4-17-84
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Federal Register

Tuesday
April 17, 1984

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Selected Subjects

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

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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.

Federal Register
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Tuesday, April 17, 1984

Presidential Documents

Title 3—

The President

Proclamation 5177 of April 13, 1984

National Hearing Impaired Awareness Week, 1984

By the President of the United States of America

A Proclamation

More than fifteen million Americans of all ages experience some degree and form of hearing impairment. These hearing-impaired Americans continue to share in the life of the Nation, contribute to family life and the home, and provide civic support to their communities. They have steadfastly striven not only to overcome their handicaps, but also to assist other members of our society. In so doing, the deaf and hearing impaired have made significant contributions to society, science, the arts and industry in virtually every field.

Research has shown us that hearing loss can sometimes be alleviated, corrected, or best of all, prevented. Scientific investigators supported by the Federal government's National Institute of Neurological and Communicative Disorders and Stroke and by professional societies and voluntary health organizations are learning more about how the auditory system works, and what can go wrong and why. Innovative programs in research, education, and prevention have long been conducted and supported by many voluntary agencies working on behalf of the hearing impaired. I commend their dedication to this important service.

The Congress, by House Joint Resolution 407, has designated the week beginning April 8, 1984, as "National Hearing Impaired Awareness Week," and has authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning April 8, 1984, as National Hearing Impaired Awareness Week. I call upon the people of the United States to observe this week with appropriate activities in their homes, offices, schools, and communities, and I urge all Americans to reflect upon the important contributions made by the hearing-impaired citizens to the progress and well-being of our country.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-10367
Filed 4-13-84; 4:05 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5178 of April 13, 1984

Asian/Pacific American Heritage Week, 1984

By the President of the United States of America

A Proclamation

The great strength of America lies in the determination and caring hearts of our people. Reflecting diverse backgrounds and the experiences of all our citizens, this Nation is a hearty amalgam of individuals united in their commitment to freedom.

Americans who have come from Asian and Pacific countries have added a special quality to the United States. They have made outstanding contributions to our Nation's progress in a wide range of fields, including science, the arts, medicine, law, literature, agriculture, industry and commerce, and government. Bringing with them the strong and varied traditions and heritages of their Asian and Pacific homelands, they have greatly enriched America's culture and institutions.

This Nation owes a debt of gratitude to the Asian and Pacific immigrants. Their desire for liberty strengthens and underscores our own.

As we celebrate the accomplishments of Asian and Pacific Americans, we dedicate ourselves to overcoming the legacy of past discrimination, knowing that the struggle for full participation and equal opportunity goes on. We are grateful to Asian and Pacific Americans for their enduring belief in the inalienable rights of life, liberty, and the pursuit of happiness.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 5, 1984, as Asian/Pacific American Heritage Week and call upon all the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-10368
Filed 4-13-83; 4:06 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5179 of April 13, 1984

National Maritime Day, 1984

By the President of the United States of America

A Proclamation

On March 20, 1984, I signed into law the Shipping Act of 1984. This important legislation removed several burdensome and unnecessary Government regulations restricting both United States-flag and foreign-flag ocean common carriers operating in the foreign commerce of the United States. This is the most significant ocean regulatory legislation since the enactment of the Shipping Act in 1916.

The United States is the greatest trading nation in the world, and this landmark legislation will provide for more flexible and responsive ocean transportation services, including intermodal service, that will benefit both our exporters and importers. United States flag-ocean carriers will benefit by being assured evenhanded regulatory treatment with foreign competitors. The Shipping Act of 1984 represents but one part of my Administration's commitment to foster and maintain the United States-flag merchant marine required by this great Nation for our national security and economic benefit.

In recognition of the importance of the American merchant marine, the Congress, by joint resolution of May 20, 1933, designated May 22 as National Maritime Day and requested the President to issue annually a proclamation calling for its appropriate observance. This date was chosen to commemorate the day in 1819 when the SS SAVANNAH departed Savannah, Georgia, on the first transatlantic steamship voyage.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 22, 1984, as National Maritime Day, and I urge the people of the United States to observe this day by displaying the flag of the United States at their homes and other suitable places, and I request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-10369
Filed 4-13-84; 4:07 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5180 of April 13, 1984

Prayer for Peace
Memorial Day, May 28, 1984

By the President of the United States of America

A Proclamation

In the course of America's existence, our citizens too often have been called upon to make the ultimate sacrifice for the cause of peace, freedom, and justice. From Bunker Hill to Beirut, these brave men and women have passed into the hands of our Creator so that we may enjoy the fruits of liberty. As Americans gather this Memorial Day to pay homage to their sacred memory and selfless commitment, we can offer no higher praise than that these patriots defended the high ideals bestowed upon this Nation by our Founding Fathers.

Today, as we commend their deeds, we also bear a heavy burden of responsibility to ensure that their sacrifice was not in vain by never wavering in our dedication and determination to maintain the peace, to safeguard human rights, and to protect the economic well-being of our Nation for future generations.

In honor and recognition of those Americans to whom we pay tribute today, the Congress, by joint resolution of May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate Memorial Day, May 28, 1984, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to unite in prayer. I urge the press, radio, television, and all other information media to cooperate in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico and the appropriate officials of all units of government to direct that the flag be flown at half-staff during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-10370
Filed 4-13-84; 4:08 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5181 of April 13, 1984

Education Day, U.S.A., 1984

By the President of the United States of America

A Proclamation

Throughout our history, Americans have recognized that education is vital to our Nation's future. Our educational system has always done far more than simply train people for a given job or profession; it has equipped generation upon generation of young men and women for lives of responsible citizenship, by helping to teach them the basic ethical values and principles that are both our heritage as a free people and the foundation of civilized life.

As the beneficiaries of that heritage, we bear a corresponding responsibility to ensure that the moral values on which freedom rests continue to be transmitted to each successive generation of Americans. If our educational efforts are rooted in first principles—that human life is sacred; that men and women should be treated as individuals, with certain fundamental rights and responsibilities; that respect for law is crucial to the survival of freedom—then our children and our children's children will share, as we have, in the blessings of liberty.

The Lubavitch movement, headed by Rabbi Menachem Mendel Schneerson, has provided people of all faiths a shining example of the true value of education. The Lubavitcher Rebbe's work is a living reminder that knowledge is worthy only when accompanied by moral and spiritual wisdom and understanding. In fostering and promoting a tradition of ethical values that can trace its roots to the Seven Noahide Laws, which have often been cited as universal norms of ethical conduct and a guarantee of fundamental human rights, the Lubavitch movement and its greatly respected leader have shown Americans of every faith that true education involves not simply what one knows, but how one lives.

In recognition of Rabbi Schneerson's contributions and in honor of his 82nd birthday on the 11th day of the Jewish month Nisan, which falls this year on April 13, the Congress, by House Joint Resolution 520, has designated April 13, 1984, as "Education Day, U.S.A.," and has authorized and requested the President to issue an appropriate proclamation.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 13, 1984, as Education Day, U.S.A., and I call upon the people of the United States, and in particular our teachers and other educational leaders, to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-10433
Filed 4-16-84; 10:57 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5182 of April 13, 1984

Crime Victims Week, 1984

By the President of the United States of America

A Proclamation

As citizens of this free Nation, we support a system of justice which protects the rights of the accused by ensuring them due process of law, a just and fair guarantee inscribed into our Constitution. Yet, through ignorance and insensitivity, our criminal justice system has often failed to provide the victims of crime the compassionate treatment they deserve. These persons too often have had to endure alone the physical and emotional pain that crime inflicts upon its victims. Victims of crime have had their lives threatened and disrupted, and their families have been subjected to unnecessary strains. Victims sometimes fear the loss of their livelihood, health, or life, and, most importantly, their cries for elementary justice too frequently go unheard.

Among the essential reasons governments are instituted among peoples is to establish a system of justice for the protection of their citizens. Justice is a primary goal and responsibility of government. As a country founded with the noble purpose of protecting and defending its people, our society cannot ignore the pleas of crime victims. Guided by recommendations of the President's Task Force on Victims of Crime, my Administration is working to implement much-needed changes throughout our criminal justice system to respond to the concerns of crime victims.

The national movement seeking more compassionate treatment for the victims of crime is led in large part by the victims themselves. I commend these courageous men and women who have overcome their pain and despair and are working to help ease the trauma of other victims. But it is crucial to remember that no segment of our society should refuse to recognize its responsibility to help in this most worthy endeavor. We must all strive to preserve the principles of justice on which our free society depends.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning April 15, 1984, as Crime Victims Week. I urge officials at all levels of government to pay special attention to the burdens crime victims face. I ask that all Americans listen and respond to the needs of crime victims, who urgently require and deserve our support.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of April, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-10434
Filed 4-16-84; 10:58 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 75
Tuesday, April 17, 1984

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota and Marketing Regulations for the 1983 Through 1985 Crops of Peanuts

Correction

In FR Doc. 84–9752 beginning on page 14282 in the issue of Tuesday, April 10, 1984, make the following corrections:

On page 14283 second column lines 20–22, "Also, the effect of quota losses on local have dissipated." should be deleted.

On page 14284, column 3, § 729.244(b), line 3, "which in filed" should read "which is filed".

BILLING CODE 1505-01-M

Farmers Home Administration

7 CFR Parts 1941, 1943, 1945, and 1980

Farmer Programs Loans to Aliens Lawfully Admitted to the United States for Permanent Residence

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to include aliens lawfully admitted to the United States for permanent residence as eligible applicants for FmHA Farmer Program loans. The purpose of the amendment is to implement legislation which gives the Secretary of Agriculture authority to make and insure loans to aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. The intended effect of the action is to enable individuals in this category who otherwise meet FmHA eligibility requirements and requirements for loan soundness, to receive program benefits.

EFFECTIVE DATE: April 17, 1984.

FOR FURTHER INFORMATION CONTACT: M. K. Smith, Loan Specialist, Farm Real Estate and Production Division, Farmers Home Administration, USDA, Room 5313, South Agriculture Building, 14th and Independence Avenue SW., Washington, D.C. 20250, telephone (202) 475–4016.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291, and has been determined nonmajor since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, organizations, government agencies or geographic regions.

There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets, since it does not affect other FmHA loan eligibility or loan servicing requirements. The FmHA program or projects which are affected by this regulation should be carried out in accordance with 7 CFR Part 3015, "Intergovernmental Review of the Department of Agriculture Programs and Activities."

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The FmHA programs affected by this regulation change are Farm Ownership (FO) insured and guaranteed, Soil and Water (SW) insured and guaranteed, Recreation Loan (RL) insured and guaranteed, Operating Loans (OL) insured and guaranteed, and Emergency Loans (EM) insured and guaranteed.

Section 2 of Pub. L. 96–438, enacted October 13, 1980, amended the Consolidated Farm and Rural Development Act by adding a new Section 348, which gives the Secretary of Agriculture authority to make and insure loans to aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. The action is needed in order to no longer exclude legal resident aliens, who are otherwise eligible, for FmHA farmer program loan assistance. It has been pointed out that aliens in good standing are able to receive the benefits of most Federal, State and local Government programs of assistance. Government programs, under Federal law, for which such aliens are eligible include Social Security, medicare, school lunch programs, disability and workers compensation, student loans, veterans benefits, maternal and child health care, and small business loans. Moreover, in the agricultural area, farmer-owners, landlords and tenant sharecroppers, regardless of citizenship or alien status, are eligible to obtain crop insurance, commodity loans and indemnities for loss of various agricultural products. This action is needed to make FmHA farmer program benefits also available to legal resident aliens. This will then be consistent with FmHA housing program benefits, which already include legal resident aliens as eligible applicants. The action will exclude individuals on indefinite parole from eligibility for all farmer program loans. Previously, those legally admitted to the United States on indefinite parole could be considered eligible applicants for Soil and Water loans. This action will standardize eligibility requirements in this regard for all FmHA farmer programs.

Cost Impact

There will be no additional costs to the Government by including legal resident aliens as eligible applicants because there will be no additional loan funds made available for this specific purpose; the legal resident aliens will compete with U.S. citizen applicants for available loan funds.

Discussion of Final Rule

A proposed rule was published in the **Federal Register** (48 FR 40894) on September 12, 1983. The proposal provided for a 60-day comment period. The comment period ended November

14, 1983. In response to the notice of proposed rulemaking comments were received from three entities. The following recommendations were made:

—Loans to aliens be restricted to a proportionate ratio of aliens in agriculture to U.S. citizens-farmers,

—Where loan funds are limited, and there is competition for loan funds, U.S. citizens engaged in farming should be given priority over aliens.

The agency did not believe it was appropriate to adopt the recommendations. Priority for loan funds is on a first come, first served basis, with exceptions being made for veterans and certain loan purposes in the case of a shortage of funds. This change will provide for *legal resident aliens* to be eligible for the farmer loan programs indicated who otherwise meet FmHA eligibility requirements and requirements for loan soundness. As previously indicated they have many of the obligations of citizenship; another comment received pointed out that aliens legally admitted to the United States serve in the armed forces.

The Catalog of Federal Domestic Assistance (CFDA) numbers are: 10.404, Emergency Loans; 10.406, Farm Operating Loans; 10.407, Farm Ownership Loans; 10.408, Grazing Association Loans; 10.409, Irrigation, Drainage, and Other Soil and Water Conservation Loans; 10.413, Recreation Facility Loans; 10.414, Resource Conservation and Development Loans; 10.416, Soil and Water Loans (SW Loans).

