 18, 20, and 30.
- T. 26 N., R. 10 E., Sec. 34.
- T. 25 N., R. 1 W., Sec. 30.
- T. 25 N., R. 11 E., Sec. 30.
- T. 24 N., R. 11 E., Sec. 6.
- T. 23 N., R. 10 E., Sec. 36.
- T. 23 N., R. 11 E., Sec. 32.
- T. 22 N., R. 14 W., Sec. 9.
- T. 22 N., R. 15 W., Secs. 13, 23, and 34.
- T. 21 N., R. 12 W., Sec. 4.
- T. 20 N., R. 13 W., Sec. 36.
- T. 20 N., R. 11 E., Sec. 22.
- T. 19 N., R. 12 W., Sec. 21.
- T. 19 N., R. 13 W., Secs. 2, 7, 32, and 36.
- T. 18 N., R. 11 W., Sec. 17.
- T. 18 N., R. 12 W., Secs. 18, 29, and 32.
- T. 18 N., R. 13 W., Secs. 2, 35, and 36.
- T. 17 N., R. 8 W., Secs. 22-27 and 33-36.
- T. 17 N., R. 12 W., Sec. 1.
- T. 16 N., R. 20½ W., Secs. 14 and 15.
- T. 15 N., R. 7 W., Secs. 7 and 18.
- T. 15 N., R. 8 W.,

- Secs. 12-14, 22, 27, and 33.
 T. 15 N., R. 9 W.,
 Secs. 16, 19-21, 27, 28, and 30.
 T. 14½ N., R. 8 W.,
 Secs. 30 and 31.
 T. 14 N., R. 9 W.,
 Secs. 14 and 16.
 T. 13 N., R. 8 W.,
 Secs. 7, 11, 12, 15, 16, 19-22, 27-29, 33, and
 34.
 T. 13 N., R. 9 W.,
 Secs. 10-15, 20, 22-24, 26, 27, and 35.
 Containing 30,100 acres, more or less.

In exchange for these lands the United States would acquire an undetermined number of acres of equal value from the State of Arizona. The Bureau of Land Management has identified approximately 65,720 acres in the Kingman Resource Area for reconveyance by the State. These lands are located within wilderness study areas, contain significant wildlife values, and would consolidate public land ownership for easier program management.

The purpose of this Notice of Realty Action is two-fold. First, this action will provide a response of forty-five (45) days during which public comments will be accepted. Secondly, this action, as provided in 43 CFR 2201.1(b), shall segregate the public lands described herein to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. This segregative effect shall terminate upon issuance of patent to such lands, upon publication in the Federal Register of a termination of the segregation, or 2 years from date of this publication, whichever occurs first.

This action is necessary to avoid the occurrence of nuisance mining claims and land use applications that could encumber the public lands while the preparation of an environmental assessment is ongoing. Upon completion of the environmental assessment and land use decision, a Notice of Realty Action shall be published specifying the land to be exchanged and any reservations of record.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange including a list of the Federal and State lands is available for review at the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: April 21, 1986.
 Marlyn V. Jones,
 District Manager.
 [FR Doc. 86-9586 Filed 4-29-86; 8:45 am]
 BILLING CODE 4310-32-M

[U-54841]

Salt Lake District; Realty Action Sale of Public Lands in Wasatch County, Utah

The following described land has been examined and identified as suitable for disposal 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:

T. 2 S., R. 4 E., SLM,
 Sec. 25, lot 7, containing 3.75 acres.

The appraised fair market value of this tract is \$21,750.

The above described land will be sold in order to dispose of lands which because of location and other characteristics are difficult and uneconomical to manage. The sale is consistent with the Bureau's planning system and the public interest will be served by offering these lands for sale.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The above described land will be sold at 10:00 a.m. on July 9, 1986, without competitive bidding at: Salt Lake District, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

The land will be sold directly to Stichting Mayflower Recreational Fonds and Stichting Mayflower Mountain Fonds. The appraised value as shown must be received by the Salt Lake District Office at the date and time shown above. Payment may be made by the principal or a duly qualified agent. Payment shall be by certified check, money order, bank draft or cashier's check made payable to the Department of the Interior, BLM.

At the date of and prior to the sale of the lands, the Stichtings shall relinquish to the United States all interest and rights to the Merling D and Merling D No. 1 unpatented mining claims, UMC numbers 219406 and 219407, respectively.

The terms and conditions applicable to the sale are:

(1) The patent will contain a reservation for ditches and canals and be subject to all valid existing rights including right-of-way U-45963 for a powerline in the name of Utah Power and Light Company.

(2) All minerals will be reserved to the United States including the right of ingress or egress for mineral development.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, BLM, 2370 South 2300 West, Salt Lake City, Utah 84119. 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 State Director, this realty action will become the final determination of the Department of the Interior.

Dated: April 24, 1986.
 John H. Stephenson,
 Acting District Manager.
 [FR Doc. 86-9601 Filed 4-29-86; 8:45 am]
 BILLING CODE 4310-DQ-M

National Park Service

Upper Delaware Citizens Advisory Council Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: May 23, 1986, 7:00 p.m.

Inclement weather reschedule date: June 13, 1986.*

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. (717) 729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda

*Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLG, WSUL, and WVOS.

for the meeting will include continued review of proposed River Management Plan. The meeting will be open to the public.

Any member of the public may file with the council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, N.Y. 12764. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1 3/4 miles North of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: April 18, 1986.

James W. Coleman, Jr.,
Regional Director, Mid-Atlantic Region.
[FR Doc. 86-9693 Filed 4-29-86; 8:45 am]
BILLING CODE 4310-70-M

Intention To Renovate for Commercial Use—Jacob Riis Park Bathhouse—Gateway National Recreation Area

The National Park Service is seeking interested parties to renovate and operate the Riis Park Bathhouse complex within Gateway National Recreation Area in New York City, Borough of Queens, for commercial, business, retail and/or recreational uses. The property includes 113,000 square feet within the bathhouse, a few smaller buildings, and a 9,700 car parking lot. The property is on the Atlantic Ocean at a heavily used beach and is 25 miles from midtown Manhattan.

This property may be leased under the Historic Preservation Act (Pub. L. 96-516) or operated as a concession under the Concession Policy Act (Pub. L. 89-249), depending on the nature of the offers received. In either case, historic preservation tax credits may be available. The property is on the National Register of Historic Places.

A copy of the "Request for Proposal" (RFP) may be obtained by sending a non-refundable payment of \$100, payable to the National Park Service. Mail to the National Park Service, Attention: Mr. Gerald L. Kirwan, 15 State Street, Boston, Massachusetts 02109. Refer to RFP-LRD-6-001. The RFP will be released on May 15, 1986. Offers will be accepted until July 15, 1986.

Dated: April 18, 1986.

Steven H. Lewis,
Deputy Director, North Atlantic Region.
[FR Doc. 86-9581 Filed 4-29-86; 8:45 am]
BILLING CODE 4310-70-M

Bureau of Reclamation

[Int-Des 86-20]

Uinta Basin Unit, Colorado River Water Quality Improvement Program; Availability of Planning Report/Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a proposed planning report/draft environmental statement on a proposed salinity-control project that would reduce salt loading to the Colorado River system by lining canals and laterals in Duchesne and Uintah Counties in northeastern Utah. Comments on the draft report must be received by the Bureau of Reclamation by the date indicated on the cover page of the document.

Public hearings will be held on June 4, 1986, at the Uinta Basin Area Vocational School, 1100 East Lagoon, Roosevelt, Utah, from 7 p.m. to 10 p.m. These hearings are designed to receive views and comments relating to the environmental impacts of the unit from interested organizations or individuals. Oral statements at the hearings will be limited to a period of 10 minutes per speaker. While speakers cannot trade their time to obtain a longer oral presentation, the person authorized to conduct the hearings may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard.

Speakers will be scheduled according to their time preference, if any, as requested by letter or telephone. Speakers not present when called will lose their privilege in the scheduled order, and their names will be recalled at the end of presentations by the scheduled speakers. Requests for scheduled presentations will be accepted until 4 p.m. on June 3, 1986. Any subsequent requests will be handled on a first-come, first-served basis following the scheduled presentations at the meeting.

Organizations or individuals desiring to present statements at the hearings should contact Jay Henrie, team leader, Bureau of Reclamation, Utah Projects Office, P.O. Box 1338, Provo, Utah 84603, telephone (801) 379-1172, by letter or telephone, and announce their intention to participate. Written comments from those unable to attend and from those wishing to supplement their oral presentations at the hearings should be sent to the Regional Director, Attention UC-730, in Salt Lake City, Utah, by July 28, 1986, in order to be included in the hearing record. Copies of the planning

report/draft environmental statement are available for inspection at the following locations:

Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7423, Washington, D.C. 20240, Telephone: (202) 343-4991

Property and Services Branch, Technical Publications and Library Branch, Engineering and Research Center, Code 960, Denver, Colorado 80225, Telephone: (303) 236-5972

Regional Director, Bureau of Reclamation, Upper Colorado Regional Office, P.O. Box 11568, Salt Lake City, Utah 84147, Telephone: (801) 524-5580

Projects Manager Utah, Projects Office, Bureau of Reclamation, 302 East 1860 South, P.O. Box 1338, Provo, Utah 84603, Telephone: (801) 379-1000

Project Construction Engineer, Uinta Basin Construction Office, Bureau of Reclamation, P.O. Box 420, Duchesne, Utah 84021, Telephone: (801) 738-2441
Single copies of the document may be obtained by request to the addresses listed above. Copies also will be available for inspection in libraries in the project vicinity.

Dated: April 2, 1986.

C. Dale Duvail,
Commissioner.
[FR Doc. 86-9620 Filed 4-29-86; 8:45 am]
BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Section 5b Application No. 5; Section 5b Application No. 12

Railroad Interterritorial Agreement; National Railroad Freight Committee Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision.

SUMMARY: The National Railroad Freight Committee (NRFC) filed an agreement under 49 U.S.C. 10706(a) for the joint consideration and standardization of packaging rules, shipping rules, and commodity classification. Modifications of the agreement and the classification system itself are required before the agreement can be approved. Modifications must be made in accordance with the schedule set forth below.

DATES: An amended agreement must be filed by July 29, 1986. Comments on whether the modifications comport with this decision must be filed by August 28, 1986. Replies are due September 17,

1986. Modifications in the classification system must be completed by October 13, 1986.

ADDRESSES: An original and 10 copies should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any comment should be sent to applicants' representative: Norman H. Donald III, 919 Third Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Elaine A. Sehrt, (202) 275-7899;

or

Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The National Railroad Freight Committee (NRFC) seeks approval of an agreement under 49 U.S.C. 10706(a) for the joint consideration and standardization of packaging rules, shipping rules, and commodity classification. Section 5b Application No. 5, *Railroad Interterritorial Agreement* is the agreement under which the Uniform Classification Committee (UCC) currently handles national packaging, shipping, and classification matters. (That agreement has received interim approval.) Section 5b Application No. 12, *National Freight Committee Agreement* would transfer these functions of the UCC to the NRFC. Upon approval of the NRFC agreement, to the extent the applications are duplicative, Application No. 12 supersedes Application No. 5.

We are requiring modification of the agreement and the commodity classification system prior to approval. The following subject areas of the agreement must be modified: identification and description of member-carriers; upon meetings and mail voting; confidentiality of independent actions; notice; appeals; antitrust immunity in intrastate matters; and approval for additional rules.

The Uniform Freight Classification System (UFC) must be modified in the following areas: (1) To eliminate consideration of non-transportation related factors; (2) to condense the factors used in classifying to four factors (density, stowability, ease or difficulty of handling, and liability); and (3) to eliminate all related charges.

Antitrust immunity will continue pending final decision, provided that applicant complies with this decision within the timeframes specified.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357

(DC Metropolitan area) or toll free (800) 424-5403.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: April 15, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Andre would not have required the agreement to be modified to limit the factors considered in classifications.

James H. Bayne,

Secretary.

[FR Doc. 86-9612 Filed 4-29-86; 8:45 am]

BILLING CODE 7035-01-M

[Fourth Revised I.C.C. Order No. P.-88]

Rail Carriers; Central Vermont Railway, Inc.; Passenger Train Operation

To: Central Vermont Railway, Inc.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Washington, D.C. and Montreal, Canada. The operation of these trains requires the use of the tracks and other facilities of Boston and Maine Corporation (BM). The BM Line is temporarily out of service because of a labor dispute. An alternate route is available via the Central Vermont Railway, Inc., between Palmer, Massachusetts and White River Junction, Vermont.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Central Vermont Railway, Inc. (VC), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Palmer, Massachusetts and White River Junction, Vermont.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist

between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

* (d) *Effective date.* This order shall become effective at 11:59 p.m., April 11, 1986.

* (e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., April 18, 1986, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Central Vermont Railway, Inc., and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 11, 1986.
Interstate Commerce Commission.

William J. Love,
Agent.

FR Doc. 86-9616 Filed 4-29-86; 8:45 am]

BILLING CODE 7035-01-M

[Third Revised I.C.C. Order No. P.-88]

Rail Carriers, Central Vermont Railway, Inc.; Passenger Train Operation

To: Central Vermont Railway, Inc.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Washington, D.C. and Montreal, Canada. The operation of these trains requires the use of the tracks and other facilities of Boston and Maine Corporation (BM). The BM Line is temporarily out of service because of a labor dispute. An alternate route is available via the Central Vermont Railway, Inc., between Palmer, Massachusetts and White River Junction, Vermont.

It is the opinion of the Commission that the use of such alternate route is

* Change of effective periods.

necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Central Vermont Railway, Inc. (CV), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Palmer, Massachusetts and White River Junction, Vermont.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

**(d) Effective date.* This order shall become effective at 11:59 p.m., April 4, 1986.

**(e) Expiration date.* The provisions of this order shall expire at 11:59 p.m., April 11, 1986, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Central Vermont Railway, Inc., and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, April 4, 1986.

Interstate Commerce Commission.

William J. Love,

Agent.

[FR Doc. 86-9615 Filed 4-29-86; 8:45 am]

BILLING CODE 7035-01-M

Rail Carriers; Release of Waybill Data for use in a Study of Rail Market Share of Refrigerated Commodities

The Commission has received a request from Roberts Associates, Inc. (Roberts) on behalf of its client, a rail car leasing company, for permission to use the 1984 and, when available, 1985 ICC Waybill Sample. These data are needed in a study to determine what commodities are moving in the car types leased by Roberts' client. Specifically, they seek to determine the movements of refrigerated commodities between points in the United States. This requires knowledge of the point of origin and point of destination of specific movements at the level of 2-digit Standard Point Location Codes (SPLC) and 7-digit Standard Transportation Commodity Codes (STCC). This information will be used to compare with truck movements between the same 2-digit SPLCs to determine rail share.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275-7003.

James H. Bayne,

Secretary.

[FR Doc. 86-9614 Filed 4-29-86; 8:45 am]

BILLING CODE 7035-01-M

Rail Carriers; Release of Waybill Data for use in the Study of Potential Interrailroad Pooling Projects

The Commission has received a request from the Association of American Railroads' Freight Equipment Management Program (FEMP) for permission to use the 1984 and, when available, the 1985 ICC Waybill Sample in conducting a study on the feasibility and benefit of potential interrailroad pooling projects. The study covers potential pooling projects for several car types including gondolas, flatcars, and boxcars. Waybill data are needed to identify loaded origin-destination flow volumes and mileages. This information when combined with empty mileage data and an optimization program, would enable FEMP to determine the potential benefits of improved utilization, such as in pooling projects. No revenue related waybill data are needed.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (48 FR 40238, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested

*Change of effective periods.

data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275-7003.

James H. Bayne,
Secretary.

[FR Doc. 86-9617 Filed 4-29-86; 8:45 am]

BILLING CODE 7035-01-M

[Order No. 6]

Rail Carriers; Boston and Maine Corp. et al.; Rerouting Traffic

Decided: April 25, 1986.

On April 4, 1986, the Commission issued the above titled order which authorizes the rerouting of traffic normally routed over the Boston and Maine Corporation (BM) and/or Maine Central Railroad Company (MEC). The rerouting was occasioned by a work stoppage and embargo on certain BM and MEC lines.

Since that time connecting carriers have filed tariffs offering new routes for the affected traffic: BM and MEC have modified their embargoes; Guilford Transportation Industries, Inc. (GTI), on April 9, 1986, filed a petition requesting that the above titled order be vacated, and requests have been received to broaden the order to include the Delaware and Hudson Railway Company (DH) and to make the order mandatory.

It appears that the circumstances initially requiring the Commission's action may have changed, and that the continuing necessity for the order should be reconsidered. However, before reconsidering the order's continuation, or its scope, the Commission will allow the carriers named in the order and any other affected parties to provide the Commission with any comments on the continuing need for this authority.

Parties will be given until close of business April 30, 1986, to provide their comments to the Commission on:

- (a) How the order is presently being used;
- (b) The number of shipments rerouted under this authority since its issuance;
- (c) Whether the order in its present form should be vacated and why;
- (d) Whether the order should be broadened to include DH, with supporting information on any substantial failure of traffic movement over DH, and,
- (e) Whether the presently permissive order should be made mandatory on all Guilford connections.

Comments may be written or telegraphic. Submissions filed since

issuance of the Order need not be refiled.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre and Lamboley.

James H. Bayne,
Secretary.

[FR Doc. 86-9674 Filed 4-29-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-172X)]

Railroad Services Abandonment; Seaboard System Railroad, Inc.; Exemption in Hardee County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Seaboard System Railroad, Inc., of 9.25 miles of railroad in Hardee County, FL, subject to standard employee protective conditions.

