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Wednesday
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Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

Selected Subjects

Animal Diseases
Animal and Plant Health Inspection Service

Animal Drugs
Food and Drug Administration

Government Procurement
Defense Department
National Aeronautics and Space Administration

Grants—Education
Education Department

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Nondiscrimination in federally conducted programs (18 agencies)—Part II

Imports
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Marketing Agreements
Agricultural Marketing Service

Pesticides and Pests
Environmental Protection Agency

Radio
Federal Communications Commission

Radio Broadcasting
Federal Communications Commission

Social Security
Social Security Administration

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BEST COPY AVAILABLE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

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

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

Selected Subjects

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.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center.
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center.
303-236-7181

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Reader Aids
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.

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Executive Order 12546 of February 3, 1986

Presidential Commission on the Space Shuttle Challenger Accident

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to establish a commission of distinguished Americans to investigate the accident to the Space Shuttle Challenger, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the Presidential Commission on the Space Shuttle Challenger Accident. The Commission shall be composed of not more than 20 members appointed or designated by the President. The members shall be drawn from among distinguished leaders of the government, and the scientific, technical, and management communities.

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

Sec. 2. *Functions.* (a) The Commission shall investigate the accident to the Space Shuttle Challenger, which occurred on January 28, 1986.

(b) The Commission shall:

(1) Review the circumstances surrounding the accident to establish the probable cause or causes of the accident; and

(2) Develop recommendations for corrective or other action based upon the Commission's findings and determinations.

(c) The Commission shall submit its final report to the President and the Administrator of the National Aeronautics and Space Administration within one hundred and twenty days of the date of this Order.

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

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

(c) To the extent permitted by law, and subject to the availability of appropriations, the Administrator of the National Aeronautics and Space Administration shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

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

(b) The Commission shall terminate 60 days after submitting its final report.

Ronald Reagan

THE WHITE HOUSE,
February 3, 1986.

[FR Doc. 86-2863
Filed 2-3-86; 4:37 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks on the formation of the commission and the White House announcement listing the Chairman, Vice Chairman, and members of the commission, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 6).

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

Domestic Dates Produced or Packed in Riverside County, CA; Continuation of Relaxed Size Regulation for Deglet Noor Dates for Further Processing; and Addition of Japan to List of Countries to Which Dry Dates Needing Further Processing May Be Exported

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action continues the relaxed size regulation for Deglet Noor dates for another season and makes Japan an eligible outlet for dry dates needing further processing. The continued relaxation will allow packers to sell more small-sized dates of good quality as whole dates. In the absence of the relaxation, packers will have to dispose of the dates as rings, chunks, pieces, butter, paste or for manufacture into such products. The addition of Japan to the list of countries to which dry dates may be exported will provide a new market for California date packers and increase date sales. Both actions are based on unanimous recommendations of the California Date Administrative Committee. The Committee works with the USDA in administering the date marketing order program.

EFFECTIVE DATES: Relaxation of the size tolerance for Deglet Noor dates for further processing to be effective upon the date of publication in the **Federal Register** and applies to the 1985–86 crop year (October 1, 1985 through September 30, 1986). The addition of Japan to the list of countries to which dry dates needing further processing may be exported to be effective upon the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined 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 group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

This final rule continues the relaxation in the size regulation for Deglet Noor dates for further processing which terminated September 30, 1985, until September 30, 1986, and adds Japan to the list of countries to which dry dates needing further processing may be shipped. These actions are expected to increase date sales.

It is estimated that approximately 26 handlers of dates will be subject to regulation under the California Date 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 on small entities if present at all is not significant.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking and that good cause exists for not postponing the effective time of these actions until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The Deglet Noor dates from the 1985 crop are expected to be unusually small and dry, and lighter in weight than usual the same as last season; (2) this will cause a substantial quantity of the dates from the 1985 crop and carryover from the 1984 crop to fail to meet the current size requirements; (3) continuation of the relaxation of the size requirements effectuated last season will allow a larger quantity of otherwise good quality Deglet Noor dates weighing less than 6.5 grams to be sold to consumers as whole dates, not as products; (4) processors in Japan have expressed an interest in importing dry dates needing processing and the domestic date handlers should be afforded the opportunity to supply their needs; (5) the addition of Japan to the group of designated countries eligible to receive dry dates needing further processing will allow domestic date handlers to meet these needs; (6) handlers are aware of these actions relieving restrictions on handlers; and (7) no useful purpose would be served by delaying the effective dates of these actions.

This action will amend temporarily § 987.112a(c)(2) of Subpart—Administrative Rules (7 CFR 987.101–987.172) by changing the size tolerance for Deglet Noor dates for further processing contained in the second sentence of that paragraph from 10 to 15 percent for the 1985–86 crop year which began October 1, 1985. It also adds Japan to the list of date processing and consuming countries contained in § 987.112a(d)(2) of that subpart to which dry dates needing further processing may be exported. The authority for both actions is contained in §§ 987.12 and 987.43 of the marketing agreement and Order No. 987 (7 CFR Part 987), both as amended, regulating the handling of domestic dates produced or packed in Riverside County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Dates for further processing are dates having a moisture content below 15 percent. To produce a desirable texture for eating, water must be added by hydration during processing. Dates for further processing are sold to users here and abroad desiring to use their own processing, packaging, and marketing facilities.

Section 987.112a(c)(2) prescribes size requirements for whole Deglet Noor dates for further processing in terms of weight. Currently, the individual dates in the sample must weigh at least 6.5

grams, but up to 10 percent of the dates in a sample may weigh less.

Deglet Noor dates in California's 1985 date crop are expected to be unusually dry and small, and lighter in weight than normal, the same as last season. As a result, a large quantity of the 1985 crop will exceed the current 10 percent tolerance for dates lighter than 6.5 grams. Dates failing to meet applicable size requirements must be diverted to product outlets. To allow a greater quantity of Deglet Noor dates weighing less than 6.5 grams to be available for use as whole dates, a temporary increase in that tolerance to 15 percent is necessary from October 1, 1985 through September 30, 1986 (1985–86 season). Last season, the tolerance also was increased to 15 percent effective through September 30, 1985, because of similar crop conditions. To maintain continuity in the marketplace the carryover of 1984 crop light-weight dates also must be covered by this action. Hence, this action should apply as of October 1, 1985.

Pursuant to § 987.112a(d)(2), dry dates of any variety inspected and certified as meeting specified quality and size requirements may only be exported to the following designated date producing and processing countries in North Africa: Morocco, Algeria, Tunisia, Libya,[1] Egypt, and Sudan; and to the following date processing and consuming countries north of the Mediterranean Sea: Spain, France, Belgium, West Germany, Italy, Greece, and the Netherlands. These countries have the facilities to properly process and produce a desirable product.

Processors in Japan have expressed an interest in importing such dates. To promote orderly marketing and to facilitate export sales of dry dates, Japan should be added to the group of date processing and consuming countries to which such dates may be exported. Authority to export dry dates to Japan will provide the industry with flexibility in meeting Japan's needs and tend to increase sales of California dates.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee, and other available information, it is further found that the amendment of §§ 987.112a(c)(2) and 987.112a(d)(2) of Subpart—Administrative Rules (7 CFR 987.101–987.172) to continue the temporary relaxation in the current size regulations for Deglet Noor dates for further processing, and to add Japan to the group of date processing and consuming countries, respectively, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 987

Agricultural Marketing Service, Marketing Agreements and Orders, Dates, and California.

PART 987—[AMENDED]

Therefore, §§ 987.112a(c)(2) and 987.112a(d)(2) of Subpart—Administrative Rules (7 CFR 987.101—987.172) are amended as follows:

1. The authority citation for 7 CFR Part 987 continues to read as follows:

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

2. Section 987.112a (c)(2) and (d)(2) are revised to read as follows:

§ 987.112a Grade, size, and container requirements for each outlet category.

* * * * *

(c) * * *

(2) FP dates of any variety shall at least meet the requirements of U.S. Grade B (dry). Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning October 1, 1985, and ending September 30, 1986, the 10 percent tolerance shall be increased to 15 percent. These size requirements are in addition to, and do not supersede, the requirements as to uniformity of size prescribed in the grade standards.

(d) * * *

(2) *Export of dry dates.* Dates of any variety identified and certified as meeting the requirements of this subparagraph only may be exported to the following designated date producing and processing countries in North Africa: Morocco, Algeria, Tunisia, Libya,[1] Egypt, and Sudan; the following date processing and consuming countries north of the Mediterranean Sea: Spain, France, Belgium, West Germany, Italy, France, Greece, and the Netherlands; and the following date processing and consuming country in Asia: Japan. Such dates shall at least meet U.S. Grade C (dry) except for defects removable by washing: *Provided,* That Deglet Noor dates shall score not less than 31 points for character and 24 points for absence of defects but up to 40 percent, by weight, of the dates may be damaged by broken skin.

* * * * *

Dated: January 31, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 86–2534 Filed 2–4–86; 8:45 am]

BILLING CODE 3410-02-M

[1] Executive Order 12543 of January 7, 1986 (51 FR 875), prohibits trade and certain transactions involving Libya, and is applicable to exports of dates under this marketing order as long as the executive order is in effect. That order, among other things, prohibits the export to Libya of any goods, technology (including technical data or other information) or services from the United States, except publications and donations of articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes.

[1] Executive Order 12543 of January 7, 1986 (51 FR 875), prohibits trade and certain transactions involving Libya, and is applicable to exports of dates under this marketing order as long as the executive order is in effect. That order, among other things, prohibits the exports to Libya of any goods, technology (including technical data or other information) or services from the United States, except publications and donations of articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes.

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 86–004]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the State of Mississippi from Class C to Class B. This rule is necessary because it has been determined that this State meets the standards for Class B status. The rule relieves certain restrictions on the interstate movement of cattle from the State of Mississippi.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Granville H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register on November 4, 1985 (50 FR 45808–45809), amended the brucellosis regulations in 9 CFR Part 78 by changing the classification of the State of Mississippi from Class C to Class B. The amendment, which was effective on November 4, 1985, relieves certain

restrictions on the interstate movement of cattle from Mississippi.

Comments were solicited for 60 days after publication of the amendent. No comments were received. The factual situation which was set forth in the document of November 4, 1985, still provides a basis for the amendment.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the State of Mississippi reduces certain testing and other requirements on the interstate movement of these cattle. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feed lots are not affected by the change in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 50 FR 45808–45809 on November 4, 1985, is adopted as a final rule without change.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 31st day of January 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–2535 Filed 2–4–86; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 92

[Docket No. 85–135]

Limited Ports; Atlanta, GA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations in 9 CFR Part 92 by adding Atlanta, Georgia, to the list of limited ports of entry for animals and animal products (such as animal semen, animal test specimens, hatching eggs, and day old chicks) which do not appear to require restraint and holding inspection facilities. It is necessary to add Atlanta, Georgia, to this list to reflect the availability of the Veterinary Services inspection facilities and personnel so that importers can make arrangements for the importation of such animals and animal products.

DATES: Effective date of this interim rule is February 5, 1986. Written comments must be received on or before April 7, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85–135. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. S.S. Richeson, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in § 92.3 of 9 CFR Part 92 list a large number of ports with inspection stations or quarantine stations maintained by Veterinary Services for the importation of animals and animal products. In addition to air and ocean ports and several other types of ports, § 92.3 lists certain limited ports for the importation of animals and animal products (such as animal semen, animal test specimens, hatching eggs, and day old chicks) which do not appear to require restraint and holding inspection facilities. It has been determined that Atlanta, Georgia, has Veterinary Services inspection facilities and available inspection personnel for a limited port.

Therefore, it is necessary to amend § 92.3(e) of the regulations to add Atlanta, Georgia, as a limited port, so that importers can make arrangements for the entry of such animals and animal products.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been classified as not a major rule. The Department has determined that this action will not have a significant effect on the economy; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

It is anticipated that the addition of Atlanta, Georgia, to the list of limited ports for the importation of animals and animal products which do not appear to require restraint and holding inspection facilities would not cause a substantial change in the number of such animals and animal products entering the United States or in the number of persons importing such animals and animal products.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedure are unnecessary and contrary to the public interest with respect to the addition of Atlanta, Georgia, to the list of limited ports in § 92.3(e), and that good cause is found for making this action effective upon publication in the Federal Register. Comments concerning the addition of Atlanta are being solicited for 60 days after publication of the document.

It is necessary to make this rule effective as soon as possible in order to relieve unnecessary restrictions and to reflect the existence of the Veterinary Services facility at Atlanta, so that importers of certain animals and animal products can make arrangements to utilize the facility.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 92 continues to read as set forth below:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. Paragraph (e) of § 92.3 is revised to read:

§ 92.3 Ports designated for the importation of animals and birds.

* * * * *

(e) *Limited ports.* The following ports are designated as having inspection facilities for the entry of animals and animal products such as animal semen, animal test specimens, or hatching eggs and day old chicks which do not appear to require restraint and holding inspection facilities: Anchorage, Alaska; San Diego, California; Denver, Colorado; Jacksonville, St. Petersburg-Clearwater, and Tampa, Florida; Atlanta, Georgia; Chicago, Illinois; New Orleans, Louisiana; Portland, Maine; Baltimore, Maryland; Boston, Massachusetts; Minneapolis, Minnesota; Great Falls, Montana; Portland, Oregon; San Juan, Puerto Rico; Galveston and Houston, Texas; and Seattle, Spokane, and Tacoma, Washington.

* * * * *

Done at Washington, D.C., this 31st day of January 1986.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–2537 Filed 2–4–86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance; Indexing for Widow(er)'s Benefits; Effect of Remarriage on Widow(er)'s Entitlement; Retroactivity of Widow(er)'s Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Final rules, with request for comments on a specific rule.

SUMMARY: In these final regulations, we explain the increased widow(er)'s benefits because of the special indexing of the deceased worker's earnings when he or she died before attaining age 62. We also explain that in many cases, a widow(er) or surviving divorced spouse who remarries can nevertheless be entitled to monthly benefits after 1983 on the earnings record of a deceased insured worker. Finally, we explain that a widow(er) under age 65 may choose to have survivor's benefits begin with the month of the worker's death if the widow(er) filed in the month after death; this is an exception to the usual rule on retroactivity.

These final rules are based on sections 131, 133, and 334 of Pub. L. 98–21 (the Social Security Amendments of 1983).

DATES: These rules are effective upon publication in the Federal Register. Because we have revised the rule on remarriage (§ 404.336) since the Notice of Proposed Rulemaking was published, comments on this final rule may be submitted within 60 days after publication.

ADDRESSES: Comments on the remarriage rule should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangments with the contact person shown below. If appropriate, we will respond in a future publication to any comments we receive on the revised remarriage rule.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6785.

SUPPLEMENTARY INFORMATION:

Remarriage of Widow(er)

Before the Social Security Amendments of 1983, a person could not be entitled to benefits as a widow or a widower if he or she had remarried before age 60 and was still married. Also, the deceased worker's surviving divorced spouse who had remarried at any age and was still married could not be entitled to widow(er)'s benefits. Furthermore, if a surviving spouse under age 60 or a surviving divorced spouse of any age remarried after becoming entitled to widow's or widower's benefits, entitlement ended unless the remarriage was to a person entitled to certain kinds of Social Security benefits (see 20 CFR 404.337). Under the provisions of the 1983 Amendments, remarriage after attaining age 60 does not affect a widow(er)'s or surviving divorced spouse's continuing entitlement to benefits. Remarriage at age 50–59 prevents entitlement of a person in that age bracket if he or she remarries before meeting the disability requirement (§§ 404.335(c) and 404.336(c)) for entitlement before age 60. Remarriage at age 50–59 prevents entitlement of a person after attaining age 60 if the person remarried before he or she was entitled to benefits as a disabled widow(er) and recovered from the disabling condition prior to attaining age 60. This provision removes the distinction between surviving spouses and surviving divorced spouses who remarry after attaining age 60. It also removes the requirement that a disabled surviving spouse under age 60 and a surviving divorced spouse age 50 or older who remarries cannot continue to

receive benefits unless the marriage is to a certain category of Social Security beneficiary.

The 1983 Amendments also amended the section of the Act (section 202(f)) on widower's benefits by providing for the entitlement of a surviving divorced husband. This makes section 202(f) consistent with the existing provisions of the Act on benefits for surviving divorced wives and reflects the decision of the District Court for the District of Oregon in *Ambrose* v. *Califano* (July 17, 1980). Our regulations have included this provision in 20 CFR 404.336 since March 22, 1982 (47 FR 12162).

The 1983 Amendments further amended the section of the Act on widower's benefits by changing the entitlement requirement "has not married" to "is not married." This too is consistent with the provisions on benefits for widows and follows the decision of the District Court for the Southern District of Texas in *Mertz* v. *Harris* (September 10, 1980). Our regulations have included this provision in 20 CFR 404.335 and 404.336 since March 22, 1982 (47 FR 12162).

In these final regulations, we are revising the rule on remarriage as it was published in the Notice of Proposed Rulemaking. We specify that the surviving divorced spouse's remarriage must have occurred after the insured individual died. This rule will not be consistent with the rule for a divorced spouse of a living insured individual (see §§ 404.331 and 404.332), which requires that the spouse not have married in or before the first month for which he or she could be entitled. More important, it will reflect the intent of Congress as expressed in the language of section 131 of the 1983 Amendments and in legislative history (Senate Rep. No. 98–23, 98th Cong., 1st Sess. (1983) at page 6). We are further revising the rule on remarriage of a surviving divorced spouse by providing that such a spouse may be entitled only for months after 1983 if he or she remarried after reaching age 60 and does not meet a disability requirement. (In the Notice of Proposed Rulemaking, we did not limit such a spouse's entitlement to months after 1983.)

Indexing Deceased Worker's Earnings

Under the Act in effect before the 1983 Amendments, benefit amounts for a widow(er) of an insured worker who would have reached age 62 after 1978 and who died before age 62 are usually based on the worker's earnings from 1951 through the year of death. Further, earnings from 1951 through the second year before death are indexed (i.e, updated) to reflect the level of the average wages of all workers for the second year before the worker's death. If the surviving spouse does not become entitled until some year after the worker's death, the spouse is disadvantaged because his or her benefits do not reflect the economy-wide wage increases that would have increased the worker's indexed earnings had he or she lived longer. The 1983 Amendments remedy this disadvantage by providing that where the worker dies before age 62, the indexing will be based on the average wage level of all workers near the time the widow(er) becomes eligible for survivor's benefits. We will only pay the benefit computed under this provision if the amount is greater than that computed under the pre-amendment provisions.

We are modifying 20 CFR 404.212(b)(1) as stated in the Notice of Proposed Rulemaking by providing that we will compute the primary insurance amount as if the deceased worker had not died but reached age 62 in the second year after the appropriate indexing year. This is a clarification of the former language where we said that we will compute as if the deceased worker had died in the second year after the indexing year.

Retroactivity of Widow(er)'s Benefits

Before the 1983 Amendments, the Act provided that a person could not be entitled to benefits for any month before the month in which an application is filed if the benefit amount beginning in a prior month would be reduced or further reduced because the person was under age 65. The 1983 Amendments provide an exception for a widow(er) who files in the month after the worker died. Such a widow(er) may be entitled beginning with the month of the worker's death, even if his or her benefit amount will be less because of the earlier entitlement. This provision offers protection if the worker dies late in a month and the widow(er) under age 65 does not file until the next month.

Effective Dates

The legislative provision on remarriage is effective for benefits for months after December 1983; a person who is not entitled for December 1983 must file an application. The legislative provision on indexing is effective for benefits for months after December 1984 for widows and widowers who are first eligible after December 1984. The legislative provision on retroactivity is effective for applications filed on or after July 1, 1983.

Comments

These rules were published as a Notice of Proposed Rulemaking at 49 FR 22340 on May 29, 1984. We received no comments. We are, therefore, adopting these rules as proposed, except as otherwise stated.

Regulatory Procedures

Executive Order 12291—These final regulations have been reviewed under E.O. 12291 for their estimated program costs or savings for FY 1984–88. The provisions on indexing are expected to increase program costs by $4 million, the remarriage provisions by $109 million, and the retroactivity of benefits provisions by a negligible amount. However, these provisions are required by Pub. L. 98–21 and we have no discretion in implementing them. Therefore, OMB has waived the requirement that a regulatory impact analysis be prepared.

Paperwork Reduction Act—The final regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors, and disability insurance, Social Security.

Dated: September 16, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 25, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subparts C, D, and G of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart C is revised to read as follows:

Authority: Secs. 202, 205, 215, and 1102, Social Security Act, 49 Stat. 623, as amended; 53 Stat. 1368, as amended; 64 Stat. 506, as amended, 49 Stat. 647, as amended, 42 U.S.C. 402, 405, 415, and 1302.

2. Section 404.211 is amended by revising paragraph (d)(1) and by adding a new paragraph (d)(4) to read as follows:

§ 404.211 Computing your average indexed monthly earnings.

* * * * *

(d) *Indexing your earnings.* (1) The first step in indexing your social security earnings is to find the relationship (under paragraph (d)(2)) between—

(i) The average wage of all workers in your computation base years; and

(ii) The average wage of all workers in your "indexing year." As a general rule, your indexing year is the second year before the earliest of the year you reach age 62, or become disabled or die before age 62. However, your indexing year is determined under paragraph (d)(4) of this section if you die before age 62, your surviving spouse or surviving divorced spouse is first eligible for benefits after 1984, and the indexing year explained in paragraph (d)(4) results in a higher widow(er)'s benefit than results from determining the indexing year under the general rule.

* * * * *

(4) We calculate your indexing year under this paragraph if you, the insured worker, die before reaching age 62, your surviving spouse or surviving divorced spouse is first eligible after 1984, and the indexing year calculated under this paragraph results in a higher widow(er)'s benefit than results from the indexing year calculated under the general rule explained in paragraph (d)(1)(ii). For purposes of this paragraph, the indexing year is never earlier than the second year before the year of your death. Except for this limitation, the indexing year is the earlier of—

(i) The year in which you, the insured worker, attained age 60, or would have attained age 60 if you had lived, and

(ii) The second year before the year in which the surviving spouse or the surviving divorced spouse becomes eligible for widow(er)'s benefits, i.e. has attained age 60, or is age 50–59 and disabled.

* * * * *

3. Section 404.212 is amended in paragraph (b)(1) by adding the following 3 sentences to the end thereof, and by removing the authority citation at the end of the section, to read as follows:

§ 404.212 Computing your primary insurance amount from your average indexed monthly earnings.

* * * * *

(b) *Benefit formula.* (1) * * * If you die before age 62, and your surviving spouse or surviving divorced spouse is first eligible after 1984, we may compute the primary insurance amount, for the purpose of paying benefits to your widow(er), as if you had not died but reached age 62 in the second year after the indexing year that we computed under the provisions of § 404.211(d)(4). We will not use this primary insurance amount for computing benefit amounts for your other survivors or for computing the maximum family benefits payable on your earnings record. Further, we will only use this primary insurance amount if it results in a higher widow(er)'s benefit than would result if we did not use this special computation.

* * * * *

4. The authority citation for Subpart D is revised to read as follows:

Authority: Secs. 202, 205, 216, 223, 228, 1102 of the Social Security Act, 49 Stat. 623, 53 Stat. 1368, 64 Stat. 492, 64 Stat. 510 as amended, 70 Stat. 815, 80 Stat. 67, 49 Stat. 647; Sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 428, and 1302; and 5 U.S.C. Appendix.

5. Section 404.335 is amended by revising paragraph (e) and by deleting the authority citation at the end of the section, to read as follows:

§ 404.335 Who is entitled to widow's or widower's benefits.

* * * * *

(e) You are unmarried, unless—

(1) You remarried after you became 60 years old; or

(2) For benefits for months after 1983—

(i) You are now age 60 or older;

(ii) You remarried after attaining age 50 but before attaining age 60; and

(iii) At the time of the remarriage, you were entitled to widow(er)'s benefits as a disabled widow(er); or

(3) For benefits for months after 1983—

(i) You are now at least age 50 but not yet age 60;

(ii) You remarried after attaining age 50; and

(iii) You met the disability requirements in paragraph (c) of this section at the time of your remarriage (i.e., your disability began within the specified time and before your remarriage).

6. Section 404.336 is amended by revising paragraph (e) and by deleting the authority citation at the end of the section, to read as follows:

§ 404.336 Who is entitled to widow's or widower's benefits as a surviving divorced spouse.

* * * * *

(e) You are unmarried, unless for benefits for months after 1983—

(1) You remarried after you became 60 years old; or

(2)(i) You are now age 60 or older;

(ii) You remarried after attaining age 50 but before attaining age 60; and

(iii) At the time of the remarriage, you were entitled to widow(er)'s benefits as a disabled widow(er); or

(3)(i) You are now at least age 50 but not yet age 60;

(ii) You remarried after attaining age 50; and

(iii) You met the disability requirements in paragraph (c) of this section at the time of your remarriage (i.e., your disability began within the specified time and before your remarriage).

(4) In addition to meeting the requirements of paragraph (e)(1), (e)(2), or (e)(3) of this section, you remarried after the insured person died.

§404.337 [Amended]

7. Section 404.337 is amended by removing paragraph (b)(1) and by redesignating paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) as (b)(1), (b)(2), (b)(3), and (b)(4) respectively.

§404.338 [Amended]

8. Section 404.338 is amended by adding new material between the first and second sentences to read as follows:

* * * If the insured person died before reaching age 62 and you are first eligible after 1984, we may compute a special primary insurance amount for the purpose of determining the amount of your monthly benefit (see § 404.212(b)). We may increase your monthly benefit amount if the insured person earned delayed retirement credit after age 65 by working or by delaying filing for benefits (see § 404.313). * * *

9. The authority citation for Subpart G is revised to read as follows:

Authority: Secs. 202(j)(1), 205 and 1102 of the Social Security Act, 53 Stat. 1368, and 49 Stat. 623, 624, and 647; sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631, 94 Stat. 2855; 42 U.S.C. 402(j)(1), 405 and 1302 and 5 U.S.C. appendix.

10. Section 404.621 is amended by revising the first sentence of paragraph (a)(2)(iii), by adding a new paragraph (a)(2)(iv) and by removing the authority citation at the end of the section, to read as follows:

§ 404.621 Filing after the first month you meet the requirements for benefits.

(a) * * *

(2) * * *

(iii) You are a widow, widower, surviving divorced wife, or surviving divorced husband who is disabled and

could be entitled to retroactive benefits for any month before age 60.

* * * * *

(iv) You are a widow, widower, or surviving divorced spouse of the insured person who died in the month before you applied and you were at least age 60 in the month of death of the insured person on whose earnings record you are claiming benefits. In this case, you can be entitled beginning with the month the insured person died if you choose and if you file your application on or after July 1, 1983.

[FR Doc. 86-2364 Filed 2-4-86; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium for Oral Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Beecham Laboratories, providing for use of amoxicillin trihydrate and clavulanate potassium for oral suspension in dogs for the treatment of certain skin and soft tissue infections such as wounds, abscesses, cellulitis, and superficial/juvenile and deep pyoderma.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham Inc., Bristol, TN 37620, filed NADA 55-101 for Clavomox ® (amoxicillin trihydrate and clavulanate potassium) Oral Suspension (Drops) for use in dogs. The drug is a dry powder which is reconstituted for the treatment of skin and soft tissue infections such as wounds, abscesses, cellulitis, and superficial/juvenile and deep pyoderma due to beta-lactamase (penicillinase) producing *Staphylococcus aureus*, non-beta-lactamase *Staphylococcus aureus*, *Staphylococcus* spp. *Streptococcus* spp. and *E. coli*. The application is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. By adding new § 540.103h to read as follows:

§ 540.103h Amoxicillin trihydrate and clavulanate potassium for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Amoxicillin trihydrate and clavulanate potassium for oral suspension is a dry mixture of amoxicillin trihydrate and clavulanate potassium with one of more suitable and harmless flavorings, sweetening ingredients, stabilizers, and suspending agents. When reconstituted as directed in the labeling, each milliliter contains amoxicillin trihydrate equivalent to 50 milligrams of amoxicillin with clavulanate potassium equivalent to 12.5 milligrams of clavulanic acid. Its amoxicillin trihydrate content is satisfactory if it is not less that 90 percent and not more than 120 percent of the number of milligrams of amoxicillin that it is represented to contain. Its clavulanate is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of clavulanic acid that it is represented to contain. The moisture content of the dry powder is not more than 8.5 percent. When reconstituted as directed in the labeling, its pH is not less than 4.8 and not more than 6.6. The amoxicillin trihydrate conforms to the standards prescribed by § 440.3(a)(1) of this chapter. The calvulanate potassium conforms to the standards prescribed by § 455.15(a)(1) of this chapter.

(2) *Labeling.* The drug shall be labeled in accordance with the requirements of paragraph (c) of this section and § 510.55 of this chapter; in addition, it shall be labeled "amoxicillin and clavulanate potassium for oral suspension, veterinary".

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 514.50 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The amoxicillin trihydrate used in making the batch for potency, moisture, pH, amoxicillin content, concordance, crystallinity, and identity.

(*b*) The clavulanate potassium used in making the batch for clavulanic acid content, moisture, pH, identity, and clavam-2-carboxylate content.

(*c*) The batch for amoxicillin content, clavulanic acid content, moisture, and pH.

(ii) Samples required:

(*a*) The amoxicillin trihydrate used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*b*) The clavulanate potassium used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of 6 immediate containers.

(b) *Tests and methods of assay*—(1) *Amoxicillin and clavulanic acid contents.* Proceed as in § 440.103e(b) of this chapter.

(2) *Moisture.* Proceed as in § 436.201 of this chapter.

(3) *pH.* Proceed as in § 436.202 of this chapter, using the suspension reconstituted as directed in the labeling.

(c) *Conditions of marketing*—(1) *Specifications.* The drug conforms to the requirements of paragraph (a) of this section.

(2) *Sponsor.* See 000029 in § 510.600(c) of this chapter.

(3) *Conditions of use*—(i) *Dogs*—(*a*) *Amount.* 6.25 milligrams per pound of body weight twice daily (equivalent to 5 milligrams amoxicillin and 1.25 milligrams clavulanic acid per pound body weight).

(*b*) *Indications for use.* For the treatment of skin and soft tissue infections such as wounds, abscesses, cellulitis, superficial/juvenile and deep pyoderma due to susceptible strains of beta-lactamase (penicillinase) producing *Staphylococcus aureus,* non-beta-lactamase *Staphylococcus aureus, Staphylococcus* spp. *Streptococcus* spp., and *E. coli.*

(*c*) *Limitations.* Administer for 5 to 7 days or 48 hours after all symptoms have subsided. Deep pyoderma may require 21 days, not to exceed 30 days. If no improvement is seen in 5 days, discontinue therapy and reevaluate the case. Not for use in dogs maintained for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(ii) [Reserved].

Dated: January 29, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-2484 Filed 2-4-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Beecham Laboratories. The supplemental NADA provides an additional claim for safe and effective use in dogs of amoxicillin trihydrate and clavulanate potassium tablets in treating soft tissue infections and also claims effectiveness against certain infectious organisms in addition to those currently associated with the existing skin infections claim. Additionally, the supplemental NADA decreases the duration of treatment.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham Inc., Bristol, TN 37620, is sponsor of approved NADA 55-099 which provides for use in dogs of amoxicillin trihydrate and clavulanate potassium tablets to treat skin infections such as superficial/juvenile and deep pyoderma due to susceptible strains of beta-lactamase (penicillinase) producing *Staphylococcus aureus,* non-beta-lactamase *Staphylococcus aureus,* and *Staphylococcus* spp. The firm has filed a supplemental NADA providing additional claims for use of the drug to treat soft tissue infections and for *Streptococcus* spp. *E. coli* as susceptible organisms. Additionally, the supplement revises the limitations paragraph in 21 CFR 540.103g to decrease the duration of treatment of skin and soft tissue infections. The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Docket Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b) (4):

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 540 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 540.103g by revising paragraph (c)(3)(i) (*b*) and (*c*) to read as follows:

§ 540.103g Amoxicillin trihydrate and clavulanate potassium film-coated tablets.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(*b*) *Indications for use.* It is used for treatment of skin and soft tissue infections such as wounds, abscesses, cellulitis, superficial/juvenile and deep pyoderma due to susceptible strains of beta-lactamase (penicillinase) producing *Staphylococcus aureus,* non-beta-lactamase *Staphylococcus aureus, Staphylococcus* spp., *Streptococcus* spp., and *E. coli.*

(*c*) *Limitations.* Wounds, abscesses, cellulitis, and superficial/juvenile pyoderma: Treat for 5 to 7 days or for 48 hours after all signs have subsided. If no improvement is seen after 5 days of treatment, discontinue therapy and reevaluate the case. Deep pyoderma may require treatment for 21 days; do not treat for more than 30 days. Not for use in dogs maintained for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

Dated: January 29, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-2483 Filed 2-4-86; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

26 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

Correction

In the issue of Thursday, January 23, 1986, beginning on page 3040, a correction to FR Doc. 86-871 appeared.

On page 3041, first column, item 2 is corrected to read, "2. In the third column, under Appendix B, th'rd line, "G" should read "G_y".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Amendments to Colorado Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: The Director is announcing the approval, with certain exceptions, of proposed amendments submitted by the State of Colorado as modifications to its permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments, originally announced as two separate proposed rulemakings on October 1, 1984 and April 25, 1985 (49 FR 38653–38654 and 50 FR 16311–16321), involve definitions and requirements concerning coal exploration, permit application information needs, prime farmland, confidentiality, mapping, inspection and enforcement, civil penalty assessments, guidelines, declaratory orders, and performance standards pertaining to roads, revegetation, land use, temporary cessation of operations, fish and wildlife, topsoil, use of explosives and the treatment of drilled holes and underground openings.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to Federal standards in accordance with SMCRA without undue delay.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102. Telephone: (505) 766–1492.

SUPPLEMENTARY INFORMATION: On December 15, 1980, the Secretary of the Interior approved the Colorado program, subject to the correction of 45 deficiencies. Information pertinent to the general background, revisions and amendments to the Colorado program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval, can be found in the December 15, 1980 Federal Register (45 FR 82173–82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15 and 906.16.

On August 28, 1984, Colorado submitted proposed amendments revising various provisions of the Colorado Code of Regulations concerning coal exploration, permit application information requirements and performance standards relating to topsoil, treatment of drilled holes and underground openings, use of explosives, and temporary cessation of operations. On October 1, 1984, OSMRE announced receipt of the amendments and opened the public comment period (49 FR 38653–38654). Since no one requested a public hearing, none was held. On February 4, 1985, OSMRE notified the State of the deficiencies found in the amendments and provided an opportunity for the State to submit further rule changes, policy statements, legal opinions or other evidence to show that the State's proposed modifications were consistent with the Federal requirements.

On March 8, 1985, Colorado responded to OSMRE's concerns by proposing additional changes to the coal exploration regulations and by providing additional information concerning the proposed changes to the topsoil and temporary cessation of operations rules. OSMRE found that this response did not fully resolve all identified deficiencies, and so notified the State by letter of May 21, 1985. This letter also provided the State with another opportunity to correct these problems.

On March 12, 1985, Colorado submitted additional proposed amendments revising various provisions of the Colorado Code of Regulations concerning prime farmland, roads, mapping, revegetation, land use, fish and wildlife, inspection and enforcement, civil penalties, guidelines, declaratory orders, and permit application information requirements. On April 25, 1985, OSMRE announced receipt of the proposed amendments and opened the public comment period (50 FR 16311–16312). Since no one requested a public hearing, none was held. On August 22, 1985, OSMRE notified the State of the deficiencies found in the proposed amendments and provided an opportunity for the State to submit additional materials demonstrating that the proposed modifications were consistent with the Federal requirements.

This letter also revised the deficiencies identified in the August 28, 1984 amendment package, as listed in the letters of February 4, 1985 and May 21, 1985. At the State's request, the contents of this letter were further discussed at a meeting on August 29, 1985. By letter dated October 2, 1985, Colorado subsequently submitted additional proposed rule changes, proposed policy statements, legal opinions and other responses regarding the mapping, topsoil, land use, blasting, coal exploration, revegetation, prime farmland, archaeological resources, confidentiality, and fish and wildlife requirements. The submittal also included material relative to revegetation success standards and methods of determining revegetation success. On October 30, 1985, OSMRE announced receipt of the materials submitted on March 8, 1985 and October 2, 1985, and reopened the public comment period until November 29, 1985 (50 FR 45117–45118).

Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments submitted by the State of Colorado. The Director's review of the proposed amendments was largely confined to the actual changes and did not necessarily encompass the entire provision within which a change was proposed. The Director may require further changes in the future as a result of his ongoing review of the Colorado program in light of Federal regulatory revisions, court decisions and oversight evaluations.

1. Coal Exploration

(a) Colorado proposes to revise its definition of "coal exploration" at 2 CCR 407–2, 1.04(22) to include only mechanical disturbances of the natural land surface for the purpose of determining overburden characteristics, coal quantity or quality, or the hydrologic characteristics of the area, as well as the construction of roads to determine other environmental resources of the area.

The corresponding Federal definition of 30 CFR 701.5 also includes all mapping and pre-permit environmental data collection activities, and does not limit its scope to mechanical disturbances. Prior to promulgating the revised coal exploration rules on September 8, 1983, OSMRE requested comments on the need to include environmental data collection within the definition of coal exploration (47 FR 21443, May 16, 1982). In response to the comments received, OSMRE decided to retain this element of the definition, as discussed in the preamble to the

September 8, 1983 rules (48 FR 40623–40624). However, as promulgated on that date, the Federal regulations at 30 CFR Parts 772 and 815 did not impose any filing, permitting or performance requirements on coal exploration operations which would not substantially disturb the natural land surface, unless those operations would take place on lands designated as unsuitable for surface mining, in which case they would have to be conducted in accordance with an approved exploration permit and the performance standards of 30 CFR Part 815.

In response to these OSMRE concerns, on October 2, 1985, Colorado indicated that as part of the regulatory reform process it would further amend its regulations to specify that, for lands designated as unsuitable for surface mining, the definition would include all data collection activities regardless of whether they disturb the natural land surface.

However, on July 15, 1985, the U.S. District Court for the District of Columbia ruled that the Secretary had failed to adequately justify his decision to require operators engaging in coal exploration activities to file a notice of intent with the regulatory authority only when the operator anticipated that such activities might substantially disturb the natural land surface. The court noted that such a procedure could encourage a lack of compliance with section 512(a) of SMCRA, and, accordingly, it remanded 30 CFR 772.11(a) to the Secretary for reconsideration (*In re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144).

The revised definition of coal exploration proposed by Colorado would have an effect similiar to remanded 30 CFR 772.11(a) in that it would limit filing requirements to sites at which the operator anticipates a certain level of disturbance. Therefore,the Director finds that the proposed revision to Colorado rule 1.04(22) would render the Colorado program less effective than the Federal regulation as interpreted by the court and he is not approving it.

(b) Colorado proposes to revise 2 CCR 407–2, 2.02.1, which establishes the scope of the general coal exploration requirements, to delete the reference to, and partial repetition of, the definition of "coal exploration". Since the definition itself would remain in effect, this deletion would have no effect upon the meaning or application of this rule. Therefore, the Director finds that revised State rule 2.02.1 is no less effective than the Federal regulations at 30 CFR 772.1.

(c) Colorado proposes to revise 2 CCR 407–2, 2.02.2(2)(c) by replacing the requirement for a "precise" description of the exploration area with one for a "narrative" description. The Director finds that the revised rule is no less stringent than section 512(a) of SMCRA, which requires a description of the exploration area, and no less effective than the Federal regulation at 30 CFR 772.11(b)(3), which requires a narrative describing the exploration area.

In *In re: Permanent Surface Mining Regulation II*, the U.S. District Court for the District of Columbia remanded 30 CFR 772.11(b)(3) for further rulemaking to clarify how detailed the description required by section 512(a) of SMCRA must be. When OSMRE has completed further rulemaking to address this decision, the State will be notified of any amendments needed to be no less effective than the Federal rules.

(d) Colorado proposes to revise 2 CCR 407–2, 2.02.2(2)(g), 2.02.3(1)(c)(ii) and 2.02.3(1)(e) to establish special descriptive and mapping requirements for coal exploration operations involving drilling. The changes to 2.02.2(2)(g) and 2.02.3(1)(c)(ii) require that descriptions of proposed exploration operations include the maximum number of holes to be drilled within each quarter-quarter section (40 acres) as established by the rectangular survey system, while the changes to 2.02.3(1)(e) require that maps accompanying exploration permit applications indicate the quarter-quarter sections within which excavations will be conducted or holes will be drilled.

Since neither section 512 of SMCRA nor the Federal regulations at 30 CFR 772.11(b) (3) and (5) and 772.12(b) (3) and (12) establish location accuracy standards, and since the maps need only be prepared at a scale of 1:24,000, the Director finds that the quarter-quarter section criterion is reasonable, no less stringent than SMCRA and no less effective than the Federal regulations. However, the wording of 2.02.2(2)(g), as revised, indicates that the description of the methods to be used to conduct coal exploration and reclamation need include only the number of drill holes. This information alone is inadequate since it does not describe the method of reclamation and since coal exploration activities may also include road construction or use non-drilling methods, activities and methods which would not have to be described under the revised rule. Therefore, the Director is requiring that Colorado further amend its program to clarify that the second sentence of 2.02.2(2)(g) only sets accuracy standards for descriptions of drilling operations, and that it does not exempt any operation from the applicable descriptive requirements of the first sentence.

(e) Colorado proposes to revise the language defining the scope of the performance standards for coal exploration at 2 CCR 407–2, 4.21.1 to delete the reference to, and partial repetition of, the definition of "coal exploration". The Director finds that the deletion of this language does not alter the meaning of the rule, and that the revised rule is no less effective than the Federal regulations at 30 CFR 815.1.

(f) Colorado proposes to revise 2 CCR 407–2, 4.21.4(1) to provide that habitats of unique value for fish, wildlife or other related environmental values, and areas identified in State rule 2.05.6(2)(b), shall not be adversely affected during coal exploration. The Federal rule at 30 CFR 815.15(a) prohibits any disturbance of such areas; however, Colorado explains that areas of only seasonal use by, or importance to, wildlife could be minimally disturbed during the period of nonuse without adversely affecting the site's significant values. The preamble to the revised Federal rule clarifies that under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) critical habitats may not be destroyed or adversely modified, except as otherwise provided in that statute (48 FR 40631, September 8, 1983). The Director finds that the phrase "adversely affected" is synonymous with the phrase "adversely modified", and that, if implemented in accordance with the clarifications contained in Colorado's letter of March 8, 1985, the revised language is no less effective than the terminology of 30 CFR 815.15(a).

However, the Director is requiring that Colorado correct an apparent typographical error in the cross reference portion of the rule. To be no less effective than the Federal requirements, Colorado must replace the reference to 2.05.6(2)(b) with one to 2.05.6(2)(a)(iii), thus insuring that the revised rule will protect critical habitats of endangered or threatened species and habitats of unusually high value for fish, wildlife or related environmental values.

2. Soil Resources Information

Colorado proposes to revise its permit application requirements at 2 CCR 407–2, 2.04.9(1) to require soil resources information only for the area to be disturbed, not the entire permit area, and to otherwise clarify informational requirements. On August 4, 1980, the Secretary suspended the corresponding Federal regulations at 30 CFR 779.21 and 783.21 to the extent that they require soil survey information for non-primeland

soils. Since Colorado rule 2.04.12(4) separately requires that a soil survey prepared to the standards of the National Cooperative Soil Survey be submitted for all prime farmland soils within the area to be disturbed, the Director finds that the proposed changes to 2.04.9(1) are no less stringent than SMCRA and no less effective than the Federal regulations.

3. Topsoil

(a) Colorado proposes to revise 2 CCR 407–2, 4.06.1(2) to delete the provision limiting alternative topsoil storage practices (other than stockpiling) to surface disturbances associated with underground mining. The corresponding Federal regulations at 30 CFR 816/817.22(c)(3) permit alternative topsoil storage practices for long-term surface disturbances of any type, but only under certain conditions. The proposed Colorado revisions are less effective in that they require only that the alternative practice provide equal or greater protection to the topsoil. Therefore, the Director is requiring that Colorado further amend its program to provide that alternative topsoil storage practices may be used only when (1) stockpiling would be detrimental to the quantity or quality of the stored materials, (2) all stored materials are moved to an approved site within the permit area, (3) the alternative practice would not permanently diminish the capability of the soil of the host site, and (4) the alternative practice would maintain the stored materials in a condition more suitable for future redistribution than would stockpiling.

(b) Colorado proposes to revise 2 CCR 407–2, 4.06.2(1) to apply all provisions governing the clearing of vegetation prior to topsoil removal to both surface and underground mining operations. The revised rule would exempt surface mining operations from the requirement to clear vegetation if the operator can demonstrate that the vegetation is necessary or desirable to ensure soil productivity consistent with the postmining land use. The Director finds that this provision does not conflict with the other vegetation-clearing requirements of this State rule (which require removal of only vegetation interfering with topsoil use) and that it is no less effective than the Federal regulations at 30 CFR 816/817.22(a)(4), which require that all vegetation interfering with topsoil salvage be cleared prior to topsoil removal.

(c) Colorado proposes to revise 2 CCR 407–2, 4.06.2(2)(a) to allow variances from topsoil removal requirements "for good cause shown". The revised rule lists three examples (light traffic areas which do not destroy vegetation or cause erosion; areas of construction of small structures such as power poles, signs or fence lines; and areas where removal would cause needless damage to soil characteristics, but it does not limit variance issuance to these cases.

The Federal regulations at 30 CFR 816/817.22(a)(3) allow the granting of topsoil removal variances for minor disturbances meeting the criteria established for the first two examples. Since the third variance situation proposed by the State (areas where topsoil removal would cause needless damage to soil characteristics) meets the reclamation objectives of SMCRA section 102 and the topsoil protection objectives of 30 CFR 816/817.22, the Director finds that the three specific situations in which the State proposes to provide a topsoil removal variance are no less effective than the Federal regulations at 30 CFR 816/817.22(a)(3). However, since the State rule does not define what constitutes "good cause shown" and since it does not limit topsoil removal variances to the three situations given as examples, the potential exists to consider almost any grounds as sufficient basis for a variance. Therefore, the Director is requiring that Colorado further amend its program to clearly establish criteria for the granting of topsoil removal variances.

By letter of October 2, 1985, Colorado stated that this revision was proposed in part to allow the State to grant operators an exemption from the requirement to salvage poor quality topsoil on the steep slopes of ephemeral drainages. While a blanket exemption of this nature would be less effective than 30 CFR 816/817.22(a)(3), the Federal regulations at 30 CFR 816/817.22(b) do allow the use of selected overburden materials as topsoil substitutes where the operator demonstrates that the resulting soil medium is equal to or more suitable for sustaining vegetation than the existing topsoil and where the resulting soil medium is the best available in the permit area to support vegetation. Except as discussed in Finding 3(d), the Colorado rules at 4.06.2(4)(a) contain similar provisions for topsoil substitution. Where appropriate selected overburden materials are available, use of this topsoil substitution procedure would allow the State to achieve the goal of the proposed amendment while ensuring that the resulting surface soil medium would be equal to or more suitable for sustaining vegetation than the existing topsoil. Based on this understanding, Colorado has agreed to restrict the granting of topsoil removal variances to the three situations identified in 4.06.2(2)(a)(i), (ii) and (iii), as submitted on August 28, 1984, until the further revisions required by the Director are submitted and approved.

(d) Colorado proposes to revise 2 CCR 407–2, 4.06.2(4)(a)(ii) to delete the requirement for laboratory certification of proposed topsoil substitutes and supplements. Instead, the revised rule would require that trials and tests be conducted using standard procedures approved by the Division. Although the revised Federal rules no longer require laboratory certification, the Director finds that the State's revised rule is less effective than the Federal regulations at 30 CFR 816/817.22(b) and less stringent than section 515(b)(5) of SMCRA in that it does not require that the operator demonstrate that the proposed final soil medium would be the best available within the permit area to support the vegetation. Therefore, he is requiring that the State further amend its program to correct this deficiency. By letter of October 2, 1985, Colorado has agreed to require this demonstration in the interim until the deficiency has been formally corrected.