List of Subjects

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

7 CFR Part 1980

Agriculture, Loan programs—Agriculture.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures and Authorizations

§ 1941.10 [Amended]

1. Section 1941.10 is amended by changing the reference in the first sentence from "Subpart A of Part 1801 of this chapter (FmHA Instruction 410.1)," to "Subpart A of Part 1910 of this chapter."

§ 1941.11 [Amended]

2. Section 1941.11(a) is amended by changing the reference from "Subpart A of Part 1801 of this chapter" (FmHA Instruction 410.1) to "Subpart A of Part 1910 of this chapter."

3. In § 1941.12, paragraphs (a)(1) and (b)(4)(i) are revised to read as follows:

§ 1941.12 Eligibility requirements.

(a) * * *

(1) Be a citizen of the United States (see § 1941.4(o) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

(b) * * *

(4) * * *

(i) They must be citizens of the United States (see § 1941.4(o) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.10 [Amended]

4. Section 1943.10(a) is amended by changing the reference from "Subpart A of Part 1801 of this chapter (FmHA Instruction 410.1)" to "Subpart A of Part 1910 of this chapter."

§ 1943.11 [Amended]

5. Section 1943.11(a) is amended by changing the reference from "Subpart A of Part 1801 of this chapter (FmHA Instruction 410.1)" to "Subpart A of Part 1910 of this chapter."

6. In § 1943.12, paragraphs (a)(1) and (b)(4)(i) are revised to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

(a) * * *

(1) Be a citizen of the United States (see § 1943.4(a) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944. Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

(b) * * *

(4) * * *

(i) They must be citizens of the United States (see § 1943.4(n) of this Subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

§ 1943.60 [Amended]

7. Section 1943.60 is amended by changing the reference from "Subpart A of Part 1801 of this chapter (FmHA Instruction 410.1)" to "Subpart A of Part 1910 of this chapter."

§ 1943.61 [Amended]

8. Section 1943.61(a) is amended by changing the reference from "Subpart A of Part 1801 of this chapter (FmHA Instruction 410.1)" to "Subpart A of Part 1910 of this chapter."

9. In § 1943.62, paragraphs (a)(1) and (b)(3) are revised to read as follows:

§ 1943.62 Soil and water loan eligibility requirements.

(a) * * *

(1) Be a citizen of the United States (see § 1943.54(l) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

(b) * * *

(3) Consist of members, stockholders or partners holding a majority interest who are citizens of the United States (see § 1943.54(l) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations

§ 1943.110 [Amended]

10. Section 1943.110 is amended by changing the reference from "Subpart A of Part 1801 of this chapter (FmHA Instruction 410.1)" to "Subpart A of Part 1910 of this chapter."

§ 1943.111 [Amended]

11. Section 1943.111(a) is amended by changing the reference from "Subpart A of Part 1801 of this chapter (FmHA Instruction 410.1)" to "Subpart A of Part 1910 of this chapter."

12. In § 1943.112, paragraphs (a)(1) and (b)(3) are revised to read as follows:

§1943.112 Recreation loan eligibility requirements.

(a) * * *

(1) Be a citizen of the United States (see §1943.104(l) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

(b) * * *

(3) Consist of members, stockholders or partners holding a majority interest who are citizens of the United States (see §1943.104(l) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card". Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

PART 1945—EMERGENCY

Subpart D—Emergency Loan Policies, Procedures and Authorizations

13. In §1945.162, paragraph (b) is revised to read as follows:

§1945.162 Eligibility requirements.

* * * * *

(b) *Citizenship.* (1) An individual applicant must be a citizen of the United States (see §1943.154(a)(34) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) A cooperative, corporation or partnership applicant must meet the requirements set out in § 1945.154 (a)(7), (a)(8) or (a)(24). In addition, more than a 50 percent interest in the cooperative, corporation or partnership must be owned by United States citizens (see §1945.154(a)(34) for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. The member, stockholder or partner who manages the farming operation must be a United States citizen or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Also, if another entity owns any interest in the applicant entity, more than a 50 percent interest in that other entity must be owned by a United States citizen(s) or an alien(s) lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

PART 1980—GENERAL

Subpart B—Farmer Program Loans

§ 1980.106 [Amended]

14. Section 1980.106(b)(16), is removed and paragraphs (b) (17) through (32) are redesignated as paragraphs (b) (16) through (31).

15. Renumbered § 1980.106(b)(20)(ii) is amended by changing the reference from "paragraph (b)(21)(i) of this section" to "paragraph (b)(20)(i) of this section."

16. In § 1980.170, paragraph (b)(2) is revised to read as follows:

§ 1980.170 Emergency loans.

* * * * *

(b) * * *

(2) *Citizenship.* (i) If an individual, the applicant must be a citizen of the United States (see § 1980.106(b)(28) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(ii) A cooperative, corporation or partnership must meet the requirements set out in § 1980.106 (b)(6), (b)(7) or (b)(21). In addition, more than a 50 percent interest in the cooperative, corporation or partnership must be owned by United States citizens (see § 1980.106(b)(28) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service Fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST". The member, stockholder, or partner who manages the farming operation must be a United States citizen or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Also, the entity must be authorized to conduct the farming operation(s) in the State(s) in which the farming operation is conducted.

* * * * *

§ 1980.170 [Amended]

17. Section 1980.170(c)(1)(i) is amended by changing the reference from "§ 1980.106(a)(21) of this part" to § 1980.106(b)(20) of this subpart."

18. Section 1980.170(c)(1)(i)(B) is amended by changing the reference from "§ 1980.106(a)(21) of this subpart" to "§ 1980.106(b)(20) of this subpart."

19. Section 1980.170(c)(1)(ii)(K) is amended by changing the reference from "§ 1980.106(a)(26)" to "§ 1980.106(b)(25)."

20. In Section 1980.175, paragraphs (b)(1)(i) and (b)(2)(iv)(A) are revised to read as follows:

§ 1980.175 Operating loans.

* * * * *

(b) * * *

(1) * * *

(i) Be a citizen of the United States (see § 1980.106(b)(28) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is

questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

(2) * * *

(iv) * * *

(A) They must be citizens of the United States (see § 1980.106(b)(28) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

§ 1980.180 [Amended]

21. Section 1980.180(b)(1) is amended by changing the reference from "§ 1980.106(b)(32) of this subpart" to "§ 1980.106(b)(31) of this subpart."

22. In § 1980.180, paragraphs (c)(1)(i) and (c)(2)(iv)(A) are revised to read as follows:

§ 1980.180 Farm ownership loans.

* * * * *

(c) * * *

(1) * * *

(i) Be a citizen of the United States (see § 1980.106(b)(28) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

(2) * * *

(iv) * * *

(A) They must be citizens of the United States (see § 1980.106(b)(28) of this Subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

§ 1980.185 [Amended]

23. Section 1980.185(b) is amended by changing the reference from "§ 1980.106(b)(32) of this subpart" to "§ 1980.106(b)(31) of this subpart."

24. In section 1980.185, paragraphs (c)(1)(i) and (c)(2)(iii) are revised to read as follows:

§ 1980.185 Soil and water loans.

* * * * *

(c) * * *

(1) * * *

(i) Be a citizen of the United States (see § 1980.106(b)(28) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

(2) * * *

(iii) Consist of members, stockholders or partners holding a majority interest who are citizens of the United States (see § 1980.106(b)(28) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

§ 1980.190 [Amended]

25. Section 1980.190(b) is amended by changing the reference from "§ 1980.106(b)(32) of this subpart" to "§ 1980.106(b)(31) of this subpart."

26. In § 1980.190, paragraphs (c)(1)(i) and (c)(2)(iii) are revised to read as follows:

§ 1980.190 Recreation loans.

* * * * *

(c) * * *

(1) * * *

(i) Be a citizen of the United States (See § 1980.106(b)(28) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right corner of the INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

(2) * * *

(iii) Consist of members, stockholders or partners holding a majority interest who are citizens of the United States (see § 1980.106(b)(28) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Form I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right corner of the INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

* * * * *

27. Section 1980.200 is added to read as follows:

§ 1980.200 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0079.

Authorities: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Dated: March 2, 1984.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 84–10187 Filed 4–16–84; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 5

[Docket No. 84–13]

Rules, Policies and Procedures for Corporate Activities; Conversions

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (Office) is simplifying and streamlining its application process for a state bank seeking to convert to a national banking association. This final rule eliminates the requirements that a bank file a formal application and publish notice in a newspaper. A notification procedure is substituted for the application. This final rule benefits banks and the Office by removing burdensome and costly regulatory requirements while maintaining the Office's ability to render decisions based on the permissibility of the conversion and the condition of the bank. Procedures for a national bank to convert to a state bank are also addressed in the regulation; however, there is no significant change since the existing procedures incorporate only the minimum legal requirements.

EFFECTIVE DATE: May 17, 1984.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Manager, Policy, or Joseph W. Malott, National Bank Examiner/Policy Analyst, Bank Organization and Structure, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East SW. Washington, D.C. 20219, (202) 447–1184.

SUPPLEMENTARY INFORMATION:

Background

This proposal is part of the Office's Corporate Activities Review and Evaluation (CARE) Program. That program, which is described in the Federal Register (45 FR 6858, October 15, 1980), involves a comprehensive review of Office rules, policies, procedures, and forms governing filings for corporate expansion and structural changes for national banks. The goals of the CARE Program are to minimize the costs and burdens on applicants, the agency and the public; to provide a better understanding of policies; to modify or eliminate rules, policies, procedures and forms which are unnecessary or lead to inefficiencies; and to remove barriers to competition.

Proposal (12 CFR 5.24)

As part of the ongoing CARE program, the Office issued for public comment a notice of proposed rulemaking (48 FR 49291, October 25, 1983) that proposed to revise the application process a state bank uses to obtain approval to convert to a national bank. The proposal replaced the application process with a notification process and eliminated the requirement that a bank published a newspaper notice filing an application.

Summary of the Comments

One comment was received concerning the notice of proposed rulemaking. The commenter was a national bank trade association and supported the Office's efforts to simplify and streamline the corporate application procedures.

Change Between Proposal and Final Rule

The proposed rule required that a bank's annual report be submitted with the letter of intent to convert to a national bank. Instead, the Office has decided to require that the latest report of condition and income (or the most recent daily statement of condition if the bank is not required to file such reports) be submitted with the letter of notification. A copy of the latest report is required because it contains information essential to proper evaluation of the condition of the bank and because the edited call report information is not compiled by the FDIC and made available to the Office until 75 days after the call date. The Office believes that the most current information available, pertinent to the decision, is needed, and that requiring submission of a copy of the most current call report is the least burdensome method of getting the needed information.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612) the Secretary of the Treasury has

certified that this regulation does not have a significant economic impact on a substantial number of small entities. This final rule would ease the burden of the existing regulations. The effect of the final rule is expected to be beneficial rather than adverse, and small entities are generally expected to share the benefits of the amendments as well as larger institutions.

Executive Order 12291

The Office has determined that this final rule is not a "major rule" and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Part 5

National banks, Conversions.

Authority and Issuance

Accordingly, the Comptroller of the Currency is amending 12 CFR Part 5 as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5—Rules, Policies, and Procedures for Corporate Activities reads as follows:

Authority: 12 U.S.C. 1 *et seq.*

2. Section 5.24 is revised to read as follows:

§ 5.24 Conversion.

(a) *Authority.* 12 U.S.C. 1 *et seq.*, 12 U.S.C. 35, 214a, 214b, and 214c.

(b) *Rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if in the judgment of the Office, a proposed conversion would represent a change in policy or raise issues of general importance to the public or banking industry, the Office may require compliance with these sections.

(c) *Conversion of a state bank to a national bank*—(1) *Policy.* A state bank (as defined by 12 U.S.C. 214) may convert to a national bank provided the conversion is in conformance with existing Federal statutes, rules and regulations. Further, the conversion must not be in contravention of state law and must be authorized by vote of the shareholders owning not less than 51 percent of the capital stock of the bank. Capitalization must meet the requirements for new national banks. The Office will approve an institution's conversion and retention of its authorized branches and fiduciary powers when approval is consistent with maintaining a sound national banking system. A conversion may be prohibited if the bank's condition poses undue supervisory concern or the conversion is being effected to escape supervisory action. The qualifications of an applicant generally will be determined through an OCC examination of the bank. In reaching its decision, the Office will consider the following factors:

(i) *Condition.* The applicant's general condition should be satisfactory. Problems of safety or soundness may preclude approval. Such problems may include an undue amount of criticized assets, particularly in relation to the capital base; serious or frequent violations of law, especially involving insiders; inadequate liquidity; adverse operating trends; poor internal controls; or other significant problems. Capital, earnings, and retention of earnings must be sufficient to support the current and projected levels of operations.

(ii) *Management.* Management must have demonstrated the ability to supervise a sound banking operation. This determination will relate to the overall condition of the institution and to management's ability to recognize and correct deficiencies.

(iii) *Community.* The Office will assess the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(2) *Procedure.* A state banking institution which desires to convert to a national bank shall submit a letter of intent to convert to a national bank to the appropriate district office. The letter must be signed by the president or cashier and include copies of the most recent audited statement (if available), the latest report of condition and report of income (the most recent daily statement of condition will suffice if the bank is not required to file such reports), and an opinion from the bank's counsel that the conversion is not in contravention of state law. The letter also must identify each authorized branch that the bank intends to operate after conversion. If the bank exercises fiduciary powers, it must indicate whether it wishes to continue to do so.