DATES: This exemption will be effective on May 30, 1986. Petitions to stay must be filed by May 15, 1986, and petitions for reconsideration must be filed by May 27, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 172X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll-free (800) 424-5403.

Decided: April 10, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

James H. Bayne,
Secretary.

[FR Doc. 86-9613 Filed 4-29-86; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL SCIENCE FOUNDATION

Measurement Methods and Data Improvement; Meeting

In accordance with the Federal Advisory Committee Act, as amended. Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel on Measurement Methods and Data Improvement.

Date/time: May 19-20, 1986, 9:00 AM to 6:00 PM.

Place: Room 1242, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Type of meeting: Closed—May 19-20, 1986, 9:00 AM to 6:00 PM

Contact person: Dr. Murray Aborn, Program Director, Measurement Methods and Data Improvement, Room 312, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7913.

Summary of minutes: May be obtained from the contact person Dr. Murray Aborn at the above address.

Purpose of advisory panel: To provide advice and recommendations concerning support for research and research-related projects in Measurement Methods and Data Improvement.

Agenda: Review and evaluation of research and research-related proposals as part of the award selection process.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979. April 25, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-9684 Filed 4-29-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-455]

Commonwealth Edison Co., Byron Station, Unit 2; Order Extending the Latest Construction Completion Date

On December 31, 1975, the Nuclear Regulatory Commission issued to the Commonwealth Edison Company Construction Permits for Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2 in Will County, Illinois.

By letter dated April 19, 1982, Commonwealth Edison Company filed a request for extension of the latest construction completion dates for the Byron Station Construction Permits. It was requested that Unit 1 be extended from June 1, 1982 to October 1, 1984 and Unit 2 be extended from November 1, 1983 to April 1, 1986. These permits were extended to October 1, 1984, and April 1, 1986 for the Byron Station, Units 1 and 2, respectively.

By letter dated February 27, 1986, Commonwealth Edison Company requested an extension of the latest construction completion date for CPPR-131, Byron Station, Unit 2 from April 1, 1986, to June 1, 1987. The applicant stated the extension was needed beyond the April 1, 1986 date because of unanticipated extended construction and turnover for testing periods. The longer construction period than originally planned resulted from primarily focusing resources on completion of Unit 1 of the Byron Station which delayed reallocation of construction workers to Unit 2. Portions of the construction work force for Unit 2 have occasionally shifted back to Unit 1 to make modifications necessary for plant availability.

The longer construction period for Unit 2 can also be attributed to

additional work resulting from changed or new requirements and from testing of Unit 1. Additional system turnover delays have been encountered in complying with NRC environmental qualification requirements for electrical equipment. As equipment deficiencies and component malfunctions occurred during preoperational testing, long procurement times for qualified parts added to the delay.

The requested revised completion date extends beyond the date by which Commonwealth Edison currently expects to load fuel to Byron Unit 2, but the current fuel load schedule has not changed. The revised completion date reflects a conservative estimate of actual completion of Unit 2 should any unanticipated delays in construction actually occur. The applicant has requested an extension from April 1, 1986 to June 1, 1987 to cover such contingencies.

As discussed more fully in the staff's related Safety Evaluation, dated April 24, 1986, we have concluded that good cause has been shown for delay, and that the requested extension is for a reasonable period. We have further concluded that the requested extension involves no significant hazards consideration, and therefore no prior public notice is required.

The NRC staff has prepared an environmental assessment and findings of no significant impact which was published in the Federal Register on April 17, 1986 (51 FR 13117). The NRC staff has concluded that this action will not have a significant impact on the quality of the human environment and therefore no environmental impact statement need be prepared.

The applicant's letter, dated February 27, 1986, and the NRC staff's letter and evaluation, dated April 24, 1986, issued in support of this Order are available for public inspection at the Commission's Public Document Room, 1717 H Street,

NW., Washington, DC., and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

It is hereby ordered that the latest construction completion date for CPPR-131, Unit 2 of the Byron Station be extended from April 1, 1986 to June 1, 1987.

Date of Issuance: April 24, 1986.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director Division of PWR Licensing-A

[FR Doc. 86-9691 Filed 4-29-86; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses To Export Nuclear Facilities or Materials; Westinghouse Electric Corp. et al.

Pursuant to 10 CFR 110.70 (b), Public notice of receipt of an application, please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed before May 30, 1986. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities and other nuclear related material, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, and application number	End-use	Country of destination
Westinghouse Electric Corp., February 13, 1986; February 13, 1986, February 18, 1986, February 18, 1986, XR-149.	One (1) primary coolant pump for Trino Vercellese Reactor	Italy.
Combustion Engineering, February 21, 1986, February 21, 1986, February 24, 1986, February 24, 1986, XR-150.	Two (2) light reactors units KNU-11 and KNU-12, 950 MWe (ea)	South Korea.

Dated: this 24th day of April 1986 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.
Marvin R. Peterson,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc. 86-9692 Filed 4-29-86; 8:45 am]
 BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on May 8-10, 1986, in Room 1046, 1717 H Street,

NW, Washington, DC. Notice of this meeting was published in the Federal Register on April 22, 1986.

Thursday, May 8, 1986

8:30 A.M.-8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.—12:00 Noon: Systems Interactions (Open)—The members of the Committee will hear and discuss the report of its subcommittee regarding the NRC Staff's proposed resolution of USI A-17, Systems Interactions in Nuclear Power Plants. Members of the NRC Staff will participate in the presentations and discussion of this matter.

12:00 Noon—12:30 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the report of the ACRS subcommittee on Thermal Hydraulic Phenomena regarding proposed revisions to 10 CFR Part 50.46, Acceptance criteria for emergency core cooling systems for light water nuclear power reactors and Appendix K. ECCS evaluation models.

1:30 P.M.—1:50 P.M.: Preparation for Meeting with NRC Commissioners (Open)—The members will discuss proposed comments to the Commissioners regarding the ACRS report dated April 15, 1986, Additional ACRS Comments on Proposed NRC Safety Goal Policy Statement.

2:00 P.M.—3:30 P.M.: Meeting with NRC Commissioners (Open)—The ACRS meeting will adjourn so ACRS members can participate in a meeting of Nuclear Regulatory Commission to discuss ACRS recommendations and comments regarding the proposed NRC Safety Goal Policy Statement, as noted above.

3:45 P.M.—5:30 P.M.: Activities of ACRS Subcommittees (Open)—The members of the Committee will hear and discuss the activities of designated ACRS subcommittees regarding:

- Severe (Class 9) Accidents regarding rebaselining studies for reference nuclear power plants.
- Management of ACRS activities—report of Management Group meetings on April 9, 1986 and May 7, 1986.

Friday, May 9, 1986

8:30 A.M.—10:30 A.M.: Management and Disposal of Radioactive Waste (Open)—The members will hear and discuss the report of its Waste Management Subcommittee regarding matters related to the handling and disposal of high- and low-level radioactive wastes including modeling strategy for high-level waste performance assessment; quality assurance for high-level waste geologic repositories; related research efforts; the NRC low-level waste program mandated by the Low-Level Radioactive Waste Policy Amendments Act of 1985; and the salvaging of contaminated smelted

alloys. Members of the NRC Staff will participate in the presentations and discussion.

10:45 A.M.—11:00 A.M.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activity and proposed items for consideration by the full Committee.

11:00 A.M.—12:00 Noon: Decay Heat Removal (Open/Closed)—An ACRS member will brief the Committee regarding the type of bleed and feed system proposed for the Westinghouse Advanced Pressurized Water Reactor.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this matter.

1:00 P.M.—2:45 P.M.: Meeting with Representatives of the Federal Republic of Germany (Closed)—The members will meet with representatives of the Federal Republic of Germany to discuss both high- and low-level radioactive waste standards for radionuclide release limits (dose limits), plans for environmental monitoring, and for modeling in connection with performance assessment in order to assure compliance with the standards and thus to ensure the public health and safety.

This session will be closed to discuss information provided in confidence by a foreign source.

3:00 P.M.—3:30 P.M.: Activities of ACRS Members (Open/Closed)—The members will discuss proposed activities of individual ACRS members and the proposed impact of their assignments as ACRS members.

Portions of this session will be closed as necessary to discuss information the release of which would represent an unwarranted invasion of personal privacy.

3:30 P.M.—4:30 P.M.: Emergency Operating Procedures (Open)—The members will discuss a proposed report to NRC regarding the status of emergency operating procedures at nuclear power plants.

4:30 P.M.—5:00 P.M.: NRC Safety Research Program (Open)—The members of the Committee will discuss the scope, format, and schedule for the preparation of the ACRS report to the NRC regarding the proposed NRC safety research and budget for FY 1988-89.

5:00 P.M.—6:00 P.M.: Preparation of ACRS Reports to NRC (Open/Closed)—The members will discuss proposed reports to the NRC regarding matters considered during this meeting.

Portions of this session will be closed

as necessary to discuss Proprietary Information applicable to the matter being discussed.

Saturday, May 10, 1986

8:30 A.M.—9:15 A.M.: Appointment of ACRS Member (Closed)—The members will discuss the qualifications of candidates proposed for appointment to the ACRS.

This portion of the meeting will be closed to discuss information the release of which would represent an unwarranted invasion of personal privacy.

9:15 A.M.—9:45 A.M.: Relocation of ACRS (Open)—The Committee will hear and discuss the report of its delegation of ACRS members to discuss the proposed ACRS move to the Bethesda area.

9:45 A.M.—12:00 Noon and 1:00 P.M.—3:00 P.M.: Preparation of ACRS Reports to NRC (Open/Closed)—The members will discuss proposed reports to the NRC regarding matters considered during this meeting.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the matter being discussed.

Procedures for the conduct of and participation in ACRS meetings were published in the *Federal Register* on October 2, 1985 (50 FR 191). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statement. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such

rescheduling would result in major inconvenience.

I have determined in accordance with section 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4)), information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)), and information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 A.M. and 5:00 P.M.

Dated: April 24, 1986.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 86-9640 Filed 4-29-86; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

State Agency Advisory Committee; Regular Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its State Agency Advisory Committee, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Action Plan implementation:
 - Western Energy Study Workplan
 - PUC/IOU Actions
- Power Planning Division's Workplan.
- Decision Analysis Modeling.
- Other issues of interest to the Task Force.

DATE: Tuesday, May 13, 1986, 9:30 a.m.

ADDRESS: The meeting will be held at

the World Trade Center; Mezzanine Level; Room 44A; Highway 99 South; Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Jim Litchfield, (503) 222-5161.

Edward Sheets,
Executive Director.

[FR Doc. 86-9584 Filed 4-29-86; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23171; File No. SR-MSRB-86-6]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB"), Suite 800, 1818 N Street, NW., Washington, DC 20036-2491, submitted on March 13, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to conform the requirements of MSRB rule G-7(b) to Commission Rule 17a-3 under the Act, as amended, so that the Uniform Application for Securities Industry Registration, Form U-4, will continue to satisfy the requirements of rule G-7(b).

Notice of the proposed rule change was given by the issuance of Securities and Exchange Act Release No. 23017 (March 14, 1986) and by publication in the Federal Register (51 FR 10130, March 24, 1986). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 23, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-9677 Filed 4-29-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23173; Filed No. SR-NASD-86-10]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Meaning of an Existing Rule

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 17, 1986 the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend an interpretation of the Board of Governors, "Forwarding of Proxy and Other Materials," to Article III, Section 1 of the NASD Rules of Fair Practice to change the guidelines for fees that NASD member firms may charge issuers for forwarding proxy and other materials to the issuer's shareholders. The guidelines would be increased as follows: a 10¢ increase for all charges for Initial Proxy and/or Annual Report Mailings, a 10¢ increase for all Charges for Proxy Follow-Up Mailings and a 10¢ increase for all Charges for Interim Report Mailing.

II. Self-Regulatory Organizations Statements Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose.* The purpose of the proposed rule change is to modify certain guidelines set forth in an interpretation of the Board of Governors, "Forwarding of Proxy and

Other Materials" as reasonable rates of reimbursement for the forwarding of proxy and annual report mailings to beneficial shareowners.

NASD members who possess or control stock for their customers who are beneficial owners of securities are required by the rules of the NASD to transmit proxy soliciting material, interim reports, and other material to each beneficial owner whenever the issuer or other person shall furnish the material and give satisfactory assurance that it will reimburse member firms for all out-of-pocket expenses, including reasonable clerical expenses.

The processing and transmitting of proxy material and the tabulation of votes demand a substantial amount of clerical work by the member firms. NASD members must be prepared to treat each proxy solicitation or other transmittal of material as an individual exercise demanding adherence to detailed corporate instructions. In most instances time is of the essence, since there is a limited period during which material received must be mailed to beneficial owners and their votes received, tabulated and sent to the issuers in advance of the stockholders' meeting date.

(b) *Basis.* Section 15A(b)(5) of the Act provides that the rules of a national securities association must provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. It is the NASD's belief that the amended guidelines provide for the equitable allocation of costs between members and issuers and complies with section 15A(b)(5) of the Act and SEC Release No. 34-20021.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Association does not foresee any burden on competition by this proposed rule change not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments we neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities, and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522 will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted in May 21, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.

Dated: April 24, 1986.

John Wheeler,
Secretary.

[FR Doc. 86-9678 Filed 4-29-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23159; File No. SR-NASD-86-9]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to the meaning of an Existing Rule

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 14, 1986 the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the

self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend an interpretation of the Board of Governors, "Forwarding of Proxy and Other Materials," to Article III, Section 1 of the NASD Rules of Fair Practice to allow NASD member firms to charge issuers a second and final surcharge for start up costs associated with complying with Rules 14b-1(c) and 17a-3(a)(9)(ii) under the Securities Exchange Act of 1934, as amended (the "Act") and a fee of six and one half cents per shareholder name provided to the issuer to recover ongoing costs associated with the implementation of these rules.

II. Self-Regulatory Organizations' Statements Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspect of such statements.

(A) Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose.* The proposed amendment establishes a second and final surcharge and an additional fee which may be charged by NASD members to issuers in connection with proxy solicitations for the purpose of recouping the direct and indirect start-up costs and ongoing costs incurred to comply with Rules 14b-1(c) and 17a-3(a)(9)(ii) under the Securities Exchange Act of 1934, as amended (the "Act"). These rules were adopted to improve the ability of issuers to identify and communicate with their shareholders whose securities are held in "street name" accounts of broker-dealers. Rule 17a-3(a)(9)(ii) requires that broker-dealers determine and maintain a record as to whether or not a customer objects to disclosure of his name, address and securities positions to issuers. Rule 14b-1(c) requires firms to provide issuers, upon request and assurance of reimbursement of

reasonable expenses, with names, addresses and security positions of non-objecting beneficial shareholders of the issuer's securities.

The Commission in its Release No. 34-20021 which covered the above-mentioned rules discusses how and by whom the costs associated with this program should be allocated. The Release stated, "The Commission continues to believe that, because the self-regulatory organizations represent the interests of both issuers and brokers, they are in the best position to make a fair allocation of all the costs associated with the amendments, including start-up and overhead costs." The NASD's second and final surcharge and six and one half cent fee per shareholder name provided are an attempt to comply with the SEC's suggestion in this Release and the NASD believes the surcharge and fee are allocated on a fair and equitable basis.

(b) *Basis*. Section 15A(b)(5) of the Act provides that the rules of a national securities association must provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility of system which the Association operates or controls. It is the NASD's belief that the surcharge requested provides for the equitable allocation of costs between members and issuers and complies with section 15A(b)(5) of the Act and SEC Release No. 34-20021.

(B) Self Regulatory Organization's Statement on Burden on Competition

The Association does not foresee any burden on competition by this proposed rule change not necessary or appropriate in furtherance of these purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission has approved the foregoing rule change pursuant to a request for accelerated effectiveness as provided for under section 19(b)(2) of the Securities Exchange Act of 1934. The Commission finds good cause to accelerate the proposed rule change in order that NASD member firms may recoup direct and indirect start-up and ongoing cost incurred in connection with the 1986 proxy season.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file number in the caption above and should be submitted by May 21, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.

John Wheeler,

Secretary.

[FR Doc. 86-9679 Filed 4-29-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23172; File No. 4-284]

Self-Regulatory Organizations, Filing of Proposed Amendment to New York Stock Exchange, Inc. Quarterly Reporting Plan for Minor Disciplinary Rule Violations

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19d-1(c)(2) thereunder,¹ notice is hereby given that on March 24, 1986, the New York Stock Exchange, Inc. ("NYSE") filed a proposed amendment to its minor rule violation plan. The Commission previously approved a minor disciplinary rule plan filed by the

¹ See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838. The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

NYSE on September 15, 1985.² The proposed amendment adds violations of NYSE Rule 412 to the list of minor rule violations subject to the plan, pursuant to NYSE Rule 476A.³ Rule 412 was designed to ensure prompt transfers of customer securities accounts between NYSE member organizations, by requiring that, following a customer request of a transfer of his or her account from one NYSE member organization to another, the transfer must take place within ten business days.⁴ Violations of Rule 412 are to be reported to the Commission in a manner identical to all other violations subject to the minor rule violation plan: A quarterly report listing the NYSE internal file number for the case, the SEC file number, name of individual or member organization, nature of the violation, specific rule provision violated, date of the violation, fine imposed, an indication of whether the fine is joint and several, the number of times the rule violation has occurred, and the date of disposition.⁵

Publication of the submission is expected to be made in the *Federal Register* during the week of April 21, 1986. In order to assist the Commission in determining whether to approve the proposed amendments to the plan or institute proceeding to determine whether the proposed amendments should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission by [insert 21 days from the date of publication]. Persons desiring to make written comments

² See Securities Exchange Act Release Nos. 22300 (August 8, 1985) 50 FR 32818 and 22415 (September 15, 1985), 50 FR 38600. The plan relieves the NYSE of the current reporting requirement, imposed by section 19(d)(1) of the Act, for final disciplinary actions, with respect to violations listed under NYSE Rule 476A, which are designated as minor rule violations subject to the plan.