(e) Colorado proposes to revise 2 CCR 407–2, 4.06.4(1) to require mechanical loosening or other treatment of regraded materials only where necessary to eliminate slippage surfaces, relieve compaction, or provide for root penetration. The Federal rules at 30 CFR 816/817.22(d)(2) contain a similar requirement, but they also require that this land treatment be done prior to topsoil replacement or at a time when it will cause no harm to either redistributed materials or reestablished vegetation. By letter of October 2, 1985, Colorado stated that it interpreted the term "regraded land" in its revised rule in a manner identical to its use in the Federal rule, i.e., loosening following topsoil replacement would be an alternative treatment requiring Division approval. Colorado further stated that it would evaluate all such requests to ensure that no unnecessary compaction of the redistributed materials occurred. In addition, State rule 4.15.3(1) prohibits seeding and planting of disturbed areas until final preparation has been completed. Since loosening of regraded land is part of seedbed preparation, no harm to vegetation could occur.

Therefore, the Director finds that the revised State rule is no less effective than the Federal regulations at 30 CFR 816/817.22(d)(2).

(f) Colorado proposes to revise 2 CCR 407–2, 4.06.4(2)(a) to replace the requirement that topsoil and other materials be distributed so as to achieve

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an "approximate uniform, stable thickness", consistent with approved postmining land uses, contours, surface water drainage systems and requirements of the vegetation proposed to be established, with a requirement that distribution achieve an "average thickness". The Federal rules at 30 CFR 816/817.22(d)(1)(i) require that redistribution achieve an approximately uniform, stable thickness consistent with the approved postmining land use, contours and surface water drainage systems. The Director finds that substitution of "average thickness" for "approximate uniform, stable thickness" would render the State rule less effective than the Federal rule since the change would allow wide random deviations in topsoil thickness without regard for uniformity or stability.

Since the approximately uniform, stable thickness standard already permits limited differential topsoil redistribution where justified by postmining land use, topographical, drainage and stability concerns, Colorado requested withdrawal of this proposed change. In its request of October 2, 1985, Colorado stated that it understood that the existing language provided sufficient flexibility to allow the Division to approve placement of greater topsoil depths at the top of swales than at the bottom so as to allow for some erosional redistribution. The Director agrees that Colorado has some flexibility in this respect, but he notes that, in approving any differential redistribution plan, the State must fully consider the requirement of State rule 4.06.4(2)(d) that erosion be minimized through protection of the topsoil both before and after seeding or planting, and the requirement of State rule 4.16.1 that all areas affected by surface coal mining operations be restored in a timely manner to conditions capable of fully supporting the uses they were capable of supporting to mining or to any approved higher or better uses.

Since Colorado has withdrawn this proposed change, the provisions approved on December 15, 1980 will remain in effect as a part of the Colorado program.

4. Drilled Holes and Exposed Underground Openings

(a) Colorado proposes to revise 2 CCR 407–2, 4.07.1(2) and 4.07.2 to provide that the sealing and protection standards for temporarily inactive drilled holes and exposed underground openings also apply to those holes and openings which will be eliminated by future mining, as approved in the permit. Boreholes extending deeper than the approved future mining must be permanently sealed below that level. Although the Federal regulations at 30 CFR 816/817.13 through 816/817.15 do not contain similar provisions, the Secretary finds that such holes are appropriately considered as being temporarily inactive since they will be completely removed by future mining. Since the operator would be required to inspect and maintain all temporary seals and protective measures, there would be no reduction in the level of protection afforded to the public health and safety and the environment. Therefore, the Director finds that these revisions are no less effective than the Federal regulations.

(b) Colorado proposes to revise 2 CCR 407–2, 4.07.3 (1) and (2) to expand the range of plug and sealant materials acceptable for use in the closure of permanently abandoned drill holes and exposed underground openings. The Federal regulations at 30 CFR 816/817.15 require only that such holes and openings be permanently closed so as to prevent contamination of surface or ground waters and to prevent access, requirements which are met by the State's technical closure criteria. Therefore, the Director finds that the revised State rules are no less effective than the Federal rules.

5. Use of Explosives

(a) Colorado proposes to revise 2 CCR 407–2, 408.3(2)(b)(i) and (ii) to allow the Division to approve blasting schedules with designated blasting areas larger than 300 acres in size, and to delete the requirement that blasting times not exceed an aggregate of four hours in any one day. The Director finds that these revisions are no less effective than the Federal regulations at 30 CFR 816.64(c)(2) and (3), which require only that the blasting schedule identify the specific areas in which blasting will take place and the dates and times when explosives are to be detonated.

(b) Colorado proposes to revise 2 CCR 407–2, 4.08.4(1)(b)(ii) to clarify that oral notice of unscheduled nighttime blasting does not need to be given to employees of the mining operation. The revised Federal regulations at 30 CFR 816.64(a)(3) require only that residents within ½ mile of the blasting site be notified by an audible signal, a signal also required by the State rules at 4.08.4(1)(b)(ii) and 4.08.4(3). Since the Federal rules no longer require oral notices, the Director finds that the Colorado revision is no less effective than the Federal rules.

(c) Colorado proposes to revise 2 CCR 407–2, 4.08.4(10), 4.08.4(10)(a) and 4.08.4(10)(a)(i) to allow the Division to increase the maximum allowable peak particle velocity for a particular mining operation if it determines that a different velocity is justified by the density of population, land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors. The currently approved State rule permits only velocity *reductions* on these grounds.

The revised Federal rules at 30 CFR 816/817.67(d)(1) require that the maximum ground vibration permissible at the protected structures listed in 30 CFR 816/817.67(d)(2)(i) be established in accordance with the peak particle velocity limits of paragraph (d)(2), the scaled-distance equation of paragraph (d)(3), or the blasting level chart of paragraph (d)(4). The Federal rules at 30 CFR 816/817.67 (d) and (e) do not permit an unrestricted increase in allowable maximum peak particle velocities for any of the factors listed in State rule 4.08.4(10)(a)(i); 30 CFR 816/817.67(d)(1) provides that the standard peak particle velocity limits of paragraph (d)(2) may be exceeded only when the blasting level chart of paragraph (d)(4) is used to determine maximum ground vibration, and then only to a limited extent (2.0 inches per second at certain frequencies).

Section 515(b)(5)(C) of SMCRA requires the regulatory authority to promulgate regulations governing the use of explosives to limit their use so as to prevent, *inter alia*, damage to public and private property outside the permit area. As discussed in the preamble to the proposed rule revising the Federal explosives regulations, this language requires that threshold damage (e.g., lengthening of existing plaster cracks), not just major and minor damage, be prevented (47 FR 12765–12766, March 24, 1982). In formulating its regulatory limits on blasting vibration, OSMRE relied on Bureau of Mines Report of Investigations RI 8507, which consolidates numerous previous studies on blast vibration and structural damage. After consideration of the comments received on its proposed rules and the Bureau of Mines report, OSMRE established its maximum peak particle velocity standards based on the report's most reliable data concerning threshold damage, data involving actual blasts and actual structures under carefully monitored conditions. OSMRE specifically rejected a commenter's request that the regulatory authority be allowed to increase permissible velocity limits on an unrestricted site-specific basis. The Director is not aware of any data which can clearly substantiate the claim that threshold damage can be prevented at higher velocities without use of the more

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sophisticated planning, analysis and monitoring required for use of the blasting level chart (48 FR 9795–9800, March 8, 1983).

Therefore, the Director finds that the proposed changes to State rules 4.08.4(10)(a) and 4.08.4(10)(a)(i) to allow the Division discretionary authority to increase the maximum allowable peak particle velocity are less effective than the Federal regulations, and cannot be approved. However, the Director also finds that the language added to the introductory paragraph of State rule 4.08.4(10) to clarify that the Division has the authority to reduce the maximum allowable peak particle velocity below one inch per second is not less effective than 30 CFR 816/817(d)(1) and (5).

(d) Colorado proposes to revise 2 CCR 407–2, 4.08.4(10)(a)(ii) to require that structures owned by the permittee and leased to another party be inhabited before they qualify as structures protected by the maximum allowable peak particle velocity standards. The Director finds that this change would render the State rule less effective than the Federal regulations at 30 CFR 816/817.67(e)(2), which do not require that leased structures be inhabited before coming under protection. In addition, the wording of the revised State rule does not limit the increased maximum velocity to the structures in question. Therefore, the Director is not approving these proposed changes.

(e) Colorado proposes to add 4.08.4(10)(a)(iii) to 2 CCR 407–2 to allow the Division to increase the maximum allowable peak particle velocity when the owners of structures provide written waivers prior to blasting. The Federal regulations at 30 CFR 816/817.67(e) do not authorize any such waivers. In the preamble to the March 13, 1979 regulations (44 FR 15199) OSMRE explained that it had declined to adopt commenters' recommendations that such a waiver provision be included in the regulations because homeowners are not likely to have adequate technical knowledge for intelligent selection of an alternative maximum allowable peak particle velocity, and because they may waive their rights without realizing the significance of such an action.

Therefore, the Director finds that adoption of this provision would render the Colorado program less effective than the Federal requirements, and he is not approving it.

(f) Colorado proposes to revise 2 CCR 407–2, 4.08.5(14) to specify that records of blasts maintained by the operator need contain data on the type and length of stemming only if the subject blasts occurred within 1,000 feet of the permit perimeter. The Federal rules at 30 CFR 816/817.68(m) require that records of all blasts contain this information. The type and length of stemming is important in controlling both flyrock and air blast, the adverse effects of which are not limited to blasts occurring within 1,000 feet of the permit perimeter. Since lack of this information would hinder investigation of both damage occurrences and complaints from the public, the Director finds that this change would render the Colorado program less effective than the Federal requirements, and he is not approving it.

(g) Colorado has made minor wording changes to 2 CCR 407–2, 4.08.6(2), to clarify its requirements concerning the use of a modified equation to determine the maximum allowable weight of explosives per delay and to conform the rule to other program requirements. The Director finds that the proposed changes are no less effective than the Federal rules at 30 CFR 816/817.67(d)(3)(ii).

6. Temporary Cessation of Operations

Colorado proposes to revise its rule at 2 CCR 407–2, 4.30.1(2) to provide a two-phase notification procedure for temporary cessations of operations and to make other nonsubstantive wording changes. The State has retained the requirement that the permittee notify the Division before ceasing operations for 30 days or more or as soon as it is known that the cessation will extend beyond 30 days. However, the revised rule allows the permittee 90 days following that notification to submit a detailed notice of intention containing the rquired information concerning mining and reclamation status and those monitoring and reclamation activities which will continue during the period of temporary cessation. As explained by letter of March 8, 1985, until the Division receives complete information and approves the temporary cessation, Colorado will continue to inspect such mines at the frequency required for active operations and will enforce all performance standards. The additional time will allow the preparation of more accurate and complete reports, especially for larger, more complex mines. Therefore, the Director finds that the revised State rule is no less effective than the Federal regulations at 30 CFR 816/817.131(b).

7. Guidelines

Colorado proposes to add a new subsection 1.15 to 2 CCR 407–2 to provide formal rules governing the adoption and use of guidelines. The Federal rules contain no similar provisions, but the Director finds that the proposed rules are not inconsistent with SMCRA nor are they less effective than the Federal regulations.

8. Declaratory Orders

In accordance with its Administrative Procedures Act, Colorado proposes to add a new subsection 1.14 to 2 CCR 407–2 to establish procedural rules governing the filing, processing and disposition of petitions for declaratory orders concerning the applicability of any statutory provision or rule or order of the Mined Land Reclamation Board to the petitioner. The Director finds that these procedures are not inconsistent with SMCRA, nor are they less effective than the Federal regulations, provided that this process is not used as an alternative administrative appeal route for enforcement, permitting or bond release actions, or for appeals of lands unsuitable determinations or other decisions of the regulatory authority.

9. Permit Application Information

(a) Colorado proposes to reorder the wording of 2 CCR 407–2, 2.03.5(3) to clarify that the schedule of violations submitted with the permit application need include only violations of the Colorado Surface Coal Mining Reclamation Act and violations of any other Colorado or Federal law, rule or regulation pertaining to air or water environmental protection. The Director finds that, apart from more clearly requiring the listing of all violations of the Act, the proposed wording changes do not alter the substantive content of this rule, and that the changes themselves are no less effective than the corresponding Federal regulations at 30 CFR 778.14(c). As part of the regulatory reform review process, Colorado will be required to further amend this rule to require the listing of all violations of the relevant laws, rules and regulations of other States as well, in order to be no less stringent than section 510(c) of SMCRA and no less effective than 30 CFR 778.14(c).

(b) Colorado proposes to revise 2 CCR 407–2, 2.03.9(1) to allow an applicant to submit that portion of the permit application requiring proof of the requisite liability insurance policy at some time subsequent to submission of the initial permit application but prior to the issuance of the permit. Section 507(f) of SMCRA and the Federal regulations at 30 CFR 800.60(a) require that proof of liability insurance coverage be submitted as part of the permit application.

The Colorado rule requires that the insurance policy be adequate to compensate any persons injured or property damaged as a result of surface

coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for bodily injury must be $300,000 for each occurrence and $500,000 aggregate, and minimum insurance coverage for property damage must be $300,000 for each occurrence and $500,000 aggregate.

Under the revised State rule, both the State and the public would have sufficient information from the portions of the permit application filed initially to evaluate the adequacy of the applicant's proposed liability coverage, while the operator would be relieved of the costs of acquiring liability insurance for the period of principal permit review. Since Colorado would still require that the applicant obtain and submit proof of the necessary liability insurance before any permit is issued and before initiation of any coal mining operation, and since this proof, when submitted, must be included in the permit application, the Director finds that the revised State rule provides protection that is no less stringent than that required by section 507(f) of SMCRA and that it is no less effective than the corresponding Federal regulations.

(c) Colorado proposes to revise 2 CCR 407–2, 2.04.4 to require that the permit application contain a description of only significant known archaeological sites existing on the date of application, rather than all known archaeological features. The Federal regulations at 30 CFR 779.12(b) and 783.12(b) require descriptions of all known archaeological features, although section 507(b)(13) of SMCRA contains language identical to that of the proposed revision to the State rule. Apart from the prohibitions and limitations on the effect of surface coal mining operations on sites listed in the National Register of Historic Places and the lands protected under the lands unsuitable designation process (provisions for which the Colorado program has similar counterparts), SMCRA and the Federal regulations establish no specific requirements for the protection of archaeological sites. Therefore, the applicable standards for the protection of cultural and historic resources under State permanent regulatory programs approved under SMCRA are provided by the National Historic Preservation Act of 1966, as amended, which requires that appropriate consideration be given to all potential effects upon sites listed in or eligible for inclusion in the National Register of Historic Places.

Hence, at a minimum, all archaeological sites listed in or eligible for inclusion in the National Register of Historic Places (using the criteria of 36 CFR 60.4) must be described and mapped in the permit application. By letter of October 2, 1985, Colorado stated that it interperets "significant" as including all such sites. The Director solicited comments from the Advisory Council on Historic Preservation on both the submission of March 12, 1985 and the clarification of October 2, 1985; however, no response was received.

Since the revised State rule requires sufficient information to provide the same level of protection to archaeological sites as that provided by the Federal rules, the Director finds that this revision of State rule 2.04.4, as clarified on October 2, 1985, is no less effective than the Federal regulations. However, OSMRE is planning to revise its rules and otherwise clarify requirements concerning the protection of cultural and historic resources. When these interpretive documents are issued or the revised regulations are promulgated, OSMRE will notify the State of any necessary modifications in accordance with 30 CFR 732,17.

(d) Colorado proposes to revise 2 CCR 407–2, 2.04.8(1) to require that permit applications include climatological information only when requested by the Division. Since, the Federal regulations at 30 CFR 779.18 and 783.19 specify that climatological information is required only when requested by the regulatory authority, the Director finds that the revised rule is no less effective than the Federal rules.

(e) Colorado proposes to revise 2 CCR 407–2, 2.04.10(4) to delete the requirement that permit applications contain information concerning the trend of each vegetative community or portion thereof. Since the Federal regulations at 30 CFR 779.19 and 783.19 specify that vegetative information is required only when requested by the regulatory authority, the Director finds that the revised rule is no less effective than the Federal regulations.

(f) Colorado proposes to revise 2 CCR 407–2, 2.05.3(4)(a)(1)(A) and 2.05.3(4)(a)(ii)(A) to provide that other engineers may assist the qualified registered professional engineer in the preparation of general and detailed design plans for ponds, impoundments and diversions. The Director finds that the revised State rules are no less effective than the design assistance provisions of the Federal regulations at 30 CFR 780.25(a)(1)(i), 780.25(a)(2)(i), 780.25(a)(3)(i), 784.16(a)(1)(i), 784.16(a)(2)(i) and 784.16(a)(3)(i).

(g) Colorado proposes to delete 2 CCR 407–2, 2.05.5(1)(a)(iv), which requires that, where the proposed postmining land use is range or pasture, the permit application must include the detailed management plans to be implemented following final bond release. The State believes this requirement is unrealistic given the permittee's lack of control following bond release and the time lapse between plan submittal and the projected implementation date. The preamble to the corresponding Federal regulations at 30 CFR 780.23(a)(2) indicates that this requirement is based on the need to know the historical carrying capacity, proposed postmining carrying capacity and site-specific capability of the land in order to determine the feasibility of the proposed use (44 FR 15058, March 13, 1979). By letter of October 2, 1985, Colorado agreed with the preamble statement and stated that this information is obtained from the detailed narratives required by 2.04.3(2)(b) and 2.05.5(1)(a) (i) through (iii). These narratives include a description of the land's capability and productivity prior to mining and a discussion of how the proposed postmining land use will be achieved. Hence, preparation of a detailed management plan is unnecessary.

Therefore, based on Colorado's clarifications of October 2, 1985, the Director finds that the deletion of State rule 2.05.5(1)(a)(iv) will not render the Colorado program less effective than the Federal regulations.

(h) Colorado proposes to revise 2 CCR 407–2, 2.07.5(1)(b) to allow information pertaining to the quantity of the coal or to stripping ratios to be kept confidential upon request of the permit applicant. In approving Colorado's permanent regulatory program, the Secretary approved similar provisions regarding quantity (but not stripping ratios) at CRS 34–33–110(7) and 34–33–111(l)(1), based on the legislative history of SMCRA (45 FR 82182, December 15, 1980). However, his approval of this provision also relied on the State's commitment of July 16, 1980 to limit the quantitative information to be held in confidence to "direct statements setting forth the limits of coal reserves", which the Secretary interpreted to mean only quantitative data, not the areal extent of the coal. A person owning property or other interests overlying the affected area of an underground mine must have access to maps showing the planned extent of mining and to overburden information to enable him to evaluate subsidence potential, and persons potentially affected by surface mining must have access to sufficient geological, chemical and physical information concerning the overburden, coal seam(s) and other

strata to enable him or her to fully evaluate any potential adverse impacts on his or her interests. Section 507(b)(17) of SMCRA requires that information pertaining to coal seams, test borings, core samplings or soil samples be made available to any person with an interest which is or may be adversely affected. Congress intended that confidential information be limited to "selected qualitative and quantitative analysis of the coal seam" [H.R. Rep. No. 218, 95th Congress 1st Sess. 91 (1977)].

By letter of October 2, 1985, Colorado agreed that persons who may be adversely impacted by the proposed operation must have access to information regarding the depth to the coal and the stratigraphy and qualitative aspects of the overburden. To meet this need, the State will require that operators requesting drill log confidentiality reconstitute the stratigraphic data and qualitative information in a form suitable and adequate for public review.

Therefore, based on this commitment, the Director finds that the revised State rule is no less effective than the Federal regulations at 30 CFR 773.13(d)(2) and 773.13(d)(3)(ii).

(i) Colorado proposes to revise 2 CCR 407–2, 2.10.1 (1), (2) and (3) to require large-scale permit application maps only for the disturbed area, not the entire proposed permit area as required by the Federal regulations at 30 CFR 777.14(a). The Division would retain the right to require that additional areas be mapped at a larger scale for good cause shown. Colorado has requested approval of this amendment because its definition of "permit area" at 1.04(89) includes the entire affected area, which by definition includes all areas overlying existing and planned underground workings. The more limited Federal definition of "permit area" at 30 CFR 701.5 does not include all such areas.

However, both the State [at 1.04(36)] and OSM (at 30 CFR 701.5) define "disturbed area" as "an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations." At a meeting on August 29, 1985, Colorado stated that its definition of "disturbed area" included all areas to be disturbed during the term of the permit, as well as all areas disturbed at the time of application, but that it did not include all areas upon which roads and support facilities were sited. By letter of October 2, 1985, Colorado announced its intention to further amend its rules at 2.10.1(1) to clarify that the large-scale mapping requirements would also apply to these areas.

With respect to other proposed changes, since Colorado has retained the general requirement of Rule 2.10.1 that *all* maps legibly detail *all* information set forth on U.S. Geologic Survey topographical maps, and since the State has retained the specific requirement of Rule 2.10.3(1)(c) that the permit application include maps showing the boundaries of all areas proposed to be affected over the estimated total life of the proposed surface or underground mining activities, the proposed deletion of the phrase "over the estimated life of the operation" from the general mapping requirements of Rule 2.10.1(2) does not render the State rule less effective than the Federal regulations at 30 CFR 777.14(a), 779.24(c) and 783.24(c). Other minor wording changes are nonsubstantive in nature.

The Director is requiring that Colorado amend its rules at 2.10.1(1) to require that all areas upon which roads and support facilities (other than isolated monitoring stations involving little or no surface disturbance) are sited also be mapped at a large scale. He finds that the revised State rules at 2.10.1(1), (2) and (3) are otherwise no less effective than the Federal regulations.

(j) Colorado proposes to delete 2 CCR 407–2, 2.10.2(4), which requires that permit applications include a map delineating the area to be disturbed after the estimated date of issuance of the permit. The Federal regulations at 30 CFR 777.14(b) include a similar requirement, which, the preamble explains, is needed in situations where initial program permits are repermitted under the permanent program. Under the Federal rules, permanent program performance standards become effective only upon issuance of a permanent program permit; therefore, the inspector must be able to readily determine the portions of the permit area subject to differing sets of regulations for enforcement purposes.

However, Colorado has completed the repermitting of all but one initial program permit. In addition, at a meeting on August 29, 1985, Colorado stated that all operations must fully comply with its permanent program requirements regardless of permit status, since its initial program regulations are no longer in effect. Therefore, the Director finds that State rule 2.10.2(4) is now obsolete, and that its deletion will not render the Colorado program less effective than the Federal rules.

(k) While retaining the requirement for a map of the existing topography, Colorado proposes to revise 2 CCR 407–2, 2.10.3(1)(j) to delete the requirement that permit applications also include slope measurements. On October 2, 1985, the State submitted an explanation of its policy governing the implementation of this rule. The policy statement requires that all maps: (1) Be prepared at a uniform scale of 1:6,000 or larger, (2) accurately represent the range of natural slopes, variations in slopes and geomorphic differences, (3) extend at least 100 feet beyond any disturbed area or area to be disturbed, and (4) utilize a contour interval no greater than 20 feet. The State also submitted a legal opinion from a State assistant attorney general confirming that the language of the revised rule provides the Division with the authority to adopt this policy.

The Director finds that topographical maps prepared in accordance with this policy would be adequate substitutes for the specific premining slope measurements required by the Federal rules at 30 CFR 779.25(a)(11) and 783.25(a)(11). Therefore, the Director finds that the revised State rule is no less effective than the Federal regulations.

(l) Colorado proposes to revise 2 CCR 407–2, 2.10.3(1)(i) to specify that the Division can require that permit application maps include relevant information other than that specified in Rule 2.10.3 only for good cause shown. As the Federal regulations at 30 CFR 779.25 and 783.25 contain no corresponding nonspecific informational requirements, the Director finds that the revised State rule is no less stringent than SMCRA and no less effective than the Federal regulations.

10. Prime Farmland

(a) Colorado has proposed several nonsubstantive wording changes to clarify the definition of "prime farmland" at 2 CCR 407–2, 1.04(95). The Director finds that the revised definition is no less effective than the Federal definition of "prime farmland" at 30 CFR 701.5.

(b) Colorado proposes to revise 2 CCR 407–2, 2.04.12(1) to require prime farmland investigations (reconnaissance inspections) only for areas to be disturbed and only for areas on which mining was not approved prior to August 3, 1977. The Director finds that the historical exemption provision is similar to and no less effective than that provided by the Federal regulations at 30 CFR 785.17(a). In addition, for reasons similar to those discussed in Finding 9(i), the Director finds that

Colorado's proposal to require an investigation only of all areas to be disturbed is no less effective than the Federal regulation at 30 CFR 785.17(b)(1), which requires an investigation of the proposed permit area. However, since Colorado does not consider all lands upon which roads and support facilities are sited to be disturbed, and since these uses could adversely impact soil structure, the Secretary is requiring that the State further amend its program to also require prime farmland investigations for such lands.

(c) Colorado proposes to revise 2 CCR 407–2, 2.04.12(2) to conform the State's negative determination criteria for prime farmland investigations with the prime farmland criteria established for Colorado by the U.S. Soil Conservation Service (SCS) State Conservationist. Specifically, the revised rule states that land shall not be considered prime farmland where, *inter alia*, the slope exceeds 6 (rather than 10) percent, the land has no developed irrigation water supply, or the growing season is shorter than 90 days. On October 2, 1985, Colorado submitted a copy of the SCS publication *Important Farmland Inventory, Colorado*, which contains the State-specific SCS definition of prime farmland. The State also submitted a copy of an August 28, 1985 letter from the State Conservationist confirming that this publication contains the definition currently in effect for SCS purposes.

The Federal reguations at 30 CFR 701.5 define prime farmland, in part, as those lands defined by the Secretary of Agriculture in 7 CFR 657. Subparagraph (a)(2) of 7 CFR 657.4 allows State Conservationists to further restrict the national prime farmland criteria of 30 CFR 657.5. Therefore, since the changes proposed by Colorado are consistent with the State Conservationist's criteria, the Director finds that the revised State rule is no less effective than the Federal regulations.

(d) Colorado proposes to revise 2 CCR 407–2, 2.04.12(4) to require that soil surveys of potential prime farmland need be submitted (and, where necessary, conducted) only for lands to be disturbed, rather than for all such lands within the proposed permit area. For the reasons discussed in Finding 10(b), the Director is requiring that Colorado further amend this rule to also require soil surveys for areas upon which roads and support facilities will be sited. He finds that the rule is otherwise no less effective than the Federal reglations at 30 CFR 785.17(c)(1).

11. Roads

Colorado proposes to revise the definition of "road" at 2 CCR 407–2, 1.04(111) to exclude all roadways adjacent to the immediate mining pit area as well as those within it, an exclusion which the State further explains as including only those roads reclaimed concurrently with the pit as part of the normal backfilling and grading plan. In addition, the State has proposed assorted revisions to its road design an performance standards at 2 CCR 407–2, 4.03. In general, these changes would permit greater flexibility in the design and construction of roads.

On October 1, 1984, the U.S. District Court for the District of Columbia held that the Secretary had failed to provide adequate public notice and opportunity for comment on the road classification system promulgated at 30 CFR 816/817.150(a) and it remanded those rules to the Secretary (*In re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144). Since the definition of "road" and the remainder of the performance standards concerning roads are partially dependent upon the road classification system, the Secretary implemented the court's order by suspending the definition of "road" at 30 CFR 701.5 and the performance standards for roads at 30 CFR 816.150, 816.151, 817.150 and 817.151 in their entirety (50 FR 7274–7278, February 21, 1985). Until new regulations are promulgated, the Director is reviewing State program amendments concerning roads only for consistency with SMCRA. When new regulations are promulgated, the Secretary will notify Colorado of any additional changes required, as provided by 30 CFR 732.17(d) and (e).

Section 515(b)(17) of SMCRA requires that surface coal mining and reclamation operations be conducted so as to insure that the construction, maintenance and postmining conditions of access roads will control or prevent erosion and siltation, water pollution, damage to fish or wildlife or their habitat, or damage to public or private property. In addition, section 515(b)(18) requires that operators refrain from the construction of roads or other access ways up stream beds or drainage channels or in such proximity to such channels so as to severely alter the normal flow of water.

Since the revisions to the State rules do not alter the general environmental and property protection requirements of Section 4.03, requirements which are similar to those of SMCRA, the Director finds that the proposed revisions are no less stringent than SMCRA.

12. Revegetation

(a) Colorado proposes to revise 2 CCR 407–2, 4.15.1(2)(a) to exempt "other facilities" approved as part of the postmining land use, as well as road surfaces and water areas, from revegetation requirements. By letter of October 2, 1985, the State explained that it would require permittees applying for such an exemption to demonstrate that the facilities would be beneficial to, and compatible with, the approved postmining use. In addition, the application would have to include the landowner's comments. As an example of "other facilities" that may qualify for the exemption, the State cites a warehouse or equipment shed which could be used as a barn or storage shed following reclamation.

Although the Federal regulations at 30 CFR 816/817.111(a) do not explicitly exempt other facilities approved as part of the postmining land use from revegetation requirements, the preambles to both the proposed and final Federal rules suggest that revegetation of the areas upon which such facilities are sited is implicitly unnecessary. Therefore, the Director finds that the revised State rule is no less effective than the Federal regulations, provided Colorado determines the appropriateness of facility retention in the manner described above.

(b) Colorado proposes a nonsubstantive rewording of 2 CCR 407–2, 4.15.1(2)(d), which concerns the selection of species for revegetation of areas with fish or wildlife postmining land uses. The Director finds that the revised rule is no less effective than its Federal counterpart at 30 CFR 816/817.116(b)(3)(ii), which requires that species have utility for the approved postmining land use.

(c) Colorado proposes to revise the vegetation monitoring requirements of 2 CCR 407–2, 4.15.1(4) to clarify that this monitoring differs from that required to demonstrate revegetation success. The Director finds that this State rule has no Federal counterpart, that it represents an added level of environmental protection, and that it is therefore not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

(d) In addition to several grammatical and organizational changes, Colorado proposes to revise 2 CCR 407–2, 4.15.2 by deleting 4.15.2(2), which limits the use of introduced species to the establishment of temporary cover, and 4.15.2(3), which requires that introduced species be compatible with the local

flora and fauna. The Federal regulations at 30 CFR 816/817.11(a)(2) allow the regulatory authority to approve the use of introduced species in permanent revegetation plans where it determines that they are desirable and necessary to achieve the approved postmining land use; therefore, the Director finds that the deletion of State rule 4.15.2(2) (limiting the use of introduced species to temporary cover establishment) will not render the Colorado program less effective than the Federal requirements.

The Federal regulations at 30 CFR 816/817.111(b)(4) require that all reestablished plant species, native or introduced, be compatible with the plant and animal species of the area. Colorado believes that this requirement is redundant with respect to introduced species, since it is an integral element of the requirement that introduced species be both desirable and necessary to achieve the postmining land use and an implicit consideration of the postmining land use regulations of State rule 4.16. In a meeting on August 29, 1985, Colorado stated that its reviews of revegetation plans proposing the use of introduced species always consider the growth characteristics of the species proposed for revegetation, and that species of an invasive nature or species destructive of local flora and fauna would not be approved. The Director interprets this statement and Colorado's comments in the October 2, 1985 letter of clarification as a commitment by the State to interpret and apply its provisions in a manner no less effective than the Federal regulations, and he is approving the deletion of Colorado rule 4.15.2(3) on this basis.

(e) Colorado has proposed assorted nonsubstantive changes to the language of 2 CCR 407–2, 4.15.4(1) and (3), and has proposed the deletion of 4.15.4(5), which provides for case-by-case waivers of mulching requirements. State rule 4.15.4, as revised, would require that soil stabilizing practices be used promptly on all regraded and topsoiled areas; a requirement more stringent than the Federal regulations in that no waivers are permitted. The revised rule is otherwise similar to the Federal regulations at 30 CFR 816/817.114, although the Federal rules allow the regulatory authority to waive this requirement if it determines that such practices are unnecessary to control soil erosion or promote prompt establishment of a vegetative cover. Therefore, the Director finds that the revised State rule is no less effective than the Federal regulations.

(f) Colorado proposes to revise 2 CCR 407–2, 4.15.5 to eliminate the grazing requirements for range and pasture land and to prohibit grazing by domestic livestock for one year after seeding and planting. Since the Federal regulations neither require nor explicitly regulate grazing, the Director finds that revised State rule 4.15.5 is no less stringent than SMCRA and no less effective than the Federal regulations.

(g) Colorado proposes to revise 2 CCR 407–2, 4.15.6(3) to make field trials discretionary, rather than mandatory, if the Division identifies a potential concern with an operator's proposed revegetation plan. Since the Federal regulations at 30 CFR 816/817.111 through 816/817.116 concerning revegetation contain no field trial requirements, the Director finds that the revised State rule is no less stringent than SMCRA and no less effective than the Federal rules.

(h) Colorado proposes to revise 2 CCR 407–2, 4.15.7(2)(c) to allow the use of unspecified other (nonstatistical) comparative procedures when evaluating revegetation success. The Federal regulations at 30 CFR 816/817.116(a)(1) require that all sampling techniques be statistically valid and that they be selected by the regulatory authority and included in the approved regulatory program following public comment and review. As discussed in the preamble to these regulations, the Secretary previously declined to adopt a commenter's recommendation that the Federal regulations be altered in a manner similar to that proposed by the State (48 FR 40150, September 2, 1983). The technical papers submitted by the State on October 2, 1985 support the use of nonstatistical sampling methods, recommend a reduction in the 90% confidence level required 30 CFR 816/817.116(a)(2), or suggest a less restrictive alpha error level than the 0.10 prescribed by at 30 CFR 816/817.116(a)(2). OSMRE considered similar comments when preparing the revised revegetation rules but, as discussed in the preamble to the proposed rules (47 FR 12599, March 23, 1982) and the preamble to the revised rules (48 FR 40150–40151, September 2, 1983), OSMRE believes that statistically valid techniques and a nationwide standard of statistical confidence are necessary to insure objective, standardized and equitable evaluations of revegetation success. Therefore, the Director finds that the proposed revision is less effective than the Federal regulations, and he is not approving it.

(i) Colorado proposes to revise 2 CCR 407–2, 4.15.7(2)(d) by adding a provision allowing the use of unspecified "other comparison methods approved by the Division" when selecting revegetation success standards. The Federal regulations at 30 CFR 816/817.116(a)(1) require that specific standards for success be selected by the regulatory authority and included in the approved regulatory program following public comment and review.

As discussed in the preamble to the Federal rules, success standards, or, in the terminology of the Colorado rules, comparison methods, are approved models or measures to which the properties of vegetation on reclaimed areas are compared for the purpose of determining the degree of success (48 FR 40149–40150, September 2, 1983). The applicable properties to be measured will depend upon the postmining land use and the method of evaluation. The preamble further explains that a statement of minimum acceptable levels or values is inherent in the success standard concept, regardless of whether fixed or variable standards are used. Except for reference areas and (presumably) technical documents, the State's current comparison methods establish no such minimum. The revegetation success criteria of State rules 4.15.8(2) and 4.15.9 require that, prior to final bond release, measurements of the applicable vegetative parameters of the reclaimed area be at least 90% of those of the reference area or other standards as established in State rule 4.15.7(2)(d). Since most of the comparison methods listed in Rule 4.15.7(2)(d) lack an actual standard, i.e., do not specify a minimum acceptable fixed or relative value or level, the Colorado program does not establish standards in the manner required by the Federal rules.

In addition, two of the remaining conditions of approval of the Colorado program result from Colorado's failure to require or obtain OSMRE approval of the technical documents used to establish success standards and of the alternative success standards for small mines. As the U.S. District Court for the District of Columbia reiterated in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144, July 15, 1985), OSMRE must approve all success standards used in State regulatory programs. Therefore, the Director finds that proposed State rule 4.15.7(2)(d)(vii) is less effective than the Federal regulations, and he is not approving it.

(j) Colorado proposes to revise 2 CCR 407–2, 4.15.8(2), (3) and (4) by changing "productivity" to "production", by making certain other nonsubstantive changes and corrections, by requiring that cover and production success

standards for woody plant communities be met with 90%, rather than 80%, statistical confidence, and by allowing the use of other comparative methods and procedures approved by the Division. Colorado also proposes to revise State rule 4.15.8(7) by applying its requirements, which concern the establishment of woody plants, to parameters other than density, by requiring that woody plant success standards be met with 90%, rather than 80%, statistical confidence, by allowing the use of unspecified other comparative methods and procedures approved by the Division, and by deleting the requirements concerning live crown length and the counting of root and stump sprouts. In addition, the State proposes to delete Rule 4.15.8(8), which requires the permittee to demonstrate annual increases in woody plant cover and/or height.

As discussed in Findings 12(h) and (i), the Director cannot approve unspecified comparative methods and procedures. The revised Federal rules do not contain any live crown length, sprout counting or annual height increase requirements, but they do require that woody plant success standards be achieved with 90% statistical confidence. Therefore, the Director finds that, except for the changes to 4.15.8(3)(a), (4)(a) and (7) allowing the use of "other methods of comparison approved by the Division", the revisions to State rules 4.15.8(2), (3), (4) and (7) and the deletion of State rule 4.15.8(8) are no less effective than the Federal regulations at 30 CFR 816/817.116(a)(2), (b)(1) and (b)(3).

(k) Colorado proposes to revise the cropland success criteria at 2 CCR 407–2, 4.15.9 by requiring that the production standard be met only for the last growing season of the liability period, by allowing the use of unspecified other comparative methods and procedures approved by the Division, and by making various nonsubstantive changes in language.

As discussed in Findings 12(h) and (i), the Director cannot approve unspecified comparative methods or procedures. In addition, the Federal regulations at 30 CFR 816/817.116(c)(3) state that, in areas with an average annual precipitation of 26.0 inches or less, an area including virtually all of Colorado, measurements of all vegetation parameters shall equal or exceed the approved success standard for at least the last two consecutive years (not growing seasons) of the liability period. As discussed in the preamble to the Federal regulations (48 FR 40156, September 2, 1983), two consecutive years of proof is necessary in States with pronounced annual climatic variability, especially where success is determined on the basis of crop yields or other highly weather sensitive parameters. Therefore, except for the replacement of "be equal to or greater" with "not be less" and the substitution of "not less than" for "at least", the Director finds that the revisions to State rule 4.15.9 are less effective than the Federal regulations at 30 CFR 816/817(b)(2) and (c)(3), and he is not approving them.

13. Postmining Land Use

(a) Colorado proposes to revise 2 CCR 407–2, 4.16.2 to clarify that postmining land uses shall be determined based on a consideration of both the premining use and the appropriateness of this use based on the land's capability. The changes would also require reclamation of previously mined areas to either the use or uses which the land was capable of supporting prior to any mining or any higher or better uses that can be achieved and are compatible with the adjacent area. Colorado states that this change is necessary to be consistent with its statutory requirements at CRS 34–33–120(2)(b), which contains similar language with which all mining and reclamation operations must comply. Colorado would thus apply the same postmining land use determination criteria to both unmined and previously mined lands. These criteria are similar to those established by section 515(b)(2) of SMCRA and the Federal regulations at 30 CFR 779.22(a)(2), 783.22(a)(2), 816/817.133(a) and 816/817.133(b), except that the State has elected not to allow a variance for previously mined lands. Therefore, the Director finds that Colorado rule 4.16.2 as revised is no less effective than the Federal requirements.

(b) Colorado proposes to revise the alternative postmining land use requirements of 2 CCR 407–2, 4.16.3 to delete redundant provisions; make various nonsubstantive technical corrections; require specific feasibility plans, demonstrations and schedules only where necessary; and eliminate the requirements for: (1) Submission of a written statement of the views of authorities with statutory responsibility for land use policies and plans, (2) public facility commitments, (3) financial plans and (4) preparation of land use plans by a registered professional engineer. State rule 4.16.3 continues to require that all necessary approvals be obtained from all appropriate Federal, State and local governmental units, that the proposed use comply with all land use policies and plans and that the land owner or land management agency be consulted. In addition, the Colorado statute at CRS 34–33–120(2)(b) requires that there be a reasonable likelihood of achieving the proposed alternative postmining land use. Since the Federal regulations at 30 CFR 816/817.133(c) do not require the other items proposed for deletion, the Director finds that revised State rule 4.16.3, in combination with the State statute, is no less effective than the Federal requirements.

14. Fish and Wildlife

(a) Colorado proposes to revise 2 CCR 407–2, 4.18(3) to replace the specific guideline requirements for design and construction of electric power lines and transmission facilities with a general requirement that such facilities be designed and constructed to minimize electrocution hazards to raptors, except where the Division determines that such requirements are unnecessary. Since the language of the revised rule parallels that of 30 CFR 816/817.97(e)(1), the Director finds that proposed State rule 4.18(3) is no less effective than the Federal regulations.

(b) Colorado proposes to revise 2 CCR 407–2, 4.18(4)(e) to require the restoration, enhancement and/or maintenance of riparian vegetation only where such vegetation is of significant value to wildlife. The Federal regulations at 30 CFR 816/817.97(f) require that the operator avoid disturbances to, enhance where practical, restore or replace riparian vegetation along rivers and streams and bordering ponds and lakes, unless restoration of the land to an approved alternative postmining land use precludes such measures (48 FR 30323–30324, June 30, 1983). Since the Federal rule requires enhancement wherever practical, the significance to wildlife of any existing riparian vegetation is clearly not a basis for waiving reclamation requirements concerning this vegetation. In addition, as noted by the U.S. Fish and Wildlife Service, there will be few if any instances where riparian vegetation is not of significant value to wildlife in the arid and semiarid environments predominant in Colorado. Therefore, the Director cannot approve the proposed revision to State rule 4.18(4)(e), since it would render the Colorado program less effective than the Federal regulations.

(c) Colorado proposes a nonsubstantive rewording of the fish and wildlife revegetation requirements of 2 CCR 407–2, 4.18(4)(i), a change which the Director finds to be no less effective than the Federal regulations at 30 CFR 816/817.97(g).

15. Inspection and Enforcement

(a) Colorado proposes to revise 2 CCR 407–2, 5.02.2 to differentiate between active and inactive sites, reduce the required inspection frequency for inactive sites, define inactive sites and allow the use of aerial inspections. State rule 5.02.2(2) establishes no "as necessary" partial inspection frequency requirement for inactive operations similar to that contained in the Federal regulations at 30 CFR 840.11(a); however, in the "Statement of Basis and Purpose" accompanying the proposed amendments Colorado explains that this rule does not preclude more frequent inspections and that, where necessary, the Division would perform such inspections. The other changes to this rule are similar to those contained in 30 CFR 840.11(a), (b), (c), (d) and (f) except that Colorado has elected to continue considering those sites with vegetative bond release as active rather than inactive operations. Therefore, the Director finds that revised Colorado rule 5.02.2 is no less stringent than section 5.21 of SMCRA and no less effective than the Federal regulations at 30 CFR 840.11.

(b) Colorado proposes to revise 2 CCR 407–2, 5.03.2(2) by adding provisions for the granting of extensions of violation abatement periods beyond 90 days. Since these provisions are virtually identical to their Federal counterparts at 30 CFR 843.12(c), (f), (g), (h), (i) and (j), the Director finds that the revised rule is no less stringent than section 521 of SMCRA and no less effective than the Federal regulations.

(c) Colorado proposes to revise 2 CCR 407–2, 5.04.6 by adding a new paragraph (4) to provide that penalties for failure to abate a violation shall not be assessed for more than 30 days. If the violation has not been abated within the 30-day period, the Division would be required to take the appropriate alternative enforcement actions. Since these provisions are virtually identical to their Federal counterparts at 30 CFR 845.15(b)(2), the Director finds that State rule 5.04.6(4) is no less stringent than sections 518 and 521 of SMCRA and no less effective than the Federal regulations.

Public Comments

The Director solicited public comments on the proposed amendments by **Federal Register** notices published on October 1, 1984, April 25, 1985, and October 30, 1985 (49 FR 38653–38654, 50 FR 16311–16321 and 50 FR 45117–45118). No public comments were received, and, since no one requested to testify at the scheduled public hearings, none were held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), the Director also solicited comments from various Federal agencies. Of the Federal agencies invited to comment on these proposed amendments, only the U.S. Fish and Wildlife Service (FWS) and the U.S. Soil Conservation Service (SCS) responded.

A summary of the comments received and the Director's responses to them appears below.

1. The FWS expressed concern that modifying the language of Colorado rule 4.18(4)(i) would result in a reduction in the level of protection of fish and wildlife values. As discussed in Finding 14(c), the Director finds that the revisions are nonsubstantive in nature and no less effective than 30 CFR 816/817.97(g). Fish and wildlife revegetation requirements apply only to those areas with approved fish and wildlife postmining land uses.

2. The FWS stated that the requirement of State rule 4.15.2(3) that introduced species be compatible with the plant and animal species of the region should be retained. As discussed in Finding 12(d), the Director finds that Colorado interprets other provisions of its program as incorporating this requirement, and he is approving its deletion solely on this basis.

3. The FWS stated that the elimination of the previous regulatory references to guidelines for the prevention of raptor electrocution, and the addition of a provision allowing the Division to waive the design and construction requirements for power poles and electrical transmission lines, would weaken State rule 4.18(3) to the point where it would no longer meet Federal requirements. The Director disagrees. As discussed in Finding 14(a), the language of the revised State rule is almost identical to that of the corresponding Federal rules at 30 CFR 816/817.97(e)(1). The preamble to the Federal regulations (48 FR 30320–30321, June 30, 1983) notes that operators must still minimize disturbances to and adverse impacts on fish and wildlife (including raptors) by use of the best technology currently available, a requirement also contained in Colorado rule 4.18(1). The specific reference materials have been deleted only to prevent obsolescence. Both the State and Federal rules allow waivers of design and construction requirements only when the regulatory authority determines that they are unnecessary, an exemption which the preamble further explains is applicable only when large raptors are not known to frequent the area or when there is no chance that electrocution could occur.

4. The FWS stated that the proposed revision to Colorado rule 4.18(4)(e) to require protection, enhancement, restoration or replacement of riparian habitats only where such habitats are of significant value to wildlife would be counterproductive to the intent of the Federal regulations to encourage enhancement and mitigation. Furthermore, the FWS noted that virtually all riparian vegetation in Colorado is of significant value to wildlife. As discussed in Finding 14(b), the Director agrees and he is not approving this revision.

5. The SCS commented that, although that agency had limited experience with statistically valid methods of evaluating vegetative parameters, use of the "running estimate of the mean" method appeared to be both practical and useful. The Director does not disagree with this conclusion; however, as submitted in this amendment and as discussed in Finding 12(h), it does not meet the standards of statistical validity established by 30 CFR 816/817.116(a).

Director's Decision

The Director, based on the above findings, is approving the proposed amendments submitted by Colorado on August 28, 1984, as clarified and modified on March 8, 1985 and October 2, 1985, and the proposed amendments submitted on March 12, 1985, as clarified and modified on August 29, 1985 and October 2, 1985, with the exception of those amendments determined to be inconsistent with SMCRA or the Federal regulations. In addition, as indicated in the findings, he is requiring that Colorado submit a number of future program amendments. The Director has notified Colorado, pursuant to 30 CFR 732.17, that certain required program amendments will be necessary. The Federal rules at 30 CFR Part 906 are being amended to implement this decision.

The Director is not approving the following proposed amendments to the Colorado program:

(1) Revisions to 2 CCR 407–2, 1.04(22), 4.06.4(2)(a), 4.08.4(10)(a), 4.08.4(10)(a)(i), 4.08.4(10)(a)(ii), 4.08.4(10)(a)(iii), 4.08.5(14), 4.15.7(2)(c), 4.15.7(2)(d) and 4.18(4)(e),

(2) Deletion of the words "two consecutive" from the phrase "the last two consecutive growing seasons of the extended liability period" in 2 CCR 407–2, 4.15.9, and addition of the phrase "or other methods of comparison approved by the Division" to the same rule, and

(3) Addition of the phrase "or other methods of comparison approved by the Division" to 2 CCR 407–2, 4.15.8(3)(a), 4.15.8(4)(a) and 4.15.8(7).

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) clearly prohibit any unilateral changes to approved State programs. In his oversight of the Colorado program, the Director will recognize only the statutes and regulations approved by him, and will require the enforcement by Colorado of only such provisions.

Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Section 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 906

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

Dated: January 29, 1986.

Brent Wahlquist,

Acting Deputy Director, Operations and Technical Services.

PART 906—COLORADO

30 CFR Part 906 is amended as follows:

1. The authority citation for Part 906 continues to read as follows:

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

2. 30 CFR 906.15 is amended by adding paragraph (e) to read as follows:

§ 906.15 Approval of amendments to State regulatory programs.

* * * * *

(e)(1) Revisions to the following provisions of 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on August 28, 1984 and March 12, 1985, and as clarified and modified on March 8, 1985, August 29, 1985, and October 2, 1985, are approved effective February 5, 1986.