(3) *Decision.* If preliminary approval is granted, the Office will inform the bank of the additional steps required to effect conversion.

(4) *Commencement of business as national bank.* When all statutory requirements and other conditions have been met, the Office will issue a charter certificate. The charter will provide that the institution is authorized to commence business as a national bank as of a specified date.

(5) *Fees.* An initial filing fee of $2,500 is required at the time the letter of intent to convert to a national bank is forwarded to the district office. If an examination is performed, the applicant will be charged in accordance with Part 8 of this Chapter.

(d) *Conversion of a national bank to a state-chartered bank*—(1) *Policy.* The conversion of a national bank to a state-charted bank does not require Office approval. Additionally, the rules of general applicability (Subpart A) do not apply. Termination as a national banking association will be automatic upon completion of the requirements of 12 U.S.C. 214(a).

(2) *Procedure.* A national bank desiring to become a state bank should submit a letter to the appropriate district office advising of its intent to convert. The bank will be furnished with instructions to terminate its status as a national bank.

(e) *Forms.* Forms to be used to convert to a national bank are: CC 7022–12: Organization Certificate (Conversion).

(Approved by the Office of Management and Budget under control number 1557–0157)

Dated: February 13, 1984.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84–10243 Filed 4–16–84; 8:45 am]

BILLING CODE 4810–33–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Final Rules Relating to Reparations; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Corrections.

SUMMARY: This document corrects omissions and technical errors in a rule relating to new reparations procedures that appeared on page 6602 in the Federal Register of February 22, 1984.

FOR FURTHER INFORMATION CONTACT: Edward S. Geldermann, (202) 254–9880.

On February 22, 1984, the Commission published in the Federal Register final rules relating to its new reparations procedures. 49 FR 6602 (February 22, 1984). Those rules as published contained some inadvertent omissions and other technical errors which could, if not corrected, cause confusion to users of the reparations process. To eliminate such potential for confusion, the Commission hereby serves notification of corrections of these omissions and errors to the final reparation rules as published in 49 FR 6602 *et seq.* The references to page numbers, columns, and line numbers,

where the corrections are made all apply to Volume 49, Number 36, of the **Federal Register**. For purposes of this notice, a line in the **Federal Register** upon which no letters or characters appear is not counted as a line number.

Such corrections are as follows:

§ 12.10 [Corrected]

1. On page number 6625, in the second column, at line number 14, the words "Proof of filing shall be made by attaching to the document for filing an affidavit certifying that the attached document was deposited in the mail, with first-class postage prepaid, addressed to the Proceedings Clerk, Office of Proceedings, 2033 K Street, NW., Washington, D.C. 20581, on the date specified in the affidavit." are inserted between the words "for filing." and the words "Proof of service";

§ 12.13 [Corrected]

2. On page number 6626, in the first column, after line number 37, a new line is inserted containing the words: "(1) *Content.* Each complaint shall include:". Also on page number 6626, in the second column, at line number 62, the words "before the Director may make a determination pursuant to § 12.26 (a), (b), or (c)," are inserted between the words "the United States," and the words "the complainant shall";

§ 12.25 [Corrected]

3. On page number 6629, in the third column, at line number 35, the words "summary decisional procedure or the formal" are inserted between the words "answer, has elected the" and the word "decisional";

§ 12.26 [Corrected]

4. On page number 6631, in the first column, at line number 5, the word "Motions" is deleted, and the words, "In a proceeding commenced pursuant to § 12.26(c) of these rules, motions" are inserted between the words "(30) days," and the words "for any additional";

§ 12.101 [Corrected]

5. On page number 6632, in the third column, at line number 62, the word "or" is deleted. At line number 63 of the same page number and column, the word "notice" is deleted;

§ 12.201 [Corrected]

6. On page number 6634, in the first column, at line number 10, the words "or request" are deleted;

§ 12.209 [Corrected]

7. On page number 6635, in the third column, at line number 11, the term "§ 12.313(f)" is deleted, and the term "§ 12.312(f)" is substituted for the deleted term. At line number 48 of the same page number and column, the words "at least five days" are inserted between the words "unless a party," and the words "prior to";

§ 12.302 [Corrected]

8. On page number 6637, in the second column, at line number 24, the word "or" is deleted. At line number 25 of the same page number and column, the word "request" is deleted. At line number 27 of the same page and column, the term "§ 12.201" is deleted, and the term "§ 12.301" is substituted for the deleted term;

§ 12.312 [Corrected]

9. On page 6639, in the third column, at line number 59, the symbol "(f)" is deleted, and the symbol "(e)" is substituted therefor;

§ 12.313 [Corrected]

10. On page 6640, in the second column, at line number 54, the word "are" is deleted, and the word "is" is substituted for the deleted word;

§ 12.314 [Corrected]

11. On page 6641, in the second column, at line number 29, the words *"; prejudgment interest,"* are inserted between the word *"Costs."* and the words "Except as provided in". At line number 35 of the same page number and column, the words "and, if warranted as a matter of law under the circumstances of the particular case, prejudgment interest," are inserted between the words "attorney's fees)" and the words "to the party in whose";

§ 12.400 [Corrected]

12. On page 6641, in the third column, at line number 23, the words "Subparts D and E" are deleted, and the terms "§ 12.26 (b) and (c)" are substituted for the deleted words. At line number 28 of the same page number and column, the words "Subpart C" are deleted, and the term "§12.26(a)" is substituted for the deleted words. At line number 49, the word "An" is deleted and the words "A non-refundable" are substituted for the deleted word;

§ 12.407 [Corrected]

13. On page 6643, in the first column, at line number 51, the words "or (b)" are inserted between the words "with paragraph (a)" and the words "of this." At line number 67 of the same page number and column, the words "or (b)" are inserted between the words "in paragraph (a)" and the words "of this";

§ 12.407 [Corrected]

14. On page 6643, in the third column, at line number 51, the words "Part 12 of", appearing between the words "in accordance with," and the word "these" are deleted, and the words "Part 12" are inserted after the word "these".

Issued in Washington, D.C. on April 10, 1984.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-10107 Filed 4-16-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 84-84]

Change in the Customs Service Field Organization—Springfield, Missouri

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish a permanent Customs port of entry at Springfield, Missouri, in the St. Louis, Missouri, Customs district. The Springfield port of entry has been operating on an experimental basis since March 8, 1982, to see if it could meet the criteria for establishing and staffing a port of entry. As a result of a recently completed review, it has been concluded that the workload will be sufficient to meet the established criteria. The change is part of a continuing program to obtain more efficient use of Customs personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: May 17, 1984.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, by a document published in the **Federal Register** on February 5, 1982, as T.D. 82-30 (47 FR 5406), Springfield, Missouri, was designated as a Customs port of entry in the St. Louis, Missouri, Customs district, on a 2-year experimental basis starting on March 5, 1982. T.D. 82-30 provided that, at the conclusion of the 2-year period Customs would make an

evaluation of the continued need for Customs services in the area, and the adequacy of Customs facilities. If the extent of the business or the adequacy of the facilities failed to meet the criteria used by Customs to determine port of entry eligibility, the designation of Springfield as a port of entry would be revoked.

Customs has recently completed its review of the status of the workload through the temporary Customs port of Springfield, Missouri. As a result of this review, Customs has concluded that the workload will exceed the established criteria. Because it has met the established criteria and all of the facilities are satisfactory, Springfield is being designated as a permanent port of entry.

Geographical Description

The geographical boundaries of the Springfield, Missouri, port of entry include all the territory within Greene and Christian Counties, Missouri.

Authority

Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2) and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR Parts 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Amendment to the Regulations

PART 101—GENERAL PROVISIONS

To reflect the establishment of a permanent Customs port of entry at Springfield, Missouri, the list of Customs regions, districts, and ports of entry in section 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by removing "T.D. 82–30" and inserting, in its place, "T.D. 84–84" following "Springfield, Missouri, including all of the territory within Greene and Christian Counties, Missouri" under the column headed "Ports of Entry" in the St. Louis, Missouri, Customs district.

Executive Order 12291

Because this amendment relates to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291, it is not subject to that E.O.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Springfield, Missouri area, the establishment of Customs ports of entry in other locations has not had a significant economic impact on a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Furthermore, Springfield has been operating as a port of entry since 1982. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document wsa Glen E. Vereb, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: April 6, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84–10211 Filed 4–16–84; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 155 and 156

[Docket No. 77P–0090]

Tomato Concentrates, Catsup, and Tomato Juice; Definitions and Standards of Identity, Quality, and Fill of Container; Confirmation of Effective Date and Further Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule and confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance, but for two exceptions, with all provisions of the final rule amending and establishing certain definitions and standards for canned vegetables and vegetable juices published in the **Federal Register** of January 28, 1983. One exception concerns § 155.191(a) (2) and (3) (21 CFR 155.191(a) (2) and (3)). These paragraphs are revised: (1) To provide for spices and flavoring as optional ingredients in tomato puree and to require that added spice or flavoring that characterizes tomato puree be declared as part of the name or in close proximity to the name of the food, (2) to clarify the use of the term "for manufacturing purposes only" for the labeling of "tomato concentrate," (3) to permit alternate methods to convey adequate directions for dilution of concentrated tomato juice in containers larger than No. 10 containers, and (4) to exempt from ingredient declaration water added to adjust the final composition of tomato concentrates. The other exception is for §155.194(a)(1) (21 CFR 155.194(a)(1)) which is being revised: (1) To provide for the use in catsup of tomato concentrate containing lemon juice, concentrated lemon juice, or safe and suitable organic acids in quantities no greater than necessary to adjust pH, and (2) to clarify that salt is an optional ingredient in catsup.

DATES: Compliance with the provisions being revised herein may begin June 18, 1984. The provisions revised in this document are effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Objections to the provisions being revised herein by May 17, 1984.

Compliance with the provisions of Parts 155 and 156 amended in the **Federal Register** of January 28, 1983 (48 FR 3946) may have begun March 29, 1983, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1985, shall fully comply.

For exceptions to these effective dates regarding information collection requirements, see "Paperwork Reduction Act of 1980" appearing in the preamble of this document.

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

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 28, 1983 (48 FR 3946), FDA issued a final regulation

amending the definition section for canned vegetables, establishing a separate definition section for vegetable juices, and amending the standards of identity and establishing standards of quality and fill of container for tomato concentrates, catsup, and tomato juice. The amendments included: (1) Establishing separate standards for tomato concentrates to include tomato puree, tomato paste, and concentrated tomato juice; (2) providing for the use of tomato concentrates and safe and suitable nutritive carbohydrate sweetners in catsup; (3) providing for the use of concentrated tomato juice to prepare "tomato juice from concentrate" and establishing a minimum tomato soluble solids requirement of 5.0 percent by weight for "tomato juice from concentrate"; and (4) providing for safe and suitable organic acids in tomato juice and tomato juice from concentrate. Also, the amendments removed the standard of identity for yellow tomato juice (21 CFR 156.147). The final rule provided that any person who would be adversely affected could at any time, on or before February 28, 1983, file written objections and request a hearing on the specific provisions to which there were objections.

One objection and request for a hearing and five comments were filed in response to the final rule.

Under section 701(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)), FDA has considered the comments and the objection and request for a hearing and its conclusions are as follows:

Tomato Puree—Spices and Flavoring

1. An objection and request for a hearing were received concerning the exclusion of spices and flavorings as optional ingredients in tomato puree. The objection stated that the excluded ingredients have long been allowed in tomato paste without causing deception or consumer confusion and that, therefore, there is no reason to prohibit their use in tomato puree. The objection further stated that consumers, as well as the industry, differentiate between tomato puree and tomato paste on the basis of solids content and not on the presence or absence of spices or flavoring. Finally, the objection pointed out that the growing concern about reducing sodium intake creates a need for exploring alternatives means of adding flavor to foods.

FDA is persuaded by these comments that the use of spices and flavoring in tomato puree should be permitted. Therefore, FDA has amended § 155.191(a)(2) to permit the use of the ingredients and has amended § 155.191(a)(3)(ii)(*c*) to provide that the use of any spice or flavoring that characterizes the product must be declared as part of or in close proximity to the name of the food.

Tomato Concentrate—For Manufacturing Purposes Only

2. One comment stated that tomato concentrate in large containers, such as 50-gallon drums, should not be required to bear the statement "for remanufacturing purposes only."

FDA advises that it never intended that containers that are larger than No. 10 containers be required to bear the statement "for remanufacturing purposes only." FDA has revised § 155.191(a)(3)(i)(*c*) to reflect this fact.

Concentrated Tomato Juice—Label Declaration for Dilution of Concentrate

3. One comment requested that, for large nonretail containers, alternative methods be permitted to convey adequate dilution directions.

FDA agrees and § 155.191(a)(3)(iii) is revised accordingly.

Tomato Concentrates—Label Declaration of Added Water

4. One comment stated water added to adjust the concentration of tomato soluble solids in certain tomato concentrates should not be required to be listed in the ingredient statement because the amount of added water is less than the amount of water in the original unconcentrated product. The comment stated that the requirement will permit a manufacturer of 8.0 percent tomato puree which has never been concentrated beyond that point to state only "tomato concentrate" in the ingredient statement while a manufacturer of a tomato puree of 12 percent tomato soluble solids prepared from 18 percent tomato soluble solids and water will be required to label his/her product with an ingredient statement reading "tomato concentrate and water."