³ See Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025. The Commission approved NYSE Rule 476A ("Imposition of Fines for Minor violations of Rule") which authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a Hearing Panel, to impose a fine, not to exceed \$5,000, on any member, member organization, allied member, approved person or registered or non-registered employee of a member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature. The comprehensive list of minor rule violations is contained in Rule 476A.

⁴ See Securities Exchange Act Release No. 22683 (November 26, 1985), 50 FR 49638.

⁵ The fine schedule under Rule 476A is as follows: (1) First offense, a fine of \$500 for an individual and \$1,000 for a member organization; (2) second offense, a fine of \$1,000 for an individual and \$2,500 for a member organization; (3) subsequent fines are \$2,500 for an individual and \$5,000 for a member organization. Fines in excess of \$2,000 are not covered by the minor rule violation reporting plan.

should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th St. NW, Washington, D.C. 20549. Reference should be made to File No. 4-284. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment to the plan which are filed with the Commission, and all written communications relating to the proposed amendment between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC. Copies of the filing and of any subsequent amendments also will be available at the principal office of the NYSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 23, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-9675 Filed 4-29-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23167; File No. SR-OCC-85-21]

Self-Regulatory Organizations; Options Clearing Corp.; Order Approving Proposed Rule Change

On December 23, 1985, the Options Clearing Corporation ("OCC") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), a proposed rule change that establishes a new margin system for non-equity options. On March 29, 1986, OCC filed amendments to the proposed rule change.¹ The Commission published notice of the proposed rule change on February 3, 1986.² No comments were received. This Order approves the proposal.

I. Introduction

The proposed rule change adds a new section 602A to OCC's rules, adopting a new non-equity options ("NEO") margin system and makes technical and conforming amendments to other OCC

¹ The amendments delegate authority to the Margin Committee, the Chairman or President of the Corporation to make certain determinations relevant to calculating margin requirements. The amendments also correct a drafting error regarding exercised and assigned foreign currency options and a typographical error in Rule 602A(d)(1).

² See Securities Exchange Act Release No. 22844 (January 28, 1986), 51 FR 4257 (February 3, 1986).

Rules and By-Laws to accommodate the new margin system. OCC believes that the new system provides a more accurate basis for margining non-equity options positions than OCC's present system and substantially reduces the potential for over- and under-margining of such positions. OCC states that the system uses options price theory to project the cost of liquidating each portfolio of positions in the event of an assumed "worst case" change in the price of the underlying asset and sets OCC's margin requirements to cover that cost. In addition, options positions on the same underlying asset or on groups of closely-related underlying assets will be margined as integrated portfolios. For the reasons discussed below, the Commission finds the proposed rule change to be consistent with the Act and is approving it. In particular, the Commission finds that the proposal should provide a more refined methodology for calculating margin, resulting in increased protection to OCC against adverse price movement in options' underlying assets, while also providing for substantially reduced margin obligations for OCC Clearing Members.

II. Description

A. OCC's Proposed NEO Margin System

Like OCC's current NEO margin system, the new system calculates margin differently for market professionals and public customers. Each is described below.

1. Market Professionals: Firm and Market-Maker/Specialist Accounts.

Under the new system, OCC's Margin Committee will organize all classes of options (*i.e.*, puts and calls, and European and American-style options) on the same underlying asset into "class groups."³ Where OCC determines that the underlying assets for two or more class groups exhibit close price correlation (*e.g.*, various broad-based stock indices), those class groups will be organized, for margin purposes, into larger "product groups."⁴ The positions

³ For example, all OCC-issued options on U.S. Treasury bills—both puts and calls, and American and European-style options—would be margined as a class group.

⁴ OCC plans to initiate its margin system using four product groups: (1) S&P 100, S&P 500, New York Composite, Amex Major Market and Value Line indices; (2) OTC indices; (3) 30-year Treasury bonds and 10-year Treasury notes; and (4) all 5-year Treasury notes. OCC states that all of the class groups within these product groups have shown approximately a 96% price correlation during the last year.

comprising a product group or class group (if the class group is not part of a larger product group) will be margined as an integrated portfolio.⁵

The first step in calculating margin requirements is to net offsetting positions in each series within each class group⁶ (*i.e.*, long and short positions in the same series and type of option) against each other.⁷ This can be done in a firm or market-maker/specialist account because OCC has a lien on all long positions in the account to cover the Clearing Member's obligations on short positions in the account. The net long or short position in each series of options is used to calculate the appropriate margin.

Daily margin requirements have two components: "premium margin" and "additional margin." Premium margin is designed to cover the cost of liquidating the positions comprising the group at the previous day's closing prices. "Additional margin" is designed to cover the projected incremental cost of liquidating those positions in the event of, among other things, an adverse change in the price of the underlying asset.

The second step is to calculate premium margin for the remaining net positions in the class group. Premium margin is determined on the basis of the previous day's closing price and represents a position's most current liquidating value or cost to OCC if OCC had to liquidate the position under Chapter 11 of its Rules. Short positions result in a margin requirement and long positions result in a margin credit equal to the position's current liquidating value. Premium margin requirements and credits within a class group are netted yielding either a margin credit or requirement for the group as a whole, depending on whether the positions comprising the class group liquidate to a credit or a deficit.

⁵ When international options are introduced, OCC expects to treat each class of international options as a separate class group (*see* File No. SR-OC-85-13, Securities Exchange Act Release No. 22354 (August 23, 1985), 50 FR 35340 (August 30, 1985)). Furthermore, margin credits for class groups and product groups consisting of international options will not be used to reduce margin requirements for other options positions and vice versa.

⁶ The term "series of options" means all option contracts of the same class with the same exercise price, expiration date and unit of trading. *See* OCC By-Law-Art. 1, Sec. 1. The term "class of options" means all option contracts of the same type (*i.e.*, put, call, American or European-style) covering the same underlying asset. *Id.*

⁷ This procedure is similar to the "Pairing off" of options positions under OCC's current margin system. *See* OCC Rule 601.

The next set of calculations is to determine the appropriate additional margin for a class group. Generally speaking, additional margin is determined by comparing the actual liquidating value of a class group with the theoretical liquidating value of the class group at several predetermined underlying asset prices. One underlying asset price would include the "maximum" anticipated one-day increase in the underlying asset price, as defined below, and another the maximum one-day decrease. Further, to protect against certain trading strategies that may have their greatest potential loss to OCC at a specific strike price (e.g., a butterfly spread), OCC would calculate, using an options pricing model, a theoretical liquidating value for an underlying asset price equal to any option strike price that falls within the boundaries of the first two underlying asset prices set by OCC. Each theoretical liquidating value would be compared to the current liquidating value to determine at which potential underlying asset price OCC is most at risk. The difference between this "worst case" liquidating value and the current liquidating value would be the additional margin required for the class group.

To determine the maximum one-day price movement in the underlying asset that OCC should anticipate (the "margin interval"), OCC will analyze historical price changes in the underlying asset. OCC's criteria for setting the margin interval are designed: (i) To ensure that additional margin is sufficient to protect against a price movement equal to or exceeding at least 95% of the daily price changes in the underlying asset for the last three months or for the previous year, whichever yields the more conservative result from OCC's perspective,⁹ and (ii) to ensure that additional margin would be eroded by no more than 70% in the event of an underlying asset price change equal to the average daily price change during that period.

⁹ OCC has determined to use one year's worth of data in addition to the three months' data it now uses to provide both a short and long-term analysis of underlying asset price changes, using the higher result of the two to set margin intervals. OCC concluded that neither the short nor long-term observations taken alone, provide a completely accurate picture of the potential price changes for given underlying assets. Using only one year's data might "hide" the effect of recent large price changes; while using only three months' data might be too short a period to capture the true range of prices over which an underlying asset might change. OCC stated that it will adjust, as it currently does, the margin interval on a monthly basis (or more frequently, if necessary) to assure margin adequacy.

Once OCC determines the appropriate margin interval for the class group's underlying asset, OCC will calculate the theoretical liquidating value of the net series positions within the class group at an underlying asset price equal to (i) the current asset price plus the margin interval (the "upside projection"); (ii) the current asset price minus the margin interval (the "downside projection") and (iii) any strike prices between the asset prices in (i) and (ii). To provide additional protection, OCC will presume the per-unit cost of liquidating out-of-the-money short call positions in the upside projection and short put positions in the downside projection would increase by at least 25% of the margin interval.⁹

To calculate the theoretical net liquidating value of the portfolio at the price levels noted above, OCC will rely on an options pricing model.¹⁰ OCC believes that options price theory has practical applications for calculating margin requirements because it can be used to fairly accurately calculate the theoretical value of an option (i.e., potential liquidating value) when the underlying asset value changes.¹¹

That process produces two or more projected liquidating values (costs) for the net series positions. The largest upside variations for all the net series positions (i.e., the greatest change in liquidating value, positive or negative, in the event of an upward movement in the price of the underlying asset), are added together to arrive at the total upside variation for the class group, as are the largest downside variations for the net

⁹ OCC believes that for deep out-of-the-money short options, the options pricing model may predict that these options values will be insensitive to the potential one-day change in the underlying asset. This would result in no additional margin requirement for that option. However, should the option move much more than expected and approach an "in-the-money relationship" to the underlying asset price, OCC would be unprotected on a short call option with a rapidly rising value. Therefore, OCC believed that some adjustment to the model was necessary to provide for an absolute minimum additional margin amount. OCC stated that its initial research indicated that it is appropriate to increase the per-unit liquidating cost of the option by 25% of the margin interval. OCC further stated that it will continue to research the problem to determine whether further refinements are appropriate.

¹⁰ OCC has informed the Commission that it is using the Cox-Rubinstein options pricing model. Cox-Rubinstein is a refinement of the Black-Scholes model, an equilibrium options pricing model first introduced in 1973. See generally J. Cox & M. Rubinstein, *Options Markets*; R. Jarrow & A. Rudd, *Option Pricing*.

¹¹ Options pricing models can be used to predict, given a set of inputs (e.g., series strike, time to expiration, interest rate, dividends, volatility and underlying asset price), what the option is theoretically worth at a specified price for the underlying asset.

series positions to arrive at the total downside variation for the class group. If an upside or downside variation reflects an increase in liquidating cost or a decrease in liquidating value, that variation is assigned a positive sign for margin calculation purposes (signifying a margin requirement). Variations reflecting a decrease in liquidating cost or an increase in liquidating value are assigned a negative sign (signifying a margin credit).

The additional margin requirement for the class group is an amount equal to either the total upside variation or the total downside variation, whichever is positive (i.e., reflects an increase in liquidating cost or a decrease in liquidating value for the positions comprising the class group). In cases where both variations are positive, the additional margin requirement is the larger of the two; and where both are negative, the additional margin requirement is zero. Unlike premium margin, which can be either positive or negative (i.e., either a margin requirement or credit), additional margin is always either positive or zero (i.e., never a margin credit against premium margin requirements).

The total margin requirement or credit for the class group is an amount equal to the sum of the net premium margin requirement (or credit, if applicable) and the additional margin requirement. If the premium margin is positive, indicating a margin requirement, additional margin will accordingly add to that requirement. If premium margin is negative indicating a margin credit (as would be the case for a class group predominantly comprised of long positions), additional margin will ordinarily reduce the resulting margin credit (but never to less than zero, because the long positions that generated the credit might cease to be assets, but would never become liabilities).

If the class group is part of a larger product group, a further margin calculation is undertaken. First, all negative upside and downside variations for the class groups comprising the product group (i.e., variations reflecting a decrease in liquidating cost or an increase in liquidating value) are reduced by a percentage predetermined by OCC. OCC stated that the purpose of this reduction is to compensate for any lack of correlation in price movements among the class groups comprising the product group. The specific percentage depends on the degree of correlation OCC observed during the previous year for the particular product group involved.

Next, the upside variations (highest liquidating values/costs in the event of an underlying asset price increase) for all class groups in the product group are added together, as are the downside variations (highest liquidating values/costs in the event of an underlying asset price decrease). The largest combined result that is positive (*i.e.*, reflects a net increase in liquidating cost or a net decrease in liquidating value for the positions comprising the product group) constitutes the additional margin requirement for the product group.

The total margin requirement or credit for the product group as a whole is an amount equal to the sum of the premium margin requirements for each class group in the product group, increased (in the case of a net premium margin requirement) or reduced (in the case of a net premium margin credit) by the additional margin requirement for the product group. In summary, if the positions in a product group (or a class group that was not part of a product group) liquidate to a deficit, the total margin requirement for the group is an amount equal to the sum of that deficit and the additional margin requirement for the group. If the positions in the group liquidate to a credit, the total margin credit for the group is an amount equal to that credit, reduced by the additional margin requirement for the group.

Finally, if the total margin amount for a product group or a class group that was not part of a product group was a credit (*i.e.*, the combined result was negative), 50% of that credit could be applied against the margin requirements for other NEO class groups and product groups in the account.¹² If the account as a whole showed a margin credit, there would be no margin requirement.

2. Customers' Accounts and Firm Non-Lien Accounts. OCC does not have a lien on firm non-lien accounts or long positions carried in customer accounts except to the extent that they comprise the long leg of a specific customer's spread (*i.e.*, constitute "unsegregated long positions"). (Commission rules preclude long value credits where the long positions are segregated.)¹³

¹² On March 19, 1986, OCC filed a related proposed rule change that would further modify its proposed NEO margin system. Specifically, the proposal would permit OCC margin credits on equity options positions partially to offset margin requirements on NEO options, and vice versa. See File No. SR-OCC-86-5, Securities Exchange Act Release No. 23107 (April 8, 1986), 51 FR 12958 (April 16, 1986).

¹³ See, e.g., 17 CFR 240.8c-1(g).

Accordingly, OCC's proposal establishes slightly different procedures for margining these accounts:

1. Segregated long positions will not be offset against short positions in the same series of options, and are assigned no value for margin calculation purposes.

2. In calculating product group margin, premium margin credits for class groups within the product group are reduced to zero.

3. In calculating margin for the account as a whole, margin credits for class groups that are not part of product groups are reduced to zero. (For firm lien and market-maker/specialist accounts these class group credits are applied, after a 50% reduction, against other class and product group margin requirements).

B. OCC's Current Non-Equity Options System

Similar to OCC's proposed NEO margin system, OCC's current system differentiates between firm lien accounts, on the one hand, and customer accounts and firm non-lien accounts, on the other hand. Also, OCC's current system calculates the current liquidating value of a position (which is referred to as premium margin in the proposed system) and adds to that amount a "minimum amount"¹⁴ (referred to as "additional margin" in the new system) to account for any changes in value of the position that OCC could expect during the next day. The first step under the current system is to calculate the current liquidating value of the positions in an account. All long and short positions within the same class of options are paired (*i.e.*, long calls are paired with short calls and long puts with short puts). Next the marking prices¹⁵ of the paired longs in the class are added together, as are the marking prices for the paired shorts. Current liquidating value for the paired positions is the difference between those two totals. If there is an excess short value, there will be a margin requirement equal to that excess. The marking price of all unpaired short positions in the class is then added to the result obtained above. That amount, for customer and firm non-lien accounts, is the total current

¹⁴ The calculation of minimum amount is described, *infra*.

¹⁵ A NEO option's marking price is, generally speaking, the cost to liquidate the option. For example, in the case of unexercised and unassigned Treasury bill options, the marking price is the product of the unit of trading and the current highest asked per unit premium quotation for options of the same series; for exercised and assigned index options, the marking price is the difference between the daily underlying security marking price and the aggregate exercise price.

liquidating value for the class. For firm lien accounts and market-maker/specialist accounts, one further step is required to determine total current liquidating value: The liquidating value resulting from the calculations above is reduced by 70% of the sum of (1) the excess long value, if any, for the account plus (2) the sum of the marking prices of any unpaired long contracts of the class.¹⁶

OCC next calculates the appropriate "minimum amount" for the positions. The "minimum amount" is a certain dollar amount per contract determined by OCC, up to a ceiling set forth in OCC Rules 601(h), (i) and (j),¹⁷ which is intended to protect OCC against adverse options and underlying asset price changes. Within the range set out in OCC's Rules, OCC has discretion to determine the appropriate minimum amount and will vary the amount depending on whether, and the degree to which, the option is in- or out-of-the-money.¹⁸

The minimum amount for the paired positions in a class is the excess of the minimum amounts for the paired short positions in the class over the minimum amounts for paired long positions (*i.e.*, "net minimum"). To arrive at total margin for the class, the minimum amount for any unpaired short positions must be added to the net minimum calculated above and that sum must be added to the current liquidating value calculated above. For firm lien and market-maker specialist accounts, class margin credits are reduced by 50% and are then used to offset margin requirements for other classes.

C. Differences Between the Proposed Margin System and the Current System

There are two principal differences between the current and proposed NEO-margin systems. The first is the reliance under the proposed system on options pricing theory to calculate aggregate margin obligations. Under OCC's current

¹⁶ OCC's Rules thus permit unpaired long positions in firm non-lien and market-maker/specialist accounts to offset, to some degree, the premium margin requirement resulting from the sum of excess short positions or unpaired short positions. This reflects OCC's lien on long positions in these accounts. The 30% reduction is intended to protect OCC against possible unfavorable price changes, including a potential decrease in the liquidating value of those long positions during the next business day. Under the proposed system this reduction is replaced by the additional margin concept.