1.04(95)
1.04(111)
2.02.1
2.02.2(2)(c)
2.02.(g)
2.02.3(1)(c)(ii)
2.02.3(1)(e)
2.03.5(3)
2.03.9(1)
2.04.4
2.04.8(1)
2.04.9(1)
2.04.10(4)
2.04.12(1), (2) and (4)
2.05.3(4)(a)(i)(A)
2.05.3(4)(a)(ii)(A)
2.07.5(1)(b)
2.10.1(1), (2) and (3)
2.10.3(1)(i) and (j)
4.03
4.06.1(2)
4.06.2(1)
4.06.2(2)(a)
4.06.2(4)(a)(ii)
4.06.4(1)
4.07.1(2)
4.07.3(1) and (2)
4.08.3(2)(b)(i) and (ii)
4.08.4(1)(b)(ii)
4.08.6(2)
4.15.1(2)(a) and (d)
4.15.2
4.15.1(4)
4.15.4
4.15.5
4.15.6(3)
4.15.8(2)
4.16.2
4.16.3
4.18(3)
4.18(4)(i)
4.21.1
4.21.4(1)
4.30.1(2)
5.02.2
5.03.2(2)

(2) Addition of the following provisions to 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on March 12, 1985 is approved effective February 5, 1986: 1.14, 1.15 and 5.04.6(4).

(3) Deletion of the following provisions from 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on March 12, 1985 and clarified on October 2, 1985 is approved effective February 5, 1986: 2.05.5(1)(a)(iv), 2.10.2(4), and 4.15.8(8).

(4) Revisions to 2 CCR 407–2, 4.15.8(3), (4) and (7), as submitted on March 12, 1985, are approved effective February 5, 1986, except for the proposed addition of the phrase "or other methods of comparison approved by the Division" to each of these paragraphs, which is not approved.

(5) Revisions to 2 CCR 407–2, 4.15.9, except for the deletion of "two consecutive" from the phrase "the last two consecutive growing seasons of the extended liability period", and the addition of the phrase "or other methods of comparison approved by the Division," as submitted on March 12, 1985, are approved effective February 5, 1986. As approved, the revised rule reads as follows:

For areas to be used as cropland, success of revegetation shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other approved standard(s). Crop production from the mined area shall not be less than that of the approved reference area or standard for the last two consecutive growing seasons of the extended liability period established in 3.02.3. This liability period shall commence on the date of initial planting of the crop being grown. Production shall be considered equal if it is not less than 90% of the production as determined from the reference area or approved standard with 00% statistical confidence.

(6) Addition of the phrase "[e]xcept as provided in 4.08.4(10)(a)," to the introductory paragraph of 2 CCR 407–2, 4.08.4(10), as submitted on August 28, 1984, is approved effective February 5, 1986, but the proposed amendments to other portions of 2 CCR 407–2, 4.08.4(10), as submitted on August 28, 1984, are not approved.

3. 30 CFR 906.16 is amended by adding paragraphs (b) through (h) to read as follows:

§ 906.16 Required program amendments.

* * * * *

(b) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 2.02.2(2)(g) or otherwise propose to amend its program to require that the notice filed by any person intending to conduct coal exploration involving the removal of 250 or fewer tons of coal include a complete description of the methods of exploration to be used and the practices that will be followed to reclaim the area following completion of exploration, and to clarify that specifying the maximum number of holes to be drilled will not fully satisfy this requirement.

(c) By February 5, 1987, Colorado shall submit a revised form of 2 CCR 407–2, 4.21.4(1) replacing the cross reference to 2.05.6(2)(b) with one to 2.05.6(2)(a)(iii), or otherwise propose to amend the coal exploration provisions of its program to protect critical habitats of endangered or threatened species and habitats of unusually high value for fish, wildlife or related environmental values.

(d) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 406.1(2) or otherwise propose to amend its program to provide that topsoil storage practices other than stockpiling may be used only when (1) stockpiling would be detrimental to the quantity or quality of the stored materials, (2) all stored materials are moved to an approved site within the permit area, (3) the alternative practice would not permanently diminish the capability of the soil of the host site, and (4) the alternative practice would maintain the stored materials in a condition more suitable for future redistribution than would stockpiling.

(e) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 406.2(2)(a) or otherwise propose to amend its program to establish definitive criteria governing the granting of topsoil removal variances, criteria which must be no less effective than those contained in the Federal regulations at 30 CFR 816.22(a)(3) and 817.22(a)(3).

(f) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 406.1(4)(a)(ii) or otherwise propose to amend its program to require that, before the State approves topsoil substitutes or supplements, the operator must demonstrate that the proposed final soil medium would be the best available within the permit area to support the vegetation.

(g) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 2.10.1(1) or otherwise propose to amend its program to require that all areas upon which roads or support facilities, other than isolated monitoring stations involving little or no surface disturbance, are to be sited be mapped at a scale of 1:6,000 or larger.

(h) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 2.04.12(1) or otherwise propose to amend its program to require that prime farmland investigations be conducted on all lands upon which roads or support facilities are to be sited.

[FR Doc. 86–2259 Filed 2–4–86; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 223

Special Impact Aid Provisions for Local Educational Agencies That Claim Entitlements Based on the Number of Children Residing on Indian Lands

AGENCY: Department of Education.

ACTION: Final regulations; technical change.

SUMMARY: The following amendment makes a technical change in the special Impact Aid regulations affecting children residing on Indian lands to correct designation of paragraphs for cross-reference purposes.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue SW., Room 2109, Washington, DC 20202. Telephone: (202) 245–1975.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operation)

Dated: January 29, 1986.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

The Secretary amends Part 223 of Title 34 of the Code of Federal Regulations as follows:

PART 223—SPECIAL IMPACT AID PROVISIONS FOR LOCAL EDUCATIONAL AGENCIES THAT CLAIM ENTITLEMENTS BASED ON THE NUMBER OF CHILDREN RESIDING ON INDIAN LANDS

1. The authority citation for Part 223 continues to read as follows:

Authority: Sec. 5(b)(3) of Title I of the Act of September 30, 1950, Pub. L. 81–874, as amended by the Education Amendments of 1978, Pub. L. 95–561 (20 U.S.C. 240(b)(3)), unless otherwise noted.

§ 223.42 [Amended]

2. In § 223.42, the paragraph designation (a)(1) is removed, and paragraph (a)(1)(i) and (ii) are redesignated as paragraph (a)(1) and (2).

[FR Doc. 86–2429 Filed 2–4–86; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E3246/R808; FRL-2962-7]

Pesticide Tolerance for Endothall

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide endothall in or on the raw agricultural commodity hops. The regulation to establish a maximum permissible level for residues of endothall in or on hops was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on February 5, 1986.

ADDRESS: Written objections, identified by the document control number [PP 5E3246/R808] may be submitted to the: Hearing Clerk (A-110), Office of Pesticide Programs, Environmental Protection Agency, Room M-3708, 401 M Street, SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of December 4, 1985 (50 FR 49705), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 5E3246 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of Oregon and Washington, proposing the establishment of a tolerance for residues of the herbicide endothall (7-oxabicyclo (2.2.2)heptane-2,3-dicarboxylic acid) from use of its mono-*N,N*-dimethylalkylamine salt wherein the alkyl group is the same as in the fatty acid of coconut oil in or on the raw agricultural commodity hops at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considerd, the Agency concludes that the tolerance would protect the public health. Therefore the tolerance is established as set forth below.

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.

List of Subjects in 40 CFR Part 180

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

Dated: January 22, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.293 is amended by adding, and alphabetically inserting, the raw agricultural commodity hops to read as follows:

§ 180.293 Endothall; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Hops	0.1
* * * * *	

[FR Doc. 86-2042 Filed 2-4-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4E3139/R806; FRL-2962-5]

Pesticide Tolerance for Hexakis[2-Methyl-2-Phenylpropyl]Distannoxane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide hexakis[2-methyl-2-phenylpropyl]-distannoxane and its metabolites in or on the raw agricultural commodity cucumbers. This regulation to establish a maximum permissible level for residues of hexakis in or on cucumbers was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on February 5, 1986.

ADDRESS: Written objections, identified by the document control number [PP 4E3139/R806], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-3199).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of November 20, 1985 (50 FR 47761), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 4E3139 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of California and Ohio and the United States Department of Agriculture proposing the establishment of a tolerance for the combined residues of the insecticide hexakis[2-methyl-2-phenylpropyl]-distannoxane and its organotin metabolites calculted as hexakis[2-methyl-2-phenylpropyl]distannoxane in or on the raw agricultural commodity cucumbers at 4.0 parts per million.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considered, the Agency concludes that the tolerance would protect the public health. Therefore the tolerance is established as set forth below.

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.

Lists of Subjects in 40 CFR Part 180

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

Dated: January 22, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

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

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

2. Section 180.362 is amended by adding, and alphabetically inserting, the raw agricultural commodity cucumbers to read as follows:

§ 180.362 Hexakis[2-methyl-2-phenylpropyl] distannoxane; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Cucumbers	4.0
* * * * *	

[FR Doc. 86-2041 Filed 2-4-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-180; RM-4773]

FM Broadcast Station in Butte, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allocates FM Channel 224A to Butte, Montana, in response to a petition filed by Ronald J. Huckeby and John D. Jacobs. The allotment could provide a third commercial service for Butte.

EFFECTIVE DATE: March 10, 1986.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio 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

In the matter of amendment of § 73.202(b), table of allotments, FM Broadcast Stations (Butte, Montana); MM Docket No. 85-180, RM-4773.

Adopted: January 22, 1986.

Released: January 30, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 26006, published June 24, 1985, proposing the allotment of FM Channel 224A to Butte, Montana, as that community's third Broadcast service. The *Notice* was issued in response to a petition filed by Ronald J. Huckeby and John D. Jacobs ("petitioners"). Supporting comments were filed by the petitioners. Opposition comments were filed by KBOW, Inc., to which reply comments were filed by the petitioners.

2. Butte (population 37,205) [1] in Silver Bow County (population 38,092), is located in the southwestern part of the state, 65 miles south of Helena, Montana. Butte is currently served by Station KOPR, Channel 231; Station KQUY, Channel 238, two educational stations and two fulltime AM stations.

3. In support of its proposal, petitioners reaffirmed their intention to file an application for Channel 224A and to promptly build a station.

4. KBOW, Inc., opposes the request on the basis that Butte is in a state of economic decline and can not support another FM station. In this regard, KBOW provided photographs of vacant warehouses, unoccupied office buildings and department stores, small businesses that have closed in the past few years and abandoned houses. It also provided letters from various businesses in the Butte area attesting to a decline in utility customers, hospital patients, jobs, personal income and overall population. KBOW contends that Butte is already well served by AM and FM stations licensed to Butte and that service is also received from several other Montana communities. It argues that the proposed third allotment to Butte would have to compete with four other fulltime stations and is at best a highly marginal economic proposition. As such, a new station would merely serve to inflict economic injuries on the existing stations and would do little to add to programming diversity in the community.

5. In response, petitioners state that population and industry did decline over a several year period in Butte, until 1983, but now appears to be on the increase. Petitioners point out that Butte is seeing new construction and new businesses, and expansion and renovation of others. They dispute other evidence of economic decline and claim the area is growing and can support an additional FM channel. Petitioners refer to the Commission's policy on this matter, *Revision of FM Assignment Policies and Procedure*, 90 F.C.C. 2d 88 (1982) wherein the Commission stated that it would not consider arguments of economic need.

6. We conclude that the public interest would be served by the allotment of Channel 224A to Butte, Montana. The showings and arguments made in the opposition are not sufficiently persuasive to justify denying the allotment of an additional FM channel to Butte. Allegations of economic impact are more appropriate at the application stage where the issues can be more fully developed. *Revision of FM Assignment Policies and Procedures, supra.* Therefore, we believe it woud be in the public interest to allot a third FM channel to Butte. Channel 224A can be allocated to Butte in compliance with the Commission's mileage separation requirements.

7. Accordingly, pursuant to 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 March 10, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended for the following community:

[1] Population figures are taken from the 1980 U.S. Census.

City	Channel No.
Butte, MT	224A, 231, and 238.

8. The window period for filing applications will open on March 11, 1986, and close on April 10, 1986.

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

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–2497 Filed 2–4–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–155; RM–4877]

TV Broadcast Station in Guymon, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns VHF TV Channel 9 to Guymon, Oklahoma, as the community's first local commercial assignment, at the request of Steven D. King.

EFFECTIVE DATE: March 7, 1986.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

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.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Guymon, Oklahoma); MM Docket No. 85–155, RM–4877.

Adopted: January 17, 1986.
Released: January 29, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 23732, published June 5, 1985, seeking comments on the assignments of VHF TV Channel 9 to Guymon, Oklahoma, at the request of Steven D. King ("petitioner"). The channel could provide Guymon with its first local commercial television service.

2. Petitioner filed comments reiterating his intention to apply for the channel, if assigned. No other comments were received. Channel 9 can be assigned in compliance with the Commission's minimum distance separation and other technical requirements.

3. We believe the public interest would be served by assigning a first commercial TV channel to Guymon, as proposed. Accordingly, it is ordered, That effective March 7, 1986, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Guymon, OK	9+, *16

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

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–2498 Filed 2–4–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–240; RM–5075]

FM Broadcast Station in McKinnon, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 268A to McKinnon, Tennessee, as that community's first FM service, at the request of David R. Ross.

EFFECTIVE DATE: March 10, 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 (McKinnon, Tennessee); MM Docket No. 85–240, RM–5075.

Adopted: January 17, 1986.
Released: January 31, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 50 FR 33610, published August 20, 1985, proposing the allotment of FM Channel 268A to McKinnon, Tennessee, as that community's first FM service. The *Notice* was adopted in response to a petition filed by David R. Ross ("petitioner"). Petitioner submitted comments reiterating his intention to apply for the channel.[1]

2. The Commission believes the public interest would be served by the allotment of Channel 268A to McKinnon, Tennessee, in order to provide a first FM service to that community. The channel can be allotted in compliance with the Commission's minimum distance separation requirements of § 73.207 of the Rules.[2]

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 March 10, 1986, the FM Table of Allotments, § 73.202(b) of the Rules, is amended for the following community:

City	Channel No.
McKinnon, TN	268A

[1] Petitioner claims that he filed timely comments. These comments were not received by the Commission. Therefore, petitioner resubmitted his comments after the comment deadline, and included a request for their acceptance. We shall accept the comments for the purpose of permitting the petitioner to reaffirm his interest in the proposal.

[2] The spacing requirements are met based on the grant of a construction permit to Station WBVR, Russellville, Kentucky. This allotment to McKinnon is conditioned on the Russellville station receiving a license at the new site.

4. The window period for filing applications will open on March 11, 1986, and close on April 11, 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. 86–2499 Filed 2–4–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 252

Department of Defense Federal Acquisition Regulation Supplement; Restrictions on Employment of Personnel

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council has issued a change to the coverage in the DoD FAR Supplement regarding Restrictions on Employment of Personnel in DoD contracts. The purpose of the change is to implement Section 8078 of the Fiscal Year 1986 Defense Appropriations Act.

DATES: Effective January 28, 1986. Comments on the change must be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before March 7, 1986, to be considered in the formulation of the final rule. Please cite DAR Case 86–3 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DASD(P)DARS, c/o OASD(A&L), Room 3E791, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697–7268.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1985 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84–1 through 84–10.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

B. Interim Changes to 48 CFR Parts 222 and 252

Section 8078 of the FY 1986 Defense Appropriations Act, enacted on December 23, 1985, requires that whenever the unemployment rate in Alaska or Hawaii exceeds the national average as determined by the Secretary of Labor, service and construction contracts awarded in FY 1986 and calling for performance in whole or in part within those states must contain a restriction on who can be employed to perform work on that contract.

C. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that the regulation in DoD FAR Supplement Parts 222 and 252 must be issued as an interim rule in compliance with section 22 of the Office of Federal Procurement Policy Act, as amended, in order to put in place, as soon as possible, the requirements of section 8078 of the FY 1986 DoD Appropriations Act.

D. Regulatory Flexibility Act

This change does nothing more than implement section 8078 of the FY 1986 DoD Appropriations Act. If this change impacts on small entities, it will impact only those small entities that have been awarded, in FY 1986, construction and services contracts calling for performance in whole or in part within the States of Alaska or Hawaii and then only if the unemployment rate for those states exceeds the national average. The number of small entities that meet this condition are considered to be insignificant in relation to the total number of small entities that do business with the Department of Defense. Therefore, the Department of Defense certifies that the change will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

E. Paperwork Reduction Act Information

The interim rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Parts 222 and 252 is amended as set forth below:

1. The authority for 48 CFR Parts 222 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Subpart 222.72, consisting of sections 222.7200 through 222.7202, is added to read as follows:

Subpart 222.72—Section 8078, 1986 Defense Appropriations Act—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7200 Policy.

(a) Except as provided in (b) and (c) below, Section 8078 of the 1986 Defense Appropriations Act requires that notwithstanding any other provision of law, every contract awarded during FY 1986 calling for construction or services to be performed in whole or in part within the State of Alaska or the State of Hawaii shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract work within the particular state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) This section shall not apply at any time during FY 1986 when the unemployment rate in Alaska is not in excess of the national average rate of unemployment as determined by the Secretary of Labor.

(c) This section shall not apply to contracts to be performed in whole or in part within the State of Hawaii unless in FY 1986 the unemployment rate in Hawaii is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

222.7201 Waivers.

This section may be waived by the Secretary of Defense, the Deputy Secretary of Defense, the Assistant Secretary of Defense for Acquisition and

Logistics, and any Secretary, Undersecretary, or Assistant Secretary of the Army, Navy, and Air Force, in the interest of national security. Requests for waiver shall be processed in accordance with Departmental or agency procedures.

222.7202 Contract Clause.

The contracting officer shall insert the clause at 252.222–7002, Restrictions on Employment of Personnel, in all solicitations and contracts in accordance with 222.7200.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.222–7002, is added to read as follows:

252.222–7002 Restrictions on Employment of Personnel.

As prescribed in 222.7202, insert the following clause.

Restrictions on Employment of Personnel (Jan. 1986)

(a) The Contractor shall employ, for the purpose of performing that portion of the contract work in the State of (*insert appropriate state*), individuals who are residents of the state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract.

(End of clause)

[FR Doc. 86–2494 Filed 2–4–86; 8:45 am]
BILLING CODE 3810–01–M

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

48 CFR Parts 1822 and 1852

Interim Changes to the NASA FAR Supplement on Overtime Compensation

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Interim rule and request for comment.

SUMMARY: This notice establishes interim amendments to the NASA Federal Acquisition Regulations System concerning overtime compensation and invites written comments on these interim amendments. This rule implements changes to the Contract Work Hours and Safety Standards Act (CWHSSA) made by Pub. L. 99–145.

DATES: *Effective date:* January 1, 1986. *Comment Date:* Comments are due not later than March 7, 1986.

ADDRESS: Comments shall be addressed to NASA, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202–453–2119.

SUPPLEMENTARY INFORMATION:

Background

NASA is issuing this interim change to the NASA FAR Supplement to assure agency compliance with Pub. L. 99–145 which became effective on January 1, 1986. Time allowed for lead agency and subsequent action from enactment of Pub. L. 99–145 and its effective date was relatively short. Due to these urgent and compelling circumstances, the instant changes are being issued as interim rules without public comment prior to their effectivity.

Impact

The Director, Office of Management and Budget (OMB), by memorandum, dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The changes concern wages falling within the exception of the Regulatory Flexibility Act (5 U.S.C. 601(2)). This rule does not contain requirements subject to the Paperwork Reduction Act (44 U.S.C. 301 et seq.).

List of Subjects in 48 CFR Parts 1822 and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1822 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

2. Subparts 1822.3 and 1822.4 are added to read as follows:

Subpart 1822.3—Contract Work Hours and Safety Standards Act

§ 1822.305 Contract clauses.

(a) The clause at 1852.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation—General, shall be used in lieu of the clause at FAR 52.222–4, same title.

(b) The clause at FAR 52.222–5, Contract Work Hours and Safety Standards Act—Overtime Compensation—Firefighters and Fireguards, shall not be used.

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.403–1 Clauses for general use.

Except as provided in 1822.403–4, every construction contract in excess of $2,000 for work within the United States shall include the clause at 1852.222–7, Contract Work Hours and Safety Standards Act—Overtime Compensation—Construction.

1822.403–4 Contracts with a State or political subdivision.

In the case of construction contracts with a State or political subdivision thereof, the contract clause required by 1822.403–1 shall be inserted therein but shall be prefaced by the following:

The Contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1852.2—Texts of Provisions and Clauses

3. Section 1852.222–4 is added to read as follows:

1852.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Jan. 1986).

As prescribed in 1822.305(a), insert the following clause:

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) *Violation; Liability for unpaid wages; Liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of

work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause. A workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used instead of the calendar day in applying the daily liquidated damages provisions of the Act to the employment of firefighters or fireguards if the use of the alternate 24-hour day was agreed upon between the employer and employees or their authorized representatives before performance of the work.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Payrolls and basic records.* (1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying or transcription by Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors will permit such representatives to interview employees during working hours on the job.

(e) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (c) of this clause.

(End of clause)

4. Section 1852.222–7 is added to read as follows:

1852.222–7 Contract Work Hours and Safety Standards Act—Overtime Compensation—Construction (Jan. 1986).

As prescribed in 1822.403–1, insert the following clause.

This contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and interpretations of the Secretary of Labor.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) *Violation; Liability for unpaid wages; Liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

[FR Doc. 86–2474 Filed 2–4–86; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 51, No. 24
Wednesday, February 5, 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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 18

[Docket No. 86-2]

Disclosure of Financial and Other Information by National Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of second hearing and extension of comment period on a proposed rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) announces a forthcoming hearing on its proposed rule 12 CFR Part 18—Disclosure of Financial and Other Information by National Banks.

The proposal generally would increase the information about a bank's financial condition and management that would be available to shareholders and depositors. The purpose of the hearing is to solicit views and comments from those who would provide and use that information.

DATE: The second hearing will be held at 10:00 a.m., eastern standard time, Wednesday, February 19, 1986. It will be held from 10:00 a.m. to 5 p.m., or from 10:00 a.m. to 1 p.m. depending on the number of witnesses. The Comment period on the proposed rule of October 30, 1985 (50 FR 45372) has been extended from January 28, 1986 to February 28, 1986.

ADDRESS: The second hearing will be held at the Comptroller's Offices, Room 3A–B, 490 L'Enfant Plaza East, S.W, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Emily R. McNaughton, Commercial Examination Division, Office of the Comptroller of the Currency, (202) 447–1164.

SUPPLEMENTARY INFORMATION: On October 30, 1985, the Office of the Comptroller of the Currency (OCC) published in the Federal Register its proposed amendments to 12 CFR Part 18—Disclosure of Financial and Other Information by National Banks.

Of particular importance to the OCC are comments on several questions regarding the proposal, including:

- Content and structure of reports.
- Exemptions.
- Non-disclosure of supervisory information.
- Cost/benefit analysis.
- Implementation.

Those wishing only to submit written comments on the proposed OCC regulation should send them to Lynnette Carter, Office of the Comptroller of the Currency, Washington, D.C. 20219 by February 28, 1986. Those wishing to appear at this public hearing should submit their written request to Lynnette Carter at the above address by February 12, 1986, accompanied by a summary of the issue on which the witness wishes to comment, the names of other interested parties who may accompany the witness, and the length of time for the oral presentation. Those wishing to appear at this public hearing will have a copy of their entire statement entered into the official record of these proceedings.

It is expected that oral presentations will be limited to 10 minutes and that those comments will specifically address the disclosure proposal.

The OCC scheduled the additional hearing and extended the comment period to give consumers and banks an added opportunity to comment orally and in writing on this proposal.

Dated: January 29, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86–2325 Filed 2–4–86; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket Nos. 24802 and 24848; Notice Nos. 85–19 and 85–23]

Transport Category Rotorcraft Performance; Helicopter Minimum Flightcrew; European Airworthiness Authorities Steering Committee Proposals for Changes to Federal Aviation Regulations (FAR) Part 29

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting and extension of comment periods for Advanced Notices of Proposed Rulemaking (ANPRM) Notice No. 85–19, Transport Category Rotorcraft Performance, and Notice No. 85–23, Helicopter Minimum Flightcrew.

SUMMARY: This notice announces the dates and location of a public meeting for ANPRM Notice No. 85–19 (50 FR 42126), Transport Category Rotorcraft Performance; ANPRM Notice No. 85–23 (50 FR 48786), Helicopter Minimum Flightcrew; and European Airworthiness Authorities Steering Committee (AASC) proposals for changes to Part 29, Airworthiness Standards: Transport Category Rotorcraft Performance and Helicopter Minimum Flightcrew.

DATES: The meeting will be held April 30 to May 2, 1986. Discussion of Helicopter Minimum Flightcrew will begin at 9 a.m. on April 30, 1986, and discussion of Transport Category Rotorcraft Performance will begin at 1 p.m. The discussion of the AASC proposals will begin at 8 a.m. on May 1 and 2, 1986.

The public comment period for ANPRM Notice No. 85–19, Transport Category Rotorcraft Performance, is extended from April 15, 1986, to June 6, 1986.

The public comment period for ANPRM Notice No. 85–23, Helicopter Minimum Flightcrew, is extended from May 25, 1986, to June 6, 1986. ADDRESS: The public meeting will be held in the Training Room (Room 167), Building 3B, FAA, Southwest Region, 4400 Blue Mound Road, Forth Worth, Texas.

FOR FURTHER INFORMATION CONTACT: R.T. Weaver, Regulations Program Management, ASW-111, Aircraft Certification Division, P.O. Box 1689, Forth Worth, Texas 76101, telephone (817) 877-2548 or FTS 734-2548.

SUPPLEMENTARY INFORMATION: The ANPRM, Helicopter Minimum Flightcrew, proposes changes to Parts 1, 27, and 29 to establish a minimum flightcrew of at least two pilots for helicopters where power controls (throttles) are not incorporated as a part of the pilot's collective control. This action results from previous public comments identifying power control location as a significant safety concern.

The ANPRM, Transport Category Rotorcraft Performance, proposes to revise the performance requirements for transport category rotorcraft. The proposal results from adoption of Rotorcraft Regulatory Review Program Amendment No. 1, which revised the applicability of Part 29 and emphasized the need to define more clearly the determination of takeoff performance. The present Part 29 does not sufficiently define factors for determining Category A takeoff distance nor minimum climb gradients necessary for the design of heliports.

The airworthiness authorities of the European community are studying Part 29 to determine the need for Joint Airworthiness Requirements (JAR) 29. The FAA met with members of the AASC to help standardize, as far as practical, rotorcraft certification rules. A letter was sent to AASC and industry on May 7, 1983, soliciting comments on key issues. The initial key issue responses were published in the **Federal Register** on May 7, 1984 (49 FR 19309), for additional public comment. Public comments were received, and a more comprehensive list of AASC proposals for Part 29 was received on September 15, 1984. A preliminary response was sent to AASC by the FAA on March 18, 1985. After additional review of the comprehensive AASC proposals for Part 29, the FAA Rotorcraft Directorate decided that the proposals were of such a nature that they warrant further public discussion by all interested parties. Therefore, each of the AASC proposals and portions of proposals not already in the rulemaking process will be discussed at the public meeting.

A copy of the AASC proposals for changes to Part 29 will be mailed to all interested parties. Any interested party who has not received a copy of the AASC proposals by March 14, 1986, may contact R.T. Weaver at the address under **"FOR FURTHER INFORMATION CONTACT"** for a copy.

Issued in Forth Worth, Texas, on January 23, 1986.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 86-2521 Filed 2-4-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 85N-0483]

Policy of Eligibility of Drugs for Orphan Designation; Termination of Interim Policy on Eligibility; Advance Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing its policy on the eligibility of drugs for orphan designation. FDA is announcing that a drug is eligibile for orphan designation for a rare disease or condition if the sponsor's request for designation is received by FDA before the agency approves a marketing application for the drug for that rare disease or condition. This is a continuation of FDA's policy, followed since enactment of the Orphan Drug Act, that requests for orphan designation could be filed for drugs that had not yet received approval of their marketing applications. FDA also is announcing that the agency is terminating an interim policy on eligibility of drugs for orphan designation. Under the interim policy, a sponsor could request from FDA and receive orphan designation for a drug after FDA had approved a marketing application for the drug for the orphan indication, if the approval of the marketing application occurred after enactment of the Orphan Drug Act (January 4, 1983). Comments and recommendations received by FDA regarding this notice will be considered by the agency in its preparation of a proposed rule to implement the orphan drug provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C 301 et seq.).

DATES: Comments by March 24, 1986; the interim policy change is effective May 6, 1986.

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

FOR FURTHER INFORMATION CONTACT: Emery J. Sturniolo, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4718.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1983, the President signed the Orphan Drug Act (Pub. L. 97-414), which amended the act to facilitate the development of drugs for rare diseases or conditions. This legislation was intended to overcome the reluctance of manufacturers to become sponsors of orphan drugs and undertake the costs of conducting clinical trials and obtaining FDA approval of these drugs, because of the limited number of patients with the rare disease or condition, their geographic dispersion, and the nonpatentability of many of these drugs. The Orphan Drug Act added four new sections to the act (sections 525 through 528). Section 525 requires FDA to give protocol assistance to sponsors of drugs for rare diseases or conditions. Section 526 defines orphan drugs and requires FDA to publicize its designation of orphan drugs. Section 527 gives 7 years of exclusive approval to certain designated orphan drugs. Section 528 facilitates the use of open protocols to permit patients to use orphan drugs for treatment purposes while the drugs are being investigated in clinical trials. To promote the development of drugs for rare diseases or conditions, the Orphan Drug Act also (a) amended the Public Health Service Act by establishing the Orphan Products Board, (b) amended the Internal Revenue Code of 1954 to allow tax credits for qualified clinical testing expenses for certain drugs for rare diseases or conditions, (c) provided authority for the Secretary of Health and Human Services (the Secretary) to make grants to defray costs of qualified clinical testing expenses incurred in connection with development of drugs for rare diseases or conditions, and (d) amended Title 35 of the United States Code to provide for patent term extension under certain conditions. Subsequently, Congress enacted two amendments of the orphan drug provisions of the act.

On October 30, 1984, the President signed the Health Promotion and Disease Prevention Amendments of 1984 (Pub. L. 98-551) that, among other actions, amended section 526 to specify that a rare disease or condition means any disease or condition which (a) affects less than 200,000 persons in the United States, or (b) affects more than 200,000 in the United States and for which there is no reasonable expectation that the cost of developing

and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug.

On August 15, 1985, the President signed the the Orphan Drug Amendments of 1985 (Pub. L. 99-91) that, among other actions, amended section 527 to provide that, if the Secretary approves a marketing application filed under section 505(b) or 507 of the act or under section 351 of the Public Health Service Act (42 U.S.C. 262) for a patented or unpatented drug that is designated for a rare disease or condition under section 526, the Secretary may not approve another sponsor's application for that drug for such disease or condition until the expiration of 7 years from date of approval of the first marketing application, unless the Secretary finds that the holder of the first approved application cannot assure the availability of sufficient quantities of the drug to meet the needs of the affected persons. Of course, these provisions in no way prohibit the approval of other drug substances which may be developed and prove valuable in the treatment of rare diseases and conditions.

Thus, some of the effects of the Orphan Drug Amendments of 1985 are to provide marketing exclusivity for 7 years to the holder of the first approval of a designated orphan drug, such marketing exclusivity to apply to either patented or unpatented drugs.

The agency will publish a proposed rule to establish procedures to implement the orphan drug provisions of the act. FDA intends to include in that proposed rule the policy described below regarding timing of requests for designation.

FDA's Policy Regarding Eligibility of Drugs for Orphan Designation

For a drug to be eligible for orphan designation, FDA must receive the sponsor's designation request before the agency has approved a marketing application for that drug for that rare diseases or condition filed under section 505(b) or 507 of the act or section 351 of the Public Health Service Act (42 U.S.C. 262).

FDA believes that this policy is consistent with the purpose of the orphan drug provisions of the act. Section 1 of the Orphan Drug Act states in part that adequate drugs for rare disease or conditions "have not been developed" and that drugs with promise for treating rare diseases or conditions "will not be developed unless changes are made in the applicable Federal laws * * *." All but one of the benefits conferred under the orphan drug provisions of the act are for activities that would occur before approval of a marketing application—protocol assistance, open protocols under investigational new drug applications, tax benefits for clinical testing, and grants and contracts for clinical testing. The only benefit conferred on a sponsor of a designated orphan drug after its approval is the 7 years of exclusive approval. However, even the language in section 527 of the act that authorizes exclusive approval anticipates marketing approval after orphan designation.

Under the policy above, for a drug to be eligible for designation, FDA needs to receive the request for designation before it approves a marketing application for the drug. However, the time needed for FDA's review of a request for orphan designation of a drug would not delay FDA's approval of the marketing application for the drug or shorten the 7-year exclusive marketing approval of the drug provided by its designation.

FDA's Interim Policy Regarding Eligibility of Drugs for Orphan Designation

FDA's interim policy has been that a sponsor could also request orphan designation for a drug for a rare disease or condition after FDA had approved a marketing application for the drug for that rare disease or condition, if the marketing application was approved after enactment of the Orphan Drug Act on January 4, 1983.

FDA first applied its interim policy in response to Abbott Pharmaceutical Division's request for orphan designation for hematin. FDA approved hematin for marketing in 1983 and FDA designated hematin as an orphan drug in March 1984. Later, on June 4, 1984, at a conference sponsored by the Institute for Applied Pharmaceutical Sciences entitled "Processing an Orphan Drug Through the Regulatory and Corporate Management Systems," the Director of FDA's Office of Orphan Products Development publicly announced implementation of this interim policy, under which FDA would accept requests for designation for certain drugs and designate these drugs as orphan drugs after FDA had approved the marketing applications for the drugs. After that announcement, FDA designated four more approved drugs as orphan drugs. The five drugs FDA has designated as orphan drugs under its interim policy are listed below.

Drug and rare disease or condition for which designated	Sponsor	Date designated an orphan drug
Hematin—for hepatic porphyria.	Abbott Laboratories	1984
Chenodeoxycholic acid—for dissolution of radiolucent gallstones in poor risk surgical patients.	Rowell Laboratories	1984
Naltrexone—as an adjunct to the maintenance of the opioid-free state in detoxified individuals.	Du Pont de Nemours	1985
Cromolyn sodium 4 percent opthalmic solution—for vernal kerato-conjunctivitis.	Fisons Corp	1985
Potassium citrate—for management of uric acid lithiasis.	The University of Texas Health Science Center, Dallas, Texas.	1985

Reasons for FDA's Adoption and Termination of the Interim Policy

Before the Orphan Drug Act was enacted, based on requests of FDA and consumers, some drug manufacturers sponsored development of certain drugs for rare diseases or conditions as a public service knowing that development costs for the drugs likely would exceed expected sales revenues from those drugs. FDA approved the marketing applications for some of these pioneer orphan drugs shortly after enactment of the Orphan Drug Act. FDA believed that the agency should not delay approval of such drugs while it reviewed sponsors' requests for orphan designation under the new Orphan Drug Act. FDA also believed that, in fairness, a short-term interim period was warranted to give sponsors time to learn about the Orphan Drug Act and submit requests to FDA for orphan designation. Moreover, the interim policy was appropriate while the definition of orphan drug was in flux.

Because of passage of time and enactment of the two amendments to the orphan drug provisions of the act described above, FDA now believes that its interim policy is no longer needed or appropriate. Accordingly, FDA is terminating its interim policy.

Effective Date of Termination of Interim Policy

FDA's termination of its interim policy on eligibility of approved drugs for orphan designation (which was not published in the **Federal Register**), May 6, 1986. FDA is delaying for 90 days the effective date of its termination of its interim policy to provide sponsors an opportunity to submit a request for designation for eligible pioneer drugs that FDA has approved for marketing since January 4, 1983. Because of FDA's

interim policy, sponsors of such approved drugs may have delayed submission of their requests for designation. Further, FDA is delaying the effective date because of the changes in the orphan drug provisions of the act resulting from the Orphan Drug Amendments of 1985 that were enacted and made effective on August 15, 1985. Before enactment of those amendments, only drugs for which a U.S. letter of patent could not be issued were eligible for marketing exclusivity of orphan drugs. Effective on August 15, 1985, both patented and unpatented drugs are eligible for the resulting 7 years of marketing exclusivity provided to the first designated orphan drug approved for the rare disease or condition. FDA's 90-day delayed effective date will allow sponsors who may not know about the eligibility for marketing exclusivity of their patented approved drugs to request designation and obtain the 7-year marketing exclusivity intended by Congress when it enacted the Orphan Drug Amendments of 1985.

Accordingly, FDA is delaying the effective date of its termination of its interim policy. After May 6, 1986, FDA no longer will accept for review and processing a sponsor's request that a drug approved for an orphan indication be designated as an orphan drug for the same indication. Requests for orphan drug designation will continue to be accepted for drugs previously approved for other uses.

Comments and recommendations received by FDA regarding this notice will be considered by the agency during preparation of its proposed rule implementing the orphan drug provisions of the act. FDA intends to incorporate its continuing policy regarding eligibility of products for orphan designation in that proposed rule that will be subject to notice and comment rulemaking.

Interested person may, on or before March 24, 1986, submit to the Dockets Management Branch (address above) written comments regarding the interim policy change. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public inspection in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 2, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-2408 Filed 2-4-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, and 212

Product Valuation for Royalty Purposes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is making available for public comment drafts of proposed methods of valuing, for royalty purposes, coal, oil, and gas and associated products from Federal and Indian leases. MMS is making these drafts available to obtain initial public comment on specific proposed methods before it formally issues proposed regulations.

DATES: Comments must be received on or before April 7, 1986. A public meeting will be held on March 18 and 19, 1986, at 8:30 a.m. to 4:00 p.m.

ADDRESSES: Comments should be mailed to Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, Attention: Vernon B. Ingraham. Copies of the draft regulations may be obtained from the above address. The public meeting will be held at the Denver Federal Center, Building 25, Room 1254, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, telephone: (303) 231-3360, (FTS) 326-3360.

SUPPLEMENTARY INFORMATION:

I. Background

Regulations governing the valuation for royalty purposes of coal, oil, and gas and associated products from Federal and Indian leases are codified in various sections of Title 30 and 43 of the Code of Federal Regulations. In addition, other regulatory and related provisions are included in various Notices to Lessees and orders.

For the past several months, MMS has been reviewing the existing regulatory scheme for royalty valuation and developing proposals for new methods for valuation which would simplify, clarify, and consolidate the existing provisions. In furtherance of the effort to develop comprehensive and workable product value regulations, the Secretary of the Interior recently Royalty Managment Advisory Committee comprised of 31 representatives from industry, the states and Indian Tribes, which will have as one of its first tasks to advise the Secretary on the new product value regulations. The Advisory Committee held its first meeting in Lakewood, Colorado on January 9 and 10, 1986.

II. Draft Regulations

As a result of its extensive review and consideration of royalty valuation issues, MMS has developed draft regulations for product valuation. There are five separate draft regulations; coal, oil, gas and associated products, gas processing allowances, and transportation allowances. Each draft is in the form of a notice of proposed rulemaking, including proposed regulatory language and a preamble.

Because the issues related to product valuation are so complex, and because MMS expects extensive public comment, it has decided to make drafts of the proposed regulations available for public review and comment before issuing formal Notices of Proposed Rulemaking. The existing draft regulations reflect MMS current proposals for addressing product valuation but we expect that changes will be made as a result of comments before proposed rules are issued.

Commenters are specifically requested to provide alternative suggestions to those specified in the draft rules. In addition, a public meeting will be held for the purpose of receiving comments at the time and location stated in the **DATES** and **ADDRESSES** sections. All written comments, plus comments received at the public meeting, will be made available to the Royalty Management Advisory Committee for its consideration in providing advice to the Secretary of the Interior on product valuation.

Although each of the five drafts is in the form of a proposed rule, MMS is not considering them as proposed rules at this time and the proposed rules will be published in the Federal Register for public comment before final rules are issued.

III. Availability of Draft Regulations

At this time, only four of the five draft regulatory packages are being made available for comment: coal, oil, gas processing allowances and transportation allowances. The draft rule for gas and associated products will be available in a few weeks and MMS will send copies to those requesting them at that time. Interested persons may obtain a copy of the draft regulations upon request from the MMS at the address above in **ADDRESSES**.

BEST COPY AVAILABLE

The format of the public meeting will be the same as that specified in the preamble sections of the draft regulations.

Dated: January 30, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-2526 Filed 2-4-86; 8:45 am]

BILLING CODE 4310-MR

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

Federal Payments Made Through Financial Institutions by the Automated Clearing House Method

[Editorial Note: The following document was originally published at page 2899 in the issue of Wednesday, January 22, 1986. The document is being republished in its entirety because of typsetting errors.]

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This amendment revises 31 CFR Part 210, which defines the responsibilities and liabilities of the Federal Government, Federal Reserve Banks, financial institutions, and recipients participating in the Automated Clearing House (ACH) payment system. There are three reasons for the proposed revision. First, changes regarding enrollment are necessary in order to allow Treasury to devise, test, and implement creative and innovative means of enrollment while improving the Direct Deposit/Electronic Funds Transfer (DD/EFT) system's flexibility. Second, the problem of fraud in the Direct Deposit Program needs to be addressed. Finally, it was felt that overall clarity and arrangement of the regulations could be improved. The proposed revision will address these needs.

DATE: Comments on this proposed rule must be received by February 21, 1986.

ADDRESS: Comments may be mailed to the ACH Programs Branch, Financial Management Service, U.S. Department of Treasury, Room 226, Treasury Annex No. 1, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Christine Ricci, (202) 535-6328 or Maurice Galloway, (202) 535-6323.

SUPPLEMENTARY INFORMATION: Part 210 of Title 31 of the Code of Federal Regulations sets forth the rights and liabilities of the Government, Federal Reserve Banks, financial institutions and recipients where a recipient of Federal recurring payments authorizes Direct Deposit of recurring payments made by means other than by check. The regulations in this Part were promulgated in 1975, with amendments in 1976, 1984, and 1985. Since that time, it has become apparent that the regulations need clarification and improvement in a number of respects. Notably, this notice proposes to expand the coverage of the regulations to include changes designed to meet increased utilization of the Automated Clearing House (ACH) method for Federal payments.

Changes have been proposed to the current regulations to make them more clear and understandable, as well as to make them more flexible so as to allow for future innovations in technology and payment methods. Thus, the phrase in the title of Part 210 referring to payment "by means other than by check" has been changed to payments "by the Automated Clearing House method." While the ACH method is presently used only for recurring payments, the word "recurring" has been eliminated in order to allow for the use of this method in the future for non-recurring payments, as well. Present §§ 210.1–210.8 plus § 210.13, which are applicable to both benefit and nonbenefit payments, have been grouped together as Subpart A. They have also been rearranged and renumbered. Minor changes have been made to present §§ 210.9—210.12, which relate only to benefit payments, and they have been renumbered and labeled Subpart B.

There are a number of new definitions found in these proposed regulations. "Automated Clearing House" refers to a computerized clearing system that effects the paperless exchange of funds. "Benefit payment" is a payment of money for any Federal Government entitlement program or annuity, either one-time or recurring. "Enrollment" means any method approved and prescribed by Treasury's Financial Management Service for authorizing or conveying instructions for the use of the ACH payment method. This term replaces "Standard Authorization Form" in the present regulations. New definitions are also provided for "Federal Reserve Bank," and "financial institution." Definitions of "Government" and "recurring payment" have been eliminated.

The present term "credit payment" is replaced in these proposed rules by two terms: "payment" and "payment instruction." The phrase "credit payment" is not only unclear, but is used in two different senses in the present regulations. The Service believes that this creates needless confusion in interpreting the present regulations. Accordingly, the term "credit payment" is replaced through these proposed rules by either "payment" or "payment instruction," as the context dictates. "Payment" is used in its most commonly accepted sense to mean the transfer of a sum of money, while "payment instruction" means an order for the payment of money, including the information necessary to make the indicated payment.

The section on recipients reflects proposed changes which are designed to improve the system's flexibility as well as simplify the enrollment process for recipients of Federal payments.

Present § 210.5 on program agencies has been eliminated as unnecessary, while a new section 210.3 has been added to state the policy for making payments by the ACH method. The authority citation has also been updated.

A new section 210.10 on fraud has been added. Paragraph (a) references the liabilities which are imposed by the False Claims Act, 31 U.S.C. 3729 *et. seq.*, for the submission of false claims or falsified documents in support of such claims, and also references applicable criminal statutes and common law remedies. This section is intended to apply to falsified enrollments, as well as to such activities as the initiation of an improper ACH payment by an employee of the Federal Government, or the diversion of a properly authorized payment by employees of the Federal Government, Federal Reserve Banks, or financial institutions to their own bank account or the account of another. Present § 210.9(g) has been added to this section and designated paragraph (b).

Numerous small, non-substantive changes in wording have been made throughout these proposed regulations in order to achieve greater clarity and precision.

The changes and new procedures will be published as amendments to the Financial Management Service's Green Book on Direct Deposit.

This proposed revision is not a major rule as defined by Executive Order 12291. Accordingly, a regulatory impact analysis is not required. It is hereby certified pursuant to the Regulatory Flexibility Act that the proposed revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 210

Banks, banking, Electronic funds transfer, Federal Reserve System.

For the reasons set out in the preamble, Part 210 of Chapter II of Title 31 of the Code of Federal Regulations is proposed to be amended as follows:

1. 31 CFR Part 210 is revised to read as follows:

PART 210—FEDERAL PAYMENTS THROUGH FINANCIAL INSTITUTIONS BY THE AUTOMATED CLEARING HOUSE METHOD

Subpart A—General

Subpart B—Repayment of Benefit Payments

Authority: 12 U.S.C. 391; 31 U.S.C. 321, and other provisions of law.

Subpart A—General

§ 210.1 Scope of regulations.

This Part governs Federal Government payments made by the automated clearing house (ACH) method through Federal Reserve Banks and financial institutions, to recipients maintaining accounts at these financial institutions. It describes the procedures to be used, defines the obligations and responsibilities of the participants in ACH payments, and states terms of a contract between the Federal Government and those participants. It also prescribes the liabilities of financial institutions to the Federal Government arising from payments to deceased or incompetent recipients, and deceased beneficiaries, of Federal benefit payments.

§ 210.2 Definitions.

As used in this Part, unless the context otherwise requires:

(a) "Account," "recipient's account," "designated account" and "appropriate account" mean the account specified by a recipient or beneficiary into which payments under this Part shall be deposited. These definitions also include an account on which the financial institution has, after execution of an enrollment, made changes to the account number or the type of account as authorized by § 210.4(f).

(b) "Automated Clearing House" (ACH) means a Federal Reserve Bank or other entity which effects the paperless exchange of funds.

(c) "Beneficiary" means a person other than a recipient who is entitled to receive the benefit of all or part of a benefit payment from the Federal Government.

(d) "Benefit Payment" is a payment of money for any Federal Government entitlement program or annuity. It can be either a one-time or recurring payment. These payments include, but are not limited to, the following:

(1) Social Security.
(2) Supplemental Security Income.
(3) Black Lung.
(4) Civil Service Retirement.
(5) Railroad Retirement Board Retirement/Annuity.
(6) Veterans Administration Compensation/Pension.
(7) Central Intelligence Agency Annuity.
(8) Military Retirement/Annuity.
(9) Coast Guard Retirement.

(e) "Enrollment" means a procedure approved or prescribed by the Financial Management Service for a recipient to provide the information necessary to make an ACH payment.

(f) "Federal Reserve Bank" means all Federal Reserve District Head Offices, branches, and regional check processing centers that process ACH payments for the Federal Government.

(g) "Financial Institution" means any bank, savings bank, savings and loan association, credit union, or similar institution.

(h) "Outstanding Total" means the sum of all benefit payments received, pursuant to an enrollment, after death or legal incapacity, minus any amount returned to or recovered by the Federal Government.

(i) "Payment" means a sum of money which is transferred to a recipient in satisfaction of an obligation.

(j) "Payment Date" means the date specified in the payment instruction for a payment. It is the date on which the funds specified in the payment instruction are to be available for withdrawal from the recipient's account with the financial institution specified by the recipient, and on which the funds are to be made available to the financial institution by the Federal Reserve Bank with which the financial institution maintains or utilizes an account. If the payment date is not a business day for the financial institution receiving a payment, or for the Federal Reserve Bank from which it received such payment, then the next succeeding business day for both shall be deemed to be the payment date.

(k) "Payment Instruction" means an order issued by the Federal Government for the payment of money under this Part. A payment instruction may be contained on:

(1) A letter, memorandum, telegram, computer printout or similar writing, or

(2) Any form of nonverbal communication, registered upon magnetic tape, disc or any other medium designed to capture and contain in durable form conventional signals used to electronically communicate messages.