FDA agrees that water need not be listed as an optional ingredient where the tomato soluble solids of tomato concentrates are adjusted with water within the range of soluble solids levels permitted for these foods. FDA believes that consumers are aware that such foods as tomato puree and tomato paste are concentrated products whether or not water has been used to adjust the final soluble solids level. FDA considers this use to differ in principle from the reconstitution of concentrated tomato juice with water to a level of soluble solids equivalent to that of the juice from which the concentrate was prepared. Therefore, FDA will continue to require that water used in the preparation of tomato juice from concentrate be declared in the ingredient statement. However, FDA has revised § 155.191(a)(3)(iv) to exempt from the labeling requirement of Part 101 (21 CFR Part 101) water as an optional ingredient when it is needed to adjust the tomato soluble solids of the final composition of tomato concentrates.

Catsup—Lemon Juice or Organic Acids

5. Two comments requested clarification as to whether concentrates containing lemon juice or organic acids are prohibited from use in catsup when added in small quantities sufficient to control the pH of the concentrates or whether they are prohibited only when added in amounts that characterize the flavor of catsup. One comment stated that safe and suitable organic acids should not replace vinegar as the characteristic acidulant in catsup, but that it is important to permit tomato concentrates containing small amounts of organic acids to be used for making catsup in order to avoid unnecessary and costly burdens to both manufacturers and distributors of concentrates, as well as industrial users who may purchase concentrates for the purposes of manufacturing both catsup and noncatsup products. The comment pointed out that acidified and nonacidified concentrates would have to be produced, inventoried, stored, labeled, and shipped separately and could not be freely diverted from one manufacturing use to another if the need arose.

FDA agrees that it is reasonable to permit tomato concentrate to which lemon juice, concentrated lemon juice, or safe and suitable organic acids have been added in quantities no greater than necessary to adjust the pH of the tomato concentrate as an optional ingredient in catsup and § 155.194(a)(1)(i) is revised accordingly.

Catsup—Salt

6. One comment stated that the final regulation implies that only the food ingredients used to make catsup may contain added salt and that salt may not be added directly to catsup. The comment suggested that § 155.194(a)(1)(iv) be amended to read "The food may contain salt (sodium chloride formed during acid neutralization or present in any ingredient shall be considered added salt) * * *."

FDA agrees with the comment but does not believe that the suggested addition to the parenthetical statement, i.e. (or present in any ingredient), is

needed. FDA has revised § 155.194(a)(1) accordingly.

Catsup—Acidification

7. One comment stated that acetic acid, in addition to vinegar, should be provided for as an acidulant in catsup because acetic acid is the active component of vinegar and is as effective as vinegar in ensuring the stability and preservation of catsup.

FDA proposed in the **Federal Register** of May 9, 1978 (43 FR 19864), to broaden the choice of acidulants permitted for use in catsup to include lemon juice, concentrated lemon juice, and safe and suitable organic acids. Two comments on that proposal favored retention of the provision for the use of vinegar in catsup. One comment opposed permitting the use of the other acidulants because vinegar has been effective as a preservative while the stability and preserving qualities of other acidulants in catsup are not known. Both comments asserted that the use of acidulants other than vinegar would change the basic characteristics of catsup because the fermentation of vinegar produces certain natural flavors which appear to enhance the flavor of catsup. On this basis, FDA did not provide for acidulants other than vinegar in the final rule published in the **Federal Register** of January 28, 1983. The comments and the agency's response are discussed fully in the preamble to that final rule. Further, FDA does not consider diluted acetic acid to be vinegar and, therefore, acetic acid may not be substituted for vinegar in products that consumers customarily expect to be prepared with vinegar. Because no data have been submitted to demonstrate that acetic acid is a suitable alternate acidulant for vinegar in catsup, no change is made in the regulation.

Catsup—Label Declaration of Tomato Ingredient

8. One comment stated that catsup is produced from either fresh tomatoes or tomato paste and that the maintenance of separate labels to cover the specific tomato ingredient used in catsup will be expensive. The comment suggested that the regulation permit a single ingredient declaration as "Tomatoes or Concentrated Tomatoes" to cover both circumstances.

FDA's policy for the label declaration of optional ingredients was discussed fully in the preamble to the January 28, 1983 final rule (48 FR 3951; item 31), and FDA is not persuaded that to permit such collective ingredient labeling would be in the best interest of consumers. However, FDA advises that any interested person who wishes to pursue this matter may submit a petition requesting that § 101.4 (21 CFR 101.4) be amended to provide for the desired collective ingredient labeling.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements in § 155.191 (a)(3) (ii)(*c*), (iii), and (iv) in this regulation as well as the collection of information requirements in §§ 155.191(a)(3), (b)(4), 155.194(a)(3), and 156.145(b)(2) as amended in the **Federal Register** of January 28, 1983, (48 FR 3946), will be submitted for approval to the Office of Management and Budget (OMB). These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register** prior to July 1, 1984.

List of Subjects

21 CFR Part 155

Canned vegetables, Food standards, Vegetables.

21 CFR Part 156

Food standards, Vegetable juices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that Parts 155 and 156, as amended in the **Federal Register** of January 28, 1983, will become effective July 1, 1985, except that §§ 155.191 and 155.194 are amended as follows:

PART 155—CANNED VEGETABLES

1. In § 155.191 by revising paragraph (a)(2) and (3)(i)(*c*), (ii)(*c*), (iii), and (iv), to read as follows:

§ 155.191 Tomato concentrates.

(a) * * *

(2) *Optional ingredients.* One or any combination of two or more of the following safe and suitable ingredients may be used in the foods:

(i) Salt (sodium chloride formed during acid neutralization shall be considered added salt).

(ii) Lemon juice, concentrated lemon juice, or organic acids.

(iii) Sodium bicarbonate.

(iv) Water, as provided for in paragraph (a)(1) of this section.

(v) Spices.

(vi) Flavoring.

(3) * * *

(i) * * *

(*c*) The name "tomato concentrate" may be used in lieu of the name "tomato puree," "tomato pulp," or "tomato paste" whenever the concentrate complies with the requirements of such foods; except that the label shall bear the statement "for remanufacturing purposes only" when the concentrate is packaged in No. 10 containers (3.1 kilograms or 109 avoirdupois ounces total water capacity) or containers that are smaller in size.

* * * * *

(ii) * * *

(*c*) A declaration of any flavoring that characterizes the product as specified in § 101.22 of this chapter and a declaration of any spice that characterizes the product, e.g., "Seasoned with ———," the blank to be filled in with the words "added spice" or, in lieu of the word "spice," the common name of the spice.

(iii) The label of concentrated tomato juice shall bear adequate directions for dilution to result in a diluted article containing not less than 5.0 percent by weight tomato soluble solids; except that alternative methods may be used to convey adequate dilution directions for containers that are larger than No. 10 containers (3.1 kilograms or 109 avoirdupois ounces total water capacity).

(iv) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter; except that water need not be declared in the ingredient statement when added to adjust the tomato soluble solids content of tomato concentrates within the range of soluble solids levels permitted for these foods.

* * * * *

2. In § 155.194 by revising paragraph (a)(1)(*i*) and the undesignated text following (a)(1)(iv) to read as follows:

§ 155.194 Catsup.

(a) * * *

(1) * * *

(i) Tomato concentrate as defined in § 155.191(a)(1), except that lemon juice, concentrated lemon juice, or safe and suitable organic acids may be used in quantities no greater than necessary to adjust the pH, and in compliance with § 155.191(b).

* * * * *

Such liquid is strained so as to exclude skins, seeds, and other coarse or hard substances in accordance with current good manufacturing practice. Prior to straining, food-grade hydrochloric acid may be added to the tomato material in an amount to obtain a pH no lower than

2.0. Such acid is then neutralized with food-grade sodium hydroxide so that the treated tomato material is restored to a pH of 4.2±0.2. The final composition of the food may be adjusted by concentration and/or by the addition of water. The food may contain salt (sodium chloride formed during acid neutralization shall be considered added salt) and is seasoned with ingredients as specified in paragraph (a)(2) of this section. The food is preserved by heat sterilization (canning), refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage.

* * * * *

Any person who will be adversely affected by the foregoing amendments to the final regulation may, in accordance with 21 CFR 12.22, at any time on or before May 17, 1984 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. Except as to the amendments that may be stayed by the filing of proper objections, compliance with these amendments to the final regulation may begin June 18, 1984. The mandatory compliance date for these amendments shall be July 1, 1985. Notice of the filing of objections or lack thereof will be published in the **Federal Register**. Accordingly, except as to the provisions herein amended, the effective date of Parts 155 and 156 as amended in the **Federal Register** of January 28, 1983 (48 FR 3946) is confirmed as follows: Compliance with this regulation, including any required labeling changes, may have begun on March 29, 1983, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1985, shall fully comply.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: April 6, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9770 Filed 4-16-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 430, 436, 440, 450, 455, and 555

[Docket No. 83N-0395]

Antibiotic Drugs; Updating and Technical Changes; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that amended certain antibiotic regulations by making updating and noncontroversial technical changes. This document corrects typographical errors.

EFFECTIVE DATE: April 17, 1984.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-4353, appearing on page 6090, in the issue for Friday, February 17, 1984, the following corrections are made on page 6093: In the first column under § 450.220 *Dactinomycin for injection* in paragraph (b)(1)(ii)(*c*), "455-nanometer" is corrected to read "445-nanometer" and "§ 450.20(b)(6)(i)" is corrected to read "§ 450.20(b)(4)(i)"; and in paragraph (b)(4), "§ 450.20(b)(4)" is corrected to read "§ 450.20(b)(2)".

Dated: April 11, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-10196 Filed 4-16-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 7950]

Exhaustion of Administrative Remedies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the circumstances in which a party normally will be considered to have exhausted the administrative remedies available within the Internal Revenue Service for purposes of the recovery of court costs and certain fees in a civil tax proceeding brought in a court of the United States (including the Tax Court). Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulations apply to parties to civil tax proceedings and provide them with guidance concerning circumstances in which the Internal Revenue Service normally will consider a party's administrative remedies exhausted.

DATES: The regulations are effective April 17, 1984, and apply to civil tax proceedings commenced after February 28, 1983, and before January 1, 1986.

FOR FURTHER INFORMATION CONTACT: C. Scott McLeod of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention, CC:LR:T, 202-566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1983, the **Federal Register** published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7430 of the Internal Revenue Code of 1954 (48 FR 12560). The amendments were proposed to reflect the changes made by section 292(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 572). After consideration of all comments, the proposed amendments are adopted as revised by this Treasury decision.

In general, the rules in this Treasury decision are the same as those in the notice of proposed rulemaking. Those rules are explained in the preamble of the notice of proposed rulemaking under the heading, **SUPPLEMENTARY**

INFORMATION. Changes to those rules and public comments on the proposed rules are summarized below.

Changes and Public Comments

Several comments objected to the rule providing that a party's administrative remedies are not exhausted unless the party agrees under section 6501(c)(4) to extend the time for an assessment of tax if necessary to provide the Appeals office with a reasonable time period to consider the tax matter. The comments suggested that taxpayers should not be required to choose between the right to recover costs under section 7430 and the right to be free from assessments after a 3-year period.

The final regulations adopt the rule as proposed. The provisions requiring exhaustion of administrative remedies and permitting extension of the period for assessment of tax are complementary and should be applied in conjunction. The former is "intended to preserve the role that the administrative appeals process plays in the resolution of tax disputes" and to "prevent taxpayers from recovering litigation costs when the litigation might have been avoided or reduced in scope through use of administrative remedies." Technical Explanation of Committee Amendment, 127 Cong. Rec. S15594 (daily ed. Dec. 16, 1981). The latter makes the administrative resolution of disputes possible when the 3-year limitation period does not provide sufficient time. The Service believes that, in these circumstances, the extension of the period for assessment is an essential part of the administrative appeals process. It is the Service's experience that many disputes are resolved during the extended period of limitations. Accordingly, a taxpayer who refuses to consent to an extension should not be considered to have exhausted administrative remedies.

Some comments expressed concern that the rule might lead to unreasonable delays in the resolution of tax disputes. The prompt resolution of tax disputes is also a concern of the Service and it is the Service's policy to request an extension only in cases involving unusual circumstances and to keep the number of extensions to an absolute minimum. Rev. Proc. 57-6, 1957-1 C.B. 729.

Some comments objected to the definition of participation in an Appeals office conference, which requires disclosure of all relevant information regarding the party's tax matter. The final regulations generally retain this definition, but now require the disclosure only of all information the party knew or should have known was relevant at the time of the Appeals office conference. The Service believes this definition is consistent with the legislative history, which states, "A taxpayer who actively participates in and discloses all relevant information during the administrative stages of the case will be considered to have exhausted the available administrative remedies. Failure to so participate and disclose information may be sufficient grounds for determining that the taxpayer has not exhausted administrative remedies." Technical Explanation of Committee Amendment, 127 Cong. Rec. S15594 (daily ed. Dec. 16, 1981).

Some comments questioned the result provided in example 10 of the regulations in which the issuance of a revenue ruling, private letter ruling or technical advice covering the same fact situation but taking a contrary position did not constitute notification by the Internal Revenue Service that the pursuit of administrative remedies is unnecessary. The final regulations have not changed example 10 as proposed because it is the experience of the Service that some disputes are resolved in Appeals office conferences despite such contrary pronouncements.