¹⁷ The ceilings were calculated by OCC to protect OCC against 90% of the historically observed price changes in the underlying asset over a given period.

¹⁸ See note 9, *supra* for a discussion of the special considerations involved with deep "out-of-the-money" short options.

margin system, margin calculations are made on a largely disaggregate basis in an essentially mechanical effort to identify varying degrees of risk represented by different kinds of offset positions. Thus, after netting out identical long and short positions in the same options class, OCC identifies different kinds of spread positions and accords them varying "spread" margins. Unhedged short positions in the options class are then margined based on the amount they are in- or out-of-the-money. The margin percentage varies for different underlying instruments based on their historical volatility. Under the proposed system, OCC attempts to measure the impact of adverse price movements on all options positions in a particular group (*i.e.*, relating to the same underlying instrument). Hence, in reliance on options price theory, margining is based on aggregate portfolio risk exposure.

The second difference is the proposed provision of margin credit between related options classes through the concept of class and product groups. The purpose of these class and product groups is to allow margin credits on certain positions to offset, at a higher ratio than the present system, margin requirements on closely related positions. Under the current system, margin is calculated on the net position for each class of options.¹⁹ Any resultant margin credit for a class of options is reduced by 50% and can then be applied against margin requirements for other classes of options.²⁰ Under the new system, OCC organizes options positions into class and product groups. All options on the same underlying asset (*i.e.*, puts, calls, American-style or European-style options) are organized into class groups. Product groups are comprised of those class groups which OCC determines exhibit close price correlation.²¹ The new system attempts

¹⁹ A "class of options" must be distinguished from "class group." OCC By-Law Art. I, Sec. 1 defines "class of options" to mean all options contracts of the same type covering the same underlying asset. "Type" means the classification of an options contract as either a put, call, American-style or European-style option. See OCC By-Law Art. I, Sec. 1. by contrast, "class group" means all classes of options on the same underlying asset.

²⁰ For customer and firm non-lien accounts under the current system, however, a margin credit on one class cannot be used to offset margin requirements for other classes to any degree because OCC does not have a lien on segregated long positions in those accounts.

²¹ See, *supra* note 4, for a description of the product groups. A discussion of price correlation follows.

to recognize the hedge value of various closely related positions by allowing a direct offset of credits within class groups and, within product, allowing an offset to the extent that the class groups show close price correlation. OCC will determine the correlation factor among a product group's class groups; reduce any class group credits to account for the correlation factor; then, with those reduced credits, offset margin requirements for other class groups within the product group.

III. OCC's Rationale

OCC believes that the system reflects modern option price and portfolio theories and substantially reduces the potential for over- and under-margining of non-equity option positions. Although OCC's current NEO system has protected OCC adequately, OCC has sought a more refined methodology to calculate margin. OCC believes that the new system is not only more equitable for its Members (and, in general, will lead to a substantial net reduction in margin requirements for Members), but also offers OCC greater protection than the current system. Furthermore, OCC has been interested for some time in developing a system that would allow cross-margining of related options and futures. OCC believes that the new NEO system is one that can serve as an intermarket margin methodology for futures and options if and when cross-marketing becomes a reality.

IV. Statutory Standards

Under section 19(b)(2) of the Act, the Commission must approve OCC's proposed rule change if it finds OCC's proposal is consistent with the Act and Commission rules applicable to registered clearing agencies. The Commission may not approve OCC's proposal if it is unable to make such a finding.

Section 17A sets out the standards the Commission must use in reviewing proposed rule changes of registered clearing agencies. Section 17A(b)(3) provides, among other things, that a clearing agency shall not be registered by the Commission unless the Commission determines that the rules of the clearing agency are designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system. Section 17A(b)(3)(F) provides that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency

or for which it is responsible. That subsection also provides that the clearing agency's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. Furthermore, section 17A(b)(3)(I) provides that the rules of a clearing agency must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Section 17A also sets forth general objectives with respect to the regulation of registered clearing agencies. In the introductory provision of the Section, Congress directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. Congress further charged the Commission to act in accordance with the following specific Congressional findings:

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

Section 17A(a)(2) directs the Commission in using its authority under the Act to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers, dealers, clearing agencies and transfer agents.

V. Discussion

OCC's margin system is designed, among other things, to protect OCC against an erosion in the value of collateral on which OCC asserts a lien. The collateral must be maintained to protect OCC in the event of member failures to meet their settlement obligations. As discussed above, the proposal would use an options pricing model to project liquidating values of

options positions, given underlying asset price movements within certain ranges, and collect margin payments within those parameters based on a worst-case scenario. An effective margin system cannot protect against the risks of all conceivable or potential market movements, however, because it would increase substantially the costs to Clearing Members of posting margin and reduce their trading activity, without providing realistic incremental safety to the clearing agency. Thus, in assessing the proposal, the Commission must determine whether OCC's system strikes a suitable balance between controlling financial exposure to OCC and imposing excessive business costs on OCC Members.

The Commission believes that OCC's decision to incorporate options price theory as the central element of its NEO margin system represents an important improvement over the current system. If the options pricing model more accurately values options positions, the potential for both under- and over-margining positions can be significantly reduced. Options pricing models are well-accepted method for valuing options and have been widely used in the market. Indeed, for options market-makers, arbitrageurs and other active options market participants, their use in pricing options, effecting trading strategies and measuring risk is virtually essential. A sound options pricing model can reasonably predict changes in an option's value by reference to changes in the value of the underlying assets.

OCC has conducted a margin adequacy study to assess the reliability of its new NEO system compared with the reliability of its present system. To make that assessment, OCC compared its Members' margin requirements during a recent period of significant volatility in which sixteen of twenty-five underlying asset price changes equalled or exceeded their margin intervals.²² Specifically, OCC compared Members' margin requirements²³ as they would

²² The fact that many underlying asset price changes exceeded the margin intervals is significant for two reasons. First, since margin intervals are set so they equal or exceed 95% of the underlying asset price changes for the previous three months, the fact that so many asset price changes were outside their margin intervals indeed indicates that the period was one of extraordinary market movements. Second, it is important to note that OCC will allow, at most, two or three instances of underlying asset price changes which exceed their margin intervals before it will change those margin intervals. See discussion, *supra*.

²³ OCC conducted the test for the period from February 12 through 18, 1986, a recent bull market period which was characterized by great upside movements in most products.

have been calculated under the new system, and as they were calculated under the old system, with OCC's actual exposure. Under the new system, thirteen more accounts would have liquidated to a deficit than under the old system. However, after application of those Member's Clearing Fund deposits, only six deficits remained. Furthermore, deficits under the new system, on average, were significantly lower than under the old system. The average deficit under the old system was \$115,910 and under the new system, \$88,148, a difference of \$27,762 per account. There appeared to be fewer deficits under the old system only because OCC over-margined positions in Members' accounts.²⁴ Accordingly, the Commission believes that the new model provides more precise risk protection than the old system. Nevertheless, because the adequacy study results appear to cause OCC to place greater reliance on Member clearing fund deposits, the Commission expects OCC to continue to monitor the adequacy of the new system and to make adjustments as necessary.

A crucial element in determining potential options liquidating values under the new system, and thus, additional margin requirements, is the margin interval. As discussed above, the margin interval is the range of intra-day underlying asset price movements for which OCC will calculate potential position liquidating values. It establishes the maximum underlying asset price movement for which the proposed margin system is intended to provide protection to OCC. Too narrow a margin interval could expose OCC to significant exposure if underlying asset prices rise or fall beyond the bounds of the chosen interval. At the same time, however, too broad a margin interval could increase OCC member margin requirements substantially without corresponding safeguarding benefits.

The proposal, as amended, delegates authority to the Chairman, the President or the Margin Committee to set margin intervals. In exercising that authority, however, the Margin Committee would be obliged to act without a strict range: (1) the interval must match or exceed 95% of the daily price movements of the underlying asset in the preceding three months and (2) it must be large enough so that additional margin would not be

²⁴ In fact, under the old system, OCC would have collected \$212,882,278 more than under the new system. Moreover, since the total potential deficit under the old system was only \$297,070 less than the total potential deficit under the new system, OCC would be getting comparatively little for that greater than \$200 million margin cushion.

reduced by more than 70% in the event of a price change in the underlying asset equal to the average daily price change during that period. OCC has indicated that, in applying these criteria, only two or three observations of volatility within a three-month period will be permitted to exceed current margin intervals before the intervals would be revised.

In addition to the three-month observations, OCC will also maintain one year's worth of data on underlying asset price changes and will compare the margin interval calculation for a year's worth of price changes with the margin interval calculation for three months' data. OCC believes that maintaining price change data for both periods will provide important additional protection in setting suitable margin intervals. Moreover, although constant monitoring of price changes within a three-month time frame should reliably detect recent underlying asset price change patterns, it could result in under-margining for products which recently experienced uncharacteristically low volatility.²⁵ On the other had, reliance solely on a one-year time frame might not give recent rapid changes in the underlying asset price the proper weight in margin interval determinations.²⁶ Therefore, OCC has determined, and the Commission concurs, that it is prudent to examine both short-range (three month) and long-range (twelve month) volatility and calculate margin intervals based on the period demonstrating the greatest range of underlying asset price changes.

Volatility of the price of the underlying asset is also one of the important variables in the options pricing model. OCC stated that there are two basic methods of estimating such volatility. One is to use the historical volatility of the underlying asset as measured over a given prior period. The other is to use "implied" or "market" volatility of an option, which involves plugging an option's actual price into the model and solving "backwards" for the volatility implied by that price.²⁷ OCC

²⁵ In fact, in subsequent information filed by OCC, OCC revealed that, at least for foreign currencies which have experienced dramatic price changes during the preceding year, margin levels based on one year's worth of data were significantly (20-30%) higher than three month's data.

²⁶ For example, a week or two of rapidly changing prices in three months' data would have a much greater effect on margin interval determinations than if it were contained in a year's worth of data.

²⁷ As discussed above, the options pricing model is used to calculate the theoretical worth of an

stated that because implied volatilities can vary significantly from historical volatilities and because both can vary from day-to-day, there is no single volatility measure that can be considered as a totally reliable predictor of theoretical option values across a range of underlying prices. OCC believes, however, that implied volatility represents the most recent market expectation of future volatility (the market's aggregate view based on current prices) and, as such, represents the more accurate measure.

OCC originally indicated that it intended to use the greater of one-year historical or implied volatility, believing this would provide the most conservative margin calculations. It subsequently determined, however, that historical volatility sometimes has the unintended effect of overvaluing long positions in Members' accounts. Moreover, implied volatility reflects actual market expectations of future volatility (*i.e.*, it relies on the views of market participants, not an OCC officer or committee, to assess whether short-range or long-range price movements are better indicators of likely future volatility). Hence, OCC decided to use implied volatility alone. The Commission is satisfied that using only implied volatility for non-equity options should provide OCC adequate protection in making additional margin determinations.

Another fundamental change in OCC's NEO margin system is the offsetting of margin credits and requirements among the class groups within a product group. The theory underlying allowing margin credits to offset margin requirements within product groups is that certain closely related underlying assets exhibit close price correlation. Market participants rely on these relationships in effecting arbitrage and hedging strategies involving related products.²⁸ OCC's proposal recognizes the close pricing relationship of related assets. At the same time, OCC's new system correctly recognizes that the hedge values of

closely related assets are not perfectly correlated. A direct dollar-for-dollar offset of credits against requirements would leave OCC exposed to great risk in the event that closely related assets do not, in fact, move in tandem. Therefore, the Commission believes that the provision in OCC's Rules requiring that any class group credit (for class groups within product groups) be reduced according to the degree the class groups exhibit price correlation is appropriate. Furthermore, OCC has indicated that, although the class groups within each product group have historically exhibited a 95% or higher correlation, OCC will reduce credits as though the class groups exhibited a lower correlation as an additional safeguard.²⁹ The Commission is satisfied that this extra cushion will protect OCC in the event of an uncharacteristic move in the price of the underlying assets.

Finally, in addition to requiring a high statistical correlation among a product group's class groups, OCC will require that the class groups be rationally and economically related to one another. The same factors that affect one class group must be the same that affect the other class groups. For example, the indices must represent the same general segment of the market and contain enough stocks so that no one stock or industry dominates. For Treasury securities this means that they must be at the same general end of the yield curve.

Cost Implications to OCC Clearing Members

Congress, in Section 17A, instructed the Commission, among other things, to avoid encouraging clearance and settlement procedures that impose unnecessary costs on investors and persons facilitating transactions. In this regard, the Commission believes that the proposed OCC NEO margin system represents a substantial improvement over OCC's current margin system. One of OCC's principal objectives in developing this new system was to make margin contributions more economically rational for its Clearing Members. The Commission believes OCC has achieved this objective: Under the new system OCC's margin requirements more reliably predict

²⁸ The following are the product groups OCC will establish and the haircuts among the member class groups:

- (i) S & P 100, S & P 500, New York Composite, Amex Major Market and Value Line Indices — 80%
- (ii) OTC Indices — 70%
- (iii) 30-year Treasury Bonds and 10-year Treasury notes — 85%
- (iv) 5-year Treasury notes — 80%.

OCC's actual exposure. At the same time, OCC's proposal should result in a significant overall reduction in margin requirements for OCC Clearing Members without adversely affecting OCC's risks. In fact, the OCC margin adequacy study described above showed that the new NEO margin system resulted in an overall reduction of Member margin requirements of \$212,882,278 for the period chosen, a 23% reduction. Furthermore, for 134 out of 152 Members, margin decreased, with the largest decrease totalling \$80,666,678 or 45% of that Member's actual margin requirement. (OCC noted, furthermore, that that particular Member's NEO positions still liquidated to an excess.)

The Commission recognizes that, by relying on an options pricing model that is much more sophisticated than the current margin formulae, OCC is introducing an increased level of complexity into the margin calculation process. The Commission is satisfied, however, that conversion to the new system should not result in significant start-up or continuing costs to Clearing Members. Most Member firms already use one or more options pricing models in their current trading and investment programs and OCC has indicated that it intends to make the software it will use for its calculations available to its Members. Finally, to facilitate conversion, OCC plans to provide Clearing Members, before shifting to the new system, at least two weeks of parallel calculations using both the old and new system to facilitate conversion.

OCC's new system provides a single, rational approach to calculating margin requirements, regardless of how complex Member's hedging, arbitrage and related strategies may be. The Commission therefore believes that the costs to Members of converting to the new system should not be significant and, more importantly, clearly will be outweighed by the benefit to Clearing Members of a fairer, more predictive system reducing overall margin obligations while providing superior protection to OCC.³⁰

³⁰ OCC has indicated that the proposed NEO margin system, once in place, easily could be adapted to permit cross-margining of related future and options positions. The Commission is not faced, at this time, with any specific proposals for futures/options cross-margining, although OCC has discussed such an initiative informally with both the Commodity Futures Trading Commission and the SEC. Without addressing the merits or any of the legal or regulatory questions raised by cross-margining under the federal commodities or securities laws, the Commission finds the potential of the proposed NEO margin system to be used for cross-margining to be a significant added advantage.

option when the underlying asset value and the option's volatility, among other things, are known. The model can also be used, therefore, to calculate the volatility of a particular option by: (1) plugging into the formula the underlying asset value and the historically observed option price for that underlying asset price; and (ii) solving the equation with volatility as the unknown variable.

²⁸ For example, a trader with a short call position in a Treasury bond option might seek to hedge that position by purchasing call options on a different Treasury bond. Similarly, a trader who believes a particular call option series on one broad-based stock index is over-priced might seek to engage in an arbitrage transaction by selling calls on a different, but closely correlated stock index.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change in File No. SR-OCC-85-21 is consistent with the Act. In particular, the Commission finds that the proposed rule change is consistent with Section 17A and the rules and regulations applicable to clearing agencies.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is approved.

By the Commission.

Dated: April 22, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-9680 Filed 4-29-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23174; File Nos. SR-PCC-85-06 and PSDTC-85-08]

Self-Regulatory Organizations; Pacific Clearing Corp. and Pacific Securities Depository Trust Co.; Order Withdrawing Proposed Rule Changes

On October 17, 1985, Pacific Clearing Corporation ("PCC") and Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), proposed rule changes to permit the PCC/PSDTC to charge non-member entities for account numbers and symbols assigned by PCC/PSDTC for Pacific Stock Exchange ("PSE") audit trail purposes. Notice of the proposed rule changes was published on November 8, 1985.¹ No comments were received. By letters dated March 21, 1986, PCC and PSDTC requested that the proposed rule changes be withdrawn. PCC and PSDTC stated that after internal review and discussions with Commission staff, PCC and PSDTC concluded that because PSE must maintain the audit trail, it would be more appropriate for PSE to file, at a later date, a similar filing charging PSE Members directly for the account numbers and symbols.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, withdrawn.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

¹ See Securities Exchange Act Release Nos. 22609 (November 8, 1985), 50 FR 47485 (November 18, 1985) (File No. SR-PCC-85-06) and 22608 (November 8, 1985), 50 FR 47486 (November 18, 1985) (File No. SR-PSDTC-85-08).

Dated: April 24, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-9681 Filed 4-29-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23175; File No. SR-PSE-86-05]

Filing and Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Restrictions and Duties of Members and Member Clerks While on the Trading Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 3, 1986, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons:

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE or "Exchange") proposes to amend section 39(b) and add to it Commentary .03 and Commentary .04 of Rule VI of the Rules of the Board of Governors to specify the duties and restrictions of the member clerks, as well as the responsibility of the member to adequately supervise his or her clerks.