(l) "Program Agency" means an agency of the Federal Government responsible for determining and initiating a payment to be made, and includes any department, agency independent establishment, board, office, commission, or other establishment in the executive, legislative, or judicial branches of the Federal Government, and any wholly-owned or -controlled Federal Government corporation.

(m) "Recipient" means a person authorized by a program agency to receive payments from the Federal Government. Recipient includes a person named by a program agency to receive benefit payments for a beneficiary.

§ 210.3 Policy for payments by the Automated Clearing House Method.

A payment shall be made by the ACH method unless the Treasury Department determines that conditions exist that make payment by check or other means more appropriate.

§ 210.4 Recipients.

(a) In order for a recipient to receive a payment by the ACH method, the recipient shall designate the desired financial institution and account identification at that financial institution using an enrollment procedure prescribed by the Financial Management Service for such payments. The title of the account so designated shall include the name of the recipient.

(b) In executing an enrollment, a recipient:

(1) Agrees to the provisions of this Part; and

(2) Authorizes the termination of any previously executed enrollment or inconsistent payment instructions.

(c) Once an ACH enrollment has been provided, it shall remain in effect until it is terminated by one of the following events:

(1) A request from the recipient to change or terminate the enrollment;

(2) A change in the title of an account which removes the name of the recipient, removes or adds the name of a beneficiary, or alters the interest of the beneficiary;

(3) The death or legal incapacity of a recipient, or the death of the beneficiary, of a benefit payment; or

(4) The closing of the account.

If any of these events occurs, a new enrollment shall be required before further payments may be credited to that account.

(d) A recipient who wishes to change the account or financial institution to which payment is directed shall execute a new enrollment.

(e) A recipient of a benefit payment made under this Part may request only that the full amount of the payment be credited to one account on the books of a financial institution. Except as authorized by law or other regulations, the procedures set forth in this Part shall not be used to effect an assignment of a payment.

(f) A financial institution may change the account numbers or, at the request of the recipient, the type of the recipient's account without executing a new enrollment provided no change is made to the title of the account or the interest of the recipient or beneficiary in the account. These changes must be communicated to the appropriate program agency or agencies in accordance with implementing instructions issued by the Federal Government.

§ 210.5 The Federal Government.

(a) The Federal agencies that perform disbursing functions will, in accordance with the provisions of this Part, issue and direct payment instructions to the Federal Reserve Bank on whose books the financial institution named therein maintains or utilizes an account in sufficient time for the Federal Reserve Bank to carry out its responsibilities under this Part.

(b) Procedural instructions will be issued by the Financial Management Service for the guidance of program agencies, Federal agencies that perform disbursing functions, Federal Reserve Banks, and financial institutions in the implementation of these regulations.

§ 210.6 Federal Reserve Banks.

(a) Each Federal Reserve Bank as Fiscal Agent of the United States shall receive payment instructions from the Federal Government and shall make available and pay to financial institutions amounts specified in these payment instructions, and shall otherwise carry out the procedures and conduct the operations contemplated under this Part. Each Federal Reserve Bank may issue operating circulars (sometimes referred to as operating letters or bulletins) not inconsistent with this Part, governing the details of its handling of payments under this Part and containing such provisions as are required and permitted by this Part.

(b) The Federal Government by its action of issuing and sending any payment instruction contained in the media specified in § 210.2(k) shall be deemed to authorize the Federal Reserve Banks to:

(1) Pay the amount specified in the payment instruction to the debit of the general account of the United States Treasury on the payment date; and

(2) Handle and act upon the payment instruction.

(c) Upon receipt of a payment instruction, a Federal Reserve Bank shall, if the payment is directed to a financial institution which maintains or utilizes an account on the books of another Federal Reserve Bank, forward the payment instruction to the other Federal Reserve Bank. The Federal Reserve Bank on whose books the financial institution or its designated correspondent maintains an account shall deliver or make available to the financial institution the information contained in the payment instruction not later than the close of business for the financial institution on the business day prior to the payment date on the medium as agreed to by the Federal Reserve Bank and financial institution.

(d) A financial institution by its action in maintaining or utilizing an account at a Federal Reserve Bank shall be deemed to authorize that Federal Reserve Bank to credit the amount of the payment to the account of the financial institution on its books, or the account of its designated correspondent maintaining an account with the Federal Reserve Bank.

(e) A Federal Reserve Bank receiving a payment instruction from the Federal Government shall make the amount specified in the payment instruction available for withdrawal from the financial institution's account on its books, referred to in paragraph (d) of this section, at the opening of business on the payment date.

(f) Each Federal Reserve Bank shall be responsible only to the Department of the Treasury and shall not be liable to any other party for any loss resulting from the Federal Reserve Bank's action under this Part.

§ 210.7 Financial Institutions.

(a) A financial institution's execution of actions required of it in connection with an enrollment shall constitute its agreement to the terms of this Part with respect to each payment received by it pursuant to the enrollment. Regardless of whether it has executed an enrollment, a financial institution's acceptance and handling of a payment issued pursuant to this Part shall constitute its agreement to the provisions of this Part.

(b) A financial institution in executing an enrollment shall be responsible for:

(1) The completeness and accuracy of the data provided by it with respect to the enrollment, and

(2) Verifying that the account number entered by the recipient during enrollment corresponds to an account bearing the name of the recipient.

(c) A financial institution wishing to terminate an enrollment shall do so by giving written notice to the recipient. The termination shall become effective thirty days after the financial institution has sent the notice to the recipient. A financial institution must immediately return to the Federal Government all payments received after the effective date of a termination.

(d) A financial institution receiving a payment under this Part shall credit the amount of the payment to the designated account of the recipient on its books, and it shall make the amount available for withdrawal or other use by the recipient not later than the opening of business on the payment date. "Available" in this paragraph means accessible through any means of access provided by a financial institution to its customers for the recipient's type of account, for example, checks, automated teller machines, or automatic transfers from the recipient's account. If the payments or any related information received by the financial institution from a Federal Reserve Bank do not balance, are incomplete, are clearly erroneous on their face (e.g., the account number and recipient's name do not agree with the financial institution's records), or are incapable of being processed, the financial institution, after assuring itself that neither it nor any of its agents is responsible, shall immediately notify the Federal Reserve Bank in order that it may deliver corrected information to the financial institution.

(e) A financial institution receiving a payment under this Part shall credit the amount of the payment to the account specified in the payment instruction. If the financial institution is unable to credit the amount of a payment to the account indicated in the payment instruction because, for example, such an account does not exist on its books, or because in processing the payment it has reason to believe the account

indicated in the payment instruction is not the account designated by the recipient, it shall either:

(1) Return the payment to the Federal Reserve Bank with a statement identifying the reason therefore; or

(2) Credit the amount of the payment to the account designated by the recipient.

A credit to any other account by a financial institution shall constitute a breach of its warranty made by reason of paragraph (i) of this section.

(f) A financial institution shall promptly return to the Federal Government through the Federal Reserve Bank any payment received by the financial institution:

(1) After termination of the enrollment pursuant to § 210.4(c)(2) and before the execution of a new enrollment;

(2) After termination of an enrollment pursuant to §§ 210.4(c)(1) or 210.7(c) has become effective;

(3) After it learns of the death or legal incapacity of the recipient, or the death of the beneficiary, of a benefit payment, regardless of whether or not notice has been received from the Federal Government; or

(4) After the closing of the recipient's account.

(g) A financial institution to which a payment is sent under this Part does not thereby become a Federal Government depositary and shall not advertise itself as one because of that fact.

(h) If any change in account numbers permitted by § 210.4(f) is made by a financial institution, the financial institution shall be liable to the recipient for any lost or late payment caused by the financial institution's actions in processing the change.

(i) Each financial institution by its action of handling a payment under this Part shall be deemed to warrant to the Federal Government that it has handled the payment in accordance with the requirements of this part. In addition to the liability which may be imposed pursuant to § 210.11, if the foregoing warranty is breached, the financial institution shall be liable to the Federal Government for any loss sustained by the Federal Government, but only to the extent that the loss was the result of the breach. Except as provided in this section, and § 210.11, a financial institution shall not be liable under this Part to any party for its handling of a payment.

§ 210.8 Timeliness of action.

If, because of circumstances beyond its control, action by the Federal Government, a Federal Reserve Bank, or a financial institution is delayed beyond the time prescribed for the action (including the payment date) by this Part, by the operating circulars of the Federal Reserve Banks, or by applicable law, the time within which the action shall be completed shall be extended for such time after the cause of the delay ceases to operate as shall be necessary to take or complete the action, provided the Federal Government, the Federal Reserve Bank, or the financial institution exercises such diligence as the circumstances require.

§ 210.9 Liability of, and acquittance to, the United States.

(a) The United States shall be liable to a recipient for the failure to credit the proper amount of a payment to the appropriate account of the receipient as required by this part. This liability shall be limited to the amount of the payment.

(b) The United States shall be liable to the financial institution, up to the amount of the payment, for a loss sustained by the financial institution as a result of its crediting the amount of the payment to the account specified in the payment instruction, if the financial institution has handled the payment in accordance with this part. The foregoing does not extend to benefit payments received by the financial institution after the death or legal incapacity of the recipient or death of the beneficiary, in which event § 210.11 shall govern.

(c) The crediting of the amount of a payment to the appropriate account of a recipient on the books of the appropriate financial institution shall constitute a full acquittance to the United States for the amount of the payment.

§ 210.10 Fraud.

(a) The False Claims Act, 31 U.S.C. 3729, *et seq.*, provides for the recovery of damages and a civil penalty from any person who knowingly presents to the Federal Government, or causes to be presented, a false or fraudulent claim for payment, or uses a false record or statement in connection with such a claim. In addition, criminal penalties are provided in 18 U.S.C. 1001 for knowingly making false or fraudulent statements or representations to agencies of the Federal Government, and in 18 U.S.C. 1002 for knowingly possessing false documents for the purpose of enabling another to receive a payment from the Federal Government. These provisions are in addition to the Federal Government's remedies under common law.

(b) A financial institution shall verify the identity of any person who initiates and executes an enrollment through such financial institution. The Federal Government shall verify the identity of any person who presents an enrollment to the Federal Government without prior review or execution by a financial institution. A financial institution that executes an enrollment in which the recipient's or beneficiary's signature is forged or other information is falsified shall be liable to the Federal Government for all benefit payments made in reliance thereon. However, if the program agency fails to take corrective action after it has been notified that a payment has not been received by the correct recipient or beneficiary, the financial institution shall not be liable for any benefit payments based on the forgery or falsified information which are made after the date of such notice.

Subpart B—Repayment of Benefit Payments

§ 210.11 Death or legal incapacity of recipients or death of beneficiaries.

(a) A financial institution shall be liable to the Federal Government for the total amount of all benefit payments received after the death or legal incapacity of the recipient or the death of the beneficiary. However, a financial institution may limit its liability if the financial institution did not have knowledge of the death or legal incapacity at the time of the deposit or withdrawal of any of the benefit payments made after the death or legal incapacity, and if it fulfills the requirements of this section and of §§ 210.12 and 210.13.

(b) Except as provided in paragraph (f) of this section, if limitation of liability is available to a financial institution under this Part, the amount of its liability shall be:

(1) An amount equal to the amount in the recipient's or beneficiary's account as defined in § 210.12(b)(2)(i), plus

(2) An amount equal to the benefit payments received by the financial institution within 45 days after the death or legal incapacity of the recipient or the death of the beneficiary; *Provided,* that the financial institution will only be liable for the 45-day amount to the extent described in § 210.12(d).

(c) Although a financial institution shall be liable for an amount equal to the amount in the recipient's or beneficiary's account, plus the amount of benefit payments received within 45 days after the death or legal incapacity of the recipient or the death of the beneficiary, this Part dose not authorize or direct a financial institution to debit the account of any customer, living or deceased, including that of the recipient or beneficiary, for the financial institution's liability to the Federal

Government under this Part. The amount in the recipient's or beneficiary's account is only a measure of the financial institution's liability. Nothing in this Part shall be construed to affect any right a financial institution may have under State law or the financial institution's contract with a customer to recover from the customer's account an amount returned to the Federal Government in compliance with this Part.

(d) A financial institution shall be deemed to have knowledge of the death or legal incapacity of the recipient or beneficary when it is brought to the attention of a financial institution employee who handles benefit payments, or when it would have been brought to that person's attention if the financial institution had exercised due diligence. The financial institution will be considered to have exercised due diligence only if it maintains procedures under which, once it learns of the death of a depositor, it determines whether its deceased depositor is a recipient or beneficary of benefit payments under this part, and immediately communicates such information to the appropriate employees, and it complies with such procedures. This does not impose a duty on a financial institution to learn of the deaths of its customers by searching obituaries or any other means, unless it does so for purposes other than its participation in the payment system governed by this Part.

(e) A financial institution that fails to comply timely with the collection procedures set forth in § 210.12 or the Notice to Account Owners requirement of § 210.13 may not limit its liability in accordance with paragraph (a) of this section.

(f) A financial institution will not be liable under this Part for benefit payments made after the death of a beneficiary if the beneficiary was decreased at the time the recipient executed an enrollment and if the financial institution had no knowledge of the beneficiary's death.

§ 210.12 Collection procedures.

The amount of which the financial institution is liable under § 210.11 shall be collected as follows:

(a) For each type of benefit payment, the Federal Government will send a Notice of Reclamation form to the financial institution. The form will identify benefit payments sent to the financial institution for credit to the account of a recipient or beneficiary which should have been returned by the financial institution because of the death or legal incapacity of a recipient or the death of a beneficiary.

(b) Upon receipt of the Notice of Reclamation, the financial institution must do one of the following:

(1) If the financial institution had knowledge of the death or legal incapacity and did not immediately return to the Federal Government all benefit payments received after it acquired that knowledge, the financial institution shall immediately return to the Federal Government an amount equal to the outstanding total of benefit payments listed on the notice form that it received after it learned of the death. With respect to any benefit payments received prior to learning of the death that have not been returned, the financial institution shall certify on the Notice of Reclamation the date it learned of the death and follow the procedure in paragraph (b)(2) of his section.

(2) If the financial institution had no knowledge of the death or legal incapacity at the time any benefit payments made after the death or legal incapacity were credited to the recipient's or beneficiary's account, an appropriate official of the financial institution shall certify on the Notice of Reclamation form that it had no knowledge of the death or legal incapacity and fully complete the form in accordance with its instructions and do the following:

(i) The financial institution shall return to the Federal Government both the executed Notice of Reclamation form and an amount equal to the amount in the account or the outstanding total, whichever is less. The amount in the account is the balance when the financial institution has received the Notice of Reclamation and has had a reasonable time to take action based on its receipt, plus any additions to the account balance made before the financial institution returns the completed Notice of Reclamation to the Federal Government. For the purposes of this paragraph, action is taken within a reasonable time if it is taken not later than the close of business on the business day following receipt of the Notice of Reclamation.

(ii) If the amount returned is less than the amount requested in the notice, the financial institution shall include with the form the name and the most current address on its records of any person(s) who withdrew funds from the account after the death or legal incapacity. If the financial institution is unable to supply the name(s) of the withdrawer(s), it shall provide the names and most current addresses on its records of any co-owners of the account or other persons authorized to withdraw. If it is unable to supply the names or addresses of the withdrawers or co-owners, it shall state the reason for its inability on the form.

(3) If the Federal Government issues a second or subsequent Notice of Reclamation for the same type of payment for the same recipient or beneficiary, the financial institution shall be liable with respect to such second or subsequent Notice only for an amount equal to the amount in the account at the time it receives a second or subsequent Notice of Reclamation, plus any further additions to the account balance up to the date it returns these subsequent Notices of Reclamation. For a second or subsequent Notice of Reclamation for the same type of payment for the same recipient or beneficiary, the financial institution shall not be liable for an amount in excess of the amount determined under the first sentence of this paragraph, attributable to benefit payments received within 45 days after the death or legal incapacity if it complied properly and timely to the first Notice of Reclamation.

(c) If the Federal Government does not receive response to the Notice of Reclamation within 30 days, it will issue a follow-up to ensure that the original Notice of Reclamation was received. If the Federal Government does not receive from the financial institution the fully completed and properly executed Notice of Reclamation form along with the amount due under § 210.11(b)(1) within 60 days of the issue date of the original Notice of Reclamation, the financial institution shall be liable for the outstanding total listed on the form. Following the sixtieth day after the date of the original Notice of Reclamation, the Federal Government will instruct the appropriate Federal Reserve Bank to debit the account utilized by the financial institution for receipt of benefit payments in the amount of the outstanding total. By receiving benefit payments under this part, the financial institution is deemed to authorize this debit. The Federal Reserve Bank will provide advice of the debit to the financial institution.

(d) After the financial institution has paid to the Federal Government an amount equal to the amount in the recipient's account as provided in § 210.11(b)(1), if the program agency is unable to collect the entire outstanding total from the withdrawer(s), the financial institution shall be liable for an additional amount equal to the benefit payments received by it within 45 days after the death or legal incapacity, or the balance of the outstanding total, whichever is less. The Federal Government will instruct the

appropriate Federal Reserve Bank to debit the account utilized by the financial institution for receipt of benefit payments in the amount of the outstanding total. By receiving benefit payments under this part, the financial institution is deemed to authorize this debit. The Federal Reserve Bank will provide advice of the debit to the financial institution.

(e) Immediately upon learning of the death or legal incapacity, regardless of whether there has been notification from the Federal Government, the financial institution shall return to the Federal Government any further benefit payments it receives and notify the Federal Government that it has learned of the death or legal incapacity in order that the above collection procedures can be commenced. See § 210.7(f)(3).

§ 210.13 Notice to Account Owners of collection action.

(a) Upon receipt by a financial institution of the Notice of Reclamation as described in § 210.12(a), the financial institution shall immediately mail to the current address(es) of the account owner(s) of record a copy of the Notice to Account Owners form included with the Notice of Reclamation.

(b) The financial institution shall indicate with the Notice to Account Owners any action it has taken or intends to take with respect to the recipient's or beneficiary's account in connection with the Federal Government's collection action against the financial institution.

(c) The financial institution is not authorized by this part to debit the account of any party or to deposit any funds from any account in a suspense account or escrow account or the equivalent. If such action is taken, it must be under authority of State law or the financial institution's contract with its depositor(s).

(d) The financial institution's liability under this part is not affected by any action taken or not taken by the financial institution to recover from any party the amount of its liability to the Federal Government.

(e) Failure to mail the Notice to Account Owners, or failure to certify on the Notice of Reclamation that it has done so, shall result in the forfeiture by the financial institution of its ability under this Part to limit its liability. See § 210.11(e).

§ 210.14 Erroneous death information.

(a) In the event that the financial institution is advised that the Federal Government's information that the recipient or beneficiary is deceased is incorrect, or that the date of death is incorrect, the financial institution shall certify the correct information to the Federal Government by one of the following means:

(1) Certify on the "Notice of Reclamation" that the person whose name is reflected on the notice is alive, or that the date of death is incorrect, and that the financial institution took prudent measures to assure that the person was alive or that the date of death was erroneous. Prudent measures to assure that the person was alive include, but are not limited to, the named person providing the financial institution adequate identification, or obtaining through a third person a signed, dated and notarized statement from the named person. Prudent measures to assure the correct date of death include obtaining a death certificate.

(2) If there is any question regarding the sufficiency of the evidence presented to demonstrate that the date or fact of death is incorrect, the individual presenting the evidence should be referred by the financial institution to the agency making the payment, e.g., the Social Security Administration or the Veterans Administration. The agency will certify in writing to the financial institution the corrected information. The financial institution shall then return the agency's certification with the Notice of Reclamation.

(b) If the Federal Government's information that the recipient or beneficiary is deceased is in error, the financial institution shall be relieved of its liability, and shall no longer be subject to collection procedures under this part, if an accurate certification in accordance with paragraph (a) of this section is received by the Federal Government, on or with a properly completed Notice of Reclamation, within 60 days of the date of the original Notice of Reclamation to the financial institution.

(c) If the date of death on the Notice of Reclamation is in error, the financial institution shall be relieved of an appropriate part of its liability if an accurate certification in accordance with paragraph (a) of this section is received by the Federal Government, on or with a properly completed Notice of Reclamation, within 60 days of the date of the original Notice of Reclamation to the financial institution. In that event, the financial institution shall adjust the outstanding total on the Notice of Reclamation to exclude benefit payments made before the correct date of death. The financial institution shall include an explanation of the adjustment with the Notice of Reclamation. If correction of an error to the date of death shown on the Notice of Reclamation would result in additional payments being due to the Federal Government, the financial institution shall so notify the Federal Government when it returns the Notice of Reclamation.

(d) If after the financial institution has returned to the Federal Government a completed Notice of Reclamation and has made payment of its liablity, the financial institution learns that the fact of death or date of death was in error, it should bring the information to the attention of the agency which made the benefit payments, e.g., the Social Security Administration or the Railroad Retirement Board. The agency will refund to the financial institution, without interest, the appropriate amount of funds paid by the financial institution pursuant to § 210.12, including funds debited from its Federal Reserve account under § 210.12 (c) or (d).

Dated: January 14, 1986.

W. E. Douglas,

Commissioner.

[FR Doc. 86-1153 Filed 1-21-86; 8:45 am]

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 153 and 166

[OPP-250072; FRL 2962-8]

Notification to Secretary of Agriculture of a Proposed Interpretive Regulation on Pesticide Advertising

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a proposed regulation that would treat as unlawful certain advertising of pesticide products. This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: John C. Street, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. Street, SW., Washington, D.C. 20460.

Office location and telephone number: Room 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7758).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the Federal Register. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the Federal Register, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the Federal Register, anytime after the 30-day period.

As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

As required by FIFRA section 25(d), a copy of this proposed regulation has also been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 136 et seq.

Dated: January 17, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-2043 Filed 2-4-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 3F2901/P384; FRL-296-6]

Pesticide Tolerances for Potassium Salt of 1-(4-Chlorophenyl)-1,4-Dihydro-6-Methyl-4-Oxo-Pyridazine-3-Carboxylic Acid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes tolerances for the hybridizing agent potassium salt of 1-(4-chlorophenyl)-1,4-dihydro-6-methyl-4-oxo-pyridazine-3-carboxylic acid (referred to in the preamble of this document as fenridazone-potassium) in or on certain raw agricultural commodities. This regulation to establish maximum permissible levels for residues of fenridazone-potassium in or on the commodities was requested by the Rohm & Haas Co.

DATE: Comments, identified by the document control number [PP 3F2901/384], must be received on or before March 7, 1986.

ADDRESS: By mail, submit written comments to: Information Services Section Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Information submitted as a comment concerning this document 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 will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Room 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of July 13, 1983 (48 FR 32078), that announced that Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, submitted pesticide petition 3F2901, proposing the establishment of tolerances for residues of the hybridizing agent fenridazone-potassium in or on the raw agricultural commodities cattle fat, meat, and meat byproducts (mbyp) at .02 part per million (ppm) and kidney at .25 ppm; goat fat, meat, and mbyp at .02 ppm and kidney at .25 ppm; hog fat, meat, and mbyp at .02 and kidney at .25 ppm; horse fat, meat, and mbyp at .02 ppm and kidney at .25 ppm; sheep fat, meat, and mbyp at .02 ppm and kidney at .25 ppm; wheat grain at 20.0 ppm and wheat straw at 10.0 ppm; and poultry fat, meat, and mbyp at .02 ppm and kidney at .25 ppm.

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

Rohm and Haas has amended the petition by increasing the tolerance levels for the commodities proposed and adding tolerances for eggs and milk. Because of the potential increased exposure to humans, the tolerances are being reproposed for a 30-day comment period.

Commodities	Proposed tolerances (ppm)	
	Previous	New levels
Cattle (fat, meat, mbyp)	0.02	0.05
(kidney)	0.25	
(kidney and liver)		1.0
Eggs		0.05
Goat (fat, meat, mbyp)	0.02	0.05
(kidney)	0.25	
(kidney and liver)		1.0
Hog (fat, meat, mbyp)	0.02	0.05
(kidney)	0.25	
(kidney and liver)		1.0
Horse (fat, meat, mbyp)	0.02	0.05
(kidney)	0.25	
(kidney and liver)		1.0
Milk		0.05
Poultry (fat, meat, mbyp)	0.02	0.30
(kidney)	0.25	
Sheep (fat, meat, mbyp)	0.02	0.05
(kidney)	0.25	
(kidney and liver)		1.0
Wheat (grain)	20.0	40.0
(straw)	10.0	25.0

The pesticide is considered useful for the purposes for which the tolerances are sought. The data submitted in the petition and other relevant material have been evaluated. The data considered include acute studies; a 90-day feeding study in mice, with a no-observed-effect level (NOEL) of 500 ppm (75 mg/kg/day); a 90-day feeding study in rats, with a NOEL of 500 ppm (25 mg/kg/day); a second 98-day feeding study in mice, with a NOEL of 2,000 ppm (300 mg/kg/day); a sister chromatid exchange assay in mouse lymphoma cells which were weakly mutagenic at 1,250 ug/ml; a mouse mutation assay, with no increase in mutant frequency without activation; with activition, frequency increased at dose levels between 2,500 to 4,000 nl/ml and cell toxicity was observed at dose levels between 3,500 to 4,000 nl/ml; a teratology study in rats at dose levels of 0, 150, 500, 1,500 mg/kg/day with a NOEL of 10,000 ppm (500 mg/kg/day), a fetoxicity NOEL of 30,000 ppm (1,500 mg/kg/day), and a teratogenic NOEL of 30,000 ppm (1,500 mg/kg/day); a teratology study in rabbits, at dosage rates of 0, 100, 300, 1,000 mg/kg/day with a teratogenic NOEL of 1,000 mg/kg/day, a fetoxicity NOEL of 100 mg/kg/day, and a maternal toxicity NOEL of (100 mg/kg/day); a 24-month chronic/oncogenicity study in rats at dose levels of 5, 15, 45, 135, 405, mg/kg/day with a NOEL of 300 ppm (15 mg/kg/day) for systemic effects (decreased survival) and no oncogenic effects observed under the conditions of the study; an 18-month chronic/oncogenicity study in

mice at dose levels of 0, 18, 75, 75, 300, mg/kg/day with a NOEL of 2,000 ppm (300 mg/kg/day) for systemic effects (decreased survival), and no oncogenic effects observed under the conditions of the study; a 3-generation reproduction study in rats at dose levels of 0, 5, 45, 405, mg/kg/day with a NOEL of 100 ppm (5 mg/kg/day) for systemic effects (decreased body weights, adults) and a NOEL of 45 mg/kg/day for reproductive effects (decreased pup survival); and a one year dog study at dose levels of 0, 16.25, 62.5, 250 mg/kg/day with a NOEL of 62.5 mg/kg for systemic effects.

The accepted daily intake (ADI) based on the 24-month rat feeding study (NOEL of 15.0 mg/kg/day) and using a 100-fold safety factor is calculated to be 0.15 mg/kg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 9.00 mg/day. The theoretical maximum residue contribution (TMRC) for existing tolerances is calculated to be 6.2632 mg/day. The current action will use 69.58 percent of the ADI.

Fenridazone-potassium contains a nitrosoamine contaminant. The Agency has performed a risk assessment for the nitrosoamine contaminant in the product and concluded that the nitrosoamine contaminant is not in excess of acceptable levels established by the Agency. Data submitted to the Agency show that the level of nitrosoamine contaminant is below the level of concern.

The nature of the residue of fenridazone-potassium in plants and animals is adequately understood. An adequate analytical method, liquid chromatography with an ultra-violet detector, is available for enforcement purposes.

Based on the data and information considered, the Agency concludes that the proposed tolerances would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide, Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this proposed rule be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3F2901/P384]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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, 5 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: January 21, 1986.

Douglas D. Campt,

Director, Registration Division.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

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

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

2. Section 180.423 is added to read as follows:

§180.423 Potassium salt of 1-(4-chlorophyenyl)-1,4-dihydro-6-methyl-4-oxo-pyridazine-3-carboxylic acid; tolerances for residues.

Tolerances are established for residues of the hybridizing agent potassium salt of 1-(4-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylic acid, in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.05
Cattle, kidney and liver	1.0
Cattle, meat	0.05
Cattle, mbyp	0.05
Eggs	0.05
Goat, fat	0.05
Goat, kidney and liver	1.0
Goat, meat	0.05
Goat, mbyp	0.05
Hog, fat	0.05
Hog, kidney and liver	1.0
Hog, meat	0.05
Hog, mbyp	0.05
Horse, fat	0.05
Horse, kidney and liver	1.0
Horse, meat	0.05
Horse, mbyp	0.05
Milk	0.05
Poultry, fat	0.30
Poultry, meat	0.30
Poultry, mbyp	0.30
Sheep, fat	0.05
Sheep, kidney and liver	1.0
Sheep, meat	0.05
Sheep, mbyp	0.05
Wheat, grain	40.0
Wheat, straw	25.0

[FR Doc. 86-2044 Filed 2-4-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-26; RM-5113]

FM Broadcast Station in Fresno, CA; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channel 257A to Fresno, California, as that community's eighth local commercial FM broadcast service, in response to a petition filed by New Life Enterprises, Inc.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 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.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Fresno, California); MM Docket No. 86-26 RM-5113.

Adopted: January 21, 1986.

Released: January 31, 1986.

By the Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule-making filed by New Life Enterprises, Inc. ("petitioner"), licensee of daytime only AM Station KIRV, Fresno, seeking the allotment of Channel 257A to that community as its eighth commercial FM service. Petitioner advises that it will apply for the channel, if allotted.

2. A staff engineering study reveals that Channel 257A can be allotted to Fresno consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

§ 73.202 [Amended]

3. Since the proposal could provide an additional voice to Fresno for the presentation of diverse viewpoints and programming, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules with respect to that community, as follows:

City	Channel No.	
	Present	Proposed
Fresno, CA	229, 239, 250, 266, 270, 274, and 290.	229, 239, 250, 257A, 266, 270, 274, and 290.

4. The Commission's authority to institute rulemaking 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 March 24, 1986, and reply comments on or before April 8, 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: James K. Edmundson, Esq., Kenkel, Barnard & Edmundson, P.C., 1220-19th Street, NW., Suite 202, Washington, DC 20036, (Counsel to Petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking 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 Rulemaking 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 Nancy V. Joyner, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rulemaking 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 rulemaking, 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 Sections 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 Rulemaking* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rulemaking* 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 rulemaking 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 Rulemaking* 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 Section 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. 86-2503 Filed 2-4-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-23; RM-5005]

FM Broadcast Station in Nicholasville, KY; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot FM Channel 298A to Nicholasville, Kentucky, as that

community's second FM allotment in response to a petition filed by Kentucky Basic Communications.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73:

Radio.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Nicholasville, Kentucky); MM Docket No. 86–23, RM–5005.

Adopted: January 17, 1986.
Released: January 30, 1986.

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for Rule Making filed by Kentucky Basic Communications ("petitioner") requesting the allotment of FM Channel 298A to Nicholasville, Kentucky, as that community's second FM allotment. Petitioner has expressed an intention to apply for the channel, if assigned. The channel can be allotted in compliance with the Commission's minimum distance separation requirements.

§ 73.202 [Amended]

2. In view of the fact that the proposed allotment could provide a second FM service to Nicholasville, 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
Nicholasville, KY	273A	273A, 298A.

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 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: Ms. Nancy L. Wolf, Dow, Lohnes & Albertson, 1255—23rd St. N.W., Washington, D.C. 20037 (Counsel for 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 Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 74.606(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 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(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 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 Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposals(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 86-2504 Filed 2-4-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-27; RM-5157]

FM Broadcast Station in Topsail Beach, NC; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 267A to Topsail Beach, North Carolina, as the community's first local FM service, at the request of Jeffrey D. Southmayd.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), table of allotments, FM Broadcast Stations. (Topsail Beach, North Carolina); MM Docket No. 86-27, RM-5157.

Adopted: January 17, 1986.

Released: January 31, 1986.

By the Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making submitted by Jeffrey D. Southmayd ("petitioner") requesting the allocation of Channel 298A to Topsail Beach, North Carolina, as the community's first local FM service.[1] Petitioner states that he will apply for the channel, if allocated. Channel 267A can be allocated in compliance with the Commission's minimum distance separation and other technical requirements, if the transmitter is restricted to an area at least 8.4 kms (5.2 miles) southwest to avoid short-spacing to Station WRAL, Raleigh, North Carolina, and to the construction permit authorizing full Class C facilities for Station WAZZ, New Bern, North Carolina.

§ 73.202 [Amended]

2. We believe the public interest would be served by soliciting comments on the proposed allocation of a first FM channel at Topsail Beach. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Topsail Beach, NC		267A

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 March 24, 1986, and reply comments on or before April 8, 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: Jeffrey D. Southmayd, Esq., Southmayd Powell Taylor & Bowen, 1764 Church Street NW., Washington, D.C. 20036 (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), and 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 Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members 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 §§ 061, 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.

[1] Petitioner requested the allocation of Channel 298A to Topsail Beach. However, to avoid a conflict with a requested adjacent channel upgrade for Station WJYW, Channel 296A at Southport, North Carolina, the staff has found that Channel 267A can be proposed for Topsail Beach.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-2505 Filed 2-4-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-25; RM-4971]

FM Broadcast Station in Chester, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channel 287C2 to Chester, California, as that community's second local FM service, in response to a petition filed by Eric R. Hilding.

DATE: Comments must be file on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 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.

Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Chester, California); MM Docket No. 86-25; RM-4971.

Adopted: January 21, 1986.
Released: January 31, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Eric R. Hilding ("petitioner") requesting the allotment of Channel 287C2 to Chester, California, as that community's second local FM service. Petitioner failed to specifically state that he will apply for the channel, if allotted. He should do so in his comments to this *Notice*.

2. A staff engineering study reveals that Channel 287C2 can be alloted to Chester, California, consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. In view of the fact that the proposed allotment could provide a second local FM service to Chester for the expression of diverse viewpoints and programming, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules with repect to that community, as follows:

City	Channel No.	
	Present	Proposed
Chester, CA	255	255, 287C2

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 require by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 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: Eric Hilding, P.O. Box 1300, Freedom, California 95019-1300.

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 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 peititioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing 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 filing 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 of 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. 2502 Filed 2-4-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-24]

FM Broadcast Station in Ardmore, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of FM Channel 243A for Channel 221A at Ardmore, Oklahoma, and the modification of Station KEBQ(FM)'s license to specify operation on the new channel, at the request of Waters Broadcasting Company, Inc.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 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

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.

Proposed Rule Making

In the matter of Amendment of § 73.202(b), table of allotments, FM broadcast stations. (Ardmore, Oklahoma); MM Docket No. 86-24, RM-5164.

Adopted: January 17, 1986.
Released: January 30, 1986.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Waters Broadcasting Company, Inc., licensee of Station KEBQ(FM), Ardmore, Oklahoma ("petitioner"). Petitioner seeks the substitution of Channel 243A for its present Channel 221A at Ardmore, and the modification of its license to specify operation on the new channel. Channel 243A can be allocated in compliance with the Commission's minimum distance separation requirements.

2. Petitioner states that Station KEBQ(FM) is currently operating under Special Temporary Authority ("STA") at less than full Class A facilities due to the station's loss of its transmitter site. Further, it states that it has been unable to locate a new, fully spaced site which would permit it to resume full power operations due to the proximity of two airports in the area where a transmitter for Channel 221A could be located. Petitioner states that it has available a fully spaced site for Channel 243A which would permit resumption of its full power operation.

3. Oktex, Inc. ("Oktex"), licensee of Class C. Station KKAJ(FM) at Ardmore, filed comments in opposition to the petition. It states that the petitioner seeks the allocation of "yet another FM channel to Ardmore which would be detrimental to KKAJ(FM)." Oktex also states that the substitution of channels is not necessary since it has located at least one site for Channel 221A which is available and poses no FAA problems. Therefore, it questions the "good faith" of petitioner in seeking the substitution.

4. We are not proposing the allocation of a third FM channel at Ardmore but only the substitution of one Class A for another. Therefore, as stated in paragraph 5, *infra,* no additional Class A channel need be available for competing interests. However, in light of Oktex's allegation that alternate sites are available for use by Station KEBQ(FM) on its present channel, we request that petitioner specifically address this site availability issue in its comments.

5. In view of the above, we propose to substitute Channel 243A for Channel 221A at Ardmore, Oklahoma, and the modification of Station KEBQ (FM)'s license. The procedures outlines in *Modification of FM and TV Licenses,* 98

F.C.C. 2d 916 (1984), and § 1.420(g) of the Commission's Rules, do not apply in this case since no upgrade in facilities is contemplated. Accordingly, comments are invited on the proposal to amend the FM Table of Allotments, § 73. 202(b) of the Commission's Rules, as concerns the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Ardmore, OK	221A, 239	239 243A

6. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 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: Timonthy K. Brady, Esq., 116 Weisgarber Road, P.O. Box 10566, Knoxville, Tennessee 37939–0566 (Counsel to petitioner)

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 FM 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.*

9. For further information concerning this proceeding, contact Leslie K. Shapiro, 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 §§ 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 comment 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 the headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86–2506 Filed 2–4–86; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–22; RM–5151]

FM Broadcast Station in Pocatalico, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Mountaineer Communications Corporation, proposes the allotment of Channel 233A to Pocatalico, West Virginia, as that community's first FM service.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 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.

Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Pocatalico, West Virginia); MM Docket No. 86–22, RM–5151.

Adopted: January 17, 1986.
Released: January 30, 1986.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Mountaineer Communications Corporation ("petitioner"), seeking the allotment of FM Channel 233A to Pocatalico, West Virginia, as that community's first FM service. Petitioner has stated its intention to apply for the channel, if allotted. The channel can be allotted in compliance with the Commission's minimum distance separation requirements.

2. In view of the fact that the proposed allotment could provide a first FM channel to Pocatalico, the Committee believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the folowing community:

City	Channel No.	
	Present	Proposed
Pocatalico, WV		233A

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 alloted.

4. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 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: A. Wray Fitch III, Gammon & Grange, 1925 K Street NW., Suite 300, Washington, DC 20006 (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 §§ 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.

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* contracts 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 preceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in §§ 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 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. 86–2507 Filed 2–4–86; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 74

[MM Docket No. 86-12; FCC 86-48]

Television Broadcasting; Lower Power Auxiliary Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to authorize broadcast low power auxiliary station (LPAS) operation, particularly wireless microphone operation, in the low VHF television bands (54–72 and 76–88 MHz) and UHF television band (470–806 MHz). Such operation is currently limited to the high VHF television band (174–216 HMz), to the aural STL band (947–952 MHz), and to some of the frequencies allocated for remote pickup operations. This proposed frequency extension will relieve the congestion that currently exists in the bands authorized for LPAS operation. In addition, the proposed technical changes will afford LPAS users (particularly wireless microphone users) maximum flexibility with practically no interference to television stations.

DATES: Comments are due on or before March 3, 1986, and reply comments on or before March 18, 1986.

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

FOR FURTHER INFORMATION CONTACT: John Wong, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Television broadcasting.

Notice of Proposed Rulemaking

In the Matter of review of Subpart H, Part 74, of the Commission's rules, Low Power Auxiliary Stations, MM Docket No. 86–12.

Adopted: January 16, 1986.
Released: January 24, 1986.

By the Commission:

Introduction/Background

1. By this *Notice of Proposed Rule Making (Notice)*, the Commission proposes to amend its Rules to extend the available spectrum allocated for broadcast low power auxiliary station (LPAS) use.[1] In addition, we propose to relax certain restrictions on LPAS use to permit grater flexibility for licensees. The goal of this proceeding is to alleviate the frequency congestion currently experienced in many major cities without increasing the potential for interference and to deregulate technical requirements that may not be necessary to prevent interference.

2. The predominant use of LPAS is for wireless microphones but it is also used to transmit signals necessary for program production such as cuing and control communications. LPAS transmitters are currently authorized to use the 174–216 MHz band (VHF–TV channels 7–13), some of the frequencies allocated for broadcast remote pickup operations, and the aural STL frequencies (944–952 MHz). The 174–216 MHz band is available for use by the motion picture, video production, and cable TV industries, as well as broadcast stations and networks.[2] The large number of users has created a shortage of available spectrum in many major cities. This, it is appropriate to investigate new avenues to relieve the current frequency congestion.

3. The following areas will be discussed in this *Notice:*

Authorizing new spectrm for LPAS use
Technical considerations
Miscellaneous

New Spectrum

4. Within the television broadcast bands, LPAS are currently allowed on a secondary non-interfering basis in the frequencies allocated to the high VHF–TV band channels 7–13. Since their entry into this band, in 1977, interference tc television stations has not increased as best we can determine. The Commission is not aware of any complaints regarding LPAS use of these frequencies. The absence of interference is largely attributable to the fact that LPAS receivers are much more susceptible to interference from broadcast TV signals than *vice versa*. Thus, LPAS users must select frequencies removed from operating broadcast TV channel and must also maintain a certain minimum operating distance from existing co-channel, TV stations. In view of the above, we propose to allow all LPAS licensees to also use the low VHF–TV bands (channels 2–6, 54–72, and 76–88 MHz) and the UHF–TV band (channels 14–36 and 38–69, 470–608, and 614–806 MHz) on a secondary non-interfering basis.[3] Comments are requested on this proposal.

Technical Considerations

5. The Commission's Rules Limit LPAS transmitters operating in the high VHF–TV band to 50 mW. We are proposing to retain this power level in the low VHF–TV band because of the similar technical characteristics of these frequencies. However, because of the technical differences and increased difficulties with propagation in the UHF–TV frequencies, we propose to allow UHF–LPAS transmitters to operate at power levels of 250 mW. Comments are requested on this proposal. In addition, tc permit LPAS users the flexibility to provide a high fidelity service, we propose to allow 25 kHz channels in the new specturm and propose to allow LPAS licensees to "stack" up to 8 adjacent channels (200 kHz) in all the television bands available to LPAS users. Finally, we are requsting comments on any other technical concerns that may arise as a result of the proposed actions.

Miscellaneous

6. Currently, LPAS licensees are precluded from full use of the high VHF–TV spectrum because of the existence of guards bands and "taboo" frequencies imbedded within every TV channel. The purpose of these restrictions is to minimize the probability of interference to adjacent channel operations. However, we now seek comment on whether these restrictions are necessary, considering that LPAS operations, for a variety of reasons, have a small probability of causing interference. Because LPAS transmitters are normally operated away from consumer TV receivers (in studios, auditoriums, and sports arenas) and operate with low power levels, the probability of causing interference to the TV service is low. This fact, coupled with the requirement that these devices will only be authorized on a secondary non-interfering basis, leads us to believe that interference to adjacent channel operations does not occur in practice. While we believe that the current restrictions to limit adjacent channel interference are unnecessary, we do believe that the current distance preclusion criteria for co-channel operations are appropriate. This requirement, which prohibits LPAS transmitters from operating within the Grade B contour of a co-channel TV station, is necessary because the

[1] A petition for rulemaking was filed on June 24, 1985 by Cetec Corporation (Cetec), requesting amendment of Part 74 of the Commission's Rules to include the UHF–TV channels for LPAS use. Because this *Notice* also proposes such a spectrum extension, the letter of petition is hereby returned.

[2] Wireless microphones for personal and business use are authorized under Part 15 and Part 90 of the Commisison's Rules on other frequencies.

[3] UHF–TV channel 37 (608–614 MHz) is reserved exclusively for the radio astronomy service. Additionally, UHF–TV channel 17 (488–494 MHz) is allocated for non-broadcast use in Hawaii.

probability of interference is much higher for co-channel operations than for adjacent channel operations. Finally, we are proposing other non-substantive changes in the Rules as shown in the attached appendix. Comments are requested on these and all proposals of this *Notice*.

7. Regulatory Flexibility Act Initial Analysis.

I. *Reason for action:*

This action is taken to consider avenues for alleviating the congestion in the frequencies allocated for broadcast low power auxiliary stations. In addition, the proposed action would allow greater flexibility for the users of these devices.

II. *The objective:*

The frequencies which are currently authorized for low power auxiliary use are congested, particularly at times when operators simultaneously must use such frequencies. The purpose of this proposal, therefore, is to ease this congestion by providing additional spectrum and flexibility to low power auxiliary station licensees without increasing interference.

III. *Legal basis:*

Sections 4 and 303 of the Communications Act of 1934, as amended.

IV *Description, potential impact, and number of small entities affected:*

No adverse impact to any small entities is expected as a result of the rule amendments contained in this proposed action. This proposal should, however, benefit low power auxiliary licensees through the increase in frequencies available for their use, and the relaxation of the current congestion in the low power auxiliary frequencies.

V. *Recording, record keeping, and other compliance requirements:*

None.

VI. *Federal rules which overlap, duplicate, or conflict with this rule:*

None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective:*

None.

Paperwork Reduction Act Statement

8. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements except for a small adjustment due to the additional applications expected to be received. This proposal will not increase or decrease burden hours imposed on the public.

Ex Parte Considerations

9. For purposes of this nonrestricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral presentation addressing matters not fully covered in any previously filed written comments must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

10. Pursuant to applicable procedures set forth in § 1,415 and § 1,419 of the Commission's Rules, interested parties may file comments on or before March 3, 1986, and reply comments on or before March 18, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW. 20554.

Ordering Clauses

11. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals advanced herein. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall cause a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

12. Accordingly, it is proposed, pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, that Part 74 of the Commission's Rules is amended as set forth in the attached appendix.

13. For further information regarding this proceeding, contact John Wong, Mass Media Bureau, (202) 632–9660.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 74—[AMENDED]

Title 47, Part 74 of the Code of Federal Regulations would be amended as follows:

1. The authority citations for Part 74 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 74.802 would be amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 74.802 Frequency assignment.

(a) The following frequency bands may be assigned for use by low power auxiliary stations:

26.100–26.480 MHz
54.000–72.000 MHz
76.000–88.000 MHz
161.625–161.775 MHz (except in Puerto Rico or the Virgin Islands)
174.000–216.000 MHz
450.000–451.000 MHz
455.000–456.000 MHz
470.000–488.000 MHz
488.000–494.000 MHz (except Hawaii)
494.000–608.000 MHz

614.000–806.000 MHz
944.000–952.000 MHz

Stations may operate on any frequency within the bands specified above except as noted in paragraph (b).

(b) Operations in the bands allocated for TV broadcasting, listed below, are limited to locations removed from existing co-channel TV broadcast stations by the following distances unless otherwise authorized by the FCC. (See § 73.609 for zone definitions.)

(1) 54.000–72.000 MHz and 76.000–88.000 MHz:
Zone I—105 km (80 miles)
Zone II and III—129 km (80 miles)
(2) 174.000–216.000 MHz
Zone I—97 km (60 miles)
Zone II and III.129 km (80 miles)
(3) 480.000–608.000 MHz and 614.000–806.000 MHz
All zones—113 km (70 miles)

(c) Specific frequency operation is required within the bands allocated for TV broadcasting.

(1) The frequency selection must be offset from the upper or lower band limits by 25 kHz or an integral multiple thereof.

(2) One or more adjacent 25 kHz segments within the assignable frequencies may be combined to form a channel with a maximum bandwidth of 200 kHz.

* * * * *

3. 47 CFR 74.803 would be amended by revising paragraph (b) to read as follows:

§ 74.803 Frequency selection to avoid interference.

* * * * *

(b) The selection of frequencies in the bands allocated for TV broadcasting for use in any area shall be guided by the need to avoid interference to TV broadcast reception. In these bands, low power auxiliary station usage is secondary to TV broadcasting and must not cause harmful interference. If such interference occurs, low power auxiliary station operation must immediately cease and may not be resumed until the interference problem has been resolved.

4. 47 CFR 73.832 would be amended by revising paragraphs (d) and (f) to read as follows:

§ 74.832 Licensing requirements and procedures.

* * * * *

(d) Cable television operations, motion picture and television program producers may be authorized to operate low power auxiliary stations in the bands allocated for TV broadcasting.

* * * * *

(f) Applications for the use of the bands allocated for TV broadcasting must specify the usual area of operation within which the low power auxiliary station will be used. This area of operation may, for example, be specified as the metropolitan area in which the broadcast licensee serves, or the usual area within which motion picture and television producers are operating. Because low power auxiliary stations operating in these bands will only be permitted in areas removed from existing co-channel TV broadcast stations, the licensee has full responsibility to ensure operation of their stations does not occur at distances less than those specified in § 74.802(b).

5. 47 CFR 74.861 would be amended by revising the introduction of paragraphs (d) and (e), and paragraphs (e)(1) and (e)(3) to read as follows:

§ 74.861 Technical requirements.