Two comments asked for clarification of the treatment given to late requests for an Appeals office conference. In the absence of extenuating circumstances, the Service denies requests for conferences received after the issuance of a statutory notice of deficiency or disallowance. Accordingly, the final regulations provide that an Appeals office conference must be requested prior to the issuance of a statutory notice of deficiency in the case of a petition in the Tax Court or a statutory notice of disallowance in the case of a civil action for refund. In the rare circumstance that an Appeals office conference is granted after the issuance of the statutory notice, however, the party will be considered to have exhausted the administrative remedies available within the Service if the party participates in the conference prior to filing a civil action for refund in a court of the United States or a petition in the Tax Court.

The proposed regulations provided that a party's administrative remedies are considered exhausted if the party did not receive a preliminary notice of proposed deficiency or disallowance before receipt of the statutory notice of deficiency or disallowance. The final regulations adopt this position with three modifications. First, the final regulations change the term "receipt" to "issuance" because a notice of deficiency mailed in accordance with section 6212(b) is sufficient even if it is not received by the taxpayer. Second, the final regulations make it clear that this rule does not apply if the failure of a party to receive a preliminary notice of deficiency (or disallowance) is due to the actions of the party. The final regulations provide that a failure to receive such a preliminary notice is due to the actions of a party if the party fails to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter. Third, the final regulations provide that in the case of a petition in the Tax Court where the party did not receive a preliminary notice of deficiency prior to the issuance of a statutory notice of deficiency, a party's administrative remedies will be considered exhausted only if the party does not refuse to participate in an Appeals office conference while the case is in docketed status.

Finally, a comment requested guidance on matters outside the scope of these regulations, such as the meaning of the terms, "prevailing party," "multiple actions," and "reasonable litigation costs." The final regulations do not address these matters.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking soliciting public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations was Paul H. Weisman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes,

Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

PART 301—[AMENDED]

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

26 CFR Part 301 is amended by adding a new § 301.7430–1 at the appropriate place. The new § 301.7430–1 reads as set forth below:

§ 301.7430–1 Exhaustion of administrative remedies.

(a) *In general.* Section 7430(b)(2) provides that a court shall not award reasonable litigation costs in any civil tax proceeding under section 7430(a) unless the court determines that the prevailing party has exhausted the administrative remedies available to the party within the Internal Revenue Service. This section sets forth the circumstances in which the Internal Revenue Service normally will consider such administrative remedies exhausted.

(b) *Tax, penalty and addition to tax*—(1) *In general.* A party has not exhausted its administrative remedies available within the Internal Revenue Service with respect to any tax matter for which an Appeals office conference is available under §§ 601.105 and 601.106 of the Statement of Procedural Rules (26 CFR Part 601) (other than a tax matter described in paragraph (c)) unless—

(i) The party, prior to filing a petition in the Tax Court or a civil action for refund in a court of the United States—

(A) Participants, either in person or through a qualified representative described in § 601.502 of the Statement of Procedural Rules, in an Appeals office conference; and

(B) Agrees under section 6501(c)(4) to extend the time for an assessment of tax if necessary to provide the Appeals office with a reasonable time period to consider the tax matter; or

(ii) If no Appeals office conference is granted, the party, prior to the issuance of a statutory notice of deficiency in the case of a petition in the Tax Court or the issuance if a statutory notice of disallowance in the case of a civil action for refund in a court of the United States—

(A) Requests an Appeals office conference in accordance with §§ 601.105 and 601.106 of the Statement of Procedural Rules;

(B) Files a written protest if a written protest is required to obtain an Appeals office conference; and

(C) Agrees under section 6501(c)(4) to extend the time for an assessment of tax if necessary to provide the Appeals office with a reasonable time period to consider the tax matter.

(2) *Participates.* For purposes of this paragraph a party or qualified representative of the party described in § 601.502 of the Statement of Procedural Rules participates in an Appeals office conference if the party or qualified representative discloses to the Appeals office all relevant information regarding the party's tax matter to the extent such information and its relevance were known or should have been known to the party or qualified representative at the time of such conference.

(c) *Revocation of a determination that an organization is described in section 501(c)(3).* A party has not exhausted its administrative remedies available within the Internal Revenue Service with respect to a revociation of a determination that it is an organization described in section 501(c)(3) unless, prior to filing a declaratory judgment action under section 7428, the party has exhausted its administrative remedies in accordance with section 7428, and any regulations, rules, and revenue procedures thereunder.

(d) *Actions involving summonses, levies, liens, jeopardy and termination assessments, etc.* (1) A party has not exhausted its administrative remedies available within the Internal Revenue Service with respect to a matter other than one to which paragraph (b) or (c) applies (including summonses, levies, liens and jeopardy and termination assessments) unless, prior to filing an action in a court of the United States—

(i) The party submits to the district director of the district having jurisdiction over the dispute a written claim for relief reciting facts and circumstances sufficient to show the nature of the relief requested and that the party is entitled to such relief; and

(ii) The district director has denied the claim for relief in writing or failed to act on the claim within a reasonable period after such claim is received by the district director.

(2) For purposes of this paragraph, a reasonable period is—

(i) The 5-day period preceding the filing of a petition to quash an administrative summons issued under section 7609;

(ii) The 5-day period preceding the filing of a wrongful levy action in which a demand for the return of property is made;

(iii) The period expressly provided for administrative review of the party's claim by an applicable provision of the Internal Revenue Code that expressly provides for the pursuit of administrative remedies (such as the 16-day period provided under section 7429(b)(1)(B) relating to review of jeopardy assessment procedures); or

(iv) The 60-day period following receipt of the claim for relief in all other cases.

(e) *Tax matter.* For purposes of this section "tax matter" means a matter in connection with the determination, collection or refund of any tax, interest or penalty under the Internal Revenue Code.

(f) *Exception to requirement that party pursue administrative remedies.* A party's administrative remedies within the Internal Revenue Service are considered exhausted for purposes of section 7430 if—

(1) The Internal Revenue Service notifies the party in writing that the pursuit of administrative remedies in accordance with paragraphs (b), (c), and (d) is unnecessary.

(2) In the case of a petition in the Tax Court—

(i) The party did not receive a preliminary notice of proposed deficiency (30-day letter) prior to the issuance of the statutory notice of deficiency and the failure to receive such notice was not due to actions of the party (such as a refusal to sign an extension of time for assessment or failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); and

(ii) The party does not refuse to participate in an Appeals office conference while the case is in docketed status.

(3) In the case of a civil action for refund involving a tax matter other than a tax matter described in paragraph (4), the party—

(i) Exhausted the administrative remedies available within the Internal Revenue Service with respect to the tax matter prior to issuance of a statutory notice of deficiency with respect to such tax matter;

(ii) Did not receive a preliminary notice of proposed disallowance prior to issuance of a statutory notice of disallowance and the failure to receive such notice was not due to actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); or

(iii) Did not receive either written or oral notification that an Appeals office conference had been granted within six months from the date of the filing of the claim for refund and the failure to

receive such notice was not due to actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter).

(4) In the case of a civil action for refund involving a tax matter under sections 6703 and 6694—

(i) The party did not receive a preliminary notice of proposed disallowance prior to issuance of a statutory notice of disallowance and the failure to receive such notice was not due to actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); or

(ii) During the six-month period following the day on which the party's claim for refund is filed, the party's claim for refund is not denied and there is no Appeals office conference with respect to the claim in which the party could participate (within the meaning of paragraph (b)).

(g) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Taxpayer A exchanges property held for investment for similar property and claims that the gain on the exchange is not recognized under section 1031. The Internal Revenue Service conducts a field examination and determines that there has not been a like-kind exchange. No agreement is reached on the matter and a preliminary notice of proposed deficiency (30-day letter) is sent to A. A does not file a request for an Appeals office conference. A pays the amount of the proposed deficiency and filed a claim for refund. A preliminary notice of proposed disallowance is issued by the Internal Revenue Service. A does not request an Appeals office conference and, instead, filed a civil action for refund in a United States District Court. A has not exhausted the administrative remedies available within the Internal Revenue Service.

Example (2). Assume the same facts as in example (1) except that, after receiving the preliminary notice of proposed deficiency (30-day letter) A files a request for an appeals office conference. No agreement is reached at the conference. A pays the amount of the proposed deficiency and files a claim for refund. A preliminary notice of proposed disallowance is issued by the Internal Revenue Service. A does not request an Appeals office conference and files a civil action for refund in a United States District Court. A has exhausted the administrative remedies available within the Internal Revenue Service.

Example (3). Assume the same facts as in example (1) except A first requests an Appeals office conference after A's receipt of the preliminary notice of proposed disallowance. A is granted an Appeals office conference and A participates in such conference. A has exhausted the administrative remedies available within the Internal Revenue Service.

Example (4). Taxpayer B receives a preliminary notice of proposed deficiency (30-day letter) after completion of a field examination. B requests and is granted an Appeals office conference. The Appeals office, to obtain a reasonable period of time to consider the tax matter, requests that B sign Form 872 to extend the time for an assessment of tax. B's administrative remedies are exhausted only if B signs Form 872.

Example (5). Taxpayer M receives a preliminary notice of proposed deficiency (30-day letter). M submits a written protest and files a request for an Appeals office conference. The Appeals office sends M a written statement that M will not be granted an Appeals office conference. M is considered to have exhausted the administrative remedies available within the Internal Revenue Service.

Example (6). Taxpayer J receives a preliminary notice of proposed deficiency (30-day letter) and a written statement that J need not file a written protest or request an Appeals office conference since a conference will not be granted. J files a petition in the Tax Court after receiving the statutory notice of deficiency. J's administrative remedies available within the Internal Revenue Service are considered exhausted.

Example (7). On January 2, the Internal Revenue Service serves a summons issued under section 7609 on third-party recordkeeper B to produce records of taxpayer R. On January 5 notice of the summons is given to R. The last day on which R may file a petition in a court of the United States to quash the summons is January 25. Thereafter, R files a written claim for relief with the district director having jurisdiction over the matter together with a copy of the summons. The claim and copy are received by the district director on January 20. On January 25, R files a petition to quash the summons. R's administrative remedies available within the Internal Revenue Service are considered exhausted.

Example (8). A notice of Federal tax lien is filed in County M on March 3, in the name of R. On April 2, R pays the entire liability thereby satisfying the lien. On May 2, R files a written claim with the district director having jurisdiction over the tax matter demanding a certificate of release of lien. Thereafter, R provides the district director with a copy of the notice of Federal tax lien and a copy of the cancelled check in satisfaction of the lien, which are received by the district director on May 15. R's claim is deemed to have been filed on May 15. Accordingly, R is considered to have exhausted R's administrative remedies with respect to an action commenced after July 14 (60 days following the filing of the claim for relief on May 15).

Example (9). A revenue officer seizes an automobile to effect collection of P's liability on January 10. On January 22 R submits a written claim to the district director having jurisdiction over the tax matter claiming that R purchased the automobile from P for an adequate consideration before the tax lien against P arose, and demands immediate return of the automobile. A copy of the title certificate and R's cancelled check are submitted with the claim. The claim is received by the district director on January 25. On January 30, R brings a wrongful levy action. R is considered to have exhausted the administrative remedies available within the Internal Revenue Service.

Example (10). The Internal Revenue Service issues a revenue ruling which holds that ear piercing does not affect a function or structure of the body within the meaning of section 213 and therefore is not deductible. Taxpayer E deducts the costs of ear piercing and following an examination, receives a preliminary notice of proposed deficiency (30-day letter) disallowing the treatment of such costs. Because of the revenue ruling, E believes a conference would not aid in the resolution of the tax dispute. Accordingly, E does not request an Appeals office conference. After receiving a statutory notice of deficiency, E files a petition in the Tax Court. E has not exhausted the administrative remedies available within the Internal Revenue Service. The issuance of a revenue ruling covering the same fact situation but taking a contrary position does not constitute notification by the Internal Revenue Service to E that the pursuit of administrative remedies is unnecessary. Similarly, the issuance to E of a private letter ruling or technical advice does not constitute notification by the Internal Revenue Service that the pursuit of administrative remedies is unnecessary.

Example (11). Taxpayer G is assessed a penalty under section 6701 for aiding in the understatement of the tax liability of another person. G pays 15% of the penalty in accordance with section 6703 and files a claim for refund on June 15. G is not issued preliminary notice of proposed disallowance and thus cannot participate in an Appeals office conference within six months of the filing of the claim for refund. G brings an action on December 23. G has exhausted G's administrative remedies.

Example (12). Taxpayer H receives a preliminary notice of proposed deficiency (30-day letter) and neither requests nor participates in an Appeals office conference. The Service then issues a statutory notice of deficiency (90-day letter). Upon receiving the statutory notice, H requests an Appeals office conference. The Appeals office informs H that an Appeals office conference will not be granted. H files a petition in the Tax Court after receiving notice of the denial of a conference. H has not exhausted the administrative remedies available within the Internal Revenue Service because the request for an Appeals office conference was made after the issuance of the statutory notice.

(h) *Effective date.* Section 7430 and the regulations thereunder apply to civil proceedings described in section 7430 filed in a court of the United States (including the Tax Court) after February 28, 1983, and before January 1, 1986.