Besides amending the body of section 39 to impose upon the member a stated duty to adequately supervise his or her clerks and to ensure that the clerks are adhering to all applicable rules, Commentaries .03 and .04 state more specifically what those clerks duties are. They will state as follows: (additions are italicized)

Commentary:

.03 *While on the Trading Floor, clerks shall display at all times the badge(s) supplied to them by the Exchange. Any Market-Maker clerk who writes up an option order on the Options Floor must give his employer a copy of that order before it is delivered; the employer must retain the copy on his person until it is executed. A clerk receiving a phone order must initial, must mark as opening or closing and must time-stamp the order.*

.04 *A clerk shall remain at a booth assigned to his employer or assigned to*

his employer's clearing firm unless he is: (1) entering or leaving the trading floor; (2) transmitting or checking the status of an order or reporting a fill; (3) standing in the same crowd as his employer who is a Market Maker or Floor Broker; (4) supervising his firm's clerks if he is a floor manager; or (5) acting as a stock clerk. Only stock clerks and Market Maker or Floor Broker clerks may stand in or near a trading crowd; in the latter case, the Market Maker or Floor Broker must be present in the same trading crowd. Terminals on the trading floor (except quote terminals or those located in the booths) may not be used by a clerk unless his employer is a Market Maker or Floor Broker who is standing near the terminal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

One of the primary objectives of Rule VI, section 39, is the restriction against non-member trading. However, because of the lack of specific restrictions placed upon the clerks of members, a misunderstanding of the clerk's limitations occurs. In this regard, the PSE proposes to define where the clerks may or may not go while on the Options Trading Floor.

In order to ensure that the member clerk is not entering orders on his own, the proposed rule change imposes requirements on the clerk to present a copy of each order to his or her employer, who must retain the copy until execution. This requirement will serve the purpose of reminding members and clerks of their respective obligations.

Finally, the Exchange has added specific language to the body of section 39, that makes this rule applicable to the members obligations to adequately supervise an employee. This language will place an additional incentive on the members' supervisory role.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition:

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received. However, the proposed rule change was considered and approved by the Board of Governors at its meeting on November 21, 1985.

III. Date of Effectiveness of the Proposed Rule Change

Because the proposed rule change is intended to clarify the duties of PSE members' clerks and thereby prevent unauthorized trading, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6¹ and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register** because the proposal amends the stated policies and practices of the PSE with respect to the administration of an existing PSE rule. In addition, the Commission notes that the proposal is substantially similar to an existing rule of the Chicago Board Options Exchange, Inc. (CBOE Rule 6.20).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,² that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³

Dated: April 24, 1986.

John Wheeler,
Secretary.

{FR Doc. 86-9682 Filed 4-29-86; 8:45 am}

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Environmental Impact Statement;
Wayne-Duplin-Sampson Counties, NC**

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 Wayne, Duplin and Sampson Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, District Engineer, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 856-4330.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed highway project in Wayne, Duplin and Sampson Counties. The proposed action would be the construction of a fully controlled US 117 connector from the Mount Olive Bypass in Wayne County through Duplin County to proposed I-40 in Sampson County. The proposed project is needed to provide a connector to I-40 from the Mount Olive-Goldsboro vicinity. This will allow quicker access to the Wilmington area or the Raleigh area via I-40.

The project consists of widening the existing 2 lane US 117 to a 4 lane divided facility from NC 55 at Mount Olive to the existing 4 lane section at Calypso. From this point a 4 lane divided facility will be build on new location to connect with I-40.

Alternatives under consideration include (1) the "no-build," and (2) a fully controlled access highway, part of which will be on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting has been held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and

federally assisted programs and projects apply to this program)

Roy C. Shelton,
District Engineer.

{FR Doc. 86-9657 Filed 4-29-86; 8:45 am}

BILLING CODE 4910-22-M

VETERANS ADMINISTRATION**Agency Form Under OMB Review**

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 24, 1986.

By direction of the Administrator.

Randall H. Bryant II,
Executive Assistant to the Associate Deputy Administrator for Management.

Reinstatement

1. Board of Veterans Appeals
2. Appeal to Board of Veterans Appeals
3. VA Form 1-9
4. On occasion
5. Individuals or households
6. 39,374 responses
7. 39,374 hours
8. Not applicable

{FR Doc. 86-9637 Filed 4-29-86; 8:45 am}

BILLING CODE 8320-01-M

¹ 15 U.S.C. 78f(1982).

² 15 U.S.C. 78s(b)(2)(1982).

³ 17 CFR 200.30-3(a)(12)(1985).

Sunshine Act Meetings

Federal Register

Vol. 51, No. 83

Wednesday, April 30, 1986

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

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:11 p.m. on Thursday, April 24, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The First National Bank of Bandera, Bandera, Texas, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, April 24, 1986; (2) accept the bid for the transaction submitted by Bandera Bank, Bandera, Texas, a newly-chartered State nonmember bank; (3) approve the applications of Bandera Bank, Bandera, Texas, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in The First National Bank of Bandera, Bandera, Texas; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First National Bank of Irving, Irving, Texas, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, April 24, 1986; (2) accept the bid for the transaction submitted by City National Bank of Irving, Texas; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive) and seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L.

Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 25, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 86-9746 Filed 4-28-86; 11:19 am]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, May 5, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personal 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. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

James McAfee,

Associate Secretary of the Board.

April 25, 1986.

[FR Doc. 86-9700 Filed 4-25-86; 4:50 pm]

BILLING CODE 6210-01-M

3

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Monday, May 5, 1986 at 4:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List
4. Petitions and Complaints.
5. Investigations 731-TA-278/280 [Final] (Certain cast iron pipe fittings from Brazil, Korea, and Taiwan)—briefing and vote.
6. Investigations 701-TA-248 [Final] and 731-TA-259 and 260 [Final] (Offshore platform jackets and piles from the Republic of Korea and Japan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason,
Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.

April 25, 1986.

[FR Doc. 86-9712 Filed 4-28-86; 9:10 am]

BILLING CODE 7020-02-M

4

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Friday, May 9, 1986 at 11:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC., 20436.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Investigations TA-201-58 Certain metal castings)—briefing and vote on injury.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason,
Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.

April 25, 1986.

[FR Doc. 86-9713 Filed 4-28-86; 9:10 am]

BILLING CODE 7020-02-M

5

RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 6, 1986, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611.

The agenda for the meeting follows:

- (1) Canadian Service

(2) Proposed Changes in the RUIA.

Regulations

(3) Appeal of Nonwaiver of Overpayment

Edna A. Sheppard

(4) Delayed Registrations Made by Dennis

J. Cooney

(5) Delayed Registrations Made by David L.

Coyle

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 387-4920.

Dated: April 25, 1986.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86-9788 Filed 4-28-86; 4:02 am]

BILLING CODE 7905-01-M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 5, 1986:

An open meeting will be held on Tuesday, May 6, 1986, at 10:00 a.m., in Room 1C30, followed by a closed meeting.

An open meeting will be held on Wednesday, May 7, 1986, at 1:00 p.m., as previously announced in 51 FR 15859.

The Commissioners, Counsel to the Commissioners, the Secretary of the

Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10), and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting, scheduled for Tuesday, May 6, 1986, at 10:00 a.m., will be:

1. Consideration of whether to issue a release adopting technical amendments to Rule 3A-02 of Regulation S-X, "Consolidated financial statements of the registrant and its subsidiaries." For further information, please contact Robert J. Kueppers at (202) 272-2130.

2. Consideration of whether to approve staff recommendations which would temporarily suspend the requirements to use current prices in applying the ceiling test under the full cost accounting method. Under these recommendations, registrants using other than current prices in applying the test would be required to provide certain disclosures. For further information, please contact John W. Albert at (202) 272-2130 or James W. Ford, Jr., at (202) 272-2553.

3. Consideration of whether to adopt amendments to Rule 31-3 under the

Securities Exchange Act of 1934 to exempt OTC/Exchange-Traded NMS Securities transactions from payment of Section 31 fees. For further information, please contact Leland H. Goss, at (202) 272-2827.

4. Consideration of whether to authorize the issuance of a Request for Proposals ("RFP") for the operational Edgar system. The RFP would require the capability for electronic filing and processing of most filings processed by the Divisions of Corporation Finance and Investment Management. In addition, the RFP would require the capability for widespread access by the public to the Edgar data base. For further information, please contact David Copenhafer at (202) 272-3794.

The subject matter of the closed meeting, scheduled for Tuesday, May 6, 1986, following the 10:00 a.m. open meeting, will be:

Regulatory matter bearing enforcement implications.

Settlement of injunctive action.

Institution of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Jacqueline Higgs at (202) 272-2149.

John Wheeler,

Secretary.

April 25, 1986.

[FR Doc. 86-9756 Filed 4-28-86; 12:17 pm]

BILLING CODE 8010-01-M

Antidiarrheal Drug Products

Wednesday
April 30, 1986

Part II

**Department of
Health and Human
Services**

Food and Drug Administration

21 CFR Parts 335 and 369

**Antidiarrheal Drug Products for Over-the-
Counter Human Use; Tentative Final
Monograph; Proposed Rulemaking**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 335 and 369

[Docket No. 78N-036D]

Antidiarrheal Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) antidiarrheal drug products (products that treat or control the symptoms of diarrhea) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal deals only with antidiarrheal drug products and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by June 30, 1986. New data by April 30, 1987. Comments on the new data by June 30, 1987. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Written comments on the agency's economic impact determination by August 28, 1986.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 21, 1975 (40 FR 12902) FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC laxative, antidiarrheal, emetic, and

antiemetic drug products, together with the recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. Interested persons were invited to submit comments by June 19, 1975. Reply comments in response to comments filed in the initial comment period could be submitted by July 19, 1975.

In a notice published in the Federal Register of March 21, 1980 (45 FR 18398), the agency advised that it had reopened the administrative record for OTC antidiarrheal drug products to allow for consideration of data and information that had been filed in the Dockets Management Branch after the date the administrative record previously had officially closed. The agency concluded that any new data and information filed prior to March 21, 1980 should be available to the agency in developing a proposed regulation in the form of a tentative final monograph.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information. Data and information received after the administrative record was reopened have also been put on display in the Dockets Management Branch. In response to the advance notice of proposed rulemaking, 19 drug manufacturers, 2 trade associations, and 1 State planning and budget office submitted comments on antidiarrheal drug products. Copies of the comments received are on public display in the Dockets Management Branch.

The advance notice of proposed rulemaking, which was published in the Federal Register on March 21, 1975 (40 FR 12902), was designated as a "proposed monograph" in order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10). Similarly, the present document is designated in the OTC drug review regulations as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Part 335 (21 CFR Part 335) FDA states for the first time its position on the establishment of a monograph for OTC antidiarrheal drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final

rule establishing a monograph for OTC antidiarrheal drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC antidiarrheal drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the Federal Register. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was

initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC antidiarrheal drug products (published in the *Federal Register* of March 21, 1975; 40 FR 12902), the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the date of publication of the final monograph in the *Federal Register* and that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether further testing was undertaken to justify their future use. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 30 days after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the *Federal Register*. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace. However, if the agency determines that any labeling for a condition included in the final monograph should be implemented sooner, a shorter deadline

may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the *Federal Register* of February 8, 1973 (38 FR 3614) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on the Comments

A. General Comments

1. One comment objected to the Panel's recommendation that the quantity of each active ingredient be stated in OTC drug product labeling, on the grounds that section 502(e)(1)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)(1)(A)) provides for quantitative ingredient labeling only for prescription drugs.

The agency agrees that other than for certain specifically named substances, the act currently requires quantitative ingredient labeling only for prescription drugs. The tentative final monograph does not require active ingredient labeling. However, the agency advises that the Panel's recommendation is consistent with that of the National Advisory Drug Committee, which advocates that all OTC drugs be labeled with a quantitative statement of the active ingredients. It is also consistent with the recommendation in 21 CFR 330.1(j) that the labeling of an OTC drug product contain the quantitative amount of each active ingredient, expressed in terms of the dosage unit stated in the directions for use.

Drug manufacturers who are members of The Proprietary Association, the trade association that represents approximately 85 OTC drug manufacturers who reportedly market between 90 and 95 percent of the volume of all OTC drug products sold in the United States, have been voluntarily including the quantities of active ingredients on OTC drug labels for a number of years (Ref. 1). The agency commends these voluntary efforts and urges all other OTC drug manufacturers to voluntarily label their products in accordance with The Proprietary Association's guidelines.

Reference

(1) "Proprietary Association Adopts Voluntary Disclosure of Inactive Ingredients," News Release, The Proprietary Association,

Washington, DC, May 14, 1984, copy included in OTC Volume 09DTFM.

2. Several comments objected to the Panel's recommendation that all inactive ingredients be listed on the labeling, arguing that such a listing would be meaningless, confusing, and misleading to most consumers.

The agency advises that neither the March 21, 1975 advance notice of proposed rulemaking nor the monograph in this tentative final rule requires that all inactive ingredients be listed in OTC drug labeling. However, the agency agrees with the Panel that listing of inactive ingredients in OTC drug product labeling would be in the public interest. Consumers with known allergies or intolerances to certain ingredients would then be able to identify substances that they may wish to avoid.

The Proprietary Association recently announced that its member companies would voluntarily begin to list inactive ingredients in the labeling of OTC drug products under guidelines established by the Association (Ref. 1). The agency commends these voluntary efforts and urges all other OTC drug manufacturers to voluntarily label their products in accordance with The Proprietary Association's guidelines.

Reference

(1) "Proprietary Association Adopts Voluntary Disclosure of Inactive Ingredients," News Release, The Proprietary Association, Washington, DC, May 14, 1984, copy included in OTC Volume 09DTFM.

3. Two comments contended that FDA does not have the authority to establish substantive rules.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the *Federal Register* of May 11, 1972 (37 FR 9484) and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the *Federal Register* of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association v. Weinberger*, 512 F.2d 688, 696-98 (2d Cir. 1975); and *National Association of Pharmaceutical Manufacturers v. FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).

4. Several comments urged a greater role for pharmacists in the sale of OTC drugs. One comment recommended that OTC drugs be available only through

pharmacies, and two suggested that any labeling which suggests consultation with a physician should mention a pharmacist as a viable alternative.

These issues were fully discussed in the preamble to the proposal to revise requirements for drug interaction warnings on OTC drug products (see the Federal Register of June 4, 1974 (39 FR 19880)). These views will not be restated here. However, the agency notes that § 330.1(g) (21 CFR 330.1(g)) requires that labeling for OTC drugs include a warning to seek professional assistance in case of accidental overdose. The pharmacist is one of the health professionals that a consumer might choose to consult.

5. One comment noted that on several pages of the Panel's recommended monograph the abbreviation "gm" is used for gram, yet 21 CFR 201.62(1) (formerly 21 CFR 1.102(d)) states that the only abbreviation which may be used for gram is "g."

The situation outlined in the comment was an editorial oversight. The OTC drug labeling regulations cited in the comment permit the use of "g" as the only abbreviation for gram. For clarity, metric units have been fully written out in this tentative final monograph.

6. One comment stated that the Panel's recommendations violate the objectives and philosophy of the OTC drug review and that the Panel failed to discharge its obligations by placing many long-established antidiarrheal ingredients and antidiarrheal combinations in Category III. Other comments contended that the Panel did not consider the extent-of-use and consumer-acceptance data or the professional opinion surveys of physicians and pharmacists submitted for products containing ingredients placed in Category III.

The agency believes that the Panel's recommendations for OTC antidiarrheal drug products are fully in accord with the objectives of the OTC drug review as stated in the applicable regulations (21 CFR Part 330). The Panel reviewed all of the data submitted for each antidiarrheal active ingredient, including marketing histories and information on the extent of use by consumers. In placing antidiarrheal ingredients or combinations in Category III, the Panel concluded that the available data were insufficient to permit classification in Category I or Category II at the time it reviewed those drugs. The agency has also evaluated these data, marketing histories, and information on extent of use, as well as more recent data and information, in reaching its conclusions in this tentative final monograph.

B. General Comments on Antidiarrheal Drug Products

7. One comment disagreed with the definition of "diarrhea" recommended by the Panel in § 335.3(a): "The abnormally frequent passage of watery stools, self-limiting (24 to 48 hours) usually with no identifiable cause." The comment argued that this definition is vague and does not provide any assistance for individuals interested in designing protocols and conducting tests for antidiarrheals. The comment added that evaluations of diarrhea are best determined by a subjective, case-by-case approach and that the definition of the condition should be related to the individual and his or her personal bowel habits, not to the "average" person. The comment proposed the following definition of diarrhea: "An increase in the frequency, fluidity, or volume of bowel movements, relative to the usual habit of each individual."

The agency agrees that the Panel's definition of diarrhea does not provide criteria for use in designing protocols or conducting clinical trials. Therefore, the definition of diarrhea in this tentative final monograph has been revised to read: "*Diarrhea*. A condition characterized by increased frequency of excretion of loose, watery stools (three or more daily) during a limited period (24 to 48 hours), usually with no identifiable cause." This revised definition suggests criteria, i.e., decreased frequency of excretion and/or improved consistency of stools, which can be used in designing clinical protocols to establish the effectiveness of an OTC antidiarrheal drug. In addition, the definition of antidiarrheal has been revised to read: "*Antidiarrheal*. A drug that can be shown by objective measurement to treat or control (stop) the symptoms of diarrhea." The agency believes that this emphasis on relief of symptoms more accurately reflects the expectations for an OTC antidiarrheal and is therefore helpful in designing testing protocols for OTC antidiarrheal drugs.