* * * * *

(d) For low power auxiliary stations operating in the bands allocated for TV broadcasting, the following technical requirements are imposed:

* * * * *

(e) For low power auxiliary stations operating in the bands allocated for TV broadcasting, the following technical requirements apply:

(1) The power of the measured unmodulated carrier power at the output of the transmitter power amplifier (antenna input power) may not exceed the following:

(i) 54–72, 76–88, and 174–216 MHz bands—50 mW.

(ii) 470–608 and 614–806 MHz bands—250 mW.

* * * * *

(3) The operating bandwidth shall not exceed 200 kHz.

* * * * *

[FR Doc. 86–2280 Filed 2–4–86; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 81

[PR Docket No. 86–2; RM–5071; FCC 86–10]

Subsidiary Communications in the Maritime Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to permit on a subsidiary basis the transmission of messages between public coast stations and land vehicles. This action was initiated by a petition for rulemaking filed by AMCOM, Inc. The effect of the proposed rules would be to expand the scope of communications on certain maritime frequencies.

DATES: Comments must be received on or before March 5, 1986, reply comments must be received on or before March 20, 1986.

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

FOR FURTHER INFORMATION CONTACT: Robert DeYoung, Private radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION:.

List of Subjects in 47 CFR Part 87

Maritime Communications equipment, Public Coast stations, Radio.

The collection of information requirements contained in the proposed rule have been submitted to the Office of Management and Budget for review pursuant to Section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35). Comments concerning the proposed requirements shall be directed to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Desk Officer for Federal Communications Commission, Washington, DC

Proposed Rule Making

In the matter of amendment of Part 81 of the rules to permit public coast stations to serve vehicles on land; PR Docket No. PR 86–2, RM–5071.

Adopted: January 3, 1986.
Released: January 27, 1986.

By the Commission.

1. This Notice proposes to amend Part 81 of the rules to permit public coast stations operating on VHF frequencies to serve vehicles on land on a subsidiary basis. The proposal is in response to a request by AMCOM, Inc. (AMCOM) dated April 12, 1984.[1]

Background

2. The Commission's rules currently restrict the use of maritime VHF public correspondence channels to communications between local area (VHF) public coast stations and ships and boats. Service to vehicles on land is prohibited.

3. Previously, § 22.509(b) of the Commission's rules prohibited licensees in the Domestic Public Land Mobile Radio Service (DPLMRS) from serving ships in areas served by VHF public coast stations. In the *Report and Order* in CC Docket No. 80–57 [2] which revised

[1] Public Notice, Report No. 1524 dated July 3, 1985.
[2] 95 FCC 2d 769 (1983).

the Public Mobile Radio Service rules (Part 22), § 22.509(b) was deleted. AMCOM and other public coast station licensees opposed the elimination of this rule. They argued however that if the rule were deleted, equity required that public coast stations be permitted to serve vehicles on land. In resolving CC Docket No. 80–57 we indicated that a separate proceeding would be initiated to consider whether to permit VHF public coast stations to serve vehicles on land on a subsidiary basis.[3]

Discussion

4. In many areas of the country maritime public correspondence traffic is seasonal in nature. Furthermore the heaviest use of VHF public coast stations by recreational boaters occurs on weekends and evenings while traffic in the land mobile services tends to be concentrated during normal business hours on weekdays. The offering of subsidiary services may improve the financial viability of public coast stations and lead to improved maritime services such as longer hours of service, expanded service areas and more public coast stations.

5. Under section 303(g) of the Communications Act of 1934, as amended, the Commission is tasked to "(s)tudy new uses for radio . . . and generally encourage the larger and more effective use of radio in the public interest." Our preliminary analysis suggests that permitting VHF public coast stations [4] to serve mobile stations on land on an ancillary or subsidiary basis would be in the public interest by encouraging an expansion in the services provided by public coast stations and a more effective use of the frequency spectrum.[5]

6. Accordingly, we are proposing to permit VHF public coast stations to provide subsidiary public correspondence services to vehicles on land provided that:

(a) The subsidiary service is provided on a secondary basis to maritime radio services;

(b) The costs or charges of maritime subscribers who do not wish to use the other communications services will not be increased because of the subsidiary service offering;

(c) The quality, growth or availability of the licensee's maritime service offerings are not materially diminished by the subsidiary service offering;

(d) The subsidiary service does not violate or is not otherwise inconsistent with other Commission regulations or policies; and

(e) The Commission is notified prior to the commencement of such subsidiary service.

Further, it may be necessary to exclude subsidiary services from the channel occupancy data provided by public coast stations in applications for additional VHF public correspondence channels. We invite comments on whether such action is needed to protect the availability and growth of maritime services.

7. Because public coast stations utilize frequencies allocated internationally to the Maritime Service, we are concerned that any additional subsidiary services not deteriorate or diminish maritime communications or any safety services. This concern is somewhat ameliorated by the fact that the proposed subsidiary services would be authorized only on public correspondence channels and direct intervehicle communications would be prohibited. No use of maritime safety or working channels would be authorized. The possibility, however, that land vehicles may interfere with maritime services by communicating among themselves on other maritime frequencies remains a serious concern. The potential for abuse is particularly great if land vehicles are equipped with frequency synthesized maritime transceivers. Accordingly, we invite comments on how this concern can be allayed. For example, should the land vehicle equipment also be limited physically to transmissions only on public correspondence channels?

8. Further, to reduce paperwork burdens on the public as well as the Commission and to simplify enforcement efforts, for licensing purposes we would include the units in land vehicles under the license of the public coast station providing service. In other words, we would authorize individual coast stations to provide subsidiary services *on a system basis.* The system would offer service to subscriber vehicles. If we adopt this approach, it will be necessary to specify an identification method for the vehicles. Use of the public coast station call sign plus a unit identification appears to be sufficient. We invite comment on these issues.

9. Accordingly, we are proposing to amend Part 81 of the rules to permit VHF public coast stations to provide subsidiary communications services to vehicles on land as set forth in the attached Appendix.

10. The proposed amendment to the Commission's rules, as set forth in the attached Appendix, are issued under the authority contained in sections 4(i) and 303 (g) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (g) and (r).

11. Under procedures set out in § 1.415 of the rules and regulations, 47 CFR 1.415, interested persons may file comments on or before March 5, 1986, reply comments must be received on or before March 20, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in Report and Order.

12. In accordance with the provisions of § 1.419 of the rules and regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their comments are given the same consideration, regardless of the number of copies submitted. All documents will be avilable for public inspection during the regular business hours in the Commission's Public Reference Room at its headquarters in Washington, DC.

13. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the

[3] See *Order on Reconsideration*, released July 31, 1985, FCC 85–367, 50 FR 32196, August 9, 1985, 101 FCC 2d ____, at para. 39.

[4] For the purposes of this proceeding VHF public coast stations includes stations operating in the 216–220 MHz band as part of an automated maritime telecommunications system.

[5] This view is consistent with other recent Commission actions. For example, radio and TV broadcast licensees are now permitted to use their subcarriers and vertical blanking interval (VBI) for a variety of ancillary or secondary services. See, *First Report and Order*, BC Docket No. 82–536, 48 FR 28445, published June 22, 1983; *Second Report and Order*, Docket No. 21323, 49 FR 18100, published April 27, 1984; and *Report and Order*, BC Docket No. 81–741, 48 FR 27054, published June 13, 1983.

Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusions in the public file. Any person who make an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discribed above must state on its face that the secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR § 1.1231.

14. The proposal contained herein has been analyzed with resepct to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by that Act.

Regulatory Flexibility Initial Analysis

15. *Reasons for Action.* DPLMRS stations are currently permitted to provide service to mobile stations on board ships. This notice responds to requests from VHF public coast station licensees for parallel authority to serve vehicles on land.

16. *The Objective.* The purpose of this proposal is to permit VHF public coast stations to serve land vehicles on a subsidary basis. This is expected to improve spectrum utilization without adversely affecting maritime radio services and thus provide greater service to the public.

17. *Legal basis.* This action is consistent with section 303(g) of the Communications Act of 1934, as amended, 47 U.S.C. 303(g), which charges the Commission to study new uses of radio and encourage larger and more effective use of radio in the public interest.

18. *Description of potential impact and number of small entities affected.* The proposed rules would apply to approximately 300 VHF public coast stations. The availability of subsidiary service authority could improve the financial viability of some public coast stations and lead to expanded service offerings. Minimal impact on DPLMRS stations is expected.

19. *Recording, record keeping and other compliance requirements.* Stations planning to provide subsidiary services would be required to notify the Commission in writing of the general and technical nature of the proposed service.

20. *Federal rules which overlap, duplicate or conflict with this rule.* None.

21. *Any significant alternative minimizing impact on small entities and consistent with stated objective.* None.

22. It is ordered, That a copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

23. Regarding questions on matters covered in this document, contact Robert DeYoung, (202) 632-7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 81 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The authority citation for Part 81 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105 as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 81.176 is amended by adding a new paragraph (c) to read as follows:

§ 81.176 Service of public coast stations.

* * * * *

(c) A VHF public coast station may provide subsidiary service to land mobile vehicles using public correspondence channels and equipment licensed to it provided that:

(1) The subsidiary service is provided on a secondary basis to the maritime radio services;

(2) The costs or charges of subscribers who do not wish to use the other communication service will not be increased because of the subsidiary service offering;

(3) The quality, growth or availability of the licensee's maritime service offerings are not materially diminished by the subsidiary service offering;

(4) The provision of the subsidiary service does not violate and is not otherwise inconsistent with other Commission rules, regulations, and policies; and

(5) The Commission is notified by letter prior to the commencement of offering subsidiary communication service. Such notification shall include a general description of the service and an explanation of the technical details.

[FR Doc. 86-2281 Filed 2-4-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

Stone Crab Fishery; Public Hearing

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold public hearings to review amendments to the stone crab fishery management plan which will affect the holding of crabs on board vessels, harvest of females with eggs, data collection systems, and a hardship exemption for removal of traps.

DATES: Written comments will be accepted through March 6, 1986. The hearings will be convened at 7:00 p.m., and will adjourn at approximately 10:00 p.m., on February 18, 19, and 20, 1986.

ADDRESSES: Written comments should be sent to Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

The hearings will be held at the following locations:

1. February 18, 1986—Disabled American Veterans Hall, 7280 Overseas Highway, Marathon, Florida.
2. February 19, 1986—County Meeting Room, 3301 Tamiami Trail East, Naples, Florida.
3. February 20, 1986—St. Benedict's Church Annex, 455 South Suncoast Boulevard, Crystal River, Florida.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, 813-228-2815.

Dated: January 30, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-2482 Filed 2-4-86; 8:45 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 51, No. 24
Wednesday, February 5, 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

January 31, 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, D.C. 20250 (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 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.

Extension

- Agricultural Marketing Service.

Fresh Peaches Grown in Designated Counties in Washington
On occasion; Once every three years
Farms; Businesses or other for-profit; 334 responses; 52 hours; not applicable under 3504(h)
William J. Doyle (202) 447-5975

- Agricultural Stabilization and Conservation Service

7 CFR Parts 723.62, 724.62, 725.69 and 726.65
MQ-25
On occasion
Farms; 1,000 responses; 500 hours; not applicable under 3504(h)
Donald M. Blythe (202) 447-2715

- Agricultural Stabilization and Conservation Service

7 CFR 1421 Standards for Approval of Warehouses
CCC-25 and 26 and related forms
Recordkeeping; On occasion
Businesses or other for-profit; Small businesses or organizations; 19,369 responses; 90,259 hours; not applicable under 3504(h)
Lynda Flament (202) 447-7912

- Animal Plant and Health Inspection Service

National Poultry Improvement Plan (NPIP)
VS Forms 9-2, 9-3, 9-4, 9-5, 9-6, 9-7, 10-3
Recordkeeping; On occasion, Annually
State or local governments; Businesses or other for-profit; Small businesses or organizations; 27,000 responses; 3,276 hours; not applicable under 3504(h)
Irvin L. Peterson (301) 436-5140

- Animal Plant and Health Inspection Service

Proceeds from Animals Sold for Slaughter
VS Form 1-24
On occasion
Businesses or other for-profit; 2,500 responses; 500 hours; not applicable under 3504(h)
Ralph L. Hosker (301) 436-8715

New

- Agricultural Stabilization and Conservation Service

7 CFR Part 1430, Dairy Products, Dairy Termination Program
ASCS-304, -305, -306, -309, -313, -315 and CCC-312
On occasion, Annually
Farms; 640,000 responses; 120,665 hours; not applicable under 3504(h)
Susan Schneider (202) 447-5171

- Federal Crop Insurance Corporation

General Administrative Regulations—Appeal Procedure 7 CFR Part 400, Subpart J
No approved forms
On occasion
Individuals or households; Farms; 700 responses; 700 hours; not applicable under 3504(h)
Peter F. Cole (202) 447-3325

Jane A. Renoit,
Departmental Clearance Officer.
[FR Doc. 86-2533 Filed 2-4-86; 8:45 am]
BILLING CODE 3410-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament
Date: February 11, 1986
Time: 2:00 PM
Place: State Department Building, Washington, D.C.
Type of Meeting: Closed
Contact Person: Paula R. Adamo, Bureau of Verification and Intelligence, Room 4953, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451, telephone (202) 647-4379
Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.
Agenda: Will include the following discussions and presentations:

February 11
P.M.—Discuss Soviet Noncompliance

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

BEST COPY AVAILABLE

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated July 24, 1985, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended.

Reason for Late Notice: This notice appears in less than 15 days prior to the meeting date because of scheduling requirements relating to the Committee's recommendations.

Joe H. Morton,

Acting Committee Management Officer.

[FR Doc. 86-2655 Filed 2-4-86; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. OEE-2-85]

Werner Scheele et al.; Denial Order Affirmed

In the matter of: Werner Scheele, individually and doing business as CHB Computer Hardware Vertriebs GmbH, a/k/a, CHB GmbH and COMSERV GmbH and COMSERV Computer Leasing GmbH, Respondents.

Pursuant to section 13(d)(2) of the Export Administration Act, and based on the facts adduced in this case, I find that there is reason to believe that the Temporary Denial Order (TDO) is required in the public interest. I therefore accept the recommendation of the Administrative Law Judge that the TDO be affirmed.

If, however, the Commerce Department elects to pursue the renewal of this TDO on or before its February 7, 1986 expiration date, I fully expect that a written record—with more complete documentation and a more substantial evidentiary basis—will be provided at that time.

The Temporary Denial Order is affirmed.

Date: January 22, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-2452 Filed 2-4-86; 8:45 am]

BILLING CODE 3510-DT-M

Office of the Secretary

[Case No. OEE-2-85]

Werner Scheele et al.; Report and Recommendation

In the matter of: Werner Scheele, individually and doing business as CHB Computer Hardware Vertriebs GmbH, a/k/a, CHB GmbH and Comserv Gmbh and Comserv Computer Leasing GmbH, respondents.

On December 30, 1985, an appeal was received from Werner Scheele, on behalf of himself and CHB Computer Hardware Vertriebs GmbH, also known as CHB GmbH, and Comserv Computer Leasing GmbH (hereinafter collectively referred to as Scheele), from the December 9, 1985, issuance, by the Deputy Assistant Secretary for Export Enforcement (Deputy Assistant Secretary), of a temporary denial order against the Respondents (50 FR 50931 (December 31, 1985)). Counsel for the agency filed a reply to Respondent Scheele's Appeal on January 9, 1986, in accordance with the time limits established by § 388.19 of the Export Administration Regulations (15 CFR Parts 368-399 (1985)) (the Regulations)[1] and the notice promulgated by this Office on December 31, 1985.

In his Appeal, Scheele alleges that he and his companies obtained a limited amount of U.S.-origin goods directly from the United States. Scheele also alleges that he obtained authorization from the appropriate authorities in the Federal Republic of Germany (FRG) before exporting U.S.-origin goods he obtained from the United States from the FRG to BEA Computers in Sweden.[2]

In Addition to the above submissions, the record file on which the temporary denial order was issued was also requested. The Deputy Assistant Secretary for Export Administration advised this Office that his office retained no such record or file, and referred the staff member to agency counsel. After some further inquiry, the counsel who has appeared in this appeal orally confirmed that there was no case file or record and that the matters transmitted to this Office of January 9, 1986, constituted the case file per the regulations. Based on the foregoing and the record, it is my finding and conclusion that the record of the action initially taken is inadequate to sustain in this appeal. Even through this is the first appeal from the issuance of a temporary denial order, it is inexcusable that the record of the *ex parte* submission and the basis for the conclusion reached is not available for review here. The oral representation of agency counsel is not a substitute for the record. The **Federal Register** publication alone (50 FR 50931 et seq., Dec. 13, 1985) is also not a sufficient record to sustain the issuance.

In a classified written submission, which may not be discussed because of the security appellation, Agency counsel seeks to show a basis for sustaining the action.

Only because of the seriousness of the assertions in the classified document submitted in this appeal which are unsupported by anything that I would characterize as evidence, do I conclude that the extraordinary process of denial without notice, initial opportunity for hearing or effective ability to appeal even though the Respondent has not been and cannot under security regulations be informed of the basis for the charges, is appropriate for a brief period. I would particularly note that the Agency has not submitted or made any showing by Customs documents or other export records supporting the asserted past or impending violation. Contrary to his assertion, Agency counsel has not submitted something that may be characterized as evidence to support his belief that violations have been committed by Respondent Scheele. Rank, unsupported hearsay is a feeble crutch to support denial action. The law was recently amended to change the temporary denial order process which has, in the past, left Respondents without a meaningful remedy.[3] The Agency should not proceed down the same path again.

Section 388.19 of the Regulations provides that the Department may seek the issuance of a temporary denial order on an *ex parte* basis from the Deputy Assistant Secretary in order to prevent an imminent violation. The Regulations provide that a violation may be imminent either in time or degree of likelihood. While the temporary denial order entered against Scheele states that the violations under investigation were deliberate, covert and likely to occur again, the record does not reflect the basis for that conclusion.

Based upon my review of the record in this proceeding including the submissions by the parties, I find the evidence presented in Scheele's appeal to be deficient, principally because it is not in English. That he does not rebut the Agency's assertions is

[1] Parts 387 and 388 of the Regulations were recently amended and republished. *See* 50 FR 53130 (December 30, 1985).

[2] Scheele attached to his appeal numerous documents which are are in German. Contrary to § 388.7(e) of the Regulations, Scheele did not provide English translations of the documents. Any future submissions of relevant documents in languages other than English should be accompanied by translations.

[3] In a recent compilation, it was reported that 21 pre-July 12 temporary denial orders involving 131 individuals were outstanding. Some of these date back to 1981. No action to have these "*ex parte*" orders adjudicated is pending in the bulk of those cases.

understandable since they have not been disclosed to him! However, I find that the Department has some basis for its belief that violations of the Act and the Regulations have been committed by Scheele and that those violations were deliberate, covert and likely to occur again. Accordingly, I find that the record now marginally supports the finding in the temporary denial order that the order is necessary to prevent an imminent violation of the Act and the Regulations.

In accordance with § 388.19 of the Regulations, I recommend that the Assistant Secretary for Trade Administration issue a written order affirming the issuance of the temporary denial order against Scheele.

Agency counsel's Motion for a Protective Order is *Denied.* Security regulations foreclose this Office from providing the Respondents with the contents of the classified document on which the Agency relies. A Protective Order would be redundant.

Date: January 14, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86-2488 Filed 2-4-86; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of General Permit

On January 29, 1986, a general permit to incidentally take marine mammals during commercial fishing operations in 1986 was issued to: The Embassy of the Republic of Korea, 2320 Massachusetts Avenue NW., Washington, DC 20008, in Category 1: Towed or Dragged Gear, to take 25 northern sea lions, 5 northern fur seals, 5 harbor seals and 5 cetaceans.

All takings are incidental to commercial fishing operations within the U.S. Fishery Conservation Zone, pursuant to 50 CFR 216.24.

This general permit is available for public review in the office of the Assistant Administrator for Fisheries, 3300 Whitehaven Street NW., Washington. DC.

Dated: January 29, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-2523 Filed 2-4-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Oklahoma City Zoological Trust (P141A)

On November 19, 1985, notice was published in the **Federal Register** (50 FR 47574) that an application had been filed by Oklahoma City Zoological Trust, 2101 NE. 50th Street, Oklahoma City, Oklahoma 73111 for a permit to obtain six (6) California sea lions (*Zalophus californianus*) and four (4) Northern elephant seals (*Mirounga angustirostris*) for public display.

Notice is hereby given that on January 29, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: January 29, 1986.

Richard B. Roe,

Director, Office of Fisheries Management; National Marine Fisheries Service.

[FR Doc. 86-2524 Filed 2-4-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Courts-Martial Manual; Annual Review

ACTION: Notice of the Annual Review of the Manual for Courts-Martial.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, Exec. Order No. 12473, as amended by EO 12484. The proposed changes are part of the annual review required by the Manual for Courts-Martial and DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985. The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

The proposed changes include modifications to the following Rules for Courts-Martial: R.C.M. 307, Preferral of charges; R.C.M. 906, Motions for appropriate relief; R.C.M. 907, Motions to dismiss; R.C.M. 916, Defenses; R.C.M. 918, Findings; R.C.M. 1001, Presentencing procedure; R.C.M. 1003, Punishments; R.C.M. 1109, Vacation of suspension of sentence; R.C.M. 1112, Review by a judge advocate; and, R.C.M. 1305, Record of trial. They also include the modifications to the following provisions of Part IV, Punitive Articles: Introductory Discussion; Paragraph 2, Article 79—Conviction of lesser included offenses; Paragraph 10, Article 86—Absence without leave; Paragraph 32, Article 108—Military property of the United States—sale, loss, damage, destruction, or wrongful disposition; Paragraph 42, Article 117—Provoking speeches or gestures; Paragraph 46, Article 121—Larceny and wrongful appropriation; and, Paragraph 89, Article 134 (Indecent language).

This notice is provided in accordance with DoD Directive 550.17, "Review of the Manual for Courts-Martial," January 23, 1985. It is intended only to improve the internal management of the federal government. It is not intended to create any right of benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be examined at the Military Law Branch, Room 1004, Federal Building No. 2 (Navy Annex), Judge Advocate Division, Headquarters, United States Marine Corps, Washington, DC. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the following address: Headquarters, U.S. Marine Corps (JAM), Washington, DC 20380-0001, Attn: Major D.P. O'Neil.

DATE: Comments on the proposed changes must be received not later than April 21, 1986, for consideration by the Joint-Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: Major D.P. O'Neil, (202) 694-4197.

Dated: January 31, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-2528 Filed 2-4-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Academy Board of Visitors; Meeting

Pursuant to section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the Air Force Academy, Colorado Springs, Colorado, March 13–15, 1986. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public on March 14, 1986, from 9:15 a.m. to 11:40 a.m. Other portions of this meeting will be closed to the public to discuss matters analogous to those listed in subsections (2), (4), and (6) of section 552b(c), Title 5, United States Code. These closed sessions will include: attendance at cadet classes and panel discussions with groups of cadets and military staff and faculty officers involving personal information and opinions, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in the Superintendent's Conference Room, Harmon Hall, Academy.

In addition to the open meeting session, the public is welcome to attend a press conference scheduled for 10:45 a.m. to 11:30 a.m. on March 15, 1986, in the Upperclass Lounge in Arnold Hall.

For further information, contact Major Randall R. Cantrell, Headquarters, US Air Force (DPPA), Washington, DC 20330–5060, at (202) 697–7116.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-2471 Filed 2-4-86; 8:45 am]

BILLING CODE 3910-01-M

Privacy Act of 1974; New Record System

AGENCY: Department of the Air Force (DAF), DOD.

ACTION: Notice of a new record system subject to the Privacy Act.

SUMMARY: The Air Force is adding a new record system to its existing inventory of record systems.

DATE: This proposed action will be effective without further notice March 7, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send comments to Mr. John Updike, HQ USAF/DAQD, The Pentagon, Washington, D.C. 20330–5024. Telephone: 202/694–3431, Autovon: 224–3431.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 522a) have been previously published in the Federal Register as follows:

FR Doc. 85-10237 (50 FR 22332) May 29, 1985
FR Doc. 85-14122 (50 FR 24672) June 12, 1985
FR Doc. 85-15062 (50 FR 25737) June 21, 1985
FR Doc. 85-26775 (50 FR 46477) November 8, 1985
FR Doc. 85-29261 (50 FR 50337) December 10, 1985

A new system report, as required by 5 U.S.C. 552(a)(o), of the Privacy Act was submitted on December 31, 1985, pursuant to OMB Circular A-108 Transmittal Memorandum No. 1, dated September 30, 1975, and Transmittal Memorandum No. 3, dated May 17, 1976.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 31, 1986.

F035 AF MP Q

SYSTEM NAME:

035 AF MP Q Family Support Center Case Files.

SYSTEM LOCATION:

At servicing Family Support Centers on AF installations. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel dependent, Air Force civilian employees, and Air Reserve Forces personnel who request assistance from the Family Support Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of client contacts and time expended; client interview and assessment, and referrals to other agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Regulation (AFR) 30-7, Family Action/Information Board and Family Support Center.

PURPOSES:

Files are used to record client traffic and referral to other agencies. They are analyzed for traffic and trends.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper form.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by the custodian of the record system and by person(s) responsible for servicing the record system in performance of their duties. Records are stored in security files containers/cabinets.

RETENTION AND DISPOSAL:

Records are destroyed 1 year from date of last visit to FSC, unless needed as background for case files supporting a separation or other action in which case disposition will be the same as the file which they support.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Air Force Family Matters Branch, Human Resources Development Division, Directorate of Personnel Plans, HQ USAF; Directorate of Personnel Programs at Major Command Headquarters; and Director, Family Support Center at Air Force installation.

NOTIFICATION PROCEDURE:

Contact Director, Family Support Center at servicing AF installation. Include full name, grade and unit of assignment. Identification such as Armed Forces Identification Card (DOD Form 2AF) will be required for personal visit.

RECORD ACCESS PROCEDURES:

Contact Director, Family Support Center at servicing AF installation.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and

appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35.

RECORD SOURCE CATEGORIES:

Information obtained from individual, medical institutions, and personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–2527 Filed 2–4–86; 8:45 am]

BILLING CODE 3810-01-M

	Supplement
Utah Power & Light Company	49
Sierra Pacific Power Company	45
Portland General Electric Company	41
Southern California Edison Company	35
San Diego Gas & Electric Company	30
Washington Water Power Company	34
Los Angeles Water & Power Company	30
Pacific Gas & Electric Company	16
Western Area Power Administration	9
City of Burbank	26
City of Glendale	28
City of Pasadena	26

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER86–259–000 et al.]

Electric Rate and Corporate Regulation Filings; Dayton Power and Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Dayton Power and Light Company

[Docket No. ER86–259–000]

January 31, 1986.

Take notice that on January 24, 1986, The Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Eldorado (Eldorado), Ohio.

The proposed Agreement allows Eldorado to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Eldorado.

Comment date: February 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Company

[Docket No. ER86–261–000]

January 31, 1986.

Take notice that on January 27, 1986, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during November, 1985, along with cost justification for the rate changed. This filing includes the following supplements:

Comment date: February 13, 1986, in accordance with Standard Paragraph H at the end of this notice.

3. Indiana and Michigan Electric

[Docket No. ER86–70–000]

January 31, 1986.

Take notice that on December 27, 1985, Illinois Power Company (Illinois Power) tendered for filing revised Modification No. 21, dated August 30, 1985, to the Interconnection Agreement, dated November 27, 1961, between Indiana and Michigan Electric Company (I&M) and Illinois Power.

Illinois Power indicates that revised Modification No. 21 modifies those areas of the revisions dealing with mulit-party transmissions to include specific rates in lieu of reference to Order 84 rates. In addition, Illinois Power seeks to increase the transmission use charge from 1.15 mills/kwh to a cost supported charge of 1.4 mills/kwh.

The parties request an effective date of March 1, 1986.

Illinois Power states that a copy of this filing was served upon I&M, American Electric Power Service Corporation, Public Service Commission of Indiana, Michigan Public Service Commission and the Illinois Commerce Commission.

Comment date: February 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Indiana & Michigan Electric Company

[Docket No. ER86–248–000]

January 31, 1986.

Take notice that American Electric Power Service Corporation (AEP) on January 27, 1986, tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&ME), which is an AEP affiliated operating subsidiary, Amendment No. 29 dated December 1, 1985 to the Operating Agreement dated March 1, 1966 among Consumers Power Company (Consumers), The Detroit Edison Company (Detroit) sometimes collectively referred to as the Michigan Companies, and I&ME. The Commission has previously designated the 1966 Agreement as I&ME's Rate Schedule FERC No. 68 and Michigan Companies Rate Schedule FERC No. 12.

Section 1 of Amendment No. 29 revises the demand rate and energy adder for Short Term Power from "$1.25/kW-week" and 10% of out-of-pocket cost (OPC) to "up to $1.25" per kilowatt per week and "up to 10% of OPC " respectively. In addition, this Schedule has also been modified by the addition of a subsection which states that the sum of the demand charge and the energy charge will not be less than 110% of the out-of-pocket cost of supplying the energy for a specific Short Term Power reservation. These revisions apply only when I&ME is the supplying party. I&ME requests an effective date of December 1, 1985.

The updated terms and conditions contained in this Amendment No. 29 for Short Term Power are the same as those previously established on the AEP System and accepted for filing by the Federal Energy Regulatory Commission.

Copies of the filing were served upon Consumers Power Company, The Detroit Edison Company, Public Service Commission of Indiana, and Michigan Public Service Commission.

Comment date: February 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas Gas and Electric Company

[Docket No. ER86–258–000]

January 31, 1986.

Take notice that Kansas Gas and Electric Company (KG&E) on January 21, 1986 tendered for filing a proposed Generating Municipal Electric Service Agreement superseding FERC Electric Service Tariff No. 87.

Kansas Gas and Electric Company states that the filing assures continued service to the City of Fredonia, Kansas (City).

This filing is necessary because KG&E desires to cancel its existing Electric Interconnection Contract at the expiration of its twenty five year initial term but desires to continue to serve the City. KG&E has requested an effective date of March 26, 1986.

Copies of the filing were served upon the City of Fredonia, Kansas and the Utilities Division of the Kansas Corporation Commission.

Comment date: February 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

New England Hydro-Transmission Corporation and New England Hydro-Transmission Electric Company, Inc.

[Docket No. EL86-19-000]

January 31, 1986.

Take notice that on January 24, 1986, New England Hydro-Transmission Corporation (NEH) and New England Hydro-Transmission Electric Company, Inc. (NEHT) filed a joint Petition for Declaratory Order. NEH and NEHT ask that the Commission issue a Declaratory Order stating that the staff may accept for filing certain agreements relating to Phase II of the NEPOOL/Hydro-Quebec Interconnection that include provisions for indexed returns on common equity.

NEH and NEHT state that that the indexed return on equity provisions are integral parts of the unique framework created in the Phase II Hydro-Quebec contracts and the issuance of the requested Declaratory Order is accordingly in the public interest. NEH and NEHT further state that they do not seek in this Petition the Commission's approval of the contracts in question nor of the indexed return provisions included therein. They seek only permission to file the agreements and an opportunity to submit evidence in support thereof, notwithstanding recent Commission decisions in which the staff was directed to reject as patently deficient all rate filings containing formula returns on equity.

Comment date: February 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER86-260-000]

January 31, 1986.

Take notice that on January 27, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing a proposed change in its rate schedule FPC No. 53 for service to the City and County of San Francisco (CCSF). The proposed adjustment is based on a settlement reached between PGandE and CCSF.

The filing proposes an increase in the charge for transmission and distribution of CCSF power to CCSF municipal load. The proposed change in the rate for CCSF wheeling would increase annual revenues by approximately $4,302,000 over current revenues.

PGandE and CCSF have requested a waiver of the 60-day notice period required by § 35.3 of the Commission's Regulations. The proposed effective date for the proposed rate schedule change contained in the settlement is January 1, 1985.

Copies of this filing were served upon the affected customer and the California Public Utilities Commission.

Comment date: February 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Texas-New Mexico Power Company

[Docket No. ES86-25-000]

January 29, 1986.

Take notice that on January 21, 1986, Texas-New Mexico Power Company (Applicant) filed an application seeking an order pursuant to section 204 of the Federal Power Act, authorizing the issuance of nor more than $50 million of short-term notes to be issued from time to time with a final maturity date of not later than April 1, 1988.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2529 Filed 2-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Consolidated Rule Supply, Inc. and Teepak, Inc.); Order Granting Reconsideration

Issued January 31, 1986.

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

On January 10, 1986, Consolidated Fuel Supply, Inc. and Teepak, Inc. (petitioners) filed a joint request for reconsideration of the Commission's November 22, 1985 order denying petitioners' request for clarification [1] of Order No. 436.[2] We grant the request for reconsideration.

In denying petitioners' request for clarification, we held that petitioners' transportation arrangement with Panhandle Eastern Pipe Line Company did not qualify under § 284.223(g)(1) of the Regulations adopted in Order No. 436 for continued transportation authorization after November 1, 1985. In that order we found that, as of October 9, 1985, Panhandle was transporting gas for the petitioners under § 157.209(e) of the old regulations. Panhandle had not advised the Commission that the transportation qualified for a high-priority end use under § 157.209(a) until October 31, 1985, when it filed an initial report. The Commission therefore denied the request, citing *Midwest Solvents.*[3]

On December 19, 1985, the Commission granted rehearing of the *Midwest Solvents* decision. Consistent with that decision, the grant petitioners' request for reconsideration. We agree that petitioners' transportation arrangement with Panhandle qualifies for continuing transportation authorization under § 284.223(g)(1) because it was authorized under § 157.209(a)(1) automatically with the commencement of service.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2530 Filed 2-4-86; 8:45 am]

BILLING CODE 6717-01-M

[1] 33 FERC ¶ 61,253 (1985).

[2] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[3] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (*Midwest Solvents Company*), Order Denying Request for Clarification, 33 FERC ¶ 61,157 (October 31, 1985); Order Granting Rehearing, 33 FERC 61,395 (December 18, 1985).

ENVIRONMENTAL PROTECTION AGENCY

[OPP-49010; FRL-2962-2]

Certification of 1080 Livestock Protection Collar Applicators in EPA-Administered Programs; Nebraska and Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has recently registered Compound 1080 Livestock Protection Collars (Collars) containing sodium monofluoroacetate (commonly called 1080) for predator control. EPA will certify both private and commercial Collar applicators in Nebraska and private applicators in Colorado. Commercial applicators in Colorado and both private and commercial applicators in other States will be certified under State programs approved by EPA.

FOR FURTHER INFORMATION CONTACT: For further information on the administration of the program to certify Collar applicators or to comment on this action, in Colorado, contact: David Combs, Environmental Protection Agency, Region VIII, Suite 1300, 999 18th Street, Denver, CO 80202-2413 (303-293-1744).

For further information on the administration of the program in Nebraska or to comment on this action, contact: C.E. Poindexter, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101 (913-236-2835).

SUPPLEMENTARY INFORMATION: On July 11, 1985, EPA registered Compound 1080 Livestock Protection Collars as a restricted use pesticide for predator control. This registration follows the Agency's public hearing and Final Decision in 1983 to allow the processing of applications for the registration of 1080 Livestock Protection Collars. The Final Decision was rendered after a lengthy hearing process that afforded all interested parties an opportunity to comment upon any Agency conclusions regarding the use of the Collars.

On December 1, 1981, the Administrator ordered a hearing pursuant to Subpart D of EPA's Rules of Practice, 40 CFR 164.130 through 164.133, to reconsider the 1972 order suspending and cancelling the registrations of Compound 1080, as published in the **Federal Register** of December 7, 1981 (46 FR 59622). All interested parties were given an opportunity to submit a notice of intent to participate in the hearing. In response, more than 60 parties filed notices.

The procedure for a Subpart D reconsideration hearing appears at 40 CFR Part 164, Subparts A and B. During the hearing the parties had an opportunity to offer evidence, cross-examine witnesses and file briefs with the Administrative Law Judge (ALJ) stating their recommendations with regard to the use of Compound 1080. More than 90 witnesses appeared, over 430 exhibits were admitted, and nearly 15,000 pages of transcript were compiled. After the close of the hearing, the ALJ issued an Initial Decision setting forth restrictions governing the use of 1080 Livestock Protection Collars. Initial Decision, FIFRA Docket 502, Attachment C, October 22, 1982 (Attach. C).

Under § 164.101(a), parties appealed the ALJ's Initial Decision by filing exceptions and submitting briefs. The Agency issued its Final Decision which affirmed the Initial Decision's conclusions concerning the use of 1080 Livestock Protection Collars. Final Decision, FIFRA Docket 502, October 31, 1983, p. 2. The Final Decision requires that the Collars be used only by applicators who have completed a special training program and have been certified to use the Collar, under 40 CFR 171.11(b), as specified in Attach. C (1) through (3).

As published in the **Federal Register** of October 13, 1978 (43 FR 47279), EPA presently administers the private and commercial applicator certification programs in Nebraska and will provide certification to Collar Applicators. Although EPA also administers the private applicator certification program in Colorado, Colorado now administers the commercial applicator certification program, as published in the **Federal Register** of August 7, 1985 (50 FR 31919). Therefore, EPA will certify commercial and private applicators in Nebraska and private applicators in Colorado to the extent Collar use is authorized by their respective State laws and regulations. EPA will request Nebraska and Colorado to submit a written interpretation of their laws and regulations as they apply to Collars. It is realized that these States have their own pesticide registration process and that Collars may not have been granted a State registration. In these instances EPA will not certify Collar applicators until a State indicates its intention to grant registrations.

1. To be eligible for certification to use Collars in EPA-administered programs, under 40 CFR 171.11 (c)(3) and (d)(1) an applicator must first be certified as a private applicator or a commercial applicator in Agricultural Pest Control, Animal category defined at 40 CFR 171.3(b)(1)(ii), as specified in Attach. C(1).

2. To be certified for use of the Collar, private and commercial applicators must also attend and participate in an EPA-approved training program under 40 CFR 171.11(d)(1)(i), as specified in Attach. C(3).

3. In addition, commercial applicators must take and pass a written examination, as specified in 40 CFR 171.11(c)(4).

EPA will issue either an additional certificate or will modify the applicator's certificate to identify those applicators certified to use Collars.

The criteria which Collar applicators must meet were developed by EPA in consultation with State regulatory and training agencies. These criteria, which follow, reflect the requirements of the Final Decision and applicable EPA regulations.

Applicators of Compound 1080 Livestock Protection Collars will first meet the private applicator standards or the general commercial applicator standards of 40 CFR 171.4 through 171.6, and 40 CFR 171.11 (c)(4) and (d)(1), as specified in Attach. C(1).

Applicators certified for use of Collars must also:

1. Read and understand label and labeling information, including all use restrictions under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1)(i), and 171.5(a)(2), as specified in Attach. C(1).

2. Recognize the technical name, sodium monofluoroacetate, and understand the basic properties of Compound 1080, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1)(i), and 171.5(a)(2), as specified in Attach. C(1).

3. Recognize potential hazards to humans, domestic animals and to non-target wildlife, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1) (i) through (iii), and 171.5(a)(4), as specified in Attach. C(3)(c).

4. Recognize general symptoms of poisoning by Compound 1080 in humans and domestic animals and take appropriate action, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1)(ii) (*e*) and (*f*), and 171.5(a)(5), as specified in Attach. C(3)(c).

5. Understand the requirements for direct supervision of noncertified applicators using Collars, under 40 CFR 171.11(b) and 171.6(a), as specified in Attach. C(2).

6. Recognize situations where Collars can be expected to be safe and effective in addition to being aware of alternative means of control, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1), and 171.5(a), as specified in Attach. C(3).

7. Keep required records on use of collars, under 40 CFR 171.11(c)(7), as specified in Attach. C (3)(d) and (5).

8. Make required reports of suspected poisoning of nontarget species and suspected poisoning of humans or domestic animals to the appropriate State regulatory agency or EPA, as specified in Attach. C(6).

9. Make appropriate repairs to damaged Collars prior to reuse or dispose of properly, under 40 CFR 171.11 (c)(3) and (d)(1), and 171.4(b)(1)(ii)(*g*) and 171.5(a), as specified in Attach. C(11).

10. Properly dispose of animal remains, vegetation or soil contaminated by a punctured Collar, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1)(ii)(*g*), and 171.5(a), as specified in Attach. C(3)(b).

11. Safely handle and store Collars, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1)(ii)(*g*), and 171.5(a), as specified in Attach. C (3)(a), (7), and (13).

12. Post and maintain required bilingual warning signs at logical points of access to areas where Collars are in use, as specified in Attach. C(9).

13. Perform weekly or more frequent inspections of Collars in use, as specified in Attach. C(10).

Dated: December 18, 1985.

Morris Kay,

Regional Administrator, Region VII.

Dated: December 2, 1985.

John Welles,

Regional Administrator, Region VIII.

[FR Doc. 86-2261 Filed 2-4-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-435; FRL-2965-2]

Pesticide Tolerance Petition; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a pesticide petition relating to the clarification of a Petitioner's name.

ADDRESS: By mail, submit comments identified by the document control number [PF-434] and the petition number, attention Product Manager (PM-15), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street 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: George LaRocca (PM-15), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 204, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of November 6, 1985 (50 FR 46176), which announced that Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Sommerville, NJ 08876, proposed amending 40 CFR 180.422 by establishing a tolerance for the combined residues of the insecticide (1*R*,3S)3[(1'*RS*)(1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester and its metabolites, (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-*cis,trans*-2,2-dimethyl-3-(2,2-dibromovinyl) cyclopropanecarboxylate calculated as parent, in or on the commodity soybeans at 0.02 part per million (ppm) (negligible). The proposed analytical method for determining residues is gas chromatography.

In FR Doc. 85-26449, appearing at page 46176, second column, the company name under "I. INITIAL

FILING, — PP 6F3309," was inadvertently filed as "Hoechst-Roussel Agri-Vet Co." and is corrected to read "Roussel Uclaf of Paris, France with Hoechst-Roussel Agri-Vet Company acting as U.S. Agent," Route 202–206 North, Sommerville, NJ 08876.

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

Dated: January 24, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–2260 Filed 2–4–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50647A; FRL–2965–3]

Terminex International, Inc.; Withdrawal of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal.

SUMMARY: On November 27, 1985, EPA issued an experimental use permit (1927–EUP–1), to Terminex International, Inc., Box 17167, Memphis, TN 38187. This experimental use permit allowed the use of 226.8 pounds of the insecticide dieldrin in 10 homes to evaluate the control of subterreanean termites and dieldrin air concentrations. The program was authorized in the States of Florida and Maryland and was effective from August 13, 1985 to August 13, 1986. The company has withdrawn this experimental use permit without prejudice in accordance with the regulations under 40 CFR Part 172 which define EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–2400).

Dated: January 22, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–2262 Filed 2–4–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report DC–363; CC Docket 86–9]

Action in Docket Case; FCC Begins Inquiry Into Policies Governing Provision of Shared Telecommunications Services

January 14, 1986.

The Commission has initiated an inquiry to examine the issues raised by the introduction of shared telecommunications services (STS) systems, including the impact of STS on local telephone companies, its effect on telephone subscribers, both directly and through its impact on local exchange rates, and the effects of state regulation on STS implementation.

STS systems use PBXs or other electronic switching devices (STS switch) to provide their users with interexchange and local telecommunications services, and in some cases, a variety of enhanced services. The STS switch allows the occupations of a multitenant building, a building complex, or a real estate development tract to call each other directly without using local exchange carrier (LEC) facilities and to call anywhere on the switched network through trunk lines connecting the STS switch with the LEC central office (CO). In addition, most STS systems purchase interexchange services from a variety of carriers and resell these services to their customers.

The Commission noted that the introduction of STS systems has attracted substantial regulatory attention at the state level. Some state regulatory commissions have reacted favorably to the introduction of STS systems, while others have developed, or are currently developing, regulations that prevent local service resale by an STS systems. States have been concerned with the effect of STS systems on universal service, stranded investment of local exchange companies and duplication of facilities. To conform to state restrictions, the STS operator is required to partition its PBX, which eliminates the aggregated use of local exchange access lines and imposes on the system the additional costs needed to perform the partitioning functions.

The Commission said the introduction of STS systems would provide certain benefits to the public by increasing the

availability of state-of-the-art telecommunications technology and by providing opportunities for small users to take greater advantage of competition in interstate service. But, it noted that there was not sufficient data and other information to assess the cost savings STS systems would provide to customers and society as a whole, especially those that derive from the resale of local service. It also indicated that more information was needed to determine the long term effect of STS on local exchange carriers and universal service.

Therefore, the Commission asked for comments on the following areas of concern:

1. The effect of state regulaions on STS systems and how they conflict with federal policy, including

Current status of state regulation of STS
Partitioning requirements and their effect
Pricing policies for local service to STS systems
Interconnection and local resale restrictions
Geographic area, number of trunks and other size restrictions

2. Potential benefits from STS systems

Cost savings to STS customers for local and interstate service
Availability of communications technologies to small users
Savings to society

3. Potential adverse effects from STS systems

Effect of local exchange service resale on local exchange carriers such as stranded investment, duplication of facilities and difficulties in facilities planning
Effect on universal service
Rights of customers in an unregulated STS system.

The Commission noted that some states have enacted regulations to address these issues. Others have decided to wait until some experience is gained from actual STS developments. The FCC said it tentatively concluded that so long as state regulation of these areas does not unduly impair the ability of STS providers to operate, the states would continue to regulate these areas. It invited comments on this conclusion.

In a separate but related concurrent action, the Commission granted a petition for declaratory ruling filed by International Business Machines Corporation (IBM) to the extent of reaffirming the right of users to interconnect the customer premises equipment (CPE) used to provide shared telecomunications services (STS) with the public switched network. It rejected IBM's request, however, for a ruling that existing federal interconnection policies have preempted state regulations restricting the resale of local service by an STS system.

Comments are due March 21; replies April 21.

Action by the Commission January 14, 1986, by Notice of Inquiry (FCC 86–28). Commissioners Fowler (Chairman), Quello, Dawson and Patrick.

For further information contact Geoffrey Jarvis or Rose Crellin at (202) 632–6342.

Note: The actual text of the Notice of Inquiry will not be printed herein, due to the ongoing effort to minimize publishing costs. However, copies may be obtained from International Transcription Service, 1919 M St., NW., Washington, D.C. 20554, Tel: (202) 857–3800. Also, a copy is available for public inspection in the FCC Dockets Branch, room 239, and the FCC Library, room 639, both also located at 1919 M St., NW.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 86–2510 Filed 2–4–86; 8:45 am

BILLING CODE 6712–01–M

North Atlantic Facilities; Meeting

January 28, 1986.

The Commission's staff will convene a public meeting on February 11, 1986 to begin preparation of the U.S. submission to the North Atlantic Consultative Working Group (NACWG) meeting tentatively scheduled to be held May 27–30, 1986. A schedule for the preparation of drafts of the various elements of the U.S. submission to the NACWG meeting will be developed at the public meeting.

The public meeting will be convened at 9:30 a.m. on February 11, 1986 in Room 856, 1919 M Street, NW., Washington, DC.

For further information, contact Robert E. Gosse, (202) 632–4047.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–2512 Filed 2–4–86; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 30, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–7231.

OMB Number: 3060–0330
Title: Part 62, Applications to Hold Interlocking Directorates
Action: Revision
Respondents: Officers or directors of communication common carriers
Estimated Annual Burden: 60 Responses; 120 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–2508 Filed 2–4–86; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 29, 1956.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submisson are available from the Commisson by calling Doris R. Benz, (202) 632–7513. Persons wishing to comment on any information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–7231.

Title: Broadcast Station Annual Employment Report
Form No.: FCC 395–B
Action: New
Estimated Annual Burden: 11,000 Response; 9,750 Hours.
Title: Broadcast EEO Program Report
Form No.: FCC 396
Action: New
Estimated Annual Burden: 123 Responses; 308 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–2509 Filed 2–4–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et. seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Wm. Jarrel Smith, Jr., Director of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, D.C. 20573, telephone number (202) 523–5866. Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR 552—Financial Reports of Vessel Operating Common Carriers by Water in the Domestic Offshore Trades and Related Forms FMC–377 and FMC–378.

FMC requests extension of clearance for regulations which establish methodologies to be used in evaluating rates filed by vessel operating common carriers in the domestic offshore trades who are subject to the Intercoastal Shipping Act, 1933. Total estimated annual burden for 18 tug and barge operators and 14 self-propelled operators is 2517.4 manhours. Total estimated annual cost to the Federal Government is approximately $15,500; total estimated annual cost to respondents is approximately $40,000.