This Treasury decision is issued under the authority contained in section 7805

of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Dated: March 13, 1984.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved:

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 84-10136 Filed 4-16-84; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6596]

Suspension of Community Eligibility Under the National Flood Insurance Program, Rhode Island, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

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

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 287-0222, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

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

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

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

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

§ 64.6 List of eligible communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Region I					
Rhode Island, Newport	Middletown, town of	445401B	Sept. 11, 1970, emergency; Apr. 9, 1971, regular; Apr. 17, 1984, suspended.	Apr. 9, 1971, July 1, 1974, Dec. 12, 1975, and Jan. 16, 1976.	Apr. 17, 1984.
Region III					
West Virginia, Marshall	Unincorporated areas	540107A	Dec. 22, 1975, emergency; Apr. 17, 1984, regular; Apr. 17, 1984, suspended.	Dec. 20, 1974	Do.
Region IV					
Florida, Hernando	Unincorporated areas	120110B	Aug. 27, 1974, emergency; Apr. 17, 1984, regular; Apr. 17, 1984, suspended.	Dec. 13, 1974 and Feb. 11, 1977	Do.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
North Carolina:					
Yancy	Burnsville, town of	370373B	July 24, 1975, emergency; Apr. 17, 1984, regular; Apr. 17, 1984, suspended.	Mar. 8, 1974 and Oct. 15, 1976	Do.
Yancy	Unincorporated areas	370361B	Mar. 29, 1978, emergency; Apr. 17, 1984, regular; Apr. 17, 1984, suspended.	June 23, 1978	Do.
Georgia, Catoosa and Walker.	Fort Oglethorpe, city of	130248B	Oct. 18, 1974, emergency; Feb. 1, 1984, regular; Apr. 17, 1984, suspended.	Mar. 9, 1974 and Oct. 22, 1976	Do.
Region VII					
Iowa, Marshall	Marshalltown, city of	190200B	May 2, 1975, emergency; Apr. 17, 1984, regular; Apr. 17, 1984, suspended.	Jan. 23, 1974 and June 25, 1976	Do.
Region VIII					
North Dakota, Cass	Harwood, township of	380259B	Mar. 23, 1978, emergency; Oct. 15, 1980, regular; Apr. 17, 1984, suspended.	Oct. 15, 1980	Do.
Region X					
Oregon:					
Baker	Baker, city of	410002B	July 25, 1974, emergency; Apr. 17, 1984, regular; Apr. 17, 1984, suspended.	Feb. 1, 1974 and Apr. 23, 1976	Do.
Malheur	Ontario, city of	410152B	Feb. 24, 1975, emergency; Apr. 17, 1984, regular; Apr. 17, 1984, suspended.	Nov. 30, 1973 and Jan. 16, 1976	Do.

[1] Date certain Federal assistance no longer available in special flood hazard areas.

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

Issued: April 12, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-10179 Filed 4-16-84; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 73

[BC Docket No. 82-536; FCC 84-113]

Use of Subsidiary Communications Authorizations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Maximum modulation level for FM licensees has been 100%. The Commission relaxed rules governing FM subchannel operations with the goal in mind of increasing spectrum efficiency and allowing licensees to increase their service to the public. FM licensees are reluctant to operate multiple subchannels while being limited to the maximum modulation level of 100% because of possible degradation of the main channel signal. By increasing the maximum modulation level to 110%, FM licensees can operate subchannels without impacting on main channel service.

EFFECTIVE DATE: March 29, 1984.

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

FOR FURTHER INFORMATION CONTACT: Brian F. Fontes, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 2 and 73

Radio.

Second Report and Order

In the matter of amendment of Parts 2 and 73 of the Commission's Rules concerning use of subsidiary communications authorizations; BC Docket No. 82-536; FCC 84-113.

Adopted: March 29, 1984.
Released: April 9, 1984.

By the Commission.

Introduction

1. On April 7, 1983, the Commission adopted a *First Report and Order*, in BC Docket No. 82-536, amending Parts 2 and 73 of the Commission's Rules concerning use of the subsidiary communications authorization (SCA).[1] The rule changes removed restrictions that limited the use of FM subchannels. Specifically, the rule changes permit the use of FM subcarriers for transmitting non-programming material in addition to programming material; operating subcarriers on a 24-hour basis regardless of whether the main channel is on-the-air; increasing the upper limit restricting the instantaneous sidebands of subcarriers in the FM baseband to 99 kHz; removing the requirement that only frequency modulated subcarriers be transmitted; eliminating the program log requirements for subcarriers; and eliminating the requirement for a formal subcarrier application (Form 318).

[1] 48 FR 28445, June 22 (1983).

2. Further, the *First Report and Order* held open the comment period on the issue of increasing the maximum modulation deviation for FM broadcast stations when using subchannels. Specifically, the Commission sought additional information on two specific issues prior to adopting a new modulation limit. The two issues are:

(A) The degree of reception degradation caused by adjacent channel stations using peak modulation exceeding 100%;

(B) Whether short-spaced stations would suffer adjacent channel interference to any greater extent than normally spaced stations.

Four parties filed comments on increased modulation limits during the extended comment period.[2]

Comments

3. Parties providing comments and engineering reports indicate that increased modulation levels of up to 115% are feasible, however, at levels of 115% or greater interference problems begin to occur. After conducting its own studies and reviewing data submitted by others, American Broadcasting Companies (ABC) observes slight

[2] Parties filing comments include: Bahakel Communications, Ltd., American Broadcasting Companies, Inc., Consumer Electronics Group of the Electronic Industries Association, and the joint comments of the National Association of Broadcasters, Westinghouse Broadcasting and Cable, Inc., and National Public Radio.

adjacent channel problems in some receivers at modulation increases of 115% to 120%. ABC, however, believes that such problems can be minimized, if not eliminated, by new receivers that have been properly designed for the assigned FM bandwidth. Bahakel and the joint comments of the National Association of Broadcasters, Westinghouse Broadcasting and Cable, Inc., and National Public Radio conclude from special studies that peak modulation may be increased to 110% with no adverse impact or reception degradation to adjacent channel stations, whether such stations are normally or short-spaced. These joint commenters suggest that a 110% modulation limit is the best approach. The Consumer Electronics Group of the Electronic Industries Association (CEG/EIA) does not object to a 10% increase in the maximum deviation when two subchannels are operating. Although approving an increase in modulation limits, the CEG/EIA cautions the Commission that, over time, the cumulative effect of minor changes in the interference protection given FM broadcast stations could resut in a deterioration of FM as a quality broadcast service.

Conclusion

4. Based on the data submitted by commenting parties, we are amending our rules to permit peak modulation levels up to but not exceeding 110% when transmitting subchannels. By permitting such increases in modulation level, we are confident that multiple subchannels can be operated without degradation to the main channel and without adversely impacting short-spaced stations.[3]

5. Our action today provides further flexibility to FM licensees who may wish to transmit subchannels. By increasing peak modulation levels to 110%, we will reduce fears expressed by FM licensees regarding the impact subchannel operations would have on main channel broadcast program reception if modulation levels were limited to 100%. The data submitted in this proceeding indicate that peak modulation levels of 110% when transmitting subchannels would not result in reception degradation of the main channel signal and that short-spaced stations would not suffer adjacent channel interference to any greater extent than normally spaced stations.

[3] Until negotiations are completed with the Government of Mexico, FM licensees within 199 miles of the Mexico/United States border are limited to 75 kHz and peak modulation levels not exceeding 100%.

6. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need for and Purpose of the Rules

The Commission has concluded that permitting modulation levels to be increased to 110% would enhance the public interest by providing opportunities for extending and diversifying subchannel service and for improving the efficiency of spectrum utilization.

II. Summary of Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. Issues Raised

1. No issues or concerns were raised specifically in response to the initial regulatory flexibility analysis. All parties agreed that increasing peak modulation levels up to and including 110% would not significantly alter the degree of reception degradation caused by adjacent channel stations using such increased modulation levels. Additionally, the parties agreed that short-spaced stations would not suffer adjacent channel interference to any greater extent than normally spaced stations.

B. Assessment

1. The Commission views the absence of specific claims of adverse impact with respect to increasing peak modulation levels to 110% as indicative of their lack of potential for negative effects on small business.

C. Changes Made as a Result of Such Comments

None.

The Commission's other alternatives were: (1) Not to permit maximum modulation levels above 100%; and (2) to permit maximum modulation levels above 110%. To deny an increase in maximum modulations levels 100% would have decreased the likelihood that FM licensees would choose to operate two full service subchannels. FM licensees would be less willing to operate two full service subchannels for fear of possible negative effect on reception of main channel service. Permitting maximum peak modulation levels to be increased to 115% or 120% may be feasible, however, engineering studies indicate that increases to 115% or greater may produce adjacent channel problems in some receivers. Therefore, the Commission concludes that by increasing the maximum modulation level up to and including 110% we are providing FM licensees greater flexibility in operating subchannels, while insuring against adjacent channel interference.

7. Authority for adoption of the rules contained herein is contained in sections 2, 4(i), and 303 of the Communications Act of 1934, as amended.

8. Accordingly, it is ordered, that Part 73 of the Commission's Rules is amended as set forth in the Appendix, effective upon adoption pursuant to 5 U.S.C. 553(d)(1).

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 73—[AMENDED]

1. Section 73.319 is amended by redesignating paragraph (d)(4) as (d)(3) and adding new text for paragraph (d)(4) to read as follows:

§ 73.319 FM multiplex subcarrier technical standards.

* * * * *

(d) * * *

* * * * *

(4) Total modulation of the carrier wave during transmission of multiplex subcarriers used for subsidiary communications services must comply with the provisions § 73.1570(b).

* * * * *

2. Section 73.322 is amended by revising paragraph (j) to read as follows:

§ 73.322 FM stereophonic sound transmission standards.

* * * * *

(j) The total modulation of the main carrier by the stereophonic pilot subcarriers and all stereophonic sound subcarriers and subsidiary communications subcarriers, if used, must comply with the maximum modulation limits specified in § 73.1570(b)(2).

3. Section 73.342 is amended by revising paragraph (b)(3) to read as follows:

§ 73.342 Automatic transmission system facilities.

* * * * *

(b) * * *

* * * * *

(3) The transmitting system must have a device that will detect and adjust the peak level of modulation. If the modulation exceeds more than 10 bursts of peak modulation within a one minute period as measured at the output terminals of transmitter, the program

audio input signal to the transmitter modulators must be automatically adjusted downward until these limits are not exceeded. For the purposes of this requirement, a sequence of repetitive instances of modulation exceeding the prescribed limits occurring within a single 5 millisecond interval will be considered to be one burst. The station must comply with the provisions of § 73.1570 with respect to the minimum land maximum modulation levels.

* * * * *

4. Section 73.542 is amended by revising paragraph (b)(3) to read as follows:

§ 73.542 Automatic transmission system facilities.

* * * * *

(b) * * *

* * * * *

(3) The transmitting system must have a device that will detect and adjust the peak level of modulation. If the modulation exceeds more than 10 bursts of peak modulation within a one minute period as measured at the output terminals of transmitter, the program audio input signal to the transmitter modulators must be automatically adjusted downward until these limits are not exceeded. For the purposes of this requirement, a sequence of repetitive instances of modulation exceeding the prescribed limits occurring within a single 5 millisecond interval will be considered to be one burst. The station must comply with the provisions of § 73.1570 with respect to the minimum land maximum modulation levels.

* * * * *

5. Section 73.1570 is amended by revising paragraph (b)(2) to read as follows:

§ 73.1570 Modulation levels; AM; FM; and TV aural.

* * * * *

(b) * * *

(1) * * *

(2) *FM Stations.* The total modulation must not exceed 100 percent on peaks of frequent reoccurrence referenced to 75 kHz deviation. However, stations providing subsidiary communications services using subcarriers under provisions of § 73.319 concurrently with the broadcasting of stereophonic or monophonic programs may increase the peak modulation deviation as follows:

(i) The total peak modulation may be increased 0.5 percent for each 1.0 percent subcarrier injection modulation.

(ii) In no event may the modulation of the carrier exceed 110 percent (82.5 kHz peak deviation).

Note.—Stations with transmitter sites located within 320 kilometers (199 miles) of the common United States-Mexico border may not exceed 100 percent modulation on peaks of frequent reoccurrence until such time as the Commission issues a notice that the bilateral agreement with Mexico on FM Broadcasting is amended to permit greater modulation when transmitting multiplex subcarriers.

* * * * *

[FR Doc. 84-10161 Filed 4-16-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 81-854; RM-3898]

FM Broadcast Stations in Sebewaing and Tawas City, Michigan; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 284A to Tawas City, Michigan, and dismisses an Application for Review filed by Carroll Enterprises, Inc. of an earlier action which (1) deleted FM Channel 280A from Tawas City, Michigan, and assigned that channel to Sebewaing, Michigan, (2) substituted Channel 257A at Tawas City, and (3) modified Carroll's license for Station WKJC, Tawas City, to specify Channel 257A in lieu of Channel 280A. This action also modifies Carroll's license to specify operation on Channel 284A. This action is taken in response to a request from Gaeth/Hofmeister, Inc.

EFFECTIVE DATE: June 12, 1984.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Sebewaing and Tawas City, Michigan); BC Docket No. 81-854, RM-3898.

Adopted: March 26, 1984.

Released: April 6, 1984.

By the Chief, Policy and Rules Division.

Introduction

1. In response to a request from Gaeth/Hofmeister, Inc. ("G/H"), the Chief, Policy and Rules Division, adopted a *Report and Order* which (1) assigned Channel 280A to Sebewaing, Michigan, (2) substituted Channel 257A for Channel 280A at Tawas City, and (3) modified the license of Station WKJC(FM), Tawas City, to specify operation on Channel 257A. Carroll Enterprises, Inc. ("Carroll"), licensee of Station WKJC, Tawas City, has filed an Application for Review of this action. Also before the Commission is a "Motion for Leave to Submit Late-Filed Pleading," a "Counterproposal," and a letter containing a conditional offer to withdraw its Application for Review, all filed by Carroll. G/H filed an opposition to the Application for Review, to which Carroll filed a reply. G/H also filed comments in response to the counterproposal.