8. One comment suggested that the term "high fever" in the Panel's recommended warning in § 335.50(c)(1), "Do not use . . . in the presence of high fever" . . ." be clarified by stating a specific temperature, i.e., over 102° F (oral) or 103° F (rectal), in order to provide specific directions.

The agency believes that the use of the term "high fever" is inappropriate for inclusion in the warning. OTC antidiarrheal drug products are intended to be used for the treatment of acute nonspecific diarrhea that is not associated with fever (any temperature

above 98.6 °F), because the presence of fever may be indicative of a serious condition that is not amenable to treatment with such products. Because consumers understand the term "fever" to mean any temperature over 98.6° F, there is no need to specify a specific temperature. Therefore, the agency is proposing in this tentative final monograph that the warning in § 335.50(c)(1) read as follows: "Do not use . . . in the presence of fever. . . ."

9. Two comments stated that the Panel's request that the mechanism of action for antidiarrheal ingredients be determined is unnecessary because, as the Panel recognized, there are many safe and effective ingredients whose precise mechanisms of action are unknown (40 FR 12934). One comment added that as long as a product can be shown to be safe and effective, there should be no requirement to demonstrate a precise mechanism of action.

The agency agrees that the precise mechanism of action of an antidiarrheal ingredient need not be demonstrated as long as there is sufficient evidence of safety and effectiveness for its intended use. However, development of such information is certainly encouraged.

10. One comment suggested that the Panel's use of the phrase "to increase the bulk of the stool" as an example of recommended labeling might be misleading when used in the context of antidiarrheal products, because that description is usually associated with laxatives.

The Panel used the phrase "to increase the bulk of the stool" only as an example and did not include it in the labeling requirements for antidiarrheal drug products in § 335.50(a) of its recommended monograph. However, the agency believes that antidiarrheal drug products should be clearly labeled to reflect their intended results because not all antidiarrheal active ingredients have the same effect. Some ingredients may actually control or stop diarrhea. Other ingredients may only improve the consistency of the bowel movement or reduce the number of bowel movements without actually affecting other factors contributing to the diarrheal process, such as increased water content and weight of stools or loss of electrolytes, bile salts, etc. There is no objection to the OTC marketing of antidiarrheal drug products that provide only symptomatic relief of diarrhea because providing symptomatic relief is the intent of these products. However, it is important that consumers be told which action the drug exerts. Therefore, the agency is recommending the following indications

for use for these drug products: (1) "For the treatment of diarrhea" or "Controls (stops) diarrhea"; (2) "Reduces the number of bowel movements in diarrhea"; (3) "Improves consistency of loose, watery bowel movements in diarrhea." One or more of these indications may be included in the labeling of OTC antidiarrheal drug products, depending on the results of studies conducted on the ingredient contained in the product. The agency also recognizes that there are other symptoms that are secondary to diarrhea, such as abdominal pain or cramps, and that some antidiarrheal ingredients may also act to relieve these symptoms. The agency has no objection to including information of this type in the indications for OTC antidiarrheal drug products, provided that the results of studies conducted on the ingredients contained in the product support this inclusion. However, the agency does not believe that relief of symptoms that are secondary to diarrhea can be considered as primary indications for use of an OTC antidiarrheal drug product. Therefore, indications for relief of symptoms secondary to diarrhea will be allowed in the labeling of an OTC antidiarrheal drug product only when the product meets the criteria of one or more of the above three indications for OTC antidiarrheal drug products being proposed in this tentative final monograph. The tentative final monograph specified the allowable indications proposed for each ingredient included in the monograph.

C. Comments on Specific Antidiarrheal Active Ingredients

11. One comment asserted that the Panel's recommended pediatric dosage statement for polycarbophil, which provides a dosage for children 3 years of age and under, is in conflict with the Panel's general warning in § 335.50(c)(1), which limits the use of antidiarrheals to children 3 years of age and older unless directed by a physician. The comment urged that the general warning as applied to polycarbophil be revised to delete the phrase "or infants or children under 3 years unless directed by a physician."

The comment is correct that the Panel's recommended pediatric dosage statement for polycarbophil is in conflict with its general warning. The Panel's general warning is in accord with the agency's recommended warning in § 369.20 (21 CFR 369.20), which limits the use of antidiarrheal drug products to children 3 years of age and older, unless directed by a physician. The agency has, therefore, determined that pediatric doses of this ingredient for children

under 3 years of age will not appear in the OTC drug labeling, but will be included only in professional labeling. Consumers will be instructed in the OTC drug labeling to consult a doctor for this dosage information.

12. Two comments contended that the studies cited by the Panel in support of the Category I classification of polycarbophil in the treatment of diarrhea do not meet the Panel's own criteria for establishing effectiveness. One of the comments added that the Panel had apparently applied a dual standard of classification in placing polycarbophil and the opiates in Category I although they have not been shown to be effective in double-blind studies for the list of objective parameters prescribed by the Panel for kaolin and pectin. The comment contended that there are no differences in the clinical endpoints which would account for this apparent dual standard for kaolin and pectin *vis-a-vis* polycarbophil and the opiates. A third comment defended the studies on polycarbophil as having been performed by well-qualified investigators whose findings were carefully documented and published in reputable medical journals. The comment contended that no other OTC antidiarrheal ingredient has been the subject of such competent and well-documented evaluation.

The agency has reviewed the studies cited by the Panel to support the Category I classification of polycarbophil (40 FR 12926). Although the comment is correct that the polycarbophil studies do not demonstrate that polycarbophil is effective for all the objective parameters listed by the Panel, the studies do provide objective evidence that polycarbophil is effective in improving consistency of watery bowel movements and in decreasing the frequency of bowel movements. As discussed in comment 10 above, the agency recognizes that not all OTC antidiarrheals have the same effect. The agency has no objection to the OTC marketing of products which relieve only certain symptoms of diarrhea provided the labeling of the product clearly indicates the expected action. Although there are similarities between the data for polycarbophil and the data for kaolin and pectin, as described in comment 23 below, the kaolin-pectin data have certain deficiencies that prevent conclusions from being drawn at this time. If those deficiencies are remedied, then kaolin and pectin may be placed in Category I. The agency believes that the Panel did not apply a dual standard in its classifications and

concurs with the Panel's conclusions. As discussed in comment 20 below, because opiate ingredients may be marketed OTC only in combination in accordance with § 329.20(a)(1) and because no combinations of opiates with other ingredients are in Category I at this time, opiate ingredients are placed in Category III in this document.

13. Two comments questioned whether the calcium salt of polycarbophil should be included in the monograph, noting that two of the studies cited by the Panel in support of its Category I classification of polycarbophil involved calcium polycarbophil (40 FR 12926). A third comment submitted data elucidating the role of the calcium in calcium polycarbophil and supporting the safety and effectiveness of this ingredient (Ref. 1). The comments explained that inclusion of calcium polycarbophil in the monograph would permit the formulation of polycarbophil in liquid as well as solid dosage forms, because calcium polycarbophil is not hydrosorptive and can be used in a liquid medium.

Calcium polycarbophil is a simple salt of polycarbophil in which calcium has been substituted for the acidic hydrogen ions. Following ingestion, the calcium salt is converted to acidic polycarbophil when the calcium is replaced by hydrogen ions of the stomach acid. Polycarbophil is then made available to exert its maximal hydrosorptive effect during intestinal transit (Ref. 2). Because the calcium ion does not alter either the chemical or pharmacological effect of polycarbophil, calcium polycarbophil can be considered to be therapeutically identical to polycarbophil (Ref. 1). Therefore, the agency is proposing to include calcium polycarbophil in the tentative final monograph.

References

- (1) Comment No. C00073, Docket No. 78N-036D, Dockets Management Branch.
- (2) Rutledge, M.L., et al., "Clinical Comparison of Calcium Polycarbophil and Kaolin-Pectin Suspension in the Treatment of Acute Childhood Diarrhea," *Current Therapeutic Research*, 23:443-447, 1978.

14. One comment contended that polycarbophil, which is a hydrosorptive agent, might be contraindicated in treatment of diarrhea, especially in children, because of the danger that hydrosorption might heighten systemic electrolyte loss and dehydration. The comment further contended that the studies on which the Panel based its evaluation of polycarbophil did not adequately measure stool water content or electrolyte loss.

The comment submitted no data to support its contention that polycarbophil, as a hydrosorptive agent, might heighten systemic electrolyte loss and dehydration. However, because of the danger of rapid electrolyte imbalance and dehydration in infants and children as a result of diarrhea, the agency believes that no OTC antidiarrheal drug product should be used in children under the age of 3 years, or for more than 2 days in anyone over 3 years of age, except under the advice of a physician. Although the studies cited by the Panel did not adequately measure stool water content or electrolyte loss, no clinically significant side effects were reported either when polycarbophil was used in children for the treatment of acute nonspecific diarrhea (Refs. 1 and 2) or in adults for chronic constipation for up to 2 years (Ref. 3). Moreover, one of the studies cited by the Panel suggests that polycarbophil exhibits the capacity to decrease the abnormally rapid transit of the intestinal contents (Ref. 4). This would possibly allow for the increased absorption of water and electrolytes back into the systemic circulation. Therefore, the agency concludes that there is no basis for the contraindication of polycarbophil in treating symptoms of diarrhea.

References

(1) Rutledge, M.L., et al., "Clinical Comparison of Calcium Polycarbophil and Kaolin-Pectin Suspensions in the Treatment of Acute Childhood Diarrhea," *Current Therapeutic Research*, 23:443-447, 1978.

(2) Rutledge, M.L., et al., "Calcium Polycarbophil in Acute Childhood Diarrhea," *Clinical Pediatrics*, 2:61-63, 1963.

(3) Grossman, A.J., et al., "Polyacrylic Resin: Effective Hydrophilic Colloid for the Treatment of Constipation," *Journal of the American Geriatric Society*, 5:187-192, 1957.

(4) Winkelstein, A., "Effect of Calcium Polycarbophil (Carbofil®) Suspension on Gastrointestinal Transit Time," *Current Therapeutic Research*, 6:572-583, 1964.

15. One comment cited a clinical study submitted to the Panel in 1974 (Ref. 1) and submitted a new clinical study (Refs. 2, 3, and 4) in support of the effectiveness of attapulgite. The comment requested that attapulgite be reclassified from Category III to Category I for use as an OTC antidiarrheal.

The agency has evaluated all of the data and concludes that they are adequate to support the reclassification of attapulgite from Category III to Category I for use as an OTC antidiarrheal.

In the 1974 double-blind randomized placebo-controlled study, the

effectiveness of tablets containing 600 milligrams (mg) attapulgite and 50 mg pectin was compared with placebo in subjects with acute gastroenteritis and diarrhea, characterized by abdominal pain and/or discomfort with watery bowel movements (Ref. 1). Four tablets were administered initially with four tablets to be taken after each diarrheal stool. Patients were given report forms to record frequency and consistency of stools as well as frequency of cramps and the duration and severity of pain.

This study was originally submitted to the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic and Antiemetic Drug Products, which concluded that the study showed the combination of attapulgite and pectin to be more effective than placebo. However, because there was no assessment of individual ingredients, the study cannot be used to demonstrate the effectiveness of attapulgite alone.

The newly submitted clinical study (Refs. 2, 3, and 4) is identical in format to the 1974 study (Ref. 1), except that it employed a dose of 2 tablets each containing 600 mg attapulgite alone versus placebo. Fifty patients were randomly assigned attapulgite or placebo at the initial visit. Results of the study indicated that the subjects of the active group had significantly fewer bowel movements, better stool consistency, and fewer cramps than the subjects of the placebo group ($p < .0001$). Based on the results of this study, the agency is proposing the following indications for this ingredient: (1) "Reduces the number of bowel movements in diarrhea," and (2) "Improves consistency of loose, watery bowel movements in diarrhea." The following indication may also be used in the labeling of attapulgite products: "Relieves cramps in diarrhea." As discussed in comment 10 above, this indication may be used in addition to one or both of the other indications but may not be used alone.

Although the 1974 study utilized a higher dosage of attapulgite, the agency believes that based on the Panel's recommendations, the results of the new study, and the dosages currently promoted on the marketed products submitted for evaluation, the use of attapulgite should be limited to the following oral dosage:

Adults and children 12 years of age and over: oral dosage is 1,200 mg after initial bowel movement, 1,200 mg after each subsequent bowel movement, not to exceed 8,400 mg in 24 hours. Children 6 to under 12 years of age: oral dosage is 600 mg after initial bowel movement, 600

mg after each subsequent bowel movement, not to exceed 4,200 mg in 24 hours. Children 3 to under 6 years of age: oral dosage is 300 mg after initial bowel movement, 300 mg after each subsequent bowel movement, not to exceed 2,100 mg in 24 hours.

The agency's detailed comments and evaluations on the data are on file with the Dockets Management Branch (Ref. 5).

References

(1) OTC Volume 090133, Docket No. 78N-036D, Dockets Management Branch.

(2) Comment No. SUP005, Docket No. 78N-036D, Dockets Management Branch.

(3) Comment No. AMD002, Docket No. 78N-036D, Dockets Management Branch.

(4) Comment No. SUP006, Docket No. 78N-036D, Dockets Management Branch.

(5) Letter from W.E. Gilbertson, FDA, to D.C. Oppenheimer, Pfizer Pharmaceuticals, ANS LET004, Docket No. 78N-036D, Dockets Management Branch.

16. One comment stated that it would be difficult or impossible to demonstrate the effectiveness of an antidiarrheal agent in vivo in humans by objective double-blind studies because of the self-limiting nature (24 to 48 hours) of acute nonspecific diarrhea. The comment added that, because of the difficulty in conducting clinical studies, evidence developed in double-blind, placebo-controlled primate studies using kaolin and pectin should be sufficient to establish the effectiveness of kaolin and pectin alone and in combination as antidiarrheal agents. The comment pointed out that FDA has endorsed other types of efficacy tests (e.g., an in vitro efficacy test in the monograph for OTC antacid drug products) in situations where human studies are difficult to perform.

This comment is incorrect. Adequate clinical studies in acute nonspecific diarrhea have been carried out in humans and have been submitted to the agency. (See comment 23 below.) Thus, there is no reason to rely solely on primate studies to reach conclusions about the effectiveness of an antidiarrheal drug in humans. The agency concludes that clinical studies in humans are required to establish the effectiveness of OTC antidiarrheal drugs.

17. One comment submitted a clinical study (Ref. 1) and detailed statistical analyses of that study (Refs. 2 and 3) in support of the effectiveness of bismuth subsalicylate. The comment requested that bismuth subsalicylate be reclassified from Category III to

Category I for use as an OTC antidiarrheal.

The agency has evaluated all of the data and concludes that they are insufficient to support the reclassification of bismuth subsalicylate from Category III to Category I for use as an OTC antidiarrheal.

In the clinical study submitted the effectiveness of bismuth subsalicylate was compared with placebo in the symptomatic treatment of diarrhea in a double-blind placebo-controlled study among students attending a Mexican University. The study was conducted in two sequential 48 hour phases. Students in Phase I were given a 30-milliliter (mL) dose of a bismuth subsalicylate preparation every ½ hour for eight doses for a total dose of 4.2 g, and students in Phase II were given twice this dose. The objective parameters assessed were frequency, consistency, weight, and water content of the stools. Results of the study indicate that frequency was the only objective parameter that improved after use of the drug. The data were analyzed for the periods 4 to 24 hours and 4 to 48 hours after initiation of the study. For the reasons stated below, the Phase II study will not be further evaluated.

Although no statistically significant difference was shown in the Phase I study for the 4 to 48 hour period, analysis of the data suggests that bismuth subsalicylate may reduce the number of bowel movements in diarrhea when compared to placebo for the time period 4 to 24 hours. However, because no formal protocol was submitted with the study, the agency is unable to determine whether the analyses performed are consistent with the initial intended objectives of the study. The agency does not believe that it is appropriate to exclude the 0 to 4 hour data from the analysis or to focus on any particular time period, considering that the study was conducted over a 2-day period. The agency's detailed evaluation and comments on the data are on file in the Dockets Management Branch (Refs. 4 through 7).¹

Although the Panel's report states that bismuth subsalicylate is safe for OTC use in amounts up to 8g (40 FR 12930), the agency believes, for the reasons stated below, that bismuth subsalicylate be included in the final monograph its dosage should be limited to the following: Adults and children 14 years of age and over: oral dosage is 525

mg every ½ to 1 hour, not to exceed 4,200 mg in 24 hours. Children 10 to under 14 years of age: oral dosage is 350 mg every ½ to 1 hour, not to exceed 2,800 mg in 24 hours. Children 6 to under 10 years of age: oral dosage is 175 mg every ½ to 1 hour, not to exceed 1,400 mg in 24 hours. Children 3 to under 6 years of age: oral dosage is 87.5 every ½ to 1 hour, not to exceed 700 mg in 24 hours. Children under 3 years of age: consult a doctor.