46 CFR 553—Financial Exhibits and Schedules of Non-Vessel-Oparating, Common Carriers in the Domestic Offshore Trades and Related Form FMC–379.

FMC requests extension of clearance for regulations which will facilitate the orderly acquisition of data required in those instances where the Commission institutes an investigation and hearing with respect to proposed rate changes by non-vessel operating common carriers in the domestic offshore trades subject to the Shipping Act, 1933.

Although no reports have been received in the past five years, potential estimated respondent is 61 with an estimated 320 manhours per year. The annual cost to the Federal Government and respondents is nominal because there is no reason to believe that a significant number of reports will be received during the renewal period.

John Robert Ewers,

Secretary.

[FR Doc. 86–2516 Filed 2–4–86; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreements.

Agreement No.: 217–010882.

Title: Southern Africa Europe Container Service, United States Lines, Inc., and South African Marine Corporation Limited Space Charter Agreement.

Parties:
Southern Africa Europe Container Service (SAECS)
United States Lines, Inc. (USL)
South African Marine Corporation Limited (Safmarine)

Synopsis: The proposed agreement would permit USL and Safmarine to charter space for the carriage of cargo in the trade between United States Atlantic, Gulf and Pacific ports and ports in Southern Africa aboard vessels operated by SAECE. Under the terms of the agreement, cargo would be transshipped to SAECS' vessels at European relay ports for on carriage to Southern Africa. SAECS would not

make calls at U.S. ports. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Dated: January 31, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-2517 Filed 2-4-86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 86-4]

Four Winds International, Inc.; Investigation and Hearing on Application for a License as an Ocean Freight Forwarder

Four Winds International, Inc. (FWI), a California corporation operating as a transportation management firm, has submitted an application for a license to act as an ocean freight forwarder.

FWI, which intends to operate nine branch offices throughout the country, is a wholly-owned subsidiary of another California corporation, Four Winds Enterprises, Inc., with which it shares officers and directors. Four Winds Enterprises, Inc. operates in the United States as a holding company for nine firms (including FWI), the majority of which are engaged in moving and consolidation services. One of these United States subsidiaries is Movers Port Service, Inc. (MPS), which operates as a trucking and warehousing firm.

MPS was licensed as an ocean freight forwarder in 1971. In December 1980, under the terms of a settlement agreement disposing of alleged violations of sections 16 and 18 of the Shipping Act, 1916 (46 U.S.C. app. secs 815 and 817), MPS surrendered its license and, together with other Four Winds companies, paid a civil penalty of $55,000.

In 1980, while MPS and its related companies were negotiating the terms of the settlement agreement, the Commission received an application from Aurora International Forwarding, Inc. (Aurora). Because Aurora appeared to meet all the standards for licensing, it was licensed on June 12, 1980.

Soon after Aurora was licensed it established a number of branch offices at the same locations which had been utilized by MPS and, in most cases, used MPS personnel. The Commission staff, in an informal investigation, determined that, while Aurora had assumed much of MPS's freight forwarding business, MPS also continued to provide certain services for export shipments. Due to the commingling of offices, employees, and records, it was unclear whether Aurora or MPS was performing forwarding services for shipments being handled jointly by MPS and Aurora.

In June, 1982, when MPS re-applied for an ocean freight forwarder license, a field investigation of MPS's operations was conducted. The investigation uncovered possible violations of section 16 of the Shipping Act, 1916. Based upon these apparent violations, the Commission advised MPS that it intended to deny the application due to the lack of required fitness. MPS did not request a hearing on its application. Subsequently, MPS paid a penalty of $100,000 in settlement of a Commission-issued enforcement claim based on the apparent violations.

FWI, which shares common ownership with MPS, also appears to have a business relationship with Aurora. The field investigation conducted in connection with this application indicates that FWI may have performed certain unlicensed forwarding services by paying the ocean freight and preparing the export declarations on ocean shipments that were also serviced by Aurora personnel. From FWI's and Aurora's files, it is unclear whether forwarding services were performed by FWI or Aurora. Moreover, neither the files nor FWI's ocean freight forwarder application clearly indicate the nature of the relationship, if any, between FWI and Aurora.[1]

Section 19 of the Shipping Act of 1984 (46 U.S.C. app. sec. 1718) provides that a forwarder license shall be issued to any person that:

> [T]he Commission determines to be qualified by experience and character to render forwarding services. * * *

Applicants for an ocean freight forwarder license have the burden of demonstrating that they meet the requisite criteria. The Commission is unable, on the existing record, to conclude that FWI has the requisite character to perform forwarding services.

FWI is a wholly-owned subsidiary of a holding company which owns another corporation that was a licensed ocean freight forwarder, MPS, whose license was surrendered in settlement of certain Shipping Act violations. MPS's forwarding operations and a number of its offices were incorporated into Aurora's forwarding operation, with which both MPS and FWI appear to have a continuing, but not fully explained, relationship. Moreover, it appears that FWI may have performed certain unlicensed forwarding services on a number of export shipments. Accordingly, the Commission is instituting a formal investigation and hearing to determine whether FWI should be licensed as an ocean freight forwarder.

Therefore, it is further ordered, That pursuant to sections 11 and 19 the Shipping Act of 1984 (46 U.S.C. app. §§ 1710 and 1718), a formal investigation and hearing is instituted to determine whether Four Winds International, Inc. possesses the necessary character to be licensed as ocean freight forwarder;

It is further ordered, That Four Winds International, Inc. is named respondent in this proceeding;

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure (46 CFR 502.61), the initial decision of the presiding officer in this proceeding shall be issued by February 2, 1987 and the final decision of the Commission shall be issued by June 2, 1987;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served upon the Respondent and the Commission's Bureau of Hearing Counsel;

It is further ordered, That in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42), the Director of the Commission's Bureau of Hearing Counsel shall be a party to this proceeding;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

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[1] In response to a staff inquiry, FWI advised that it has a "business relationship [with Aurora] in which Aurora performs certain services which FWI cannot perform because it does not have a FMC license." FWI did not, however, document or further explain the extent of its relationship with Aurora.

It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as mailed directly to all parties of record.

By the Commission.[2]

John Robert Ewers,

Secretary.

[FR Doc. 86-2518 Filed 2-4-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Capitol Bancorporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

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 may 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 February 25, 1986.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Capitol Bancorporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary, CAP Mortgage Co., Inc., Braintree, Massachusetts ("Company"), in issuing, buying, selling and otherwise dealing in first and second mortgages on real property and also to service such loans, pursuant to section 225.25(b)(1) (i), (ii), (iii), (iv), and (v). Loans originated by Company would generally be sold in the secondary mortgage market to investors.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Valley Capital Corporation*, Las Vegas, Nevada; to engage *de novo* through its subsidiary, Valley Financial Services, Inc., Las Vegas, Nevada, in acting as a registered securities broker/dealer providing securities brokerage services and related securities credit activities and certain incidental services, pursuant to section 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, January 31, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2485 Filed 2-4-86; 8:45 am]

BILLING CODE 6210-01-M

National Industrial Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (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 February 28, 1986.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *National Industrial Bancorp, Inc.* (formerly, the Co-op Credit Corporation), East Hartford, Connecticut; to become a bank holding company by acquiring at least 80 percent of the voting shares of National Industrial Bank of Connecticut, Meriden, Connecticut.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers & Merchants Bancshares, Inc.*, Wright City, Missouri; to acquire 18 percent of the voting shares of Warren County Bancshares, Inc., Warrenton, Missouri, thereby indirectly acquire Commerce Warren County Bank, Warrenton, Missouri.

Board of Governors of the Federal Reserve System, January 31, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2486 Filed 2-4-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Department of Interior.

ACTION: Notice of Availability of a final environmental impact statement (EIS) for the proposed Adoption and Implementation of Coachella Valley Fringe-toed Lizard Habitat Conservation Plan and Endangered Species Act Section 10(a) Permit.

FOR FURTHER INFORMATION CONTACT: Fish and Wildlife Service, Division of Endangered Species, 500 NE Multnomah

[2] Vice Chairman James J. Carey is not participating in this matter.

Street, Suite 1692, Portland, Oregon 97232.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the above contact.

Copies are also available for inspection at the following locations:

Fish and Wildlife Service, Sacramento Field Station, Division of Endangered Species, 2800 Cottage Way, Room E–1823, Sacramento, California 95825;

Fish and Wildlife Service, Laguna Niguel Field Office, Federal Building, 24000 Avila Road, Laguna, California 92677.

Dated: January 29, 1986.

Joseph R. Blum,

Acting Regional Director.

[FR Doc. 86–2369 Filed 2–4–86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Colorado; Extension of Public Comment Period and Additional Public Meeting on Draft Environmental Statement

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Extension of the comment period, and notice of an additional public meeting to receive comments on, the Draft Environmental Impact Statement (EIS) for the James Creek Coal Preference Right Lease Application.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior, has prepared a Draft EIS on the James Creek Preference Right Lease Application (PRLA) of Rio Blanco County, Colorado, and copies have been available for public review and comment since November 22, 1985. The Draft EIS also documents a BLM land use planning amendment for the PRLA and several adjacent coal leases.

Notice is also given that an additional public hearing will be held and public comment will be accepted on the Draft EIS through February 28, 1986.

DATES: Written comments on the proposal will be accepted up to and including February 28, 1986.

An additional public meeting to receive oral and/or written comments on the Draft EIS will be held as follows: February 25, 1986—7:30 p.m., Mt. Vernon Room, Sheraton Inn, Union and 6th Avenue, Lakewood, Colorado.

ADDRESS: Written comments on the proposals in the document are to be addressed to: Greg Goodenow, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625, Telephone (303) 824–8261.

Availability: Single copie of the Draft EIS are available from the Craig District BLM Office (address and phone listed above.)

FOR FURTHER INFORMATION CONTACT: Greg Goodenow, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson, Craig, Colorado 81625; telephone (303) 824–8261.

SUPPLEMENTARY INFORMATION: This Draft EIS describes and analyzes the environmental impacts of the proposed leasing of Preference Right Lease Application (PRLA) C–0126998 located about 9 miles northeast of Meeker, Colorado, in Rio Blanco County, and in the Craig District, Bureau of Land Management. It also serves as the analysis for amending the White River Resource Area Management Framework Plan, by applying the coal unsuitability criteria (43 CFR 3460) to the project area.

This PRLA is held by Consolidation Coal Company (Consol). Consol has proposed a 10-million-ton-per-year surface mine as the likely development of the PRLA, should the lease be issued. It is around this proposal that the analysis is centered.

The Alternatives considered in this EIS include:

No Action
Withdrawal/Just Compensation
Lease Exchange
Proposed Action (Consol's Current Proposal)
BLM's Preferred Alternative

Dated: January 30, 1986.

Kannon Richards,

State Director.

[FR Doc. 86–2492 Filed 2–4–86; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Endangered Species Permit Issued for the Months of October, November, December 1985

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Federal Wildlife Permit Office, 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, telephone (703/235–1903) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

October 1985

Darryl L. Hastings	X697329	Oct. 3.
Bernard Hennings	X697808	Oct. 3.
John M. Hinerwadel Sr..	X696581	Oct. 3.
Dan Mooney	X697813	Oct. 3.
New York Zoological Society.	X696360	Oct. 4.
William A. Paulin	X696354	Oct. 9.
San Diego Zoological Society.	X696757	Oct. 9.
San Diego Zoological Society.	X696755	Oct. 9.
Hawaii Division of Forestry & Wildife.	X691504	Oct. 17.
Jack Risken	X697798	Oct. 17.
Ted M. Siouris	X698450	Oct. 17.
Frank Howard Bess	X698474	Oct. 17.
Natalie M. Eckel	X695739	Oct. 18.
San Diego Zoological Society.	X695998	Oct. 22.
San Diego Zoological Society.	X695995	Oct. 22.
Leonard Hinckley	X697804	Oct. 24.
Charles Mooney	X697809	Oct. 24.
Fresno Zoo	X696999	Oct. 28.
Kim Enterprises	X696527	Oct. 28.

November 1985

John E. Parks	X695839	Nov. 1:
USFWS/Regional Director:		
Region 3	X697830	Nov. 5.
Region 4	X697819	Nov. 5.
Region 5	X697823	Nov. 5.
Gerald E. Fleock	X699729	Nov. 5.
David S. Hodgin	X699018	Nov. 5.
Los Angeles Zoo	X699695	Nov. 5.
Vance B. Grannis, Jr	X686602	Nov. 13.
Lloydean Martin	X699786	Nov. 21.
Don R. Mullins	X699432	Nov. 21.
International Animal Exchange.	X699120	Nov. 25.
Mesker Park Zoo	X700327	Nov. 25.
Ralph E. Ward	X699971	Nov. 25.
International Animal Exchange.	X695764	Nov. 26.
Dallas Zoo	X697170	Nov. 27.
San Diego Zoological Society.	X701931	Nov. 27.
New York Zoological Society.	X697669	Nov. 27.
Hagan Thompson	X700088	Nov. 29.
Gary Lingle	X696341	Nov. 30.

December 1985

David F. Bilbie	X699542	Dec. 2.
Vance B. Grannis	X701827	Dec. 3.
FWS/National Sea Turtle Coordinator.	X696367	Dec. 8.
San Diego Zoological Society.	X697192	Dec. 13.
Cincinnati Zoo	X700809	Dec. 13.

Chicago Zoological Society.	X697739	Dec. 13.
New England Wild Flower Society, Inc.	X700728	Dec. 16.
Baltimore Zoo	X700784	Dec. 18.
Jackson Zoological Park.	X701521	Dec. 27.
Charles Bazzy	X700583	Dec. 27.
Sunlight Gardens, Inc.	X693622	Dec. 31.

Dated: January 27, 1986.

Robert T. Kavetsky,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-2445 Filed 2-4-86; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-700879

Applicant: Dallas Museum of Natural History, Dallas, TX

The applicant requests a permit to import for scientific research and public display a trophy specimen of Nile crocodile (*Crocodylus niloticus*) taken in the Sudan.

PRT-702488

Applicant: Michael Barrett, Fillmore, CA

The applicant requests a permit to import two pairs of captive-born Cabot's tragopan pheasants (*Tragopan caboti*) from Glenn Howe of Aylmer, Ontario, Canada, for enhancement of propagation.

PRT-702540

Applicant: Cincinatti Zoo, Cincinatti, OH

The applicant requests a permit to import one captive-born Asian tapir (*Tapirus indicus*) from the Metroplitan Toronto Zoo, Toronto, Ontario, Canada, for enhancement of propagation.

PRT-702932

Applicant: Ned V. Goecken, Orland, CA

The applicant requests a permit to import the personal sport-hunted trophy of bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Mr. V. Pringle in Cape Province, Republic of South Africa, for the purpose of enhancement of propagation.

PRT-703241

Applicant: Dennis Kropp, Driscoll, ND

The applicant requests a permit to import the sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Phil van de Merwe in Cape Province, Republic of South Africa, for the purpose of enhancement of propagation.

PRT-703251

Applicant: Life Fellowship, Seffner, FL

The applicant requests a permit to purchase 2.0 Galapagos tortoises (*Geochelone elephantpus*) from International Animal Exchange, Ferndale, MI, for the purpose of enhancement of propagation.

PRT-703339

Applicant: Life Fellowship, Seffner, FL

The applicant requests a permit to purchase 3.1 Galapagos tortoises (*Geochelone elephantopus*) from Mr. and Mrs. Rene van Swinderen, Phoenix, AZ, for the purpose of enhancement of propagation.

PRT-703180

Applicant: Wilbur Carr Brown, San Angelo, TX

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Coenraad Vermaak in Dundee, Republic of South Africa, for the purpose of enhancement of propagation.

PRT-703399

Applicant: Dr. Harold F. Hirth, Salt Lake City, UT

The applicant requests a permit to take (measure, tag) hawksbill turtles (*Eretmochelys imbricata*) on the beach at Rose Atoll (American Samoa) for the purpose of scientific research.

PRT-703212

Applicant: Nancy Crawford, Sunnymead, CA

The applicant requests a permit to import a pair of white eared pheasants (*Crossoptilon crossoptilon*), and one Mikado pheasant (*Syrmaticus mikado*), captive born at Harry Hardy's, Bumaby, British Columbia, Canada, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: January 27, 1986.

Robert T. Kavetsky,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-2443 Filed 2-4-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Procedures for Determining Natural Gas Value for Royalty Purposes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed modification to Notice of Lessees-5; extension of comment period.

SUMMARY: This Notice extends the comment period from February 3, 1986 to March 3, 1986 on the Notice of Proposed Modification to NTL-5 (concerning procedures for determining natural gas value for royalty purposes) which was published in the **Federal Register** on January 3, 1986 (51 FR 260, 261 and 262). The extension of the comment period is in response to requests received from the public to allow additional time for comments.

DATE: Comments must be delivered or postmarked no later than March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, telephone: (303) 231-3432, (FTS) 326-3432.

Dated: January 31, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-2525 Filed 2-4-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Modification of Consent Decree in Clean Water Act Enforcement Action; Welch, WV

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that the consent decree in *United States* v. *City of Welch, West Virginia,* which was entered by the United States District Court for the Northern District of West Virginia on January 30, 1985, is the subject of a proposed modication lodged with the District Court on *Jan. 30, 1986.* The proposed modification requires the City to build a new sewage collection system in conjunction with the new sewage treatment facility required by the consent decree. Interim milestone dates in the consent decree are adjusted in the modification but the final compliance date is unchanged.

The Department of Justice will receive for thirty (30) days from the publication date of this notice, written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *City of Welch*, 90–5–1–1–813.

The modification to the consent decree can be examined at the office of the United States Attorney, Room 243, Federal Building, 1125–1141 Chapline Street, Wheeling, West Virginia, at the Region III office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, (Room 1515), Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. Copies of the modification to the consent decree can be obtained in person or by mail from the Environmental Enforcement Section at the above address.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–2493 Filed 2–4–86; 8:45 am]

BILLING CODE 4410–01–M

Bureau of Prisons

National Institute of Corrections Advisory Board; Meeting

Notice is hereby given that the National Institute of Corrections Advisory Board will meet on February 11, 1986, starting at 8:30 a.m., at the United States Department of Labor, 200 Constitution Avenue, NW., Departmental Development Center, 5th Floor, Seminar Room 3, Washington, D.C., 20210. At this meeting (one of the regularly scheduled triannual meetings of the Advisory Board), the Board will receive its subcommittees' reports and recommendations as to future thrusts of the Institute.

Raymond C. Brown,

Director.

[FR Doc. 86–2489 Filed 2–4–86; 8:45 am]

BILLING CODE 4410–05–M

Drug Enforcement Administration

Revocation of Registration; John M. Thorkelson, M.D.

On October 30, 1085, the Administration of the Drug Enforcement Administration (DEA) issued to John M. Thorkelson, M.D. of 2713 Maplewood Drive, Sulphur, Louisiana 70663, an Order to Show Cause proposing to revoke his DEA Certificate of Registration, AT3387001. The Order to Show Cause alleged that the continued registration of Dr. Thorkelson would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f). Additionally, citing his preliminary finding that the continued registration of Dr. Thorkelson posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration AT3387001 during the pendency of these proceedings. 21 U.S.C. 824(d).

The Order to Show Cause/Immediate Suspension was personally served on Dr. Thorkelson on November 1, 1985. In a letter dated November 8, 1985, Dr. Thorkelson's counsel specifically waived Dr. Thorkelson's opportunity for a hearing pursuant to 21 CFR 1301.54(c). The letter further stated that Dr. Thorkelson intended to close his medical office as of December 31, 1985, and therefore had no further need to maintain his DEA Certificate of Registration. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that Dr. Thorkelson was the subject of a joint undercover investigation conducted by DEA and the Calcasieu Parish Sheriff's Office starting in August 1985. Since January 1985, Dr. Thorkelson was the subject of a Louisiana State Police undercover investigation. During the investigation, Dr. Thorkelson sold a number of prescriptions for controlled substances to undercover investigators and to a cooperating individual. There was no legitimate medical justification for the writing of these prescriptions.

On four separate occasions between December 7, 1984 and March 6, 1985, Dr. Thorkelson wrote prescriptions for Valium 5 mg. and 10 mg. tablets for an undercover investigator. Valium is a Schedule IV controlled substance. On each of these visits, Dr. Thorkelson performed a very cursory physical examination if he performed one at all.

On January 30, 1985, a cooperating individual traded Dr. Thorkelson auto parts in exchange for 90 dosage units of Valium 5 mg. On May 21, 1985, Dr. Thorkelson sold the cooperating individual two prescriptions for Tuinal and on June 13, 1985, Dr. Thorkelson sold him a prescription for Percodan. Tuinal and Percodan are Schedule II controlled substances.

Dr. Thorkelson's illicit prescribing practices were not limited to his office. On at least one occasion, Dr. Thorkelson sold an undercover investigator two prescriptions for Percodan while they were at a Louisiana paramutual race track. In addition, Dr. Thorkelson sold the undercover investigator a prescription for Valium on August 28, 1985.

As a result of these investigations, Dr. Thorkelson was arrested on October 24, 1985. That same afternoon, within a few hours of his release from the Calcasieu Parish Jail, Dr. Thorkelson telephoned Darryl's Thrifty Drugs and attempted to have a prescription filled over the phone. Dr. Thorkelson's telephone call was answered by a DEA special agent who was at Darryl's Thrifty Drugs conducting an accountability audit, because the owner/pharmacist of Darryl's Thrifty Drugs was also arrested that morning for controlled substance violations.

Previously, the Administrator concluded that the activities of Dr. Thorkelson indicated that the continued registration of Dr. Thorkelson posed such an imminent danger to the public health and safety that on October 30, 1985, the Administrator ordered the immediate suspension of Dr. Thorkelson's DEA registration during the pendency of these proceedings. Dr. Thorkelson has stated that he no longer needs a DEA Certificate of Registration since he has closed his medical office as of December 31, 1985. Based on the foregoing reasons, the Administrator concludes that the registration of Dr. Thorkelson would be inconsistent with the public interest and therefore Dr. Thorkelson's DEA Certificate of Registration shoud be revoked pursuant to 21 U.S.C. 824(a)(4).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AT3387001, previously issued to John M. Thorkelson, M.D., be, and it hereby is revoked. This order is effective immediately.

Dated: January 30, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–2487 Filed 2–4–86; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Appeals of Service Delivery Area Reorganization Plans

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of appeals procedures for plans to reorganize Service Delivery Areas.

SUMMARY: This notice announces procedures for appeals to the Secretary of Labor of a Governor's plan to reorganize a Job Training Partnership Act Service Delivery Area for failure to meet performance standards for two consecutive years.

FOR FURTHER INFORMATION CONTACT: Robert N. Colombo, Director, Office of Employment and Training Programs, Room 6402, 601 D Street, NW., Washington, D.C. 20213. Telephone number: (202) 376–6093.

SUPPLEMENTARY INFORMATION: Pursuant to section 106(h) of the Job Training Partnership Act (JTPA) and 20 CFR 629.46(d) of the JTPA regulations, the Governor must impose a reorganization plan on a Service Delivery Area (SDA) for failure to meet, for two consecutive program years, the performance standards established by the Secretary. It is left to the Governor to determine if "failure" constitutes failure to meet any one or more of the standards. A reorganization plan may not, however, be imposed for an SDA's failure to meet performance standards other than those established by the Secretary. Such reorganization plans may be appealed to the Secretary pursuant to section 106(h)(4) of JTPA. Pursuant to 20 CFR 629.46(d)(1), the Governor must offer the SDA an opportunity for a hearing prior to imposing a reorganization plan. The Governor shall provide the SDA with written notification of the hearing determination. The Secretary will accept appeals dated no later than 30 days after the SDA's receipt of the Governor's written notification of the hearing determination. The Secretary will make a decision only with regard to determining whether or not the Governor's decision is inconsistent with section 106 of the Act. The regulations provide the address for appeal submittal and require simultaneous submittal of the appeal to the Governor.

Pursuant to section 20 CFR 629.46(d)(5), the appealing party shall explain why it believes the Governor's decision is contrary to the provisions of section 106 of the Act. In order for the Secretary to make an informed decision, the appealing party should provide all relevant information in the appeal. This includes, at a minimum:

(a) Documentation of the SDA's performance standards established by the Governor, any variations to these local standards prescribed by the Governor, and if available to the SDAs, information on how such variations were determined.

(b) Documentation of the SDA's actual performance to assess the extent of failure to meet standards.

(c) Documentation of availability of technical assistance and requests for and the use of such technical assistance by the SDA based upon underperformance.

(d) Documentation of the State sanction policy, if available to the SDA, including the criteria the Governor uses to apply sanctions and the type of sanctions during the two year period. At a minimum, such poliocy should include the following:

- Number of Secretary's performance standards not met which constitutes failure; and
- Extent of failure as determined by the degree of underperformance or relative importance of standards.

(e) Documentation of efforts by the SDA to follow a corrective action plan if imposed by the State, for underperformance. If feasible, the SDA can provide information on reasons why such action was not effective in correcting deficiencies.

(f) A copy of the Governor's notification of the hearing determination with evidence of the date of receipt of such notification.

Pursuant to 20 CFR 629.46(d)(6), Governors may submit comments for consideration by the Secretary. Governors may wish to submit similar or additional information with their comments on the appeal. Since the Secretary will make a final decision within 60 days of receipt of the appeal, Governors will need to submit their comments to the Secretary expeditously for consideration. A letter indicating that the Secretary has received an appeal and establishing a cutoff date for receipt of comments will be sent to the Governor by the Employment and Training Administration for each appeal.

Pursuant to 20 CFR 629.46(d)(6), the Secretary shall make a decision only with regard to determining whether or not the Governor's decision is inconsistent with section 106 of the Act. Pursuant to section 106(e), where the Governor has elected to vary the performance standards established by the Secretary by using the nationally developed adjustment methodology referenced in the Department's Performance Standards Issuance Number 1-PY 84, the Secretary will be predisposed to uphold the Governor's reorganization plan if the varied standards are not being met. If the Govenor elected to use an alternative methodology to vary the standards, however, the Secretary will make the decision on a case-by-case basis, based on the validity of the methodology and its uniform application throughout the State.

Paperwork Reduction Act Clearance

This notice was submitted to and approved by OMB under the Paperwork Reduction Act. The control number assigned to this document by OMB is 1205–0243.

Signed at Washington, D.C., this 3rd day of December, 1985.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86–2467 Filed 2–4–86; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

National Endowment for the Arts; Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Audience Development Section) will be held on Thursday and Friday, February 20–21, 1986, from 9:00 a.m.–5:30 p.m. and Saturday, February 22, 1986, from 9:00 a.m.–1:00 p.m., Room 714 of the Nancy Hank Center, 1100 Pennsylvania Avenue, NW. Washington, DC 20506.

A portion of this meeting will be open to the public on February 22, 1986, from 11:30 p.m.–1:00 p.m. Topics for discussion will be policy and guidelines.

The remaining sessions of this meeting on February 20–21, 1986, from 9:00 a.m.–5:30 p.m., and February 22, 1986, from 9:00 a.m.–11:15 a.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to

subsections (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: January 27, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–2469 Filed 2–4–86; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) as amended, notice is hereby given that a meeting of the Music Advisory Panel (Centers/Services Section) will be held on Wednesday, February 19, 1986, from 9:00 a.m.–5:00 p.m., Room 730 of the Nancy Hank Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 19, 1986, from 2:00 p.m.–3:00 p.m. Topics for discussion will be policy and guidelines.

The remaining sessions of this meeting on February 19, 1986, from 9:00 a.m.–2:00 p.m. and 3:00 p.m.–5:00 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Fundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: January 27, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–2470 Filed 2–4–86; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Arkansas Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF–6 issued to Arkansas Power and Light Company (the licensee), for operation of Arkansas Nuclear One, Unit 2, located in Pope County, Arkansas.

The amendment would revise section 6 (Administrative Controls) of the Technical Specifications (TS) in accordance with the licensee's application for amendment dated December 20, 1985. The proposed TS changes are:

1. Changes to TS 6.5.2.2 would be made to clarify the responsibility of Safety Review Committee (SRC) appointments and total membership of the committee. In addition, the job titles referenced in the current TS for the committee membership would be replaced with functional descriptions.

2. Editorial changes would be made to TS 6.5.2.8 and a typographical error which was made with the issuance of Amendment No. 52 dated February 1, 1984 would be corrected.

3. Changes to Figures 6.2–1 and 6.2–2 would be made to reflect a reorganization of the Nuclear Operations Department of Arkansas Power & Light Company (AP&L).

4. Changes would be made to reflect title changes and change in makeup of the Plant Safety Committee (PSC) due to reorganization.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). One of the examples (i) of actions involving no significant hazards considerations is a purely administrative change to TS; for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature.

The proposed changes identified in item 2 above are purely administrative changes as in example (i) since they involve editorial changes and correction of an error.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes identified in items 1, 3 and 4 above are the results of a recent reorganization of the Nuclear Operations Department of AP&L. The details of the reorganization are described in the licensees application dated December 20, 1985. There, the licensee indicates that the reorganization will enhance the effectiveness of the Nuclear Operations Department in responding to safety issues at Arkansas Nuclear One (ANO). In a similar manner, the effectiveness of PSC and SRC will be enhanced by the improved utilization of personnel with experience and expertise in the appropriate technical disciplines necessary to carry out their functions. Based on the above, the NRC staff

believes that these proposed changes are administrative improvements and that these changes will not diminish, in any way, current administrative requirements of the ANO–2 TS. The staff therefore, proposes to conclude that the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any previously evaluated, or (3) involve a significant reduction in a margin of safety. On this basis, the staff has made an initial determination that the proposed amendment is not likely to involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By March 6, 1986, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period; provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petitioner and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland, this 30th day of January 1986.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.

[FR Doc. 86–2545 Filed 2–4–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-400A]

Carolina Power & Light Company and the North Carolina Eastern Municipal Power Agency; No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the construction permit review of Unit 1 of the Shearon Harris Nuclear Power Plant by the Attorney General and the Commission. The finding is as follows:

"Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensees' activities or proposed activities have occurred subsequent to the previous construction permit review. The Committee has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Shearon Harris construction permits to the Carolina Power and Light Company, the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

"In reaching this conclusion, the staff considered the structure of the electric utility industry in both North and South Carolina, the events relevant to the Shearon Harris construction permit review and the related Brunswick operating license review and the events that have occurred subsequent to these reviews.

"The conclusion of the staff's analysis is as follows:

'Carolina Power and Light (CPL) and the North Carolina Eastern Municipal Power Agency (NCEMPA) are joint owners of the Shearon Harris Nuclear Power Plant (Harris). CPL is a relatively large, fully integrated investor owned utility system serving in North Carolina and South Carolina. NCEMPA is a joint action agency, representing over thirty municipal electric utility systems in North Carolina. CPL supplied wholesale power to NCEMPA, and contractually provides transmission service between NCEMPA and its members. CPL also provides wholesale service to eighteen electric membership cooperatives, four other municipal electric utilities, and one private utility.

'The Department of Justice (Department) rendered antitrust advice to the Commission in 1972 following the Department's review of CPL in connection with CPL's construction permit (CP) application for Harris. In that advice letter, the Department noted that it had received separate complaints regarding CPL's practices, one from a group of fourteen municipal electric distribution utilities, and a second from EPIC, Inc., an agency representing both municipals and cooperatives in the area. In addition, the Department noted several objectionable restrictive provisions in CPL's wholesale contracts. CPL denied any anticompetitive intent or actions, but agreed to remove the alleged restrictive contract provisions, and agreed to accept certain procompetitive conditions in the Harris licenses in exchange for a "no hearing" advice letter from the Department.

'Subsequent to the Harris CP antitrust review, the Department reviewed, (1) CPL with respect to the Brunswick operating license (OL) application, and (2) NCEMPA with respect to its ownership participation in Harris. In neither instance, did the Department express any further antitrust concerns.

'Staff's review of changes in load forecasts, generation and transmission additions, power delivery points, and rate schedules does not suggest any significant anticompetitive effects. Further, CPL's purchases of the Domestic Electric Company and of Pinehurst, Inc., indicate reasonable business transactions which had no significant consumer or local regulatory opposition. Finally, staff views CPL's sale of an ownership share in Harris to NCEMPA and the associated service arrangements as consistent with antitrust conditions contained in other nuclear power plant licenses, and the transmission service arrangements consistent with its Harris antitrust license conditions. Although negotiations for transmission service arrangements between CPL and the North Carolina Electric Membership Corporation (NCEMC) have not been completed, any subsequent problems that may arise therewith may be treated under the Commission's rules for enforcement of license conditions. In conclusion, staff does not recommend a "significant change" finding for the Harris OL application." '

"Based upon staff's analysis, it is my finding that a formal operating license antitrust review of the Shearon Harris Power Plant, Unit 1, is not required."

Signed on January 27, 1986 by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 for 30 days from the date of the publication of the **Federal Register** notice. Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Bethesda, Maryland, on January 29th, 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-2546 Filed 2-4-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-337 and 50-328; 50-259, 50-260, and 50-296; 50-390 and 50-391; 50-438 and 50-439]

Tennessee Valley Authority, (Sequoyah Nuclear Plant, Units 1 and 2), (Browns Ferry Nuclear Plant, Units 1, 2, and 3), (Watts Bar, Units 1 and 2), (Bellefonte, Units 1 and 2); Order Modifying Licenses (Effective Immediately)

I

Tennessee Valley Authority (TVA or the licensee) is the holder of Facility Operating Licenses Nos. DPR-77 and DPR-79 which authorize the licensee to operate the Sequoyah Nuclear Plant, Units 1 and 2 (SNP) in Soddy-Daisy, Tennessee, the holder of Facility Operating Licenses Nos. DPR 33, DPR 52, DPR 68 which authorize the licensee to operate the Browns Ferry Nuclear Plant, Units 1, 2, and 3 near Athens, Alabama, the holder of construction permits to build the Watts Bar Nuclear Plant, Units 1 and 2 near Spring City, Tennessee and the holder of construction permits to build the Bellefonte Nuclear Plant, Units 1 and 2.

II

In the spring of 1985, the NRC received a number of anonymous allegations regarding safety concerns and employee reprisals at TVA. Most of the allegations involved construction quality issues at Watts Bar and the perception that TVA supervisors had either taken or would take adverse actions against employees raising these concerns through normal channels.

TVA has contracted with the Quality Technology Company (QTC) to conduct interviews of all employees at Watts Bar and to conduct certain investigations flowing from concerns raised by these employees. The contract between TVA and QTC provides, *inter alia*, that the names of persons raising concerns will be held in confidence, and will only be disclosed to a third party with the permission of the employee or as a

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result of a compelled process such as an order.

The Commission, acting under the authority of section 161(c) and 161(o) of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.70 of the Commission's regulations, has also initiated inspections and undertaken investigations of licensed activities involving the construction of Watts Bar and other TVA facilities. Specifically, the inspections and investigations are to determine: (a) Whether construction workers engaged in activities under the various licenses were harassed, intimidated or discharged because the workers were raising questions concerning alleged construction problems which, if uncorrected, could lead to unsafe conditions jeopardizing the public health and safety, (b) whether there may now exist at the Watts Bar potentially unsafe conditions, the existence of which has not been communicated to the licensee or the Commission because of the chilling effect on workers' willingness to identify safety concerns from a perception on such workers' part that a worker may be harassed or discharged if he or she identifies potentially unsafe conditions to the licensee or to the Commission; and (c) whether the program put in place by TVA is identifying, evaluating, and resolving plant specific safety concerns at Watts Bar, Sequoyah, Browns Ferry, and Bellefonte and any generic aspects of employee concerns that may relate to other TVA facilities.

In order for the NRC to carry out its health and safety responsibilities it is necessary that the NRC have reasonable assurance that safety concerns affecting TVA's licensed facilities have been identified and properly evaluated and resolved. This may require that NRC representatives review the QTC records describing the safety concerns and interview the persons who have raised such concerns. Access to the original unexpurgated records is therefore required to obtain the necessary information. If such records are reviewed, NRC would honor the confidentiality agreements between QTC and their interviewees. In any subsequent interviews NRC may conduct, NRC would afford the interviewee the opportunity to sign an NRC confidentiality agreement if he or she desires to remain confidential.

IV

During the past few weeks it appears that the continuing status of the contractual relationship between QTC and TVA is unclear and may significantly change at any time. QTC has informed the NRC that there is only a verbal agreement between QTC and TVA to preserve the integrity of the original unexpurgated records resulting from the employee concern program. Thus, there is a substantial question as to whether the original QTC records will be preserved and if preserved, whether NRC will have access to them to permit inspection and copying.

The failure to permit voluntary NRC inspection of the complete employee concern records containing potential safety information related to licensed activities is contrary to 10 CFR 50.70. *See Union Electric Company* (Callaway Plant, Units 1 and 2), 9 NRC 126 (1979). Therefore, in view of the above I have determined that the public health, safety and interest requires that the following actions be effective immediately.

V

In view of the foregoing, pursuant to sections 103, 161c, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 50, it is hereby ordered, effective immediately, that TVA:

(A) Prohibit the removal of the unexpurgated original QTC records resulting from the employee concern program from TVA controlled property, the destruction of such records, the deletion of information from such records, or any other action which could compromise the integrity of the information contained in such records without prior written approval of the Director, Office of Nuclear Reactor Regulation.

(B) Provide 5 working days notice to the Director, Office of Nuclear Reactor Regulation, before QTC relinquishes control or custody of the unexpurgated original QTC records resulting from the employee concern program.

(C) Direct QTC to permit inspection and copying of the unexpurgated original QTC records resulting from the employee concern program by NRC representatives authorized by the Director of the Office of Nuclear Reactor Regulation.

The Director, Office of Nuclear Reactor Regulation, may relax or terminate any of the above conditions for good cause.

VI

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of the Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, Region II, 101 Marietta Street, NW., Atlanta, Georgia 30303. An answer to this order or a request for hearing shall not stay the immediate effectiveness of section V of this order.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

Dated at Bethesda, Maryland, this 30th day of January, 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulations.

[FR Doc. 86-2547 Filed 2-4-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-424-OL, 50-425-OL; (ASLBP No. 84-499-01-OL)]

Georgia Power Company et al., (Vogtle Electric Generating Plant, Units 1 and 2); Hearing

January 29, 1986.

Atomic Safety and Licensing Board. Before Administrative Judges: Morton B. Margulies, Chairman, Gustave A. Linenberger, Jr., Dr. Oscar H. Paris.

Notice is hereby given that an evidentiary hearing will be conducted involving the application filed by Georgia Power Company, acting for itself and as agent for Oglethorpe Power Corporation, Municipal Electric Authority of Georgia and City of Dalton, Georgia, for operating licenses for two pressurized water nuclear reactors located in Burke County, Georgia. The application, as amended, was filed on September 13, 1983, pursuant to the Atomic Energy Act of 1954, as amended, and the National Environmental Policy Act of 1969. Hearing will commence on March 11, 1986, at 9:30 a.m., local time, in the Burke County Office Park Auditorium, West 6th Street, Waynesboro, Georgia and continue at the direction of the Licensing Board.

The subject of the hearing will relate to allegations made by Joint Intervenors, Campaign For A Prosperous Georgia and Georgians Against Nuclear Energy, that there is no reasonable assurance that the activities to be authorized by the operating licenses can be conducted without endangering the health and safety of the public because of possible groundwater contamination (Contention 7) and deficiencies that exist in the qualification of certain polymer

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materials to be employed in components (Contention 10.1) and of specified valves (Contention 10.5) that are to be used in the facilities. (There are contentions pending on the discrete issue of emergency planning for which no hearing schedule has been set.)

Direct testimony to be presented at the hearing is to be prefiled with the Licensing Board and the parties by February 24, 1986. The identities of witnesses to appear at the hearing are to be conveyed to the Licensing Board and the parties, in writing, by February 18, 1986.

The public is invited to attend the hearing. An appropriate opportunity will be provided during the course of the hearing for persons not parties to the proceeding to make a limited appearance through an oral or written statement of position on the issues, as provided for in 10 CFR 2.715(a). The terms under which the limited appearance are to be made will be set forth in a further notice.

It is so *Ordered.*

Dated at Bethesda, Maryland, this 29th day of January, 1986.

For the Atomic Safety and Licensing Board.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 86-2544 Filed 2-5-86; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Claim for Credit for Military Service (RUI Act).

(2) Form(s) submitted: UI-44.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 300.

(7) Annual reporting hours: 25.

(8) Collection description: Military service can be used under certain conditions for entitlement to an extended or accelerated unemployment benefit period provided for under section 2(c) of the Railroad Unemployment Insurance Act. The form will obtain information about the applicant's claimed military service.

Additional information or comments: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86-2472 Filed 2-4-86; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Employer Service and Compensation Reports.

(2) Form(s) submitted: UI-41, UI-41a.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Businesses or other for-profit.

(6) Annual responses: 25,000.

(7) Annual reporting hours: 1,833.

(8) Collection description: The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86-2473 Filed 2-4-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14926; (812-5882)]

Municipal Investment Trust Fund et al.; Application for Order Permitting Principal Transactions

January 30, 1986.

Notice is hereby given that Municipal Investment Trust Fund and Liberty Street Trust, Municipal Monthly Payment Series and any future series of either Fund (collectively, "Funds"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Dean Witter Reynolds Inc., Prudential-Bache Securities Inc., Shearson Lehman Brothers Inc., PaineWebber Incorporated and any other broker/dealer which may in the future act as Sponsor of the Funds (collectively with Merrill Lynch, "Sponsors") (Sponsors and Funds collectively, "Applicants") c/o Merrill Lynch, One Liberty Plaza, 165 Broadway, New York, New York 10080, filed an application on June 27, 1984, and amendments thereto on August 28, 1985, and January 10, 1986, for an order of the Commission, pursuant to sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") exempting Applicants and any future Sponsor who may join as a co-sponsor of the Funds from the provisions of section 17(a)(2) of the Act to the extent necessary to permit the Funds to sell their portfolio securities ("Securities") through independent broker-dealers to purchasers, which may include one or more of the Sponsors. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the Rules thereunder for the text of the applicable provisions thereof.

According to the application, each of the Funds is a registered unit investment trust under the Act that issue separate series ("Series"), created by separate trust indentures. Each Fund has a separate portfolio and registration statement under the Securities Act of 1933 ("Securities Act") with respect to

the sale of units ("Units") that represent a fractional undivided interest in the Series. Applicants state that each Series of the Funds invests in Securities consisting solely of debt obligation of states, municipalities, public authorities and other public subdivisions ("Municipal Bonds"), and to a limited extent in some Series, Units of other Series comprised of such Securities. The interest on each of the Securities, in the opinion of bond counsel, is exempt from federal income taxation. At the time of acquisition by the Funds, the Securities are rated A or better by Standard & Poor's Corporation or Moody's Investors Services, or in the opinion of the agent ("Agent") for the Sponsors, has comparable credit characteristics.

According to the application, the trustee for each Series is not permitted to vary investments or to purchase Securities except to purchase replacement Securities for failed contracts. The trustee is authorized to sell Securities prior to maturity in order to meet redemption obligations to Unitholders, or as directed by the Agent, in the event of certain material adverse credit developments, such as defaults of amounts due or a default on amounts due on other securities by the same issuer, a decline in prices, or the occurrence of other market developments which in the opinion of the Sponsors would make retention of the Securities by the Funds to be deterimental to the interest of Unitholders.

Applicants state that Merrill Lynch acts as Agent for the Sponsors of each Series pursuant to a power of attorney and is the only Sponsor giving instructions to a trustee with respect to Securities to be sold. These instructions are given an officer of Merrill Lynch in its Unit Trust Department, which maintains it own separate research staff. Applicants represent that although Securities deposited in a Series may be acquired from Merrill Lynch, White Weld Capital Markets Group ("Group"), a separate division of Merrill Lynch and one of the largest dealers in municipal securities, the personnel and operations of the two divisions are separate and the Group will not have any involvement in the administration of the Funds' portfolios, and will not solicit sales from the Funds' portfolios. Applicants state that personnel from the Group may be consulted from time to time about the quality of a Municipal Bond held by a Series.

Applicants state that Municipal Bonds are exempt from the registration requirement under the Securities Act and are traded after initial issuance in a dealer market in which there is no single obtainable price. Applicants state that a seller of Municipal Bonds can have an executing broker telephone directly different Municipal Bond dealers, or can use the facilities of a wire service. Applicants state there are two principal operators of wire systems in Municipal Bonds. The wire services announce offers over the wire, specifying the security, principal amount offered, and any price and timing limitation, but neither the ultimate seller nor the dealer acting on its behalf are revealed. Applicants state that Merrill Lynch will select an independent broker-dealer which will introduce the Series' order on the wire service. Each of the Sponsors maintains a major business in municipal securities, Applicants state, and that based on their experience as dealers in municipal securities, the Sponsors and their affiliates represent a significant portion of the municipal securities market. Applicants also state that to the best of their knowledge and belief, the two wire systems operate where a major segment of secondary market transactions in municipal securities are conducted.

Applicants submit that because the Funds are excluded from receiving bids from the Sponsors and their affiliates, Funds may frequently be denied the best available price notwithstanding that the market reached by the wire services is both widely competitive and anonymous. Applicants request an order, pursuant to sections 6(c) and 17(b) of the Act, that the sales of Securities from the Funds and any future series of the Funds through an independent broker-dealer to a purchaser, which may include a Sponsor, be exempted from the provisions of section 17(a)(2) of the Act.

Applicants agree that in order to minimize the possibilities of overreaching in the Securities transactions, any order issued by the Commission be subject to the following conditions: (1) Merrill Lynch will not advise the Group or the municipal securities dealer department of any other Sponsor when giving instructions to sell a Municipal Bond. (2) Merrill Lynch will select a broker-dealer to effect the sale which it considers efficient and competent and which is independent of any of the Sponsors. (3) Offers will be made through a major wire service in Municipal Bonds and will be kept open for 3 hours after initial appearance on the wire, and which will not be reduced to less than 2 hours in the discretion of the executing broker-dealer in a declining market. (4) A Sponsor's bid will be accepted only if a minimum of three bids are received from persons other than their Sponsors or their affiliates. (5) The trustee will be instructed not to inquire as to the identity of a bidder, and if it receives such information, will not transmit it to the Agent for the Sponsors. (6) Broker-dealers effecting the sales will be instructed to obtain the best available price and execution and will instruct the wire services not to report any bid from a Sponsor unless it is higher than the best price available from non-affiliated broker-dealers.

Applicant believe that the proposed terms and conditions of the Funds' transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each Fund as recited in their registration statements and reports filed under the Act, and is consistent with the general purpose of the Act. Applicants further assert that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 24, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2542 Filed 2-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22847; File No. SR-OCC-85-13]

Self-Regulatory Organizations; The Options Clearing Corp.; Amendment to Proposed Rule Change

On January 16, 1986, the Options Clearing Corporation ("OCC") filed with the Commission an amendment to a proposed rule change (SR-OCC-85-13) filed on August 9, 1985. In Securities Exchange Act Release No. 22354 (August 23, 1985), 50 FR 35340 (August 30, 1985), the Commission published notice of that proposed rule change. That rule change would establish a general OCC processing system for the issuance and clearance of international options traded pursuant to international market agreements.

More specifically, the proposed rule change reflected a proposed link between the Philadelphia Stock Exchange ("PHLX") and The Stock Exchange of the United Kingdom and the Republic of Ireland (the "London Exchange") whereby foreign currency options that are currently traded on the PHLX would be traded on the London Exchange. Under the proposed rule change, since options of a given series would be fungible regardless of the market in which the option was purchased or sold, options positions acquired in one market could be liquidated in the other. These international options ("IFX") would be traded and cleared pursuant to an International Market Agreement ("IMA") among OCC, PHLX and the London Exchange.

OCC proposed revisions to its By-Laws and Rules in light of the proposed rule change and submitted a draft IMA in its initial filing. The Commission is publishing this notice of amendment because OCC has proposed significant modifications to the previous proposed changes to its By-Laws and Rules and IMA. In addition, OCC has submitted to the Commission an Associate clearinghouse Agreement between OCC and International Commodities Clearing House Association Limited ("ICCH") through which ICCH would become an "associate clearinghouse" of OCC for the purpose of carrying the accounts of London-based securities firms that do not choose to become OCC Clearing Members.

Although the present filing relates specifically to IFX options, the proposed amendments to the By-Laws and Rules have been drafted to apply generally to options that might be traded on any international market pursuant to an international market agreement similar to the IMA ("international options"). In addition, it should be noted that, although all foreign currency options presently traded on PHLX will be deemed for most purposes under the By-Laws and Rules to be international options and may at some future time be traded on the London Exchange, it is the present intention of the London Exchange and PHLX to initiate trading in IFX options only on the British pound.