Background

2. In response to a petition for rule making filed by G/H, the *Report and Order*, 47 FR 43697, published October 4, 1982, amended the FM Table of Assignments as previously indicated and modified Carroll's license to another channel over its objection. The modification was made effective October 1, 1982, concurrent with the expiration of the license term for Station WKJC pursuant to Commission policy. See *Transcontinent Television Corp.* v. *F.C.C.*, 308 F. 2d 339 (D.C. Cir. 1962). In its Application for Review, Carroll asserted that it is entitled to an evidentiary hearing concerning modification of its license under section 307(b) of the Communications Act of 1934, as amended, at which it could present evidence of public interest considerations concerning the resultant adverse impact on its station. Carroll also argued that the Commission's action contained procedural deficiencies concerning the effective date of the license modification.

3. Subsequently Carroll submitted a counterproposal and a letter which informed the Commission that, upon receipt of a Commission order or written acknowledgement of an assignment of Channel 284A to Tawas City and modification of its license to specify operation on that channel, it would withdraw its Application for Review.

4. Carroll assert that, as a result of Commission action in Docket 80-90, 48 FR 29486, published June 27, 1983, *recons. denied*, 49 FR, published March, 1984 (subsequent to the comment period in this proceeding), it has determined that by assigning Channel 284A to Tawas City, an action that was not previously possible, Carroll has the opportunity to upgrade its station to Class C2 in the future. Such upgrading is not possible on Channel 257A. Thus, Carroll asserts that good cause exists to accept and consider its counterproposal. Accordingly, Carroll states that it will

withdraw its Application for Review upon a grant.

5. G/H states that it has no objection to the counterproposal. G/H notes that it appears that Carroll no longer objects to changing the channel of its station and that Carroll's hardship arguments can be disregarded. G/H further asserts that its responsibility to reimburse Carroll for costs associated with a change in channels, as specified in the *Report and Order*, should be limited to the costs of switching to another Class A channel as opposed to switching to a Class C channel.

Discussion

6. In the interest of insuring service to Sebewaing at the earliest possible date, we shall accept Carroll's counterproposal and offer to withdraw its Application for Review. As such, we reaffirm the assignment of Channel 280A to Sebewaing. In addition, we shall substitute Channel 284A for 280A at Tawas City and modify Carroll's license for Station WKJC to specify Channel 284A, as requested. Accordingly, we have dismissed Carroll's Application for Review. As previously indicated in the *Report and Order*, the ultimate licensee of Channel 280A at Sebewaing is under an obligation to reimburse Carroll for its reasonable expenses in switching to Channel 284A.

§ 73.202 [Amended]

7. Pursuant to the authority contained in §§ 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective June 12, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Tawas City, Mich.	269A, 284A

8. It is further ordered, pursuant to the authority contained in § 316(a) of the Communications Act of 1934, as amended, That the outstanding license for Station WKJC, held by Carroll Enterprises, Inc. at Tawas City, Michigan, is modified effective June 12, 1984, to specify operation on Channel 284A in lieu of Channel 280A, with the condition it will be reimbursed for the reasonable costs incurred in switching frequencies from the ultimate permittee of Channel 280A at Sebewaing. The renewal application of Station WKJC for the license period commencing October 1, 1982, shall specify operation on Channel 284A. In addition, it shall comply with the following conditions:

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

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

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

9. It is further ordered, that the Secretary of the Commission shall send a copy of this *Order* by certified mail, return receipt requested, to Carroll Enterprises, Inc., 523 Meadow Road, Tawas City, Michigan 48763, and also a copy thereof, by regular mail to its attorney, Christopher Imley, Esq. of Booth and Freret, 1302 18th Street NW., Washington, D.C. 20036.

10. It is further ordered, that the Application for Review filed by Carroll Enterprises, Inc. is dismissed.

11. For further information concerning the above, contact Joel Rosenberg, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–10172 Filed 4–16–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 83–833; RM–4465]

TV Broadcast Station in Durango, Colorado; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 33 to Durango, Colorado, as that community's second commercial television service, in response to a petition filed by David E. Sparks.

EFFECTIVE DATE: June 12, 1984.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Durango, Colorado), MM Docket No. 83–833, RM–4465.

Adopted: March 26, 1984.

Released: April 6, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 48 FR 37261, published August 17, 1983, proposing the assignment of UHF television Channel 33 to Durango, Colorado, as that community's second commercial television service, in response to a petition filed by David E. Sparks ("petitioner"). Supporting comments were filed by petitioner reiterating his intention to apply for the channel, if assigned. Comments in opposition were filed on behalf of Chris May ("May"), a resident of Bayfield, Colorado. No reply comments were received.

2. Durango (population 11, 426)[1], the seat of LaPlata County (population 27,424), is located approximately 370 kilometers (230 miles) southwest of Denver. Currently, it is served by Station KREZ–TV (Channel 6) and is assigned noncommercial educational Channel *20, which is unoccupied.

3. In his opposition, May asserts that the instant petition should be denied based on several factors. First, he claims that the engineering showing submitted with the petition is inadequate since it merely consists of a computer printout prepared by petitioner's consultant which neglected to indicate the basis of the data or to include the preclusive effects of the proposed assignment. Further, May questions the consultant's qualifications and credibility based on a past history of submissions to the Commission, including numerous applications for low power television stations, which were returned for various reasons as unacceptable for filing. Such background, according to May, raises a question whether petitioner's engineering submission here is consistent with the Commission's technical rules.

4. May also asserts that the petitioner's consultant has sought to recruit potential or exising low power applicants to seek full-service television channel assignments. According to May, the consultant has done so by misleading clients with wrongful interpretations of the rules, and by neglecting to advise them that full-service television stations are regulated

[1] Population figures were extracted from the 1980 U.S. Census.

more stringently than are low power television stations. May alleges that these circumstances raise questions as to the true intent of petitioner's expression of interest in applying for a new full-service channel at Durango.

5. Additionally, May contends that Durango cannot support another full-service television station. According to May, the petition is void of any assertion regarding Durango's future growth, and therefore that petitioner has failed to justify the need for another full-service television station in the community. It asserts that this is especially true in light of the fact that Durango is adequately served by a local VHF station (Channel 6), as well as four other area stations, the combination of which negates the need for an additional channel.

6. Initially, we find that May's allegation regarding the sufficiency of petitioner's engineering submissions is without merit since the proposed assignment of Channel 33 to Durango complies with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules. Moreover, May's allegation that petitioner failed to provide information with regard to the preclusive effects of the proposal is also invalid since such a study is not generally required in a proceeding to amend the Television Table of Assignments.

7. Regarding May's argument that an additional television assignment may be unviable at Durango is misplaced here. Rather, the application stage is the proper forum at which to address such issue as economic conditions of the market. See, *Grand Junction, Colorado,* 26 R.R. 2d 513 (1973), *Bend, Oregon,* 46 FR 62858, published December 29, 1981, and cases cited therein.

8. In response to May's assertion that Durango does not need another station since its residents receive a variety of programming from one local VHF television station, as well as from outside sources, we find that argument also without merit. While the availability of reception services has been cited by the Commission as justification for denying a channel assignment in comparative cases, we are not aware of any situation in which a channel was denied to a community solely on the basis of the availability of other services received in that community from other area stations.

9. As for May's suggestion that petitioner has been misguided by his consultant concerning the responsibilities required of a full-service television station licensee, that matter is also improper for resolution here. Applicants for a full-service television station are expected to be familiar with the rules concerning operation of the station. The petitioner has supplied the necessary statement to indicate his willingness to apply for the channel, if assigned. The prospective applicant's knowledge of the rules and good faith intentions are generally assumed in a rule making proceeding. Otherwise, the legitimacy of a petitioner's interest cannot be adequately settled without an evidentiary hearing. See *Fort Smith, Arkansas,* 47 FR 23189, published May 27, 1982.

10. In view of the above considerations, the Commission believes that the public interest would be served by the allocation of a second commercial TV outlet at Durango for the expression of diversified viewpoints and programming. We believe this determination is consistent with the Commission's policy favoring competition through the authorization of additional television broadcast services, and is consistent with the mandate of section 307(b) of the Communications Act of 1934, as amended.

§ 73.606 [Amended]

11. 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 June 12, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Durango, Colorado	6+, *20−, and 33+

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

13. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–10173 Filed 4–16–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 87

[PR Docket No. 83–990; FCC 84–107]

Aeronautical Advisory Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action permits more than one aeronautical advisory station (unicom) to be authorized to operate at airports which have a control tower. Additionally, the rules concerning frequency assignments to unicoms at airports without control towers are revised. These proposals result from the FCC's program to eliminate unnecessary regulations and staff discussions wtih industry and Federal Aviation Administration staff. The proposed amendments are intended to improve the advisory service available to the flying public and eliminate unnecessary regulations.

EFFECTIVE DATE: May 16, 1984.

FOR FURTHER INFORMATION CONTACT: Robert H. McNamara, Private Radio Bureau, (202) 632–7175.

List of Subjects in 47 CFR Part 87

Aeronautical stations, General aviation, Radio.

Report and Order

In the matter of amendment of part 87 of the rules concerning aeronautical advisory station, PR Docket No. 83–990.

Adopted: March 29, 1984.

Released: April 9, 1984.

By the Commission.

Summary

1. In this Report and Order we are amending Part 87 of the rules (Aviation Services) to permit more than one aeronautical advisory station to operate at airports which have a control tower. We are also modifying the frequency assignment plan for aeronautical advisory stations located at airports which do *not* have a control tower. This change will make two more frequencies generally available to advisory stations at uncontrolled airports (i.e., airports with no control tower) by eliminating special frequency assignments for other categories of advisory stations. Additionally, we are amending the rules to reflect that under certain circumstances foreign governments may license aircraft radio stations and radio operators on U.S. registered aircraft.

Background

2. Aeronautical advisory stations (also called unicoms) provide for air-ground communications primarily between General Aviation aircraft [1] and airport

[1] General Aviation encompasses all facets of civil aviation except certificated air carriers and large commercial aircraft operators. For example, corporate jets, light single engine aircraft and sailplanes are all considered within the "General Aviation" classification.

facilities. Communications are limited to the necessities of safe and expenditious operation of aircraft such as runway conditions, fuel availability, dispatching, wind conditions, weather, and the like. In addition, on a secondary basis communications may be transmitted which pertain to the efficient portal-to-portal transit of a flight, such as requests for ground transportation, food or lodging. However, at airports which have a control tower or FAA flight service station, the advisory station may not transmit information concerning runway conditions, wind or weather information. Aeronautical advisory stations must provide service to aircraft without discrimination and are required to be impartial with respect to ground services available at the airport. These stations may not be used for air traffic control purposes.[2] Typically, the licensee of the advisory station is the airport owner/operator or an organization which in some capacity services the general aviation community utilizing the airport.[3]

3. *One Station per Airport Rule.* At many uncontrolled airports the advisory station is the only means of communication between the airport and aircraft in flight. Since the aeronautical advisory service was first established in 1950, only one station has been authorized at each airport. This restriction has been considered necessary for reasons of flight safety and potential interference. Aircraft approaching and departing many uncontrolled airports monitor the advisory frequency and "self-announce" their position and intentions for the benefit of other aircraft in the area. This aural alerting system is an essential supplement to the basic visual requirement for pilots to see and avoid other aircraft. Further, the possibility of contradictory information being issued to aircraft and/or interference among stations on an airfield have supported the conclusion that more than one station should not be authorized.

4. *Current Frequency Plan.* Section 87.253 of the Commission's rules sets forth the current allotment of frequencies for use by advisory stations. Advisory stations at airports which have a control tower (controlled airports) are assigned the frequency 122.950 MHz. Advisory stations at uncontrolled airports may be assigned the frequency 122.700, 122.800 or 123.000 MHz. These "100 kHz spaced channels" were made available to advisory stations at uncontrolled airports in order to enhance safety by insuring that all aircraft equipped with radio, even older radios only capable of tuning 100 kHz spaced channels, would be able to communicate at uncontrolled airports. The frequencies 123.050 and 123.075 MHz are available for assignment to stations serving heliports. Additionally, the frequencies 122.725 or 122.750 MHz may, upon request, be assigned to airfields not open to the public in lieu of one of the three "100 kHz channels", and the frequency 122.975 MHz may be assigned for communications with aircraft at altitudes greater than 10,000 feet above ground level.

[2] Air traffic control, where available, is provided by the Federal Aviation Administration (FAA).

[3] The rules regarding the operation of aeronautical advisory stations are contained in Subpart C of Part 87 of the Commission's rules, 47 CFR 87.251-87.257.

Discussion

5. In the Notice of Proposed Rule Making (NPRM) in this proceeding the Commission proposed to amend the Aviation Services rules to (1) authorize more than one aeronautical advisory station at airports which have a control tower; (2) make two additional frequencies available for assignment to advisory stations at airports with no control tower; and (3) incorporate a recent legislative change concerning the licensing of equipment and operators on U.S. registered aircraft by foreign governments.[4] Comments were filed by the Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), corporate pilot Mark A. Kurtz, Maine Aviation Corporation, and the National Air Transportation Association. Reply comments were filed by AOPA and the National Business Aircraft Association, Inc. (NBAA). All of the Commenters generally supported the proposed amendments.