Recent reports on the literature (Refs. 8 through 11) indicate that the salicylate moiety is readily absorbable from bismuth subsalicylate. For this reason, the agency believes the higher dose used in the Phase II study presents a potential for toxicity without a compensating therapeutic benefit. Although the amount of salicylate absorbed from the lower dose used in the Phase I study does not present a safety problem when bismuth subsalicylate is taken alone, the agency is concerned that if products containing this drug were taken with other salicylate-containing products, such as aspirin, the increased blood plasma salicylate concentration could result in adverse side effects. Additionally, the salicylate in bismuth subsalicylate is readily absorbable and salicylates are known to interact with certain other drugs, e.g., anticoagulants, uricosuric drugs. For these reasons, should bismuth subsalicylate be included in the final monograph, the agency will consider requiring the following warning in the monograph for all products containing bismuth subsalicylate: "This product contains salicylate. Do not take this product with other salicylate-containing products, such as aspirin, unless directed by a doctor. If you are taking a prescription drug for anticoagulation (thinning the blood), diabetes, gout, or arthritis, do not take this product unless directed by a doctor." In addition, because bismuth-containing products cause the stools to darken in color and cause a temporary darkening of the tongue (Refs. 12, 13, and 14), the agency will also consider requiring that the following statement be included in the labeling of all products containing bismuth subsalicylate: "This product may cause the stool to darken or cause a temporary darkening of the tongue."

References

- (1) Comment No. C00082, Docket No. 78N-036D, Dockets Management Branch.
- (2) Comment No. C00074, Docket No. 78N-036D, Dockets Management Branch.
- (3) Comment No. 0B052A, Docket No. 78N-036D, Dockets Management Branch.
- (4) Letter from W.E. Gilbertson, FDA to S. Mercurio, Norwich Eaton Pharmaceuticals,

LET003, Docket No. 78N-036D, Dockets Management Branch.

(5) Letter from W.E. Gilbertson, FDA to W.E. Cooley, Proctor and Gamble Co., LET008, Docket No. 78N-036D, Dockets Management Branch.

(6) Comment No. MM0005, Docket No. 78N-036D, Dockets Management Branch.

(7) Letter from W.E. Gilbertson, FDA to W.E. Cooley, Proctor and Gamble Co., LET009, Docket No. 78N-036D, Dockets Management Branch.

(8) Feldman, S., et al., "Absorption of Salicylate from a Bismuth Subsaliicylate Antidiarrheal Preparation (Pepto-Bismol)," *Clinical Pharmacology and Therapeutics*, 27:252, 1980.

(9) Feldman, et al., "Salicylate Absorption From a Bismuth Subsaliicylate Preparation," *Clinical Pharmacology and Therapeutics*, 29:788-792, 1981.

(10) Anonymous, "Salicylate in Pepto-Bismol," *The Medical Letter on Drugs and Therapeutics*, 22:63, 1980.

(11) Pickering, L.K., et al., "Absorption of Salicylate and Bismuth from a Bismuth Subsaliicylate-Containing Compound (Pepto-Bismol)," *The Journal of Pediatrics*, 99:654-656, 1981.

(12) Bank, S., et al., "Gastro-Intestinal and Hepatic Diseases," in "Drug Treatment, Principles and Practice of Clinical Pharmacology and Therapeutics," 2nd Ed., edited by G.S. Avery, Adis Press, New York, pp. 703 and 1249, 1980.

(13) Weiss, G., and W.J. Serfontein, "The Efficacy of a Bismuth-Protein-Complex Compound in the Treatment of Gastric and Duodenal Ulcers," *South African Medical Journal*, 45:467-470, 1971.

(14) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," W.B. Saunders Co., Philadelphia, 1957.

18. One comment suggested that the entire paragraph dealing with bismuth subsalicylate labeling claims (40 FR 12931) should be stricken from the Panel's report because the Panel confused the use of a single ingredient for multiple symptoms and the use of multiple ingredients for multiple symptoms. The comment stated that although bismuth subsalicylate is used for treating symptoms of nausea, indigestion, upset stomach, and diarrhea, it is not necessary for a patient to suffer from more than one of these symptoms concurrently for bismuth subsalicylate to be used rationally.

The agency agrees that it is not necessary for a patient to suffer concurrently from more than one of the symptoms described above in order for bismuth subsalicylate to be used rationally. However, the use of bismuth subsalicylate as an antidiarrheal is the only claim discussed in this document. Claims for the treatment of other symptoms, such as nausea, indigestion, or upset stomach, may be included in labeling if the ingredient is proven

¹ Industry has responded to FDA's concern regarding the need for additional data and is in the process of conducting additional studies (Comment No. PR0002, Docket No. 78N-036D, Dockets Management Branch).

effective for each symptom in other rulemakings. The use of bismuth subsalicylate for the treatment of nausea was discussed in the tentative final monograph for OTC antiemetic drug products, published in the Federal Register of July 13, 1979 (44 FR 41064). Bismuth subsalicylate used for the treatment of upset stomach due to overindulgence in food and alcohol was reviewed by the Advisory Review Panel on OTC Miscellaneous Internal Drug Products, in its advance notice of proposed rulemaking published in the Federal Register of October 1, 1982 (47 FR 43540).

19. One comment stated that the Panel's classification of a product containing *Lactobacillus acidophilus* and sodium carboxymethylcellulose as a combination was in error, noting that the initial submission to the Panel did not make it clear that the sodium carboxymethylcellulose acts as a pharmaceutical necessity by coating and matrixing the lactobacillus organisms to protect them from stomach acid and to transport them to the intestine.

The agency has reviewed the submission to the Panel and notes that sodium carboxymethylcellulose was listed along with *Lactobacillus acidophilus* as an ingredient in the product. Although the label did not specifically claim sodium carboxymethylcellulose as an active ingredient, the Panel assumed it was an active ingredient and reviewed it as such. Although the comment makes it clear that the sodium carboxymethylcellulose in the product is present as a pharmaceutical necessity, the Panel recognized that sodium carboxymethylcellulose can increase the viscosity of fluids and, therefore, might be rational for inclusion in antidiarrheal drug products. However, data were insufficient to establish effectiveness of this ingredient, and the Panel classified it in Category III. The agency concurs with the Panel's conclusions. While the agency has no objection to the use of sodium carboxymethylcellulose as an inactive ingredient in antidiarrheal drug products, the products should be labeled to avoid the appearance that sodium carboxymethylcellulose is an active ingredient.

20. One comment stated that the Panel's recommended monograph is not consistent with existing regulations (21 CFR 329.20(a)(1)) that require the presence of another nonnarcotic active ingredient in OTC drug preparations containing opiates. Another comment expressed the hope that opiates would remain in Category I despite the fact that regulations do not permit OTC

marketing of these ingredients as single active ingredient products.

The Panel's recommended monograph is not inconsistent with existing regulations. Section 335.10(a)(2) of that monograph cites the requirements of § 329.20(a)(1), which states that pharmaceutical preparations containing not more than 100 mg of opium per 100 mL or per 100 g may be exempt from prescription status, provided that such preparations contain one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the preparation valuable medicinal qualities other than those possessed by the narcotic drug alone. Although the Panel placed opiate ingredients in Category I (for use in combination), the data were insufficient for the Panel to classify any combination of an opiate and other active ingredients in Category I. No new data on such combinations were submitted to the FDA, and the agency concurs with the Panel's Category III classification of these combinations. Therefore, opiate ingredients are placed in Category III in this document and are not included in the tentative final monograph. However, if data are received to support any such opiate-containing combination in accordance with § 329.20(a)(1), opiates will be included in the final monograph. (See comment 22 below.)

21. One comment suggested that the requirement stated in § 329.20(a), that a narcotic-containing product also contain one or more nonnarcotic active medicinal ingredients, is not consistent with the Panel's recommended limitation of antidiarrheal combination products to two active ingredients at 40 FR 12932. The Comment proposed that § 329.20(a) be changed to read, "Provided that the preparations * * * contain one additional (but no more than one) nonnarcotic active medicinal ingredient," etc.

As discussed in comment 27 below, an antidiarrheal combination drug product may contain two or more active ingredients so long as it meets the agency's combination policy. Therefore, the inconsistency has been resolved without any need to modify § 329.20(a).

22. Two comments stated that the Panel's placement of paregoric, which contains six ingredients, in Category I as a single active ingredient is inconsistent and not in keeping with the OTC drug review concept of an ingredient by ingredient review. Citing § 329.20(a), one comment stated that an active ingredient in paregoric in addition to opium must be recognized in order for paregoric to be exempt from prescription

status. However, to do so would mean placing paregoric in Category II because the other ingredient would not have been reviewed by the Panel. In addition, the comment stated that camphor should be deleted from the paregoric formula because the alternate name "camphorated tincture of opium" for paregoric implies that camphor at one time was thought to be an active ingredient in the paregoric formula. Therefore, according to the Panel, camphor cannot now be claimed as an inactive ingredient without proper documentation. Also, if camphor is considered inactive, the labeling of paregoric as "camphorated tincture of opium" would be illegal because inactive ingredients must not be emphasized or identified as active ingredients in the labeling or in the advertisement of such products.

The agency acknowledges that the Panel placed "camphorated tincture of opium" in parentheses after paregoric in its recommended monograph. However, the name "camphorated tincture of opium" has not been included in the official compendia since 1960 (USP XVI), and "paregoric" is the official compendial name. Therefore, "camphorated tincture of opium" as an alternate name for paregoric is not allowed, and the comment's argument regarding emphasizing an inactive ingredient in the labeling is moot.

Paregoric is an official article in the USP XXI and is a formulation of six ingredients—powdered opium, anise oil, benzoic acid, camphor, diluted alcohol, and glycerin (Ref. 1). However, only the powdered opium is considered to be active as an antidiarrheal. Although the other ingredients when combined with powdered opium constitute what is recognized as paregoric, they do not contribute to the antidiarrheal effect of the product and are considered to be inactive ingredients. Therefore, paregoric is considered to be a single active ingredient formulation and when used alone is a prescription item (See 37 FR 6734; April 4, 1972). Although the Panel listed paregoric, tincture of opium, and powdered opium as allowable sources of opium, the Panel did not provide specific dosages for each individual preparation, but instead based the dosage on the opium component (40 FR 12943). As discussed in comment 20 above, opiate ingredients are not being included in the tentative final monograph. However, should combinations containing an opiate and other active ingredients be included in the final monograph, manufacturers may market their products in the formulation of their choice using any of the

allowable sources of opium (i.e., paregoric, tincture of opium, or powdered opium) provided that the dosage is equivalent to the opium dosage provided in the monograph.

Reference

(1) "The United States Pharmacopeia XXI—National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 787-788, 1985.

D. Comments on Antidiarrheal Combinations

23. One comment submitted three new clinical studies and two literature references on the effectiveness of kaolin and pectin in fixed combination for the treatment of acute nonspecific diarrhea (Refs. 1 through 5). The comment requested reclassification of kaolin and pectin in combination from Category III to Category I for the treatment of acute nonspecific diarrhea.

After evaluating all of the available data, the agency concludes that they are insufficient to reclassify kaolin and pectin, alone or in combination, in Category I for the treatment of acute nonspecific diarrhea.

The study by Portnoy seems to indicate some possible benefit in terms of a greater number of formed stools and a smaller number of liquid stools from either the kaolin-pectin combination or pectin alone (Ref. 1). However, because no data were submitted on frequency and consistency of stools prior to accession and randomization or on admission, it is impossible to establish and assess the baseline comparability of the study groups or otherwise statistically evaluate the study.

A study of 61 outpatients in Guadalajara, Mexico, showed virtually no difference in soft-stool frequency between the kaolin-pectin combination and placebo (Ref. 2). The study had relatively few patients (61 in 7 treatment groups) and cannot provide a definitive answer on effectiveness of kaolin and pectin either alone or in combination.

The third study, the United States multicenter study, is a double-blind, randomized, placebo-controlled study of a kaolin-pectin suspension in the treatment of acute nonspecific diarrhea (Ref. 3). The study showed a marginal increase in the frequency of formed stools and improved consistency of stools with the kaolin-pectin suspension compared to placebo, but showed no effect for these ingredients on overall stool frequency. In addition, the study failed to evaluate the ingredients kaolin and pectin separately; therefore, the study cannot be used to demonstrate that each ingredient makes a

contribution to the claimed effect of the product.

The two literature references (Refs. 4 and 5) mentioned the use of the kaolin-pectin combination among other ingredients in the treatment of diarrhea, but they contained no specific information that would establish the effectiveness of the combination.

The agency's detailed comments and evaluations on the data are on file with the Dockets Management Branch (Ref. 6).²

References

(1) Portnoy, B.L. et al., "Antidiarrheal Agents in the Treatment of Acute Diarrhea in Children," *Journal of the American Medical Association*, 236:844-846, 1976.

(2) DuPont, H.L., "Comparison of the Effectiveness of Kaopectate Concentrate, Kaolin, Pectin, Lomotin[®] and Placebo in the Treatment of Non-Specific Diarrhea," unpublished study in Comment No. OB0064, Docket No. 78N-036D, Dockets Management Branch.

(3) Study #295 and 295A in Comment OB0064, RPT, SUP004, and AMD004, Docket No. 78N-036D, Dockets Management Branch.

(4) DuPont, H.L., "Enteropathogenic Organisms—New Etiologic Agents and Concepts of Disease," *Medical Clinics of North America*, 62:945-960, 1978.

(5) DuPont, H.L., "Interventions in Diarrheas of Infants and Young Children," *Journal of the American Veterinary Medical Association*, 173:649-653, 1978.

(6) Letter from W.E. Gilbertson, FDA, to G.H. Ishler, The Upjohn Company, ANS LET002, Docket No. 78N-036D, Dockets Management Branch.

24. One comment requested reclassification of pectin as an antidiarrheal adjunct in a product in which it is used in combination with tincture of opium, which the Panel recommended as a Category I active ingredient. The comment contended that even though the Panel concluded that the effectiveness data are insufficient to classify pectin and a Category I antidiarrheal, it is a useful adjunct which used in combination with an ingredient such as tincture of opium. The comment cited a number of literature articles in support of its request (Ref. 1).

The General Guidelines of OTC Drug Combination Products (Ref. 2) state that an ingredient claimed to be a pharmacological adjuvant will be considered an active ingredient, and that such an ingredient may be included in addition to one or more principal active ingredients only if it meets the combination policy in all respects. None of the articles offers data to demonstrate

² Industry has responded to FDA's concern regarding the need for additional data and is in the process of conducting additional studies (Comment No. LET006, Docket No. 78N-036D, Dockets Management Branch).

that pectin makes a contribution to the product, a requirement of the OTC drug combination policy as specified in § 330.10(a)(4)(iv). Therefore, the combination will remain in Category III.

References

(1) Comment No. C00039, Docket No. 78N-036D, Dockets Management Branch.

(2) Food and Drug Administration, "General Guidelines for CTC Drug Combination Products," September 1978, Docket No. 78D-0322, Dockets Management Branch.

25. Two comments suggested that morphine and codeine be considered as ingredients in Category I combination antidiarrheal drug products. One comment pointed out that the antidiarrheal action of opium is attributable to its morphine content and that the other ingredients in opium contribute insignificantly to any therapeutic effect. The second comment noted that, similar to morphine, codeine exhibits inhibitive effects on the small intestine and colon, but with fewer side effects (Ref. 1). The comment suggested that an antidiarrheal drug product combining codeine with another active ingredient, possibly kaolin, would be effective and safe for OTC use.

The agency is aware of the constipating effects of both morphine and codeine. However, no data on any drug product used for the treatment of acute, nonspecific diarrhea, containing either morphine or codeine, have been submitted to the Panel or the agency for review. Therefore, neither morphine nor codeine is included in the monograph at this time.

Reference

(1) Miller, J.W., and H.H. Anderson, "The Effect of N-Demethylation on Certain Pharmacologic Actions of Morphine, Codeine, and Meperidine in the Mouse," *Journal of Pharmacology and Experimental Therapeutics*, 112:191-196, 1954.

26. Two comments requested that a combination of polycarbophil and powdered opium, USP be classified in Category I. The comments pointed out that, although both ingredients were recommended as Category I as single ingredients, the Panel did not make any provision for combining them. The comments stated that such a combination is therapeutically rational because the powdered opium acts to inhibit the motility of the intestine and through this action prolongs the transit time of polycarbophil; the prolonged transit time would allow the polycarbophil to exert its maximum hydrosorptive effect.

The agency's General Guidelines for OTC Drug Combination Products (Ref. 1)

permit combining two Category I active ingredients from the same therapeutic category that have different mechanisms of action if the combination meets the OTC combination policy in all respects and the combination is on a benefit-risk basis equal to or better than each of the active ingredients used alone at its therapeutic dose. However, no data to support the comment's rationale for the combination of polycarbophil and powdered opium, USP have been submitted to the Panel or to the agency. Data demonstrating the combination to be generally recognized as safe and effective must be submitted in order for it to be included in the monograph.

Reference

(1) "Food and Drug Administration General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D-0322, Dockets Management Branch.

27. Several comments objected to the Panel's Category II classification of all combination products containing more than two active ingredients. The comments contended that the Panel presented no scientific data to support limiting a product to two active ingredients. Others objected to this limit as being unnecessarily restrictive, arbitrary, and not in agreement with the OTC combination policy set forth in § 330.10(a)(4)(iv). One comment urged that combination products that contain more than two active ingredients, but do not contain a Category II ingredient, be reclassified as Category III so that they might be tested for safety and effectiveness.

The agency agrees with the comments that a fixed limit need not be set on the number of active ingredients an antidiarrheal drug product may contain. However, adequate justification must be presented for the inclusion of each active ingredient in a combination product. Both the General Guidelines for OTC Drug Combination Products (Ref. 1) and the regulations at § 330.10(a)(4)(iv) provide that an OTC drug product may combine two or more safe and effective active ingredients provided the product meets the combination policy in all respects.