Amendments to By-Laws and Rules

In Article I, section 1 of the By-Laws, the changes in the leadin language are to conform to the language approved by the Commission in File No. SR-OCC-85-15. The definitions of "business day" and "settlement time" are being amended to more precisely define those terms in relation to international options. OCC will conduct margin and premium settlement in respect of international options in a particular country on any day when the local banks are open and the markets in that country are open for trading. OCC will designate a settlement time in London that is prior to the time when trading begins on the London Exchange. The definition of "settlement time" is being amended to make clear that the London settlement time applies only to those Clearing Members that have elected to clear international transactions through OCC's London office ("London Clearing Members"). In accordance with proposed Rule 204, Clearing Members that maintain offices in the United States may clear international transactions, including transactions in IFX options executed on the London Exchange, through the same OCC offices they have designated for clearance of other OCC-issued options. The regular settlement time in the United States will apply in respect of international transactions cleared through an OCC office in the United States. A new sentence is being added to the definition of "settlement time" to specify that for purposes of the definition the term "international transaction" shall include any Exchange transaction that is deemed to be an international transaction for purposes of section 20 of Article VI of the By-Laws. The reason for this change is described below in the discussion of the new "Interpretation and Policy" to accompany section 20 of Article VI of the By-Laws.

Because transactions executed on the London Exchange may be cleared through OCC offices in the United States, and transactions in foreign currency options executed on PHLX may be cleared through OCC's London office, it is possible that the premiums required to be paid *by* OCC to London Clearing Members on any business day will exceed the premiums paid *to* OCC by London Clearing Members. Accordingly, OCC is in the process of establishing banking arrangements that will allow it to overdraft its settlement account in London in order to pay premiums owed to London Clearing Members pending receipt of premiums from United States Clearing Members at settlement time in the United States. On a few days during the year when the market in one country is open but the market in the other country is not, OCC will borrow funds overnight if needed to make premium settlement.

The definition of "business day" is also being amended to make clear that exercise notices may be tendered in respect of international options, and exercises will be assigned to such options, on any day that is a trading day on either the London Exchange of PHLX. This is necessary to keep the exercise and assignment system in balance. Accordingly, OCC offices in the United States will be open for the purpose of accepting exercise notices on holidays such as the Fourth of July, which is ordinarily a trading day on the London Exchange. The changes in the last sentence of the definition are to conform to the language proposed in File No. SR-OCC-85-18.

The definition of "Exchange transaction" is being amended to eliminate any implication that all options transactions on the London Exchange are within the definition. Options other than IFX options are traded on the London Exchange, and OCC is not the clearing agent in respect of those other options. The definition of "associate clearinghouse" is being amended to provide that an associate clearinghouse acts on behalf of those of its participants that choose to clear international transactions through the associate clearinghouse, whether or not such participants are Clearing Members of OCC. The definition is also amended to specify that the provisions governing the relationship between the associate clearinghouse and OCC are contained in an agreement between OCC and the associate clearinghouse, rather than in the IMA.

The added definitions in section 1 of Article I of the By-Laws have been re-lettered in accordance with a letter dated October 10, 1985, from Ms. Lori R. Burns to the Division of Market Regulation.

Section 6 of Article VI of the By-Laws is being amended to enable authorized Exchange members to give up the name of an associate clearinghouse in respect of international transactions. Section 20 of Article VI is being amended to make

clear that international transactions may be cleared through an international office at the election of a particular Clearing Member. An "Interpretation and Policy" is being added following section 20 to make it clear that under the IMA all foreign currency options traded on PHLX will be deemed to be "international options" for the purposes of that section, even though initially only options on the British pound will be traded on the London Exchange. This result is required because matched trades in respect of all foreign currency options traded on PHLX will be reported to OCC on the same daily computer tapes and must therefore be cleared through the same clearing system—*i.e.*, the new international clearing system. Conforming changes required for the same reason are being made to subparagraph (bb) of section 1 of Article I of the By-Laws, new Rule 101(p), Rule 204, Interpretation and Policy .08 to Rule 604 and Rule 801(a), and the changes described below to Rule 601(b)(5), new Rule 601(b)(6) and the new Interpretation and Policy to Rule 1602 are influenced by the same considerations.

An "Interpretation and Policy" is being added following section 1 of Article XV of the By-Laws to indicate that certain foreign currency options traded on PHLX have been designated as "international options" pursuant to an international market agreement, and that the By-Laws and Rules applicable to international options are applicable to such options.

The proposed change to Rule 201 specifies that offices maintained by Clearing Members for the purpose of doing business with OCC through an international office will be treated in the same way as offices maintained by Foreign Clearing Members.

Proposed new Rule 310 has been deleted for reasons that are explained below in the discussion of section 9 of the Associate Clearinghouse Agreement.

Proposed new Rule 601(b)(6) has been changed, and new language has been added to Rule 601(b)(5), to clarify that, while there will be no "crossover margin credit" between options that the Corporation deems to be international options for purposes of section 20 of Article VI of the By-Laws and other classes of options, "crossover margin credit" will be available between the various classes of options that the Corporation deems to be international options for the purposes of Section 20 of Article VI of the By-Laws.

The change in paragraph (j) of Rule 601 merely corrects a cross-reference and is unrelated to international options.

In Rule 801, the reference to paragraph (d) as being unchanged is added to conform the configuration of the Rule to that proposed in File No. SR–OCC–85–18.

The new "Interpretation and Policy" following Rule 1602 is intended to supplement the amended definition of "business day" by emphasizing that any day that is a trading day on any Exchange or international market will be treated as a business day for purposes of acceptance and assignment of exercise notices filed in respect of options that the Corporation deems to be international options for the purposes of section 20 of Article VI of the By-Laws.

International Market Agreement

The text of the IMA as set forth in Exhibit 4 has been marked to show the location of changes from the form of the agreement as originally filed with the Commission. The changes on the first page reflect the fact that not all foreign currency options traded on PHLX ("PFX options") will be international options, at least initially. The changes in the second sentence of section 2 are for the same purpose. The change in section 1 is not substantive.

A new sentence has been added to section 2 to specify that, for purposes of clearance and settlement, foreign currency options traded on PHLX which are not international options will be deemed to be international options. This change is dictated by the considerations described above in the discussion of the new "Interpretation and Policy" to accompany section 20 of Article VI of OCC's By-Laws, and it will have the additional consequences for OCC's By-Laws and Rules described in that discussion. The remaining changes in section 2 are stylistic and to correct a typographical error.

Section 3 has been changed to provide that new series of options can be opened only by agreement between the two markets. Section 4, relating to the submission of matched trade information by the London Exchange to OCC, has been amended to delete references to magnetic tape since transmission will be by telecommunication. The London Exchange will be required to submit such information to OCC in Chicago not later than 5:00 P.M. Chicago time rather than 7:00 P.M. London time, as originally stated. The changes in section 6 are stylistic. Section 8, which relates to the furnishing of certain information by the London Exchange to OCC for inclusion in any disclosure document that OCC might be required to prepare, has been amended to reflect OCC's view that, under present law, no disclosure with respect to IFX options traded on the London Exchange will be required. Under the definition of security as set forth in section 2(l) of the Securities Act of 1933 (the "Securities Act") and in section 3(a)(10) of the Securities Exchange Act of 1934 (the "Exchange Act"), an option relating to foreign currency is a security only if it is "entered into on a national security exchange." Because IFX options arising from transactions on the London Exchange will not be "entered into on a national securities exchange," such options are not securities within the meaning of either Act. Accordingly, neither the Prospectus filed by OCC under the Securities Act nor the risk disclosure document distributed pursuant to the Exchange Act will contain specific disclosures relating to LFX options. Section 8 of the IMA nevertheless provides that the London Exchange is obligated to furnish information for inclusion in a disclosure document if OCC should at any time determine that such disclosure is required.

A new sentence has been added to section 9 to make clear that the Associate Clearinghouse Agreement, which is being filed with this Amendment, contains a provision (in section 7(b) of that Agreement) which governs the exchange rate to be applied to British pounds, and the "haircut" to be applied to British "gilts", that are deposited as margin by ICCH.

Former section 11, which contained certain provisions relating to the role of ICCH as an associate clearinghouse, has been deleted from the IMA. The role of ICCH is now set forth in detail in the Associate Clearinghouse Agreement.

Section 11 now provides that OCC will treat as "Market-Makers" under its Rules such persons and firms as are recognized as market makers in LFX options by the London Exchange.

A reference to the Associate Clearinghouse has been deleted from section 13 because all agreements relating to the Associate Clearinghouse are now contained in the Associate Clearinghouse Agreement.

Paragraph (a) of section 14 is amended (i) to reflect the fact that the London Exchange does not file its rules with any regulatory authority, and (ii) to narrow the scope of the provision to those Exchange Rules that relate to contract specifications. A sentence containing the agreement of PHLX and the London Exchange not to list options other than IFX options on any foreign currency that is an underlying foreign

currency for IFX Options has also been added to the paragraph.

Section 16 limits OCC's authority and responsibility with respect to certain matters. A non-substantive change has been made in clause (i), and a general provision has been added to the effect that OCC shall have no authority or responsibility to establish or enforce any standard or procedure not fairly contemplated by the IMA.

Section 17 obligates the London Exchange to adopt Exchange Rules establishing time limits for the preparation of exercise notices by its members in respect of IFX options. The Section is being amended to require the London Exchange to establish time limits that are not later than the corresponding time limits contained in the rules of PHLX.

Section 20 has been amended to eliminate the obligation of the London Exchange to provide certain specific information to OCC and to make clear that the London Exchange is not obligated to furnish any information to OCC regarding any Clearing Member except to the extent that the Clearing Member has given its written consent to the release of such information. The change in Paragraph (b) is stylistic.

Subparagraph (a)(i) of section 21 has been amended to make its provisions parallel to those of Subparagraph (b)(i).

Paragraph (b) of section 23 has been amended to clarify its intended meaning. A stylistic improvement has been made to clause (ii) of Paragraph (c), and a new clause has been added that permits PHLX and the London Exchange to open new series of IFX options after a termination of the IMA, so long as each such new series expires on the expiration date of any previously opened series of IFX options. This new provision is intended to give PHLX and the London Exchange the ability to set new exercise prices that take account of then-current market conditions so that the full range of trading strategies remains available to traders until the final expiration date.

Section 24 has been amended to permit the London Exchange to give notices to OCC's London office.

Section 25 has been amended to include a forum selection provision requiring that any action brought by either party against the other relating to the IMA or the transactions contemplated therein shall be brought in federal court in Chicago, Illinois if the federal court has jurisdiction, and shall otherwise be brought in an appropriate Illinois state court in Chicago, Illinois. A typographical error has also been corrected.

Associate Clearinghouse Agreement

OCC has reached an agreement with International Commodity Clearing House Limited ("ICCH") whereby ICCH agrees to act as an associate clearinghouse as defined in the By-Laws and Rules of OCC. ICCH will act on behalf of securities firms that are or become participants in ICCH for the purpose of clearing the transaction and carrying the positions of such firms in IFX options. Under the provisions of the Associate Clearinghouse Agreement, an OCC Clearing Member could choose to clear its transaction in IFX options through ICCH. It is anticipated, however, that most ICCH participants will not be Clearing Members of OCC.

ICCH will function in many respects as a Clearing Member of OCC, and will be deemed to be a Clearing Member under OCC's By-Laws and Rules, except to the extent provided in the Associate Clearinghouse Agreement.

Section 1 of the Associate Clearinghouse Agreement provides that terms used in the Agreement that are defined in the By-Laws and Rules of OCC shall have the same respective meanings as therein.

Section 2 provides that ICCH shall become an associate clearinghouse and, as such, shall not be subject to the requirements of Article V of the By-Laws that are applicable to other Clearing Members.

Section 3 provides that ICCH is bound by amendments to the By-Laws and Rules except that, if ICCH delivers to OCC notice objecting to a particular amendment or proposed amendment to the By-Laws and Rules and gives notice of termination of the Agreement, that OCC shall use its best efforts to delay or suspend the effectiveness of any such amendment, or to exempt ICCH from the effect of such amendment, until the termination has been effected.

Section 4 sets forth a system of subaccounts to be maintained by ICCH on behalf of its participants that is parallel in some respect to the accounts that would be maintained on behalf of such participants if the participants were themselves Clearing Members of OCC. These subaccounts shall consist of Firm Subaccounts, Market-Maker's Subaccounts, Combined Market-Makers' Subaccounts, and Customers' Subaccounts. Paragraph (d) of section 4 provides that long positions in Customers' Subaccounts may be carried as unrestricted long positions only to the extent that ICCH and the affected ICCH Participants warrant to OCC that it is lawful to so carry such long positions and grant OCC a lien on such long positions. In addition, paragraph (e) of section 4 provides for the possible consolidation of Firm Subaccounts of two or more ICCH Participants, or of Market-Maker's or Combined Market-Makers' Subaccounts carried by two or more ICCH Participants, in Omnibus Firm Subaccounts and Omnibus Market-Makers' Subaccounts (as the case may be) provided, among other things, that the respective ICCH Participants and Market-Makers whose positions are commingled in such omnibus accounts have executed an agreement consenting to such commingling.

For each subaccount other than a Customers' Subaccount maintained by ICCH on behalf of an ICCH Participant, OCC will require ICCH and the ICCH Participant to enter into an account agreement with OCC similar in form to the account agreements required by OCC in respect of Market-Maker accounts. Account agreements in respect of Market-Maker's Subaccounts and Combined Market-Makers' Subaccounts shall also be executed by each Market-Maker whose positions are included in the account. Each such account agreement shall provide, among other things, that OCC shall have a lien on all long positions carried in the account. In the case of a Market-Maker's Subaccount or a Combined Market-Maker's Subaccount, the lien shall be limited to obligations of ICCH arising out of the particular subaccount. In the case of a Firm Subaccount, the lien shall extend to any obligation arising from such Firm Subaccount or any obligation arising from any other subaccount maintained by ICCH on behalf of the same ICCH Participant.

To the extent that the Firm Subaccounts of more than one ICCH Participant are consolidated in an Omnibus Firm Subaccount, OCC shall require that ICCH and each such ICCH Participant shall enter into an account agreement with OCC providing, among other things, that OCC shall have a lien on all long positions carried in such Omnibus Subaccount in respect of any obligation arising in any subaccount maintained by any ICCH Participant whose positions are included in the Omnibus Subaccount. In the case of an Omnibus Market-Makers' Subaccount, OCC will require ICCH and each such ICCH Participant whose Market-Maker Subaccount are included in such Omnibus Subaccount, together with each Market-Maker whose positions are included in such Omnibus Subaccount, to enter into an agreement with OCC pursuant to which OCC shall have a lien on all long positions included in such Omnibus Subaccount in respect of any

obligation of ICCH to OCC arising out of such Omnibus Account.

Section 5 provides the grounds upon which ICCH could be suspended as a clearing member and provides that, in the highly unlikely event of such a suspension, the Rules of Chapter XI shall apply. Section 6 relates to Daily Position Reports and clearing procedures of OCC and is self-explanatory.

Paragraph (a) of section 7 provides that ICCH shall be required to deposit margin on each ICCH Participant Customers' Subaccount as if it were a customers' account and on each Firm Subaccount and Market-Maker Subaccount as if it were a firm or Market-Maker account. OCC may nevertheless require ICCH to deposit margin on each ICCH Participant Subaccount as if it were a Customers' Subaccount if OCC determines that it is impossible or impracticable under applicable laws of the United Kingdom to perfect OCC's security interest on long positions maintained in such account. The reasoning of this provision is that OCC will give margin credit for long positions (as is presently done in the case of Market-Makers' accounts and firm accounts) only to the extent that OCC has a perfected security interest in such long positions.

The provisions of paragraph (b) of section 7 relate to the acceptance by OCC of ICCH margin deposits in the form of British pounds and governmental obligations of the United Kingdom. The provisions of paragraph (b) are self-explanatory.

Section 8 provides that ICCH shall be required to make contributions to OCC's Non-Equity Securities Clearing Fund according to the same formula applicable to other Clearing Members. ICCH will be permitted, however, to make such contributions in the form of British pounds or Gilts if it so chooses.

Section 9 provides that most of the financial requirements contained in Chapter III of the Rules are inapplicable to ICCH. Section 9 sets forth special financial requirements that are appropriate to the unique circumstances of ICCH. As a result the provision that was proposed as new Rule 310 in OCC's Rules has been deleted as no longer necessary.

Section 10 contains certain technical provisions indicating how certain existing provisions of OCC's By-Laws and Rules will apply to ICCH. Paragraph (b) of section 10 exempts ICCH from the disciplinary provisions of Chapter XII of the Rules. OCC believes that it is inappropriate for ICCH to be subject to disciplinary procedures. However, in the event that ICCH is in violation of operational Rules, the problem would be dismissed with ICCH and, if it could not be resolved, OCC would have the right to terminate performance of its obligations related to ICCH's violation on 30 days' notice to ICCH, and would have the additional right to terminate its relationship with ICCH on an additional 15 days' notice. Paragraph (c) reflects an agreement that ICCH may designate Exchange members that are not OCC Clearing Members to compare trades on its behalf.

Section 11 requires that ICCH Participants shall establish a cut-off time for submission of exercise notices in respect of IFX options that is not later than the cut-off time for submission of such exercise notices established in the Rules of PHLX and to establish procedures for allocation of exercise notices in accordance with OCC's Rule 804.

Section 12 relates to clearing fees, the calculation of which will be in accordance with the formula set forth in Schedule A to the Associate Clearinghouse Agreement. These provisions are self-explanatory.

Section 13 contains certain representations and warranties of ICCH and of OCC with respect to execution of the Associate Clearinghouse Agreement. ICCH makes no representation or warranty as to the authority of the government of the United Kingdom under the Protection of Trading Interests Act 1980 to prohibit the performance of any act to be performed by ICCH pursuant to the agreement.

Section 14 contains provisions permitting either party to terminate the agreement on 120 days' prior notice. Section 15 provides for notices delivered by one party to the other, and section 16 relates to miscellaneous matters. The provisions of these sections are self-explanatory.

Item 4. *Self-Regulatory Organization's Statement on Burden on Competition*

OCC is not amending its statement pursuant to this Item 4 as originally filed.

Item 5. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none have been received.

Item 6. *Extension of Time for Commission Action*

OCC does not consent to an extension of the time period specified in section 19(b)(2) of the Exchange Act.

Item 7. *Basis for Summary Effectiveness Pursuant to section 19(b)(3) or for Accelerated Effectiveness Pursuant to section 19(b)(2)*

Not applicable.

Item 8. *Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission*

The proposed rule change is not based on a rule of another self-regulatory organization or of the Commission.

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 it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-2540 Filed 2-4-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/937]

Chairman's Special Ad Hoc Subcommittee of the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that the Chairman's Special Ad Hoc Subcommittee of the CCIR National Committee will meet on February 27, 1986 at 9:30 a.m. in Room 6320, Department of State, 2201 C Street, NW., Washington, D.C.

During the 93rd meeting of the CCIR National Committee, the Chairman established a Special Ad Hoc Subcommittee to facilitate the activities of the Committee. The general purpose of this Subcommittee is to obtain both government and private sector input to advise the Chairman on a wide variety of radio issues related to the CCIR National Committee. In the short term, this Special Ad Hoc Subcommittee will focus on preparations for the XVIth CCIR Plenary Assembly, May 1986, especially those items of a general, non-technical nature. In the longer term, the work will address general, non-technical policy issues that encompass multiple study groups.

The purpose of this meeting will be to initiate preparatory work for the VXIth Plenary Assembly and to identify long-term study areas that the Special Subcommittee will address in the future.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact Warren Richards, Department of State (telephone (202) 647-5841). All attendees must use the C Street entrance to the building.

Dated: January 29, 1986.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 86-2522 Filed 2-4-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Revocation of the Section 401 Certificates of Chisum Flying Service of Alaska, Inc., the Hawaii Express, Inc., and Marco Island Airways, Inc.; Section 418 Certificates of Combs Airways, Inc., Gelco Courier Services, Inc., and Hawkins & Powers Aviation, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 86-1-73), Docket 43767.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the section 401 certificates of Chisum Flying Service of Alaska, Inc., The Hawaii Express, Inc., and Marco Island Airways, Inc., and the section 418 certificates of Combs Airways, Inc., Gelco Courier Services, Inc., and Hawkins & Powers Aviation, Inc.

DATES: Persons wishing to file objections should do so no later than February 21, 1986.

ADDRESSES: Responses should be filed in Docket 43767 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Special Authorities Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 755-3812.

Dated: January 30, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-2514 Filed 2-4-86; 8:45 am]

BILLING CODE 4910-62-M

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 85-12-54 established the currently effective two-month SFFL applicable through January 31, 1986.

In establishing the SFFL for the two-month period starting February 1, 1986, we have projected nonfuel costs based on the year ended September 30, 1985 data, and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported by the Department.

By Order 86-1-72 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic	1.1116
Latin America	1.3500
Pacific	1.2601
Canada	1.2590

For further information contact: Julien R. Schrenk, (202) 472-5126.

By the Department of Transportation.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-2515 Filed 2-4-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[FAA Order 6850.26A]

Grants, Availability, etc.; Federal Funding of Visual Glideslope Indicators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of funding policy.

Purpose

This notice announces the FAA's policy on Federal funding of visual glideslope indicators. As required by Pub. L. 99-88, the proposed funding policy, as contained in FAA Order 6850.26A, was published in the **Federal Register** (50 FR 34573) on August 26, 1985, to provide the public with the opportunity to comment. The original comment period of 30 days was extended to 60 days by notice in the **Federal Register** (50 FR 39067) dated September 26, 1985.

Background

During the period from 1961 to 1982 the VASI was the U.S. standard system and was the only system eligible for Federal funding. During this period over 3000 runways in the U.S. were equipped with a VASI. Although the VASI was an English developed system, it was not patented and could be made by anyone. All of the systems installed in the U.S. were made by American manufacturers.

In 1978, a system called the Precision Approach Path Indicator (PAPI) was proposed for adoption as a new international standard to replace the VASI. The PAPI is basically a reconfigured VASI with a improved

signal format and consists of four light units located on a line perpendicular to the runway centerline. The PAPI was thoroughly tested by a number of countries, including the U.S., and was adopted by ICAO as the new international standard in 1982. The VASI will cease to be an international standard on January 1, 1995.

In 1983, the FAA revised its longstanding policy of funding only one standard system. The new policy permitted Federal funding of only the new international system, the PAPI, at international airports while permitting the funding of various types of systems at other than international airports. During the period this policy was in effect, three systems, including the PAPI, VASI, and the Pulsed Light Approach Slope Indicator (PLASI), were made eligible for Federal funding at non-international airports.

The three systems (VASI, PAPI, PLASI) were all in a comparable price range. For federally funded projects, competitive bidding must be followed. Because of their similar price range, any of the three approved systems could be the lowest bid on any particular project. This could result in a situation where a particular airport could have three different systems. As more systems, each employing a different signal format, were expected to be added to the approved list, this problem would have become even more pronounced. Several of the other systems on the market which were expected to be added to the approved list were substantially lower in price than the three original systems on the list. Thus, the competitive bid process would insure that only the lowest cost systems would be funded. This would have effectively eliminated the three original systems (VASI, PAPI, PLASI).

It seemed apparent that the new policy would lead to a proliferation of systems, each having a different signal format. FAA professional opinion did not consider this to be in the best interest of aviation safety. Also, it was felt that pilots need to see the same visual presentation at all airports and expecially when breaking out of a low overcast or approaching a new field at night.

In the critical approach to landing phase, a pilot has many things to do and it was felt by those who considered the issue that pilots should not be unnecessarily burdened with the need to determine which of several different signal formats is presented by the visual glideslope indicator. It was also felt that the use of a standard signal format lessens the pilot's workload by having one less thing to concentrate on, reduces the margin of error, and thereby enhances safety.

One approach that was considered would have limited Federal funding to the three systems previously approved. However, this was not considered the best approach since it would favor some manufacturers while discriminating against others. Also, it would not lead to the desirable goal of standardization. The PAPI was chosen as the new national standard for Federal funding purposes primarily because it is the system that has been adopted by the International Civil Aviation Organization (ICAO) as the standard international system for use by fixed-wing aircraft. It is the policy of the Federal Aviation Administration (FAA), consistent with U.S. obligations under the Convention on International Civil Aviation to implement ICAO standards on international airports, whenever practicable. To select a system other than the PAPI for use at non-international airports would not be consistent with the goal of standardization. The PAPI system is not patented and can be made by anyone. There are currently six U.S. manufacturers who already market or plan to market the PAPI.

One of the most fundamental responsibilities provided for under the Federal Aviation Act of 1958 is to develop a safe aviation system. Inherent in this charge is the wide discretionary latitude to establish standards and regulations that are directed toward accomplishing this goal. It is the firm belief of the FAA that standardization is directly related to safety and that the issuing of an order establishing a standard is necessary to discharge the FAA's statutory duty.

Discussion of Comments

One commenter stated that the FAA had presented no data to prove that standardization enhanced safety. In support of this view it was pointed out that several different lighting configurations were used for other airport lighting systems. Examples cited were that several different configurations of approach lighting systems were used and that runway lighting systems consisted of edge lights, centerline lights, touchdown zone lights, and runway end identifier lights. It was further stated that there were three different systems of runway edge lights and that various colors were used.

As for approach lighting systems, those used for precision approaches are standardized in the sense that the configuration is based on the center row concept and all contain the essential common elements such as centerline crossbars, distance-to-threshold bar, and a green threshold bar. As to runway edge lights, they are standardized in their presentation to a pilot since the only difference is in the light intensity which is based on their use in different visibility conditions. The use of other lighting systems on runways such as centerline lights and touchdown zone lights are necessary to provide additional information to permit operations under very low visibility conditions.

One commenter stated that standardization was not necessary and cited as an example that there is no standardization in aircraft cockpit instruments.

Another commenter, in support of standardization stated that pilots are thoroughly checked out on using the various cockpit instruments but there was no requirement to be familiar with various visual glideslope indicators. One commenter who supported standardization cited a personal experience as follows: "I had personal experience with the problem of nonstandardization the other day. We broke out of an overcast on a nonprecision approach on short final and there to provide visual slope guidance was an indicator I was unfamiliar with. Fortunately, it was fairly easy to figure out (it was a PAPI), but nonetheless, it was distracting at a critical phase of flight. When flying airplanes, the best surprise is no surprise. Trying to decode a different indicator at every airport at night or in marginal weather conditions could easily lead to a disaster."

Several commenters stated there would be no problem with retaining two systems, such as the PAPI and PLASI, since this would not constitute proliferation. However, the FAA has determined that more than one system would conflict with the goal of standardization. By permitting the PLASI system to be funded would not support this goal and in addition would benefit only the one manufacturer holding the patent to that system. To quote the Air Line Pilots Association, "In the final analysis we are convinced that the standardization and safety issues are of paramount importance over all others, and in this instance the FAA has acted correctly in fulfilling its charter to ensure safety of flight and enhance the effectiveness of the aviation industry."

Several commenters stated that standardizing on one system would lead to a lack of competition. Since there are currently at least six manufacturers who are in the process of marketing a PAPI,

there would appear to be more than adequate competition. Also, several commenters expressed the view that airport sponsors should be free to select the system of their choice. To permit the selection of a particular manufacturer's product does not foster competition and is not in conformance with procurement guidelines for grant programs as given in OMB Circular A–102, Attachment O.

Summary of Comments

A total of 7,488 public comments were received. All comments received after the close of the comment period but in time to be considered prior to publication of this notice are included. The vast majority of responses, approximately 7,333, were in the form of preprinted postcards which had been distributed by three different organizations in order to solicit views or to enlist support for their respective positions. Major organizations which supported the FAA's position on the need for standardization included the Air Line Pilots Assocation, Air Transport Association, Airport Operators Council International, Allied Pilots Association, Association of Flight Attendents, and the Aviation Safety Institute. Organizations which opposed the FAA's position on standardization included the Aircraft Owners and Pilots Assocation, National Air Transportation Association, National Association of State Aviation Officials, and the aviation departments of the States of Maryland, Alaska, Montana, Nebraska, and New Mexico. On an overall basis, the vast majority of response supported the goal of standardization by a count of approximately 6,518 to 970.

Determination

In consideration of the fact that the vast majority of responses supported the concept of standardization and since no evidence was presented as a valid argument against the need for standardization, the FAA has determined that the funding of only one system, the PAPI, to promote standardization is in the interest of aviation safety. This policy is set forth in the following FAA order number 6850.26A.

FAA Order Number 6850.26A—Visual Glideslope Indicators

1. *Purpose.* This order establishes national policy on Federal funding of visual glideslope indicators which provide visual descent guidance to pilots of landing aircraft.

2. *Distribution.* This order is distributed to the division level in the Office of Flight Standards (sic), Office of Airport Standards, Office of Airport Planning and Programming, Office of Aviation Policy and Plans, Program Engineering and Maintenance Service, Systems Engineering Service, Air Traffic Service, and to the regional Airports, Air Traffic, Airway Facilities, and Flight Standards Divisions.

3. *Cancellation.* Order 6850.26, Visual Approach Slope Indicators, dated May 9, 1983, is cancelled.

4. *Background.*

a. The visual approach slope indicator (VASI) (as described in Order 1010.47B, cancelled October 31, 1982), was selected as the national standard visual glideslope indicator in 1961 and shortly thereafter was adopted as the international standard by the International Civil Aviation Organization (ICAO). To date, over 3000 runways in the United States have been equipped with a VASI. The VASI has been, and continues to be, an effective aid for providing visual descent guidance.

b. An improved version of the VASI, called the precision approach path indicator (PAPI), was recently adopted by ICAO as the new international standard to replace the VASI. The VASI will cease to be an ICAO standard system after January 1, 1995.

5. *Explanation of Changes.* The policy has been revised to promote standardization of visual glidepath indicators by limiting Federal funding to only one system, the PAPI, for use by pilots of fixed-wing aircraft.

6. *Policy.*

a. The PAPI, as described in ICAO Annex 14, Aerodromes, shall be the standard visual glideslope indicator for new installations at U.S. airports when funded under the Facilities and Equipment Program or through the Airport Improvement Program.

b. Existing VASI installations shall remain in service and need not be replaced with the PAPI.

c. Other types of systems, which have been determined operationally suitable by the Office of Flight Standards (sic), may be federally funded for use on heliports or may be installed on airports when non-federally funded.

7. *Responsibilities.*

a. The Office of Flight Standards (sic) shall develop performance characteristics which assure safe and effective visual guidance for all visual glidepath indicators and shall determine acceptability of proposed system concepts for operational use.

b. The Office of Airport Standards shall develop equipment and installation standards for those visual glideslope indicators, which have been determined to be acceptable by the Office of Flight Standards (sic), to be funded under the Airport Improvement Program.

c. The Program Engineering and Maintenance Service shall develop equipment and installation standards for those visual glideslope indicators, which have been determined to be operationally acceptable by the Office of Flight Standards (sic), to be funded under the Facilities and Equipment Program.

d. The equipment specifications and installation standards issued under the Airport Improvement Program and the Facilities and Equipment Program shall be coordinated with the Office of Airport Standards and the Program Engineering and Maintenance Service, respectively, to assure that the agency specifications and standards are uniform in meeting the operational requirements of the Office of Flight Standards (sic).

e. The Office of Aviation Policy and Plans shall have the responsibility for developing establishment, discontinuance, and replacement criteria for visual glideslope indicators to be funded under the Facilities and Equipment Program.

Issued in Washington, DC on January 21, 1986.

Donald D. Engen,

Administrator.

[FR Doc. 86–2520 Filed 2–4–86; 8:45 am]

BILLING CODE 4910–13–M

High Density Traffic Airport Slots; Meeting; Correction

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of meeting to assign withdrawal priorities to High Density Traffic Airport Slots; correction.

SUMMARY: On January 28, 1986, the FAA published a notice of a meeting at FAA Headquarters in Washington, DC, to conduct a lottery to assign withdrawal priority numbers to high density airport slots. This notice corrects the date of that meeting to February 11, 1986.

The lottery is being conducted under provisions of a final rule issued by the Secretary of Transportation on December 16, 1985, which will permit the transfer of high density airport slots effective April 1, 1986. The withdrawal priority number lottery is an administrative action which is necessary for implementation of the rule, particularly as it pertains to international and essential air service obligations. This lottery will not result in the withdrawal or transfer of slots.

DATE: The meeting will be held on Tuesday, February 11, 1986, at 8:30 a.m.

ADDRESS: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, in conference rooms 9A, B, and C on the 9th floor.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Manager, Airspace and Air Traffic Law Branch, AGC–230, Telephone: (202) 426–3691, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTAL INFORMATION:

Availability of Document

Any person may obtain a copy of Amendment No. 93–49, "High Density Traffic Airports; Slots Allocation and Transfer Methods," by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 426–8058. Communications must identify the amendment number of the document.

Background

On December 16, 1985, the Department of Transportation issued Amendment No. 93–49, "High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule" (50 FR 52180, December 20, 1985), adding new Subpart S to Part 93 of the Federal Aviation Regulations (FAR), 14 CFR Part 93, Subpart S. The amendment establishes procedures for the allocation and transfer of operating slots at the four airports designated as high density traffic airports under 14 CFR Part 93, Subpart K. The airports are Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that slots will be allocated to those carriers holding the slots as of December 16, 1985, and that unallocated and returned slots will be distributed by lottery. Beginning April 1, 1986, slots may, with certain exceptions, be bought, sold, or traded for any consideration.

In order to honor international obligations and to provide operating authority for carriers providing service under the Essential Air Service (EAS) Program, the rule provides that slots may be withdrawn from domestic operators if needed for international or EAS operations. Slots may also be withdrawn for other agency international needs not foreseen at this time. Slots will be withdrawn for the above purposes, if necessary, in the order of withdrawal priority numbers assigned to each slot. The rule provides that each slot will be assigned a withdrawal priority number by random lottery.

Separate slot pools will be maintained for air carriers and commuter operators at each of the four high density airports. A separate lottery will be conducted for air carriers and for commuter operators at each airport. Once designated, the slot withdrawal priority number for each slot will be permanent. The number will be included in the designation of each slot which will consist of the airport, type of carrier (air carrier or commuter operator), time period, and withdrawal priority number. This number must be included in all communications with the agency concerning that slot, including utilization reports and requests for confirmation of transfers. A list of the withdrawal priority numbers will be made available to the public.

Public Process

This notice announces a meeting to conduct the lotteries to assign slot withdrawal priority numbers for each category of carrier at each high density airport. The meeting is open to the public and all interested persons are invited to attend. The meeting will begin at 8:30 a.m. on Tuesday, February 11, 1986, at FAA Headquarters, in conference rooms 9A, B, and C. The meeting will continue on February 12 if necessary.

No slots will be withdrawn at this meeting. The meeting is being conducted solely for administrative purposes, to assign numbers to individual slots and to fulfill regulatory obligations of the agency under Amendment 93–49.

Lottery Procedures

Procedures for conduct of the lotteries will be as follows.

1. The lotteries will be conducted in the following order:

(a) Kennedy Airport air carriers.

(b) Kennedy Airport commuter operators.

(c) National Airport air carriers.

(d) National Airport commuter operators.

(e) LaGuardia Airport air carriers.

(f) LaGuardia airport commuter operators.

(g) O'Hare Airport air carriers.

(h) O'Hare Airport commuter operators.

2. The FAA has prepared a separate list of slots for each airport and carrier category indicating the existing allocation of each slot which was allocated to a carrier on December 16, 1985. Slots are listed in order of hour or half-hour, and within the hour or half-hour in alphabetical order of the carrier to which they are allocated. Unallocated slots are listed at the end of each hour or half-hour. The lists may be obtained by contacting the offic listed above under "Availability of Documents."

3. A slot pool will consist of all air carrier or all commuter slots at a particular airport, including international, EAS, and unallocated slots. A card will be prepared for each slot in a pool, identifying the slot by the hour or half-hour and the current slot holder. (The card will be marked "U" if the slot is not currently allocated).

4. The card for each slot will be placed in a separate envelope. The envelopes will be identical and unmarked. Each envelope will be placed in a drum with all other envelopes for the same slot pool.

5. The envelopes will be drawn from the drum, one at a time, by a representative of the Office of the Secretary or the Federal Aviation Administration. As each envelope is drawn, the slot identification will be announced and recorded, and the number of the selection will be assigned to that slot as its slot withdrawal priority number. The first slot drawn will be withdrawal priority number 1, the second drawn will be withdrawal priority number 2, and so on.

6. Example: The drawing for air carriers at National Airport begins as follows:

The first slot drawn has an identifier of Eastern Air Lines 1800. The permanent designation of that slot becomes "DCA/A/1800/0001." (The identifier of the holder—"EA"—may be added to the end of the permanent designation but would change if the slot is transferred.) This slot would be the first National Airport air carrier slot to be withdrawn if an 1800 air carrier slot at National satisfied the need for which the slot was being withdrawn.

The second slot drawn is identified as United Airlines 0900. The permanent designation would be recorded as "DCA/A/0900/0002."

7. Each lottery will continue until all slots for that slot pool are assigned withdrawal priority numbers.

8. The meeting will continue until all slot pools receive slot allocation priority sequences.

9. In accordance with 14 CFR 93.223(d), if an operator has more than one slot in a specific time period in which it also has one or more slots being used for international or essential air service operations, the slots used for international or EAS service shall be assigned the lowest priority (i.e., the last to be withdrawn) of that carrier's slots in that hour.

Issued in Washington, DC, on January 30, 1986.

Edward P. Faberman,

Acting Chief Counsel.

[FR Doc. 86-2519 Filed 2-4-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 86-14]

Revision of Criteria for Establishing Ports of Entry and Stations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Revised Criteria.

SUMMARY: This notice is to advise the public that Customs has revised the criteria it uses in determining whether to grant requests for the establishment of Customs ports of entry and stations. The revision set forth in this document modifies and expands upon certain criteria which Customs has followed since 1982 in evaluating these requests. It reflects the increased minimum value for commercial entries and deletes any reference to informal entries. In addition, the revision requires a commitment by any applicant that is attempting to qualify for port or station status by satisfying the cargo workload standard (2,500 consumption entries), to make optimal use of electronic data transfer capability to permit integration with Customs Automated Commercial System.

The revised criteria will permit Customs to obtain more efficient use of its personnel, facilities, and resources and provide improved service to carriers, importers, and the public.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

By T.D. 82-37, published in the Federal Register on March 9, 1982 (47 FR 10137), Customs set forth the criteria it uses in determining whether to grant requests for the establishment of Customs ports of entry and stations. Under the heading "Criteria" of T.D. 82-37, number (2)(b) states the following:

> (2) The actual or potential Customs workload (minimum number of transactions per year), in the area must be: (b) 2,500 consumption entries (formal (over $250 in Customs value));"

Since the publication of T.D. 82-37, Customs has implemented the Automated Commercial System (ACS) which provides a means for the electronic processing of entries of imported merchandise. ACS is a national teleprocessing system that encompasses approximately 2,000 programs and processes 250,000 transactions per day. ACS includes a number of interdependent modules and computer-to-computer interfaces with the private sector which, together, automatically process enforcement and statistical data spanning the full range of Customs processing for imported merchandise. Current ACS modules are Antidumping and Countervailing Duty, Automated Broker (Importer) Interface, Bonds, Collections and Revenue, Drawback, Entry Summary Processing, Fines, Penalties and Forfeitures, In-bond, Information Exchange, Liquidations, Manifests, Protests, Quota, Carrier and Port Authority Interfaces, Cargo and Entry Summary Selectivity, and Warehouse. It is anticipated that ACS will be fully operational in 1987. To take full advantage of the potential of ACS to expedite the entry of imported merchandise, in determining whether to grant requests for the establishment of Customs ports and stations, Customs will now require a commitment by the applicant port or station to make optimal use of electronic data transfer capability to permit integration with ACS.

In an unrelated matter, by section 206 of Pub. L. 98-573, the Trade and Tariff Act of 1984, Congress amended § 498(a)(1), Tariff Act of 1930, (19 U.S.C. 1498(a)(1)), by increasing the statutory limit for informal Customs entries from $250 to $1,250. After thorough consideration of the issue, Customs determined that, with the exception of specific exclusions, the informal limit for all articles would be set initially at $1,000, with the option to increase it to $1,250 in the future. This change was reflected in amendments to the Customs Regulations published as T.D. 85-123 in the Federal Register on July 23, 1985 (50 FR 29949). Accordingly, a further criteria revision reflects the increased minimum value of $1000 for commercial entries, instead of $250. In addition, all references to informal entries in the criteria are deleted since they are not a factor in determining potential cargo activity. As a result of these changes, number 2(b) under "Criteria" listed in T.D. 82-37, is revised to read as follows:

> (b) 2,500 consumption entries (each valued over $1000). The applicant must commit to optimal use of electronic data input means to permit integration with any Customs system for electronic processing of entries.

These changes will permit Customs to obtain more efficient use of its personnel, facilities, and resources and provide improved service to carriers, importers, and the public.

All of the other criteria in T.D. 82-37 will continue to be used in evaluating requests for new service.

Drafting Information

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

William von Raab,

Commissioner of Customs.

Approved: January 10, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-2400 Filed 2-4-86; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 86-15]

Country of Origin Marking of Imported Pipe and Pipe Fittings of Iron or Steel

AGENCY: U.S. Customs Sevice, Department of the Treasury.

ACTION: Notice of Required Alternative Marking Methods.

SUMMARY: In a notice previously published in the Federal Register, Customs acknowledged that certain pipe and pipe fittings of iron or steel cannot be marked with the country of origin by any of the methods prescribed by section 207 of the Trade and Tariff Act of 1984, without rendering such articles unfit for the purpose for which they are intended or violating industry standards for such articles. The notice solicited public comments as to which pipe and pipe fittings of iron or steel cannot be marked by any of the prescribed methods. This document sets forth which articles may be exempted from the marking methods prescribed by section 207 and are eligible for marking by alternative methods.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

On October 30, 1984, the President signed Pub. L. 98-573, the Trade and Tariff Act of 1984, which made numerous changes to the Tariff Act of 1930. Section 207 of Pub. L. 98-573

amended section 304, Tariff Act of 1930, (19 U.S.C. 1304), requiring, without exception, that all imported pipe and pipe fittings of iron or steel be permanently marked to indicate the proper country of origin of the article by means of die stamping, cast-in-mold lettering, etching, or engraving.

Pursuant to 19 U.S.C. 1304, every article of foreign origin, or its container, imported into the U.S., shall be marked in a conspicuous place as legibly, indelibly, and permanently *as the nature of the article or its container will permit*, in such a manner as to indicate to an ultimate purchaser in the U.S. the English name of the country of origin of the article, unless specifically exempted. Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304.

It was brought to Customs attention that certain pipe and pipe fittings of iron or steel cannot be marked by any of the four prescribed methods without rendering such articles unfit for the purpose for which they are intended or violating industry standards for such articles.

Under the laws of statutory construction, section 207 and 19 U.S.C. 1304, which it amends, should be read in *pari materia*, so that pipe and pipe fittings which by their nature will not permit marking by any of the four prescribed methods will not be barred from entering the U.S. Such a construction would allow for alternative methods of marking, such as stencilling or tagging in bundles. Accordingly, by a document published in the Federal Register on January 9, 1985 (50 FR 1064), Customs solicited public comments as to which pipe and pipe fittings of iron or steel cannot be marked by any of the means prescribed in section 207 without rendering such articles unfit for the purposes for which they were intended or violating industry standards for such articles.

Customs has already taken the position that the new marking requirements will apply to iron or steel pipes, tubes, and blanks therefor, as defined in Headnote 3(e), Schedule 6, Part 2, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), which covers tubular products, including hollow bars and hollow billets, of any cross-sectional configuration, by whatever process made, whether seamless, brazed, or welded, and whether with an open or lock seam or joint, of the kind classifiable under items 610.30–610.58, 688.30, TSUS. However, it does not include hollow drill steel of the kind defined in Headnote 3(e), Schedule 6, Subpart 2B, TSUS, and classifiable under items 607.05–607.09, TSUS. By a correction document published in the Federal Register on January 31, 1985 (50 FR 4524), Customs stated that the new marking requirements of section 207 will also apply to pipe and tube fittings of iron or steel (bends, branches, drains, reducers, etc.) of the kind classifiable under items 610.62–610.93, 688.32, TSUS, as well as those pipe and tube fittings of iron or steel of the kind classifiable under items 606.71 and 606.73, TSUS.

Required Alternative Marking List

After reviewing the numerous comments received in response to the notice and the best technical information available, Customs has identified certain categories of articles which cannot be marked by any of the methods prescribed by section 207 without impairing the articles with respect to their intended use, or without violating applicable industry standards. The categories of articles so identified were listed and communicated in the form of a telex to Customs field offices on March 18, 1985, and subsequently amended by telexes dated April 15, 1985, and May 13, 1985. Copies of those telexes were made available to all interested parties. The purpose of this notice is to publish in a final and definitive format the categories which may be marked to indicate their country of origin by methods other than those prescribed by section 207.

Inasmuch as this notice is merely a restatement of existing requirements and contains no substantive changes in the previously adopted rules, and because the requirements of section 207 became effective on November 14, 1984, no delayed effective date is necessary.

Categories of Articles Exempted From Section 207 Marking Requirements Thin-Walled Pipes and Fittings

Carbon and low-alloy steel tubing or fittings with wall thickness less than .08 inch (this exception is provided because the statutory methods of marking would be illegible on the relatively rough surfaces of these articles).

High-alloy (nickel, chromium, molybdenum, or combinations thereof) articles which have wall thicknesses less than .08 inch and which the importer certifies (in writing to the district director) will actually be used in an application or environment in which marking by a statutory method would substantially diminish or destroy the utility of the articles.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Small-Diameter Pipes and Fittings

Fittings having nominal diameters of one-fourth inch or less.

Pipes having inner diameters of 1.9 inches or less.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Other Fittings

Fittings which meet American Petroleum Institute (API) specifications (or equivalent mill specifications) 5AC or higher, including 5AX and 5AQ.

High-alloy (nickel, chromium, molybdenum, or combinations thereof) fittings ordered to National Aeronautic and Space Administration (NASA) or military specifications which prohibit marking by any of the statutory methods.

Small galvanized iron fittings of the following types (dimensions stated are nominal diameters):

Elbows 90 degree—one-eighth and one-fourth inch.

Elbows 45 degrees—one-eighth and one-fourth inch.

Street elbows 90 degrees—one-eighth and one-fourth inch.

Street elbows 45 degrees—one-eighth and one-fourth inch.

Tees—one-eighth and one-fourth inch.

Crosses—one-eighth and one-fourth inch.

Couplings (sockets)—one-eighth and one-fourth inch.

Locknuts—one-eighth, one-fourth, three-eighths, and one-half inch.

Bushings—one-fourth by one-eighth, three-eighths, by one-eighth, three-eighths by one fourth, one-half by one-eighth, one-half by one-fourth, one-half by three-eighths inch.

Unions—one-eighth, one-fourth, and three-eighths inch.

Caps—one-eighth, one-fourth, three-eights, and one-half inch.

Plugs—one-eighth, one-fourth, three-eighths, one-half, three-fourths, and one inch.

Reducing elbows—one-fourth by one-eighth inch.

Reducing tees—one-fourth by one-eighth inch.

Reducing coupling—one-fourth by one-eighth inch.

Spun iron fittings with a Brinell hardness number in excess of 500 (five hundred).

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Oil Country Tubular Goods

Oil Country Tubular Goods (OCTG) which meet API specifications (or

equivalent mill specifications) 5AC or higher, including 5AX and 5AQ.

Solution-annealed austentitic ferritic duplex stainless steel.

"Green" tubes which are two and seven-eighths inches or smaller in outer diameter, and which are certified by the importer (in writing to the district director) to be for redrawing.

Required alternative marking method: paint stencilling.

Line Pipe

High-test line pipe meeting API specifications (or equivalent mill specifications) 5L grades X–42 and higher.

Pipe meeting API specification (or equivalent mill specification) 5LU.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Mechanical Tubing

Mechanical tubing which meets American Society of Testing and Materials (ASTM) specification A–511, A–512, A–513, A–519, A–554, A–787, or A–789.

Any other such articles for which the importer certifies (in writing to the district director) that the tubing will actually be used in an application or environment in which marking by a statutory method would substantially diminish or destory the utility of the tubing.

Required alternative marking method: paint stencilling.

Coated Pipe

Galvanized, plastic-coated, aluminized, galv-alum, porcelain enamel-coated, and vinyl-coated pipe.