Three of the combinations that the Panel placed in Category II are combinations of three active ingredients. Each of the ingredients was placed by the Panel in Category I or Category III as a single ingredient. The combinations are activated attapulgite, pectin, and hydrated alumina powder; kaolin, hydrated alumina powder, and pectin; and paregoric, pectin, and kaolin. The Panel determined that the ingredients in these products are safe, but concluded that adequate data were lacking to

establish their effectiveness. The agency believes it reasonable to move these three combination products, which contain no Category II ingredients, from Category II to Category III. The revised procedures for classifying OTC drugs, published in the *Federal Register* of September 29, 1981 (46 FR 47730), provide for the submission of new data and information for up to 12 months after publication of a tentative final monograph to support any condition excluded from the proposal.

Reference

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978 Docket No. 78D-0322, Dockets Management Branch.

28. One comment noted that, although the Panel's report discussed criteria for antidiarrheal combinations, no provision was made in the recommended monograph for antidiarrheal combinations. The comment recommended that a new subsection for combinations of active antidiarrheal ingredients be established in the monograph.

The intended purpose of an OTC drug monograph is to set forth those specific conditions under which drugs that are subject to the monograph are generally recognized as safe and effective for OTC use and not misbranded. The Panel did not include any antidiarrheal combinations in its monograph because the data were insufficient for any of the combinations that were reviewed to be generally recognized as safe and effective. At this time, the agency concurs with the Panel's decision. Should data establishing the safety and effectiveness of any antidiarrheal combination be received in the comment and new data periods following publication of this tentative final monograph, the agency will state the conditions for such combination product(s) in the final monograph.

E. Comments on Data Pertinent to Antidiarrheal Ingredient Evaluation

29. Several comments objected to the Panel's recommended testing guidelines at 40 FR 12933 for establishing the safety and effectiveness of antidiarrheal ingredients. The comments contended that the testing guidelines do not provide adequate time to complete the required testing; the guidelines for antidiarrheals were apparently taken virtually verbatim from a similar provision for laxatives appearing elsewhere in the panel's report, and there is no basis for this apparent incorporation by reference; the guidelines do not adequately describe

what test should be conducted or which data should be developed in order to move Category III ingredients to Category I; under the guidelines, manufacturers would not be allowed to use other well-controlled and well-designed studies to obtain necessary data; and many of the testing procedures listed in the guidelines require long-term use of antidiarrheal drug products to obtain the complete data required, thus contradicting the Panel's warning against use of antidiarrheal drug products for more than 2 days.

The agency has not addressed specific testing guidelines in this document. In revising the OTC drug review procedures relating to Category III, published in the *Federal Register* of September 29, 1981 (46 FR 47730), the agency advised that tentative final and final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. Instead, the agency will meet with industry representatives at their request to discuss testing protocols. The revised procedures also state the time in which test data must be submitted for consideration in developing the final monograph. (See also part II, paragraph A. 2. below—*Testing of Category II and Category III conditions.*)

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. *Summary of ingredient categories.* The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and has proposed the recategorization of attapulgite from Category III to Category I and opiate ingredients (in combination) from Category I and Category III for use as OTC antidiarrheal active ingredients. As a convenience to the reader, the following list is included as a summary of the categorization of antidiarrheal active ingredients recommended by the Panel and the proposed categorization by the agency.

Antidiarrheal active ingredients	Panel	Agency
Alumina powder, hydrated.....	III	III
Atropine sulfate.....	III	III
Attapulgite, activated.....	III	I
Bismuth subnitrate.....	III	III
Bismuth subsalicylate.....	III	III
Calcium carbonate precipitated.....	III	III
Calcium hydroxide.....	III	III
Calcium polycarbophil.....	N.C. ¹	I
Charcoal, activated.....	III	III
Glycine ?.....	II	III
Homatropine methylbromide.....	III	III
Hyoscyamine sulfate.....	III	III

Antidiarrheal active ingredients	Panel	Agency
Kaolin.....	III	III
<i>Lactobacillus acidophilus</i>	III	III
<i>Lactobacillus bulgaricus</i>	III	III
Opiate ingredients (for use in combination):		
Opium power.....	I	III
Opium, tincture of.....	I	III
Paregoric.....	I	III
Pectin.....	III	III
Phenyl salicylate (salo).....	III	I
Polycarbophil.....	I	I
Potassium carbonate.....	II	II
Rhubarb fluidextract.....	II	II
Scopolamine hydrobromide.....	II	II
Sodium carboxymethylcellulose.....	III	III
Zinc phenolsulfonate.....	III	III

¹ Not classified by Panel.

² Although "aminoacetic acid" was the name designated by the Panel for this ingredient, "glycine" is the official title for this ingredient in the "USAN and the USP dictionary of drug names, 1985."

2. *Testing of Category II and Category III conditions.* The agency's position regarding the Panel's testing guidelines is discussed in comment 29 above. Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any antidiarrheal ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the *Federal Register* of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. Because of the number of changes that have been made, as summarized below, many of the section and paragraph numbers have been redesignated in this tentative final monograph. In addition, Subpart D has been redesignated as Subpart C, and the labeling sections are placed under Subpart C.

2. The following changes have been made to conform to the format and Content of other recent OTC drug tentative final monographs:

a. A "statement of identity" section has been added and identifies the product as an antidiarrheal.

b. The dosage information for each active ingredient has been moved to the directions section for the respective antidiarrheal ingredient.

c. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and any applicable OTC drug regulation will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option.

3. The definitions for antidiarrheal and diarrhea have been revised. (See comment 7 above.)

4. The phrase "high fever" has been replaced with the word "fever" in the general warning for OTC antidiarrheals in § 335.50(c)(1). (See comment 8 above.)

5. The agency recognized that not all OTC antidiarrheals have the same effect and believes that consumers should be aware of the intended results from the use of the products. The agency has proposed expanded indications for use in the tentative final monograph accordingly. (See comment 10 above.)

6. The pediatric dosage for children 3 years of age and under for polycarbophil is proposed in the tentative final monograph under professional labeling only. (See comment 11 above.)

7. The agency has reclassified activated attapulgite from Category III to Category I. (See comment 15 above.)

8. Should bismuth subsalicylate be included in the final monograph, the agency will consider proposing that the directions for use be revised and additional warnings be included in the labeling. (See comment 17 above.)

9. In accordance with § 329.20(a)(1) opiate ingredients may be marketed for OTC use in combination only. Because no data have been submitted to support combinations of opiates and other active ingredients, opiates will not be included in the tentative final monograph. (See comment 20 above.)

10. The Panel recommended in its report that Category I antidiarrheal combination drug products be limited to two Category I active ingredients. The agency has determined that an OTC antidiarrheal drug product may combine two or more safe and effective active ingredients in accordance with the provisions set forth in § 330.10(a)(4)(iv) and the agency's General Guidelines for OTC Drug Combination Products. (See comment 27 above.)

11. The agency has revised the dosage for polycarbophil in the monograph to reflect the dosage used in studies submitted for evaluation. This dosage is also the same as that currently promoted on marketed products.

12. The sodium, potassium, and magnesium warnings have been deleted from the monograph because none of the active antidiarrheal drugs in the monograph contain these ingredients.

The agency proposes to revoke the existing warning statement in § 369.20 for diarrhea preparations at the time that this monograph becomes effective.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice in the *Federal Register* of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this proposed rule for OTC antidiarrheal drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antidiarrheal drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antidiarrheal drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC antidiarrheal drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on antidiarrheal drug products, a period of

120 days from the date of publication of this proposed rulemaking in the Federal Register will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Exclusivity of Labeling

In the Federal Register of April 22, 1985 (50 FR 15810) the agency proposed to change its "exclusivity" policy for the labeling of OTC drug products that has existed during the course of the OTC drug review. Under this policy, the agency has maintained that the terms that may be used in an OTC drug product's labeling are limited to those terms included in a final OTC drug monograph.

The proposed rule would establish three alternatives for stating the indications for use in OTC drug labeling while all other aspects of OTC drug labeling (i.e., statement of identity, warnings, and directions for use) would continue to be subject to the existing exclusivity policy. The proposed rule for OTC antidiarrheal drug products included in this document incorporates the exclusivity proposal by providing for the use of other truthful or nonmisleading statements in the product's labeling to describe the indications for use. After considering all comments submitted on the proposed revision to the exclusivity policy, the agency will announce its final decision on this matter in a future issue of the Federal Register. The final rule for OTC antidiarrheal drug products will incorporate the final decision on exclusivity of labeling.

Interested persons may, on or before June 30, 1986, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before August 28, 1986. Three copies of all comments, objections, and requests are to be submitted, except that

individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the Federal Register.

Interested persons, on or before April 30, 1987, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before June 30, 1987. These dates are consistent with the time and periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the Federal Register of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on June 30, 1987. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the Federal Register, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects

21 CFR Part 335

Over-the-counter drugs, Antidiarrheal drug products.

21 CFR Part 369

Over-the-counter drugs, Warning and caution statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act and under 21 CFR 5.11, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 335—ANTIDIARRHEAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. By adding new Part 335, to read as follows:

Subpart A—General Provisions

Sec.
335.1 Scope.
335.3 Definitions.

Subpart B—Active Ingredients

335.10 Antidiarrheal active ingredients.

Subpart C—Labeling

335.50 Labeling of antidiarrheal drug products.
335.80 Professional labeling.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1058 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.11.

Subpart A—General Provisions

§ 335.1 Scope.

(a) An over-the-counter antidiarrheal drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 335.3 Definitions.

As used in this part:

(a) *Antidiarrheal*. A drug that can be shown by objective measurement to treat or control (stop) the symptoms of diarrhea.

(b) *Diarrhea*. A condition characterized by increased frequency of excretion of loose, watery stools (three or more daily) during a limited period (24 to 48 hours), usually with no identifiable cause.

Subpart B—Active Ingredients

§ 335.10 Antidiarrheal active ingredients.

The active ingredient of the product consists of any of the following when used within the dosage limits established for each ingredient in § 335.50(d):

- (a) Attapulgit, activated.
- (b) Calcium polycarbophil.
- (c) Polycarbophil.

Subpart C—Labeling

§ 335.50 Labeling of antidiarrheal drug products.

(a) *Statement of identity*. The labeling of the product contains the established

name of the drug, if any, and identifies the products as an "antidiarrheal."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in this paragraph, as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed below, may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing attapulgite, activated, identified in § 335.10(a).* (i) "Reduces the number of bowel movements in diarrhea."

(ii) "Improves consistency of loose, watery bowel movements in diarrhea."

(iii) "Relieves cramps in diarrhea." This indication is permitted only in addition to one or both of the indications identified in § 335.50(b)(1)(i) or (ii).

(2) *For products containing calcium polycarbophil or polycarbophil identified in § 335.10 (b) or (c).* (i) "Reduces the number of bowel movements in diarrhea."

(ii) "Improves consistency of loose, watery bowel movements in diarrhea."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings:" "Do not use for more than 2 days, or in the presence of fever, or in children under 3 years of age unless directed by a doctor."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing attapulgite, activated identified in § 335.10(a).* Adults and children 12 years of age and over: oral dosage is 1,200 milligrams after initial bowel movement, 1,200 milligrams after each subsequent bowel movement, not to exceed 8,400 milligrams in 24 hours. Children 6 to under 12 years of age: oral dosage is 600 milligrams after initial bowel movement, 600 milligrams after each subsequent bowel movement, not to exceed 4,200 milligrams in 24 hours. Children 3 to under 6 years of age: oral dosage is 300 milligrams after initial bowel movement, 300 milligrams after each subsequent bowel movement, not to exceed 2,100 milligrams in 24 hours. Children under 3 years of age: consult a doctor.

(2) *For products containing calcium polycarbophil or polycarbophil identified in § 335.10 (b) or (c).* Dosages are based on the polycarbophil equivalent. Adults and children 12 years of age and over: oral daily dosage is 1 gram 4 times a day or 2 grams 3 times a day or as needed, not to exceed 6 grams in 24 hours. Children 6 to under 12 years of age: oral daily dosage is 0.5 to 1 gram 3 times a day or as needed, not to exceed 3 grams in 24 hours. Children 3 to under 6 years of age: oral daily dosage is 0.33 to 0.5 grams 3 times a day or as needed, not to exceed 1.5 grams in 24 hours. Children under 3 years of age: consult a doctor.

(e) The word "physician" may be substituted for the word "doctor" in any

of the labeling statements in this section.

§ 335.80 Professional labeling.

The labeling provided to health professionals (but not to the general public) may contain the following additional dosage information for products containing the active ingredient identified below:

For products containing calcium polycarbophil or polycarbophil identified in § 335.10 (b) or (c). Dosages are based on the polycarbophil equivalent. Children under 3 years of age: oral daily dosage is 166.6 milligrams to 333.3 milligrams 3 times a day or as needed, not to exceed 1 gram in 24 hours.

PART 369—INTERPRETIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

2. The authority citation for Part 369 continues to read as follows:

Authority: Secs. 502, 503, 506, 507, 701, 52 Stat. 1050 as amended, 1052 as amended, 53 Stat. 854, 55 Stat. 851, 59 Stat. 463 as amended, 52 Stat. 1055 as amended (21 U.S.C. 352, 353, 356, 357, 371); 21 CFR 5.11.

3. In § 369.20 *Drugs; recommended warning and caution statements*, by removing the entry for "Diarrhea Preparations."

Frank E. Young,
Commissioner of Food and Drugs.

Dated: April 1, 1986.

Otis R. Bowen,
Secretary of Health and Human Services.

[FR Doc. 86-9598 Filed 4-29-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF AGRICULTURE**Cooperative State Research Service****7 CFR Part 3401****Rangeland Research Grants Program; Administrative Provisions**

AGENCY: Cooperative State Research Service, USDA.

ACTION: Final rule.

SUMMARY: This document establishes Part 3401 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Rangeland Research Grants Program conducted under authority of Section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333). The issuance of this rule establishes the procedures to be followed annually in the solicitation of research grant proposals, the evaluation of such proposals, and the award of research grants under this program.

EFFECTIVE DATE: April 30, 1986.

FOR FURTHER INFORMATION CONTACT:

Terry J. Pacovsky, Chief, Grants Administrative Management, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 112, Justin Smith Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251. (Telephone: (202) 475-5024.)

SUPPLEMENTARY INFORMATION:**Paperwork Reduction**

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this rule has been approved under OMB Document No. 0525-0001.

Classification

This rule has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as

defined in the Regulatory Flexibility Act, Pub. L. 96-534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Catalog of Federal Domestic Assistance

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, (7 U.S.C. 3333), the Secretary of Agriculture is authorized to make grants to land-grant colleges and universities, State agricultural experiment stations, and colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research.

This rule establishes Part 3401 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Rangeland Research Grants Program.

On February 25, 1986, the Department published a Notice in the *Federal Register* (51 FR 6700) proposing the establishment of this regulation and inviting comments from interested individuals and organizations. Comments were requested by March 27, 1986. No comments were received.

Change

The Department changed section 3401.5, "Indirect Costs and Tuition Remission Costs," to make the rule consistent with the statutory language. This section as revised clarifies the fact that while the law expressly prohibits the payment of indirect costs and tuition remission costs to "State cooperative institutions" such restriction does not apply to Federal laboratories.

List of Subjects in 7 CFR Part 3401

Grant programs—agriculture, Grant administration.

The Department therefore amends Title 7, Subtitle B, Chapter XXXIV of the

Code of Federal Regulations by adding Part 3401 to read as follows:

CHAPTER XXXIV—COOPERATIVE STATE RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE**PART 3401—RANGELAND RESEARCH GRANTS PROGRAM****Sec.**

- 3401.1 Applicability of regulations.
- 3401.2 General regulations.
- 3401.3 Eligibility requirements.
- 3401.4 Matching fund requirement.
- 3401.5 Indirect costs and tuition remission costs.

Authority: Sec. 1470 of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (7 U.S.C. 3316).

§ 3401.1 Applicability of regulations.

(a) The regulations of this part apply to rangeland research grants awarded under the provisions of section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333) to land-grant colleges and universities, State agricultural experiment stations, and colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research. The Secretary, or his or her designee, shall determine and announce, through publication of a Notice in the *Federal Register* each year, research program areas for which proposals will be solicited to the extent that funds are available.

(b) The regulations of this part do not apply to research grants awarded under any other authorization.

§ 3401.2 General regulations.

For purposes of this part, the provisions found at Part 3400 of this chapter, excluding the provisions listed in paragraphs (a) through (g) of this section, are applicable to the administration of this research program.

(a) Section 3400.1.

(b) Paragraph 3400.3(a).

(c) The last sentence of paragraph 3400.4(c)(11).

(d) The parenthetical phrase in the last sentence of paragraph 3400.7(c).

(e) Paragraph 3400.7(d)(1).

(f) Paragraph 3400.7(d)(2).

(g) Paragraph 3400.7(d)(3).

§ 3401.3 Eligibility requirements.

Except where otherwise prohibited by law, any land-grant college and university, State agricultural experiment station, and college, university, and Federal laboratory having a demonstrable capacity in rangeland research shall be eligible to apply for and receive a project grant under this

part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in § 3400.3(b).

§ 3401.4 Matching fund requirement.

In accordance with section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent

Federal and 50 percent non-Federal funding.

§3401.5 Indirect costs and tuition remission costs.

Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or for tuition

remission. Indirect costs and tuition remission costs, except in the case of Federal laboratories, are not allowable costs for purposes of this program.

Done at Washington, DC, this 24th day of April 1986.

John Patrick Jordan,
Administrator, Cooperative State Research Service.

[FR Doc. 86-9607 Filed 4-29-86; 8:45 am]

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