Required alternative marking method: paint stencilling, or tagging of bundles or containers.

"Mother" Tubes

So-called "mother" tubes which are certified by the importer (in writing to the district director) to be for redrawing.

Required alternative marking method: paint stencilling.

Structural Pipe

Structural pipe which meets API specifications (or equivalent mill specifications) 2H and 2B.

Required alternative marking method: Paint stencilling.

Pressure Tubing

Pressure tubing which meets ASTM specification A–161, A–178, A–179, A–192, A–199, A–200, A–209, A–210, A–213, A–214, A–226, A–249, A–250, A–333, A–334, A–423, A–557.

Tubing for which the importer certifies (in writing to the district director) that it is for actual use in an application or environment in which marking by one of the statutory methods would substantially diminish or destroy the utility of the tubing.

Required alternative marking method: paint stencilling.

Ornamental Pipes, Tubes, and Fittings

Ornamental pipes, tubes, and fittings of all types, having highly polished surfaces.

Required alternative marking methods: Each piece is separately marked with a durable tag or sticker securely affixed to the article, or is separately wrapped in a protective wrapping which clearly indicates the country of origin.

Spun Iron Pipe

Spun iron pipe with a Brinnel hardness number of 500 or more.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Drafting Information

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

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: January 22, 1986.

Francis A. Keating, II

Assistant Secretary of the Treasury.

[FR Doc. 86–2401 Filed 2–4–86; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the **Federal Register** notifying the public that such a submission has been made. USIA is requesting approval of an information collection which requires organizations or individuals interested in promoting German-American contacts to complete a form to be used by USIA's German-American Contacts Staff in preparing a directory of such organizations.

DATE: Comments must be received by February 18, 1986. If you intend to comment but cannot prepare comments before the deadline, please advise the OMB Reviewer and the Agency Clearance Officer promptly.

Copies: Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA clearance officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, attention Desk Officer for USIA.

FOR INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, D.C. 20547, telephone (202) 485–8676. And OMB review: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, telephone (202) 395–3785.

SUPPLEMENTARY INFORMATION: Title: "German-American Directory". USIA has created a German-American Contacts Staff to encourage and disseminate information on educational, cultural, professional and social contacts and exchanges between the United States and the Federal Republic of Germany. In pursuit of this goal, USIA will create a directory of German-American organizations which can be used to simplify establishing contracts between such groups and save a considerable amount of research and staff time for those interested in making such contacts.

Dated: January 22, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–2618 Filed 2–4–86; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 24
Wednesday, Feburary 5, 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).

CONTENTS

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 the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, February 10, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Mission Thrift and Loan Association, an operating noninsured industrial bank located at 1765 4th Avenue, San Diego, California.

Marine Merchant Bank and Trust Company, Ltd., an operating noninsured bank located at Hyatt Regency Office Plaza, Suite 4, Garapan, Saipan, Commonwealth of the Northern Marianas Islands.

Application for consent to purchase assets and assume liabilities and to establish one branch:

Reeves Bank, Beaver Falls, Pennsylvania, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Moon Township Branch of Colony First Federal Savings and Loan Association, Monaca, Pennsylvania, a non-FDIC-insured institution, and for consent to establish that office as a branch of Reeves Bank.

Request for reconsideration of a previous denial of an application to convert into a non-FDIC-insured institution:

The Business Bank, Vienna, Virginia

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,419-L
The First National Bank of Midland, Midland, Texas
Memorandum and Resolution re:
First National Bank of Oak Lawn, Oak Lawn, Illinois

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Resolution amending the current delegations of authority with respect to liquidation and receivership activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: February 3, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-2649 Filed 2-3-86; 3:10 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANACE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, February 10, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussions of those matters will occur at the meeting.

Discussion Agenda:

Request for modification of a condition imposed in granting Federal deposit insurance:

Universal Trust Company, San Juan, Puerto Rico.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 - 17th Street, NW., Washington, DC.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: February 3, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-2650 Filed 2-3-86; 3:11 pm]

BILLING CODE 6714-01-M

3

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, February 10, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. 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.

Dated: February 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–2617 Filed 2–3–86; 12:24 pm]

BILLING CODE 6210–01–M

4

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, February 6, 1986 at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
   a. Certain laser inscribed diamonds and the method of inscription thereof. (Docket no. 1273).
5. Any items left over from the previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–2551 Filed 2–3–86; 9:28 am]

BILLING CODE 7020–02–M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 3, 10, 17, and 24, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 3

Thursday, February 6

2:00 p.m.
Affirmative/Discussion and Vote (Public Meeting)
a. Review of ALAB–826 (In the Matter of Metropolitan Edison Company)
b. Final Rule, "Limitation on the Use of Highly Enriched Uranium (HEU) in Research and Test Reactors" (Tentative) (Postponed from January 29)

Friday, February 7

2:00 p.m.
Briefing on Staff Activities Regarding TVA (Public Meeting)

Week of February 10—Tentative

Tuesday, February 11

10:30 a.m.
Classified Security Briefing (Closed—Ex. 1)
10:45 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Briefing by AIF on Technical Specification Improvements (Public Meeting)

Wednesday, February 12

2:00 p.m.
Discussion of Staff Recommendations on Enforcement Policy (Public Meeting)

Thursday, February 13

2:00 p.m.
Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 & 7)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of February 17—Tentative

Tuesday, February 18

2:00 p.m.
Briefing by TVA on Status, Plans and Schedules (Public Meeting)

Wednesday, February 19

10:00 a.m.
Staff Briefing on Integrated Safety Assessment Program (Public Meeting)

Thursday, February 20

10:00 a.m.
Report on Safety Goal Evaluation (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, February 21

10:00 a.m.
Briefing by Southern California Edison Co. on San Onofre (Public Meeting)

Week of February 24—Tentative

Monday, February 24

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, February 25

10:00 a.m.
Briefing by Incident Investigation Team on Status of Rancho Seco (Public Meeting)

Wednesday, February 26

10:00 a.m.
Briefing on NUMARC Initiatives (Public Meeting)

Thursday, February 27

10:00 a.m.
Discussion of DOE High Level Waste Program (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Intervenors' Motion for Cancellation of Shoreham Emergency Planning Exercise" and "Order on ALAB–812 (In the Matter of Louisiana Power & Light Company, Waterford, Unit 3)" (Public Meeting) was held on January 29.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Dated: January 30, 1986.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 86–2543 Filed 1–31–86; 4:23 pm]

BILLING CODE 7590–01–M

federal register

Wednesday
February 5, 1986

Part II

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 326

ADVISORY COMMITTEE ON FEDERAL PAY

5 CFR Part 1411

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

5 CFR Part 1701

DEPARTMENT OF ENERGY

10 CFR Part 1040

OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

10 CFR Part 1535

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 410

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1033

UNITED STATES INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 219

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 607

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO—UNITED STATES SECTION

22 CFR Part 1103

BOARD FOR INTERNATIONAL BROADCASTING

22 CFR Part 1304

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 406

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Part 1175

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services

45 CFR Part 1181

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

45 CFR Part 1706

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 807

MARINE MAMMAL COMMISSION

50 CFR Part 550

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

AGENCIES: Administrative Conference of the United States; Advisory Committee on Federal Pay; Advisory Commission on Intergovernmental Relations; Department of Energy; Office of the Federal Inspector for the Alaska Natural Gas Transportation System; Export-Import Bank of the United States; Consumer Product Safety Commission; United States International Trade Commission; International Development Cooperation Agency, Agency for International Development; Arms Control and Disarmament Agency; International Boundary and Water Commission, United States and Mexico—United States Section; Board for International Broadcasting; American Battle Monuments Commission; National Foundation on the Arts and the Humanities, National Endowment for the Humanities; National Foundation on the Arts and the Humanities; Institute of Museum Services; National Commission on Libraries and Information Science; National Transportation Safety Board; Marine Mammal Commission.

ACTION: Final rule.

SUMMARY: This regulation requires that the agencies listed above operate all of their programs and activities to ensure nondiscrimination against qualified handicapped persons. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for handicapped person and qualified handicapped person, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal executive agencies.

EFFECTIVE DATE: April 7, 1986.

FOR FURTHER INFORMATION CONTACT: See individual agencies below. Copies of this regulation are available on tape for those with impaired vision. They may be obtained from the Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

SUPPLEMENTANY INFORMATION:

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the following agencies (hereinafter "the agencies): Administrative Conference of the United States; Advisory Committee on Federal Pay; Advisory Commission on Intergovernmental Relations; Department of Energy; Office of the Federal Inspector for the Alaska Natural Gas Transportation System; Export-Import Bank of the United States; Consumer Product Safety Commission; United States International Trade Commission; International Development Cooperation Agency, Agency for International Development; Arms Control and Disarmament Agency; International Boundary and Water Commission, United States and Mexico—United States Section; Board for International Broadcasting; American Battle Monuments Commission; National Foundation on the Arts and the Humanities, National Endowment for the Humanities; National Foundation on the Arts and the Humanities, Institute of Museum Services; National Commission on Libraries and Information Science; National Transportation Safety Board; Marine Mammal Commission. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized))

On January 11, 1984, eighteen agencies jointly published a Notice of Proposed Rulemaking (NPRM) in the Federal Register. 49 FR 1450. Each agency individually received comments on the NPRM. In addition, each agency considered the Department of Justice's (DOJ) Supplemental Notice, published March 1, 1984 (49 FR 7792), as part of its rulemaking record. After analysis of the comments received by the individual agencies, DOJ's Supplemental Notice, and the final section 504 regulation that DOJ issued for its own programs and activities, the agencies participating in this publication decided to adopt this final rule. Because this rule is identical for all the participating agencies, they are able to publish it jointly, and are doing so in order to minimize costs and expedite its issuance. The rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations, as indicated in the information provided for the individual agencies below.

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies be submitted to the appropriate authorizing committees of Congress and that such regulations take effect no earlier than the thirtieth day after they have been so submitted. The Department of Justice, on behalf of the agencies participating in this joint rulemaking, is submitting these regulations to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and to the House Committee on Education and Labor and its Subcommittee on Select Education. Each regulation will become effective on April 7, 1986.

One commenter said that the agency should have tailored the regulation to its particular programs and activities instead of adopting the Justice Department's prototype. The agencies participating in this publication have found that the programs that they conduct are not so unique as to require special regulatory language and that this regulation is therefore appropriate for them.

Several commenters suggested that the agency adopt the changes discussed by the Department of Justice in its Supplemental Notice. One of these suggested that, in order to ensure adequate public notice of these changes, the agency should publish a second Notice of Proposed Rulemaking. The agency has adopted the changes, but does not believe that a second NPRM is necessary. As the Court of Appeals for the District of Columbia stated in *Air Transport Association of America* v. *CAB*, 732 F.2d 219, 224 (D.C. Cir. 1984), "the statutory duty to submit a proposed rule for comment does not include an obligation to provide new opportunities for comment whenever the final rule differs from the proposed rule." Notice is intended to inform interested persons of the subjects and issues under consideration so that they can address their comments to them. *See, e.g., Small Refiner Lead Phase-Down Task Force* v. *EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983); *BASF Wyandotte Corp.* v. *Costle*, 598 F.2d 637, 642–644 (1st. Cir. 1979); and cases there cited. We believe that the changes suggested in the Supplemental Notice and incorporated in this final rule are a "logical outgrowth" of the proposed rule, *Air Transport Association* at 224, so that an additional notice is not required. The Supplemental Notice itself was included as a comment in the public record before the close of the comment period, and several commenters did, in fact, discuss it in their comments.

The substantive nondiscrimination obligations of the agencies, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this final rule and the Federal government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

This interpretation is supported by the recent decision of the Supreme Court in *Alexander* v. *Choate*, 105 S. Ct. 712 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requries only "reasonable" modifications, 105 S. Ct. at 721, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access" (*id.*, n.21) (emphasis added).

Incorporation of these changes, therefore, makes this section 504 federally conducted regulation consistent with the Federal government's section 504 federally assisted regulations, as interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the judicial interpretations of *Davis*, subsequent lower court cases interpreting *Davis*, and *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agencies believe that there are no significant differences between this final rule for federally conducted programs and the Federal government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298).

It has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. Ths regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis and Response to Comments

Section .101 Purpose

Section .101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended

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section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

No comments were received on this section and it remains unchanged from the proposed rule.

Section .102 Application

The regulation applies to all programs or activities conducted by the agencies. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the agencies for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits. No comments were received on this section.

Section .103 Definitions

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Auxiliary aids are addressed in § .160(a)(1). Comments on the definition of "auxiliary aids" are discussed in connection with that section.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (*see* § .170(g)) begins when it receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted. As explained in DOJ's Supplemental Notice, the term "facility," as used in this regulation, refers to structures, and does not include intangible property rights. The definition, therefore, has no effect on the scope of coverage of programs, including those conducted in facilities not included in the definition. The phrase has been omitted because the requirement that facilities be accessible would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest. The regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. Sixty commenters supported the clarification of this issue in the Supplemental Notice. The term "facility" is used in §§ .149, .150, and .170(f).

"Handicapped person." The definition of "handicapped person" has been revised to make it identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Subparagraph (1) of the definition states that a "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment is a handicapped person who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition is based on the Supreme Court's *Davis* decision.

In *Davis*, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." 442 U.S. at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

One comment received by the agencies said that provision of a sign language interpreter or relocation of a service could be considered a fundamental alteration in the nature of a program of activity. The agency believes that the specific provisions of the regulation on program accessibility and communications clearly establish that, absent some unusual circumstance, such an interpretation would be incorrect.

"Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § .140. Nothing in this part changes existing regulations applicable to employment.

The definition of "qualified handicapped person" has been revised to make it clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in subparagraph .150 (a)(2) and paragraph .160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the ageny head determines that an action would result in a

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fundamental alteration, the agency must consider options that would enable the handicapped person to achieve the purpose of the program but would not result in such an alteration.

Subparagraph (2) of the definition adopts the existing definition in the coordination regulation of "qualified handicapped person" with respect to services for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this part of the definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section .110 Self-evaluation

This section requires that the agency conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

In response to preliminary comments that the proposed DOJ rule had no specific criteria for conducting a self-evaluation, the Department requested comment on a proposed alternative in its Supplemental Notice (49 FR at 7792). It received 64 comments, 57 of which were positive. The comments generally favored adoption of the alternative section, instead of the proposed section. The agency agrees.

This final rule uses the same provision adopted by the Department of Justice in its final rule implementing section 504 for its federally conducted programs. 28 CFR 39.110. The Department of Justice determined that this regulatory language was appropriate after it analyzed the Federal Advisory Committee Act (5 U.S.C. app.), Executive Order 12024, and 41 CFR Part 101–6, the regulation of the General Services Administration implementing the Act.

This final rule provides that the agency shall provide an opportunity for interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process and development of transition plans by submitting comments (both oral and written).

Section .111 Notice

A commenter criticized the omission of a paragraph routinely used in section 504 regulations for federally assisted programs requiring recipients to inform interested persons of their rights under section 504. The agency has incorporated the new provision on notice from DOJ's Supplemental Notice into the final rule. It appears as § .111.

Section .111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section .111 is, in fact, a broader and more detailed version of the proposed rule's requirement (at § .160(d)) that the agency provide handicapped persons with information concerning their rights. Because § .111 encompasses the requirements of proposed § .160(d), that latter paragraph has been deleted as duplicative.

Section .130 General prohibitions against discrimination

Section .130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51). This regulatory provision attracted relatively few public comments and has not been changed from the proposed rule.

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § .130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § .130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicaped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumption that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of irrebuttable presumptions is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to disqualify automatically all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ .149– .151) and communications (§ .160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, subparagraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate of different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Subparagraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necesssary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate of different aids, benefits, or services would be more effective, subparagraph (b)(2) provides that a qualified person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Subparagraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Subparagraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Subparagraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This subparagraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Subparagraph (b)(4) specifically applies the prohibition enunciated in § .130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Subparagraph (b)(4) does not apply to construction of additional buildings at an existing site.

Subparagraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

One commenter recommended that the agency include the provision on licensing and certification from the Department of Justice's regulation. None of the agencies participating in this joint publication conduct licensing or certification programs. That provision was not included in the proposed rule, and is not included in this final rule because it is not applicable to the agency's programs.

This regulation does not include the paragraph of the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization, that discriminates. To the extent that assistance from the agency would provide significant support to an organization, it would constitute Federal financial assistance, and the organization, as a recipient of such assistance, would be covered by the agency's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

Section .140 Employment

Section .140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *U.S. Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *U.S. Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *U.S. Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 622 F.2d at 304. Accordingly, § .140 (Employment) of this rule adopts the definitions, requirements and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section, § .170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

The final rule has not been changed, except that a reference to the Equal Employment Opportunity Commission has been added. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp. p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section .149 Program accessibility: Discrimination prohibited

The propoosed regulation did not contain a general statement of the program accessibility requirement similar to that appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.56). In order to remedy the misperception that a change in substance was intended, the final rule has been revised to include a general program accessibility statement. The language appears at § .149.

Section .150 Program accessibility: Existing facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § .150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible and to usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ .150(a)(1)). However, § .150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ .150(a)(2)).

The "undue financial and administrative burdens" language (found at §§ .150(a)(2) and .160(d)) is based on the Supreme Court's *Davis* holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt, supra; American Public Transit Association* v. *Lewis, supra* (*APTA*).

This interpretation is also supported by the Supreme Court's recent decision in *Alexander* v. *Choate*, 105 S.Ct. 712 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court rejected the defendants' argument that section 504 prohibits only intentional discrimination, but held that the reduction was not "the sort of disparate impact" discrimination prohibited by section 504 or its implementing regulation (*id.* at 720).

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers" (*id.* at 721) and that *"reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." (*Id.*, n.21) (emphasis added). However section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' . . . or that would constitute 'fundamental alteration(s) in the nature of a program.' " (*id.*, n.20) (citations omitted).

Because *Alexander* was decided after the comment period on the proposed regulation closed, the agency would have allowed additional comments if it believed that a change in the proposed rule was necessary. *Alexander*, however, supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus the failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation. This provision is therefore unchanged from the proposed rule.

Some commenters asserted that the holding in *Davis* was that the plaintiff was not a qualified handicapped person and that the subsequent reference to "undue financial and administrative burdens" was mere *dicta*. This view overlooks the interpretations of *Davis* provided by the Federal circuit court cases mentioned above. The *APTA* and *Dopico* decisions make it clear that financial burdens can limit the obligation to comply with section 504. *See also New Mexico Association for Retarded Citizens* v. *New Mexico*, 678 F.2d 847 (10th Cir. 1982). In addition, the Court in *Alexander* held that the "administrative costs" of subjecting any action affecting Medicaid recipients to a detailed analysis of its effects on handicapped people "would be well beyond the accommodations that are required under *Davis.*" (105 S.Ct. at 725).

The Department of Justice carefully considered the comments on the process that the Department should follow in determining whether a program modification would result in undue financial and administrative burdens and adopted procedural requirements for application of the "fundamental alteration" and "undue financial and administrative burdens" language. The agency is also adopting those requirements. The agency believes that, in most cases, making an agency program accessible will not result in undue burdens. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity are to be considered. The burden of proving that compliance with § .150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § .170. Finally, even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the agency must still take action, short of that outer limit, that will open participation in the agency program to disabled persons to the fullest extent possible.

A commenter argued that the decision that an action would result in undue burdens should be based on the resources of the agency as a whole. The agency believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the agency's budget can be earmarked for specific purposes and are simply not available for use in making the agency's programs accessible to disabled persons.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section .151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section .151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). It is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § .150.

This regulation does not require that buildings leased after the effective date of the regulation meet the new construction standards of § .151, rather than the program accessibility standard for existing facilities in § .150. Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings. The question of whether buildings leased by the U.S. Postal Service and subject to the Architectural Barriers Act must be accessible at the time of leasing is the subject of litigation now pending before the courts. The agencies may provide more specific guidance on the accessibility of leased buildings after the litigation is concluded.

Section .160 Communications

Section .160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps include procedures for determining when auxiliary aids are necessary under § .160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ .160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § .160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § .150(a)(2)). Unless not required by § .160(d), the agency shall provide auxiliary aids at no cost to the handicapped person.

One commenter argued that the communications section should require that communications for handicapped people be "equal" to those for non-handicapped people, not merely "effective." The regulation requires the agency to provide auxiliary aids to ensure that handicapped people have "an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency." Where the form of communication is different for handicapped people than for non-handicapped people (*e.g.*, oral instead of written for blind people, sign language instead of speech for deaf people) the effectiveness of the communication is the only appropriate measurement of equality of treatment.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of: (1) The communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids when several different modes are effective.

When sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ .160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

A commenter suggested that the language in proposed § .160(a)(1)(ii) that states that the agency need not provide individually prescribed devices or readers for personal use or study be modified to state that such devices are not required for "nonprogram material." This suggestion has not been adopted because it is less clear than the existing formulation, which is intended to distinguish between communications that are necessary to obtain the benefits of Federal programs and those that are not, and which parallels the requirements of the Federal Government's section 504 regulations for federally assisted programs. For example, a federally operated library would have to ensure effective communication between its librarian and a patron, but not between the patron and a friend who had accompanied him or her to the library.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section .170 Compliance procedures

One commenter suggested that the agency adopt the more comprehensive compliance procedures adopted by the Department of Justice in its regulation. The Department of Justice included very detailed procedures that were tailored to its needs and abilities. The procedures in this rule are less detailed and more suitable for adoption by small agencies with limited enforcement capacities. The procedures adopted in this regulation follow the same basic scheme as those in the Department of Justice's rule. To the extent that additional procedural guidance is appropriate to the agency, the agency will adopt it in the form of internal guidelines.

Paragraph (a) specifies that paragraphs (c) through (1) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) of the proposed rule provided that the head of the agency would designate an official to be responsible for coordinating implementation of this section. Since the proposed rule was published, the Office of the Federal Register has developed a method whereby individual agencies participating in a joint publication may amend the jointly published regulatory text to incorporate individual variations.

Accordingly, some of the participating agencies are making that designation through this publication and are also providing an address to which complaints may be sent.

The agency is required to accept and investigate all complete complaints (§ .170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ .170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access to and use by handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ .170(g)). One appeal within the agency shall be provided (§ .170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ .170(i)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 326

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, Esq., General Counsel, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037; (202) 254–7020, TDD: (202) 724–7678.

List of Subjects in 1 CFR Part 326

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 1 of the Code of Federal Regulations is amended as follows:

1. Part 326 is added as set forth at the end of this document.

PART 326—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Authority: 29 U.S.C. 794.

2. Part 326 is further amended by revising paragraph (c) in § 326.170 to read as follows:

§ 326.170 Compliance procedures.

* * * * *

(c) The General Counsel shall be responsible for coordinating implementation of this section. Complaints may be sent to General Counsel, Administrative Conference of the United States, 2120 L St., NW., Suite 500, Washington, D.C. 20037.

* * * * *

Richard K. Berg,
General Counsel.

ADVISORY COMMITTEE ON FEDERAL PAY

5 CFR Part 1411

FOR FURTHER INFORMATION CONTACT: Ms. Lucretia Dewey Tanner, Executive Director, Advisory Committee on Federal Pay, 1730 K Street, NW., Suite 205, Washington, D.C. 20006. (202) 653–6193, TDD: (202) 724–7678.

List of Subjects in 5 CFR Part 1411

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 1411 is added as set forth at the end of this document.

PART 1411—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY ADVISORY COMMITTEE ON FEDERAL PAY

Authority: 29 U.S.C. 794.

2. Part 1411 is further amended by revising paragraph (c) in § 1411.170 to read as folows:

§ 1411.170 Compliance procedures.

* * * * *

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Executive Director, Advisory Committee on Federal Pay, 1730 K Street, NW., Suite 205, Washington, D.C. 20006.

* * * * *

Lucretia Dewey Tanner,
Executive Director.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

5 CFR Part 1701

FOR FURTHER INFORMATION CONTACT: Franklin A. Steinko, Jr., Budget and Management Officer, Advisory Commission on Intergovernmental Relations, Suite 2000, Vanguard Building, 1111 20th Street, NW., Washington, D.C. 20575, Phone: (202) 653–5640, TDD (202) 724–7678.

List of Subjects in 5 CFR Part 1701

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped,

Nondiscrimination, Physically handicapped.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 1701 is added as set forth at the end of this document.

PART 1701—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Sec.
1701.101 Purpose.
1701.102 Application.
1701.103 Definitions.
1701.104–1701.109 [Reserved]
1701.110 Self-evaluation.
1701.111 Notice.
1701.112–1701.129 [Reserved]
1701.130 General prohibitions against discrimination.
1701.131–1701.139 [Reserved]
1701.140 Employment
1701.141–1701.148 [Reserved]
1701.149 Program accessibility: Discrimination prohibited.
1701.150 Program accessibility: Existing facilities.
1701.151 Program accessibility: New construction and alterations.
1701.152–1701.159 [Reserved]
1701.160 Communications.
1701.161–1701.169 [Reserved]
1701.170 Compliance procedures.
1701.171–1701.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1701 is further amended by revising paragraph (c) in § 1701.170 to read as follows:

§ 1701.170 Compliance procedures.

* * * * *

(c) The Personnel Officer shall be responsible for coordinating implementation of this section. Compliants may be sent to Budget and Management Officer, Advisory Commission on Intergovernmental Relations, Suite 2000, Vanguard Building, 1111 20th St., NW., Washington, D.C. 20575.

* * * * *

Franklin A. Steinko, Jr.,
Budget and Management Officer.

DEPARTMENT OF ENERGY

10 CFR Part 1040

FOR FURTHER INFORMATION CONTACT: Mr. Barry Haley, Manager for Federally Assisted Programs, Complaints and Investigations Division, Office of Equal Opportunity, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 4B–088, Washington, D.C. 20585, Voice: (202) 252–2230, TDD: (202) 252–9777.

List of Subjects in 10 CFR Part 1040

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Subpart D is added to Part 1040 as set forth at the end of this document.

PART 1040—[AMENDED]

Subpart D—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by Department of Energy

Sec.
1040.101 Purpose.
1040.102 Application.
1040.103 Definitions.
1040.104–1040.109 [Reserved]
1040.110 Self-evaluation.
1040.111 Notice.
1040.112–1040.129 [Reserved]
1040.130 General prohibitions against discrimination.
1040.131–1040.139 [Reserved]
1040.140 Employment.
1040.141–1040.148 [Reserved]
1040.149 Program accessibility: Discrimination prohibited.
1040.150 Program accessibility: Existing facilities.
1040.151 Program accessibility: New construction and alterations.
1040.152–1040.159 [Reserved]
1040.160 Communications.
1040.161–1040.169 [Reserved]
1040.170 Compliance procedures.
1040.171–1040.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Subpart D is further amended by revising paragraph (c) in § 1040.170 to read as follows:

§ 1040.170 Compliance procedures.

* * * * *

(c) The Director, Complaints and Investigations Division, Office of Equal Opportunity shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Office of Equal Opportunity, U.S. Department of Energy, Room 4B–112, 100 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2218.

* * * * *

Barry Haley,
Manager for Federally Assisted Programs.

OFFICE OF THE FEDERAL INSPECTOR OF THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

10 CFR Part 1535

FOR FURTHER INFORMATION CONTACT: Rhodell G. Fields, Legal Counsel, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252–4669 TDD: (202) 724–7678.

List of Subjects in 10 CFR Part 1535

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 10 of the Code of Federal Regulations is amended as follows:

1. Part 1535 is added as set forth at the end of this document.

PART 1535—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Sec.
1535.101 Purpose.
1535.102 Application.
1535.103—1535 Definitions.
1535.104–1535.109 [Reserved]
1535.110 Self-evaluation.
1535.111 Notice.
1535.112–1535.129 [Reserved]
1535.130 General prohibitions against discrimination.
1535.131–1535.138 [Reserved]
1535.149 Program accessibility: Discrimination prohibited.
1535.140 Employment.
1535.141–1535.149 [Reserved]
1535.150 Program accessibility: Existing facilities
1535.151 Program accessibility: New construction and alterations.
1535.152–1535.159 [Reserved]
1535.160 Communications.
1535.161–1535.169 [Reserved]
1535.170 Compliance procedures.
1535.171–1535.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1535 is further amended by revising paragraph (c) in § 1535.170 to read as follows:

§ 1535.170 Compliance procedures.

* * * * *

(c) Legal Counsel, Office of the Federal Inspector of the Alaska Natural Gas Transportation System shall be responsible for coordinating implementation of this section. Complaints may be sent to Legal Counsel, Office of the Federal Inspector of the Alaska Natural Gas, 1000

Independence Avenue, SW., Washington, D.C. 20585.

* * * * *

Rhodell G. Fields,
Legal Counsel.

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 410

FOR FURTHER INFORMATION CONTACT: Hart Fessenden, General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Room 947, Washington, D.C. 20571 VOICE: (202) 566–8334, TDD: (202) 566–8860.

List of Subjects in 12 CFR Part 410

Blind, Civil Rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 12 of the Code of Federal Regulations is amended as follows:

1. Part 410 is added as set forth at the end of this document.

PART 410—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY EXPORT-IMPORT BANK OF THE UNITED STATES

Sec.
410.101 Purpose.
410.102 Application.
410.103 Definitions.
410.104–410.109 [Reserved]
410.110 Self-evaluation.
410.111 Notice.
410.112–410.129 [Reserved]
410.130 General prohibitions against discrimination.
410.131–410.139 [Reserved]
410.140 Employment.
410.141–410.148 [Reserved]
410.149 Program accessibility: Discrimination prohibited.
410.150 Program accessibility: Existing facilities.
410.151 Program accessibility: New construction and alterations.
410.152–410.159 [Reserved]
410.160 Communications.
410.161–410.169 [Reserved]
410.170 Compliance procedures.
410.171–410.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 410 is further amended by revising paragraph (c) in § 410.170 to read as follows:

§ 410.170 Compliance procedures.

* * * * *

(c) General Counsel, Export-Import Bank of the United States shall be responsible for coordinating implementation of this section. Complaints may be sent to General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Room 947, Washington, D.C. 20571.

* * * * *

Hart Fessenden,
General Counsel.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1034

FOR FURTHER INFORMATION CONTACT: Robert T. Noonan, Office of the General Counsel, Telephone (301) 492–6980, TDD: (800) 638–8270 National, (800) 492–8104 MD only.

SUPPLEMENTARY INFORMATION: In the proposed rule, this part was incorrectly designated part 1033. The designation of this final rule has been corrected to 1034.

List of Subjects in 16 CFR Part 1034

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 16 of the Code of Federal Regulations is amended as follows:

1. Part 1034 is added as set forth at the end of this document.

PART 1034—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE CONSUMER PRODUCT SAFETY COMMISSION

Sec.
1034.101 Purpose.
1034.102 Application.
1034.103 Definitions.
1034.104–1034.109 [Reserved]
1034.110 Self-evaluation.
1034.111 Notice.
1034.112–1034.129 [Reserved]
1034.130 General prohibitions against discrimination.
1034.131–1034.139 [Reserved]
1034.140 Employment.
1034.141–1034.148 [Reserved]
1034.149 Program accessibility: Discrimination prohibited.
1034.150 Program accessibility: Existing facilities.
1034.151 Program accessibility: New construction and alterations.
1034.152–1034.159 [Reserved]
1034.160 Communications.
1034.161–1034.169 [Reserved]
1034.170 Compliance procedures.
1034.171–1034.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1034 is further amended by revising paragraph (c) in § 1034.170 to read as follows:

§ 1034.170 Compliance procedures.

* * * * *

(c) The Office of Equal Employment Opportunity and Minority Enterprise shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Office of Equal Employment Opportunity and Minority Enterprise, Consumer Product Safety Commission, Washington, D.C. 20207.

* * * * *

Sadye E. Dunn,
Secretary.

UNITED STATES INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

FOR FURTHER INFORMATION CONTACT: Mr. Terry P. McGowan, Room 166, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436; telephone (202) 523–0182. TDD: (202) 724–0004.

List of Subjects in 19 CFR Part 201

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 19 of the Code of Federal Regulations is amended as follows:

1. Subpart G is added to Part 201 as set forth at the end of this document.

PART 201—[Amended]

Subpart G—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the U.S. International Trade Commission

Sec.
201.101 Purpose.
201.102 Application.
201.103 Definitions.
201.104–201.109 [Reserved]
201.110 Self-evaluation.
201.111 Notice.
201.112–201.129 [Reserved]
201.130 General prohibitions against discrimination.
201.131–201.139 [Reserved]
201.140 Employment.
201.141–201.148 [Reserved]
201.149 Program accessibility: Discrimination prohibited.
201.150 Program accessibility: Existing facilities.
201.151 Program accessibility: New construction and alterations.
201.152–201.159 [Reserved]
201.160 Communications.
201.161–201.169 [Reserved]
201.170 Compliance procedures.
201.171–201.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Subpart G is further amended by revising paragraph (c) in § 201.170 to read as follows:

§ 201.170 Compliance procedures.

* * * * *

(c) EEO Director, Office of Operations, Office of Data Systems, Library Division shall be responsible for coordinating implementation of this section. Complaints may be sent to Handicap Coordinator, Office of Operations, Office of Investigations, 701 E Street, NW., Washington, D.C. 20436.

* * * * *

Paula Stern,

Chairwoman.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 219

FOR FURTHER INFORMATION CONTACT: Dennis Diamond, Acting Director, Office of Equal Opportunity Programs, Agency for International Development, International Development Cooperation Agency, Room 1224 SA–1 Washington, D.C. 20523. Voice (202) 663–1333 TDD, (202) 663–1341.

List of Subjects in 22 CFR Part 219

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 219 is added as set forth at the end of this document.

PART 219—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY INTERNATIONAL DEVELOPMENT COOPERATION AGENCY, AGENCY FOR INTERNATIONAL DEVELOPMENT

Authority: 29 U.S.C. 794.

2. Part 219 is further amended by revising paragraph (c) in § 219.170 to read as follows:

§ 219.170 Compliance procedures.

* * * * *

(c) Director, Office of Equal Opportunity Programs shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Office of Equal Opportunity Programs, Agency for International Development, International Development Cooperation Agency, Room 1224, SA–1, Washington, D.C.

* * * * *

Nancy D. Frame,

Assistant General Counsel for Employee and Public Affairs, Office of the General Counsel.

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 607

FOR FURTHER INFORMATION CONTACT: F. Eugene Johnson, Room 5672A, 320 21st Street, NW., Washington, D.C. 20451, Telephone: (202) 632–8666; TDD (202) 632–7987.

List of Subjects in 22 CFR Part 607

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 607 is added as set forth at the end of this document.

PART 607—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Authority: 29 U.S.C. 794.

2. Part 607 is further amended by revising paragraph (c) in § 607.170 to read as follows:

§ 607.170 Compliance procedures.

* * * * *

(c) Chief, Communication and Services Section, Office of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to the Chief, Communication and Services Section, Office of Administration, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, D.C. 20451.

* * * * *

William J. Montgomery,

Administrative Director.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO-UNITED STATES SECTION

22 CFR Part 1103

FOR FURTHER INFORMATION CONTACT: Legal Adviser, International Boundary and Water Commission, United States and Mexico, United States Section, The Commons, Building C, Suite 310, 4171 North Mesa, El Paso, Texas 79902. Telephones: Commercial (915) 541–7393, FTS: 572–7394, TDD: (202) 724–7678.

List of Subjects in 22 CFR Part 1103

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 1103 is added as set forth at the end of this document.

PART 1103—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, UNITED STATES SECTION

Sec.
1103.101 Purpose.
1103.102 Application.
1103.103 Definitions.
1103.104–1103.109 [Reserved]
1103.110 Self-evaluation.
1103.111 Notice.
1103.112–1103.129 [Reserved]
1103.130 General prohibitions against discrimination.
1103.131–1103.139 [Reserved]
1103.140 Employment.
1103.141–1103.148 [Reserved]
1103.149 Program accessibility: Discrimination prohibited.
1103.150 Program accessibility: Existing facilities.
1103.151 Program accessibility: New construction and alterations.
1103.152–1103.159 [Reserved]
1103.160 Communications.
1103.161–1103.169 [Reserved]
1103.170 Compliance procedures.
1103.171–1103.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1103 is further amended by revising paragraph (c) in § 1103.170 to read as follows:

§ 1103.170 Compliance procedures.

* * * * *

(c) Director, Equal Employment Opportunity shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Equal Employment Opportunity, International Boundary and Water Commission United States and Mexico, United States Section, The Commons, Building C, Suite 310, 4171 North Mesa, El Paso, Texas 79902.

* * * * *

Darcy Frownfelter,
Legal Adviser.

BOARD FOR INTERNATIONAL BROADCASTING

22 CFR Part 1304

FOR FURTHER INFORMATION CONTACT: Kathryn M. Harper, 1201 Connecticut Avenue, NW., Suite 400, Washington, D.C. 20036 Telephone: (202) 254–8040, TDD: (202) 724–7678.

List of Subjects in 22 CFR Part 1304

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 1304 is added as set forth at the end of this document.

PART 1304—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE BOARD FOR INTERNATIONAL BROADCASTING

Sec.
1304.101 Purpose.
1304.102 Application.
1304.103 Definitions.
1304.104–1304.109 [Reserved]
1304.110 Self-evaluation.
1304.111 Notice.
1304.112–1304.129 [Reserved]
1304.130 General prohibitions against discrimination.
1304.131–1304.139 [Reserved]
1304.140 Employment.
1304.141–1304.148 [Reserved]
1304.149 Program accessibility: Discrimination prohibited.
1304.150 Program accessibility: Existing facilities.
1304.151 Program accessibility: New construction and alterations.
1304.152–1304.159 [Reserved]
1304.160 Communications.
1304.161–1304.169 [Reserved]
1304.170 Compliance procedures.
1304.171–1304.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1304 is further amended by revising paragraph (c) in § 1304.170 to read as follows:

§ 1304.170 Compliance procedures.

* * * * *

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to the Budget and Administrative Office, 1201 Connecticut Avenue, NW., Suite 400, Washington, D.C. 20036.

* * * * *

Walter R. Roberts,
Executive Director.

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 406

FOR FURTHER INFORMATION CONTACT: Col. Clayton L. Moran (202) 272–0534 (Voice) or (202) 724–7678 (TDD).

List of Subjects in 36 CFR Part 406

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 36 of the Code of Federal Regulations is amended as follows:

1. Part 406 is added as set forth at the end of this document.

PART 406—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY AMERICAN BATTLE MONUMENTS COMMISSION

Sec.
406.101 Purpose.
406.102 Application.
406.103 Definitions.
406.104–406.109 [Reserved]
406.110 Self-evaluation.
406.111 Notice.
406.112–406.129 [Reserved]
406.130 General prohibitions against discrimination.
406.131–406.139 [Reserved]
406.140 Employment.
406.141–406.148 [Reserved]
406.149 Program accessibility: Discrimination prohibited.
406.150 Program accessibility: Existing facilities.
406.151 Program accessibility: New construction and alterations.
406.152–406.159 [Reserved]
406.160 Communications.
406.161–406.169 [Reserved]
406.170 Compliance procedures.
406.171–406.999 [Reserved]

Authority: 29 U.S.C. 749.

2. Part 406 is further amended by revising paragraph (c) in § 406.170 to read as follows:

§ 406.170 Compliance procedures.

* * * * *

(c) The Director, Personnel and Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Personnel and Administration, American Battle Monuments Commission, Room 5127, Pulaski Building, 20 Massachusetts Ave., N.W., Washington, D.C. 20314.

* * * * *

Clayton L. Moran,
Colonel, FA, Director, Personnel and Administration.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR 1175

FOR FURTHER INFORMATION CONTACT: Carol M. Gordon, Director, Office of Equal Opportunity, (202) 786–0410, TDD: (202) 786–0282 (Public Affairs Office).

List of Subjects in 45 CFR Part 1175

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped.

Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 45 of the Code of Federal Regulations is amended as follows:

1. Part 1175 is added as set forth at the end of this document.

PART 1175—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ENDOWMENT FOR THE HUMANITIES

Sec.
1175.101 Purpose.
1175.102 Application.
1175.103 Definitions.
1175.104–1175.109 [Reserved]
1175.110 Self-evaluation.
1175.111 Notice.
1175.112–1175.129 [Reserved]
1175.130 General prohibitions against discrimination.
1175.131–1175.139 [Reserved]
1175.140 Employment.
1175.141–1175.148 [Reserved]
1175–149 Program accessibility: Discrimination prohibited.
1175.150 Program accessibility: Existing facilities.
1175.151 Program accessibility: New construction and alterations.
1175.152–1175.159 [Reserved]
1175.160 Communications.
1175.161–1175.169 [Reserved]
1175.170 Compliance procedures.
1175.171–1175.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1175 is further amended by revising paragraph (c) in § 1175.170 to read as follows:

§ 1175.170 Compliance procedures

* * * * *

(c) The Director, Office of Equal Opportunity shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Office of Equal Opportunity, National Endowment for the Humanities, 1100 Pennsylvania Ave., N.W., Room 419, Washington, D.C. 20506.

* * * * *

John Agresto,
Acting Chairman.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services

45 CFR 1181

FOR FURTHER INFORMATION CONTACT: Monika Edwards Harrison, Acting Director Institute of Museum Service, (202) 786–0536, TDD: (202) 786–0282 (Public Affairs Office, National Endowment for the Humanities).

List of Subjects in 45 CFR Part 1181

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 45 of the Code of Federal Regulations is amended as follows:

1. Part 1181 is added as set forth at the end of this document.

PART 1181—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE INSTITUTE OF MUSEUM SERVICES

Sec.
1181.101 Purpose.
1181.102 Application.
1181.103 Definitions.
1181.104–1181.109 [Reserved]
1181.110 Self-evaluation.
1181.111 Notice.
1181.112–1181.129 [Reserved]
1181.130 General prohibitions against discrimination.
1181.131–1181.139 [Reserved]
1181.140 Employment.
1181.141–1181.148 [Reserved]
1181.149 Program accessibility: Discrimination prohibited.
1181.150 Program accessibility: Existing facilities.
1181.151 Program accessibility: New construction and alterations.
1181.152–1175.159 [Reserved]
1181.160 Communications.
1181.161–1181.169 [Reserved]
1181.170 Compliance procedures.
1181.171–1181.999 [Reserved]

Authority: 29 U.S.C. 794

2. Part 1181 is further amended by revising paragraph (c) in § 1181.170 to read as follows:

§ 1181.170 Compliance procedures.

* * * * *

(c) The Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Institute of Museum Services, 1100 Pennsylvania Ave., NW., Room 510, Washington, D.C. 20506.

* * * * *

Monika Edwards Harrison,
Acting Director, Institute of Museum Services.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

45 CFR Part 1706

FOR FURTHER INFORMATION CONTACT: Sarah G. Bishop, Deputy Director, (202) 382–0840 (Voice) or (202) 724–7678 (TDD).

List of Subjects in 45 CFR Part 1706

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 45 of the Code of Federal Regulations is amended as follows:

1. Part 1706 is added as set forth at the end of this document.

PART 1706—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sec.
1706.101 Purpose.
1706.102 Application.
1706.103 Definitions.
1706.104–1706.109 [Reserved]
1706.110 Self-evaluation.
1706.111 Notice.
1706.112–1706.129 [Reserved]
1706.130 General prohibitions against discrimination.
1706.131–1706.139 [Reserved]
1706.140 Employment.
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1706.149 Program accessibility: Discrimination prohibited.
1706.150 Program accessibility: Existing facilities.
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1706.152–1706.159 [Reserved]
1706.160 Communications.
1706.161–1706.169 [Reserved]
1706.170 Compliance procedures.
1706.171–1706.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1706 is further amended by revising paragraph (c) in § 1706.170 to read as follows:

§ 1706.170 Compliance procedures.

* * * * *

(c) The Deputy Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Deputy Director, National Commission on Libraries and Information Science, Suite 3122, GSA–ROB 3, Washington, D.C. 20024.

* * * * *

Toni Carbo Bearman,
Executive Director.

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 807

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, General Counsel,

National Transportation Safety Board, Washington, D.C. 20594; (202) 382-6540, (TDD) (202) 724-7678.

List of Subjects in 49 CFR Part 807

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 49 of the Code of Federal Regulations is amended as follows:

1. Part 807 is added as set forth at the end of this document.

PART 807—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL TRANSPORTATION SAFETY BOARD

Authority: 29 U.S.C. 794.

2. Part 807 is further amended by revising paragraph (c) in § 807.170 to read as follows:

§ 807.170 Compliance procedures.

* * * * *

(c) Director, Bureau of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Bureau of Administration, 800 Independence Ave., SW. Room 802, Washington, D.C. 20594.

* * * * *

Jim Burnett,

Chairman.

MARINE MAMMAL COMMISSION

50 CFR Part 550

FOR FURTHER INFORMATION CONTACT: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, Room 307, 1625 I Street, NW., Washington, D.C. 20006; TDD (202) 653-6237, Voice (202) 724-7678.

List of Subjects in 50 CFR Part 550

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 50 of the Code of Federal Regulations is amended as follows:

1. Part 550 is added as set forth at the end of this document.

PART 550—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY MARINE MAMMAL COMMISSION

Authority: 29 U.S.C. 794.

2. Part 550 is further amended by revising paragraph (c) in § 550.170 to read as follows:

§ 550.170 Compliance procedures.

* * * * *

(c) The General Counsel for the Commission shall be responsible for coordinating implementation of this section. Complaints may be sent to the General Counsel for the Commission, Marine Mammal Commission, Room 307, 1625–I Street, NW., Washington, D.C. 20006.

* * * * *

John R. Twiss, Jr.,

Executive Director.

PART —ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED

By

Authority: 29 U.S.C. 794.

§ .101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ .102 Application.

This part applies to all programs or activities conducted by the agency.

§ .103 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged

discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(l) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic bring syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § .140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ .104– .109 [Reserved]

§ .110– Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ .111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ .112– .129 [Reserved]

§ .130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualfied handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ .131– .139 [Reserved]

§ .140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ .141– .148 [Reserved]

§ .149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § .150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ .150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § .150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by April 7, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ .151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to

and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ .152– .159 [Reserved]

§ .160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § .160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ .161– .169 [Reserved]

§ .170 Compliance Procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The head of the agency shall designate an official to be responsible for coordinating implementation of this section.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § .170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ .171— .999 [Reserved]

[FR Doc. 86–2134 Filed 2–4–86; 8:45 am]

BILLING CODE 6110–01–M; 6820–43–M; 6115–01–M; 6450–01–M; 6119–01–M; 6690–01–M; 6355–01–M; 7020–02–M; 6116–01–M; 6820–32–M; 4710–03–M; 6155–01–M; 6120–01–M; 7536–01–M; 7036–01–M; 7527–01–M; 7533–01–M; 6820–31–M

federal register

Wednesday
February 5, 1986

Part III

Office of Management and Budget

Office of Federal Procurement Policy

Management and Operating Contracts Use (Circular A-49, Proposed Rescission)

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Transmittal Memorandum No. 1, Rescission of OMB Circular No. A–49, "Use of Management and Operating Contracts"

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Final notice of rescission.

SUMMARY: This rescission notice is issued to cancel OMB Circular No. A–49, "Use of Management and Operating Contracts."

EFFECTIVE: Transmittal Memorandum No. 1 to OMB Circular No. A–49, is effective as of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Bienvenue, Office of Federal Procurement Policy (202) 395–3254.

SUPPLEMENTARY INFORMATION: Comments received in response to our Proposed Notice of Rescission, which appeared in the **Federal Register** on November 13, 1985 (50 FR 46849), were overwhelmingly supportive of that action. Responses from Government agencies reaffirmed our assessment that comprehensive guidance currently exists in the Federal Acquisition Regulation, Subpart 17.6, OFPP Policy Letter 84–1, "Federally Funded Research and Development Centers", dated April 4, 1984, and in agency implementing regulations. The circular is no longer necessary and is being cancelled.

Dated: January 27, 1986.

David F. Baker,

Acting Administrator.

Circular No. A–49

Transmittal Memorandum No. 1

Executive Office of the President,
Office of Management and Budget,
Washington, DC 20503.

January 28, 1986.

To the heads of executive departments and establishments.

Subject: Use of Management and Operating Contracts.

Office of Management and Budget Circular No. 49 is hereby rescinded. Policy and guidance affecting the use of management and operating contracts is found in the Federal Acquisition Regulation, Subpart 17.6, and in other related regulations and directives.

James C. Miller III,

Director.

[FR Doc. 86–2468 Filed 2–4–86; 8:45 am]

BILLING CODE 3110–01–M

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