One Station per Airport Restriction

6. The one advisory station per airport limitation is founded on safety of flight and potential interference considerations. While we continued to believe that this limitation is indeed critical in the vicinity of uncontrolled airports, we felt that the rule could be relaxed at the approximately 400 airports which have a control tower. The NPRM proposed such a rule amendment based on the following considerations. Safety would not be affected since aircraft approaching and departing such airports must maintain communications with the control tower which is responsible for all safety related information.[5] Advisory stations at these airports do not transmit primary safety related information such as wind, weather and runway conditions. Additionally, the aviation community at controlled airfields should benefit from the added convenience of direct communications between aircraft and any of a number of service organizations. Because of the professionalism of this community, we would not expect significant interference problems on the assigned airport advisory frequency.

7. Elimination of this restriction at the nation's large controlled airports would also eliminate the majority of potential mutually exclusive applications in this radio service.[6] Most applicants for advisory station authorizations, as well as the Commission, would avoid the time and expense of participating in a comparative hearing to determine the "best" licensee at a given airport.

8. All the commenters supported this proposed rule amendment. EAA added that although traffic advisories are given on the control tower frequency after part-time towers close for the day, it is common practice for aircraft to contact the advisory station for local weather conditions prior to switching to the tower frequency. It suggests that only one advisory station be permitted to provide local weather information after a part-time tower has ceased daily operations. However, we do not feel this limitation is necessary or desirable if multiple advisory stations are permitted at these airports. Such a rule would require the Commission to continue to make case-by-case decisions as to which licensee should be allowed to provide airfield weather conditions, enforcement would be very difficult, and there would appear to be little public benefit.

9. For the reasons stated above and in view of the support of the aviation community, we are amending the rules as proposed to allow more than one aeronautical advisory station to be authorized at airports with a control tower. However, in order to avoid the possibility of multiple advisory stations at uncontrolled airports, we will note on each subject advisory station license granted after the effective date of this action, that the authorization is valid

[4] Notice of Proposed Rulemaking, PR Docket No. 83-990, adopted September 9, 1983, 48 FR 43359.

[5] Even when a part-time tower is not in operation the FAA recommends that aircraft monitor and utilize the "self-announce" procedures on the tower frequency rather than the advisory frequency.

[6] Although random selection techniques may now be applied in cases involving mutually exclusive applications for initial licenses, a hearing is still necessary where mutually exclusive applications involve an existing license. See *Second Report and Order*, Gen. Docket No. 81-768, released May 27, 1983, 48 FR 27182.

only so long as a control tower is located at the airport. [7]

Frequencies at Uncontrolled Airports

10. Complaints of congestion on the frequencies available to advisory stations serving uncontrolled public airports, particularly those located near large urban areas, have been common over the years. In 1977 the Commission attempted to solve this problem by adding the frequencies 122.700 and 123.000 MHz to the then single available frequency 122.800 MHz.[8] Assignment of 100 kHz spaced channels was considered essential at uncontrolled public airports to insure all radio equipped aircraft would have access to the station. In an effort to further alleviate the heavy channel loading on these three frequencies, 122.725 and 122.750 MHz were made available on an optional basis to advisory stations at uncontrolled airports not open to the public. The frequency 122.975 MHz was also allotted for advisory communications with aircraft at an altitude greater than 10,000 feet above the ground and two additional frequencies were dedicated for use at heliports. Further, in cooperation with the FAA, the Commission implemented a voluntary frequency assignment plan in the sixteen heaviest populated areas of the country. However, the Commission and the FAA still receive reports of congestion on the three primary advisory frequencies available at uncontrolled public airports.

11. Since the portion of the General Aviation community equipped with radios capable of operating on 25 kHz channels has been steadily increasing and since this capability will ultimately be necessary [9] we proposed that two additional frequencies, 122.725 and 122.975 MHz, be made available for assignment at uncontrolled airports. We proposed to delete the present provisions for assignment of these frequencies from the rules. In the case of the frequency 122.725 MHz, the existing 74 station authorizations at private uncontrolled airfields would be consistent with the proposed expanded use. However, the 27 authorizations for "high altitude" advisory service on 122.975 MHz would not be consistent with the subject rule revisions. We proposed to "grandfather" existing licensees of "high altitude" advisory stations. That is, these licensees could continue to operate the stations under the provisions of their current authorizations until such time as the stations cease operation. Further, we proposed to "grandfather" the 39 advisory station licensees at private airports operating on 122.750 MHz. This frequency would continue to be available for air-to-air communications. As the sole dedicated General Aviation air-to-air frequency, 122.750 MHz would satisfy the needs of pilots operating under visual flight rules who wish to utilize a "buddy system" in flight, i.e., monitor a common frequency.[10]

12. We also proposed to delete Rule 87.253(b) which permits, upon a showing of need, advisory stations located at heliports to be assigned a second advisory frequency for communications with fixed-wing aircraft, and stations at airports to be assigned a second advisory frequency for communications with helicopters. Because very few applications are received for such a second advisory frequency, we felt that this rule was unnecessary. In addition, a number of other minor editorial changes in §§ 87.251 and 87.253 were proposed to simplify and clarify these rules.

13. The commenters all supported these proposals. However, Mr. Kurtz and AOPA in its reply comments made a number of suggestions beyond those proposed in the proceeding. Mr. Kurtz recommended assignment of more frequencies for advisory communications, greater use of 25 kHz spaced channels, elimination of specific frequency assignments for heliports, and a geographic separation of 150–200 miles between like frequency assignments. AOPA's recommendations included the greater use of 25 kHz spaced channels, the elimination of specific assignments for heliports, and an expansion of the scope of service of aeronautical utility mobile stations as well as the number of frequencies available. This latter suggestion is aimed at making secondary advisory communications relating to aircraft servicing and the like available via a number of aeronautical utility stations while maintaining a single source of information for runway, wind and weather conditions. NBAA supported AOPA's reply comments.

14. We note that concurrent with our adoption of the NPRM the FAA proposed a three phase plan for the further implementation of 25 kHz channel spacing in the 118–136 MHz aviation band.[11] The primary impact of this program would be to require aircraft wishing to receive full FAA communications services to be equipped with 720 channel radios. This proposed action by the FAA likely encouraged some of our commenters to recommend greater use of 25 kHz spaced channels and new approaches to improve advisory service. Although these recommendations are clearly beyond the scope of this present proceeding, they offer many ideas worth exploring. If the FAA's proposed plan is adopted, it will present a unique opportunity for the Commission to review the aviation frequency assignment plan and make changes where beneficial for the flying public. Toward this end, we intend to open a dialogue with the FAA and interested aviation organizations.

15. Nevertheless, at this time we are revising the frequency assignments available for aeronautical advisory service as proposed in the NPRM. As indicated above, the commenters supported the rationale for this action. Further amendments such as those suggested by AOPA and Mr. Kurtz will be reviewed in light of FAA's proposed implementation of 25 kHz channel spacing. Appropriate changes could be addressed in a future proceeding. We will, however, review applications for assignment of 122.725 and 122.975 MHz to assure reasonable geographic separation to avoid potential adjacent channel interference.

16. In an unrelated matter, the Communications Amendment Act of 1982 [12] added a new Section 303(t) to the Communications Act which reflects recent changes in both the International Radio Regulations and the Convention on International Civil Aviation. In essence, under specified conditions, the aircraft radio station and the radio operator of a United States registered aircraft may be licensed by a foreign government. The NPRM proposed to note this legislative change in the rules. None of the commenters specifically addressed this issue, although they generally supported the actions proposed in this proceeding. Accordingly, we are amending the rules to reflect this legislative change.

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[7] In the instance where a control tower is permanently closed, we will consider requests for special temporary authority to provide advisory service pending the grant of a new authorization.

[8] *Report and Order*, Docket No. 20123, released April 15, 1977, 64 FCC 2d 573.

[9] Implementation of the provisions of the 1979 World Administrative Radio Conference will require aircraft to be equipped for operation on 25 kHz channels by 1990.

[10] We have received a number of inquiries from local pilots organizations, particularly on the West Coast, concerning the availability of such air-to-air communications.

[11] General Notice, 48 FR 39194, August 29, 1983. Briefly, the proposed three phase plan is as follows: (I) Beginning July 1984, 25 kHz channel spacing will be introduced at selected high density airports, (II) beginning January 1985, 25 kHz channel spacing will be introduced in selected low altitude (below 18,000 feet) enroute sectors, and (III) beginning in January 1986, 25 kHz channel spacing will be introduced at flight service stations and other controlled and uncontrolled airports as required.

[12] Pub. L. 97-259, 96 Stat. 1087.

Conclusion

17. In summary, we are (a) amending § 87.251 to permit more than one aeronautical advisory station to operate at airports which have control towers; (b) revising § 87.253 to modify the frequency assignment plan for aeronautical advisory stations located at airports without control towers; and (c) add a new paragraph in § 87.185 to reflect that under specified circumstances foreign governments may license aicraft radio stations and radio operators on U.S. aircraft.

18. The rule amendments described in this proceeding are expected to generally benefit the General Aviation community by improving the convenience of aeronautical advisory service at airports with control towers and the quality, in terms of channel loading, of advisory service at airports without control towers. However, these amendments would not result in a significant economic impact on any entity in the affected General Aviation community. Therefore, in accordance with Section 605(b) of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission hereby certifies that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

19. Accordingly, it is ordered, That under the authority contained in Sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (c) and (r), the Commission's rules are amended as set forth in the attached Appendix effective May 16, 1984.

20. It is further ordered, that a copy of this Report and Order shall be sent to the Chief Counsel of Advocacy of the Small Business Administration.

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

22. Regarding questions on matters covered in this document contact Robert H. McNamara (202) 632–7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. In Section 87.251 paragraphs (d) and (g) are removed; paragraphs (e), (f) and (h) are redesignated (d), (e), and (f) respectively; the words "at a landing area which does *not* have a control tower" are inserted between the words "thereof" and "must" in new paragraph (d); and paragraphs (a) and (b) are revised to read as follows:

§ 87.251 Special conditions.

(a) Except as provided in paragraphs (b) and (c), only one aeronautical advisory station (also called a unicom) may be authorized to operate at a landing area which does *not* have a control tower. Where a control tower, including a part-time control tower, is located at a landing area, the one station limitation does not apply and the airport operator and all aviation service organizations [1] may be authorized to operate an aeronautical advisory station.

(b) When the Commission believes that an existing station has been abandoned or ceased operation at a landing area where only one aeronautical advisory station may be authorized, another station may be authorized on an interim basis to provide service pending final determination of the status of the original station. An applicant for such interim authority must give notice, where possible, to the present licensee as well as meet the notice requirements of paragraph (d) below.

* * * * *

2. Section 87.253 is revised to read as follows:

§ 87.253 Frequency assignment.

(a) Aeronautical advisory stations will be assigned a frequency in accordance with the paragraphs below. Except as provided in paragraphs (a)(3) and (b), only one frequency will be assigned at any one landing area. Applicants need not specify a frequency as the Commission will make the final determination. However, applicants may state a preference for a particular frequency and this will be taken into consideration when the assignment is made.

(1) Landing areas, other than heliports, which do not have a control tower: 122.700, 122.725, 122.800, 122.975, or 123.000 MHz.

(2) Landing areas, other than heliports, which do have a control tower: 122.950 MHz.

(3) Heliports (including landing areas authorized separate service pursuant to § 87.251(c)): 123.050 or 123.075 MHz.

(b) 121.5 MHz is a universal simplex emergency and distress frequency for air-ground communications and will not be assigned unless (1) a showing is made establishing a need for such service and (2) an aeronautical advisory frequency is assigned and available for use to accommodate advisory communication needs.

3. In Section 87.185 the heading is revised and new paragraph (c) is added to read as follows:

§ 87.185 Foreign aircraft stations.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, where an agreement with a foreign government has been entered into with respect to aircraft registered in the United States but operated by an aircraft operator who is subject to regulation by that foreign government, the aircraft radio station licenses and aircraft radio operator licenses may be issued by such foreign government.

[FR Doc. 84-10162 Filed 4-16-84; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105 and 1152

[Ex Parte No. 274; Sub-12]

Rail Abandonments; Public Use Condition

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts final rules that require parties seeking imposition of a public use condition in rail abandonment proceedings to show why the conditions are of sufficient public importance to justify the burden that would be imposed upon the railroad. Specifically, parties will have to submit in writing, with a copy to the railroad, the following information: (1) The condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the time period. These rules will also apply to parties seeking imposition of a public use condition in cases where the Commission exempts railroads from the requirement of prior abandonment approval because the lines have been out of service for at least 2 years. These rules are necessary because imposition of these conditions could burden the affected railroads.

DATE: These rules will be effective on May 18, 1984.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275–7245

or

Wayne A. Michel, (202) 275–7657

SUPPLEMENTARY INFORMATION: On December 27, 1983, proposed rules were published (48 FR 56981) that governed the procedure for having public use conditions imposed in rail abandonment proceedings. The rules required those parties seeking the imposition of public use conditions to justify their request. This was deemed necessary because imposition of these conditions could burden the affected railroads. *See, e.g., Boston & Maine Corp.—Abandonment Exemption,* 367 I.C.C. 688 (1983). *(B&M Exemption)*

Only two comments have been filed. The Association of American Railroads merely notes its support of the proposal. A joint filing by Chessie System Railroads and Seaboard System Railroad (CSX) also supports the proposal. Accordingly, based on the reasons stated in our notice and the lack of opposition, we will adopt as final our proposed regulation.

CSX also suggested, however, that the rule should apply in those situations where railroads take advantage of our recently authorized class exemption to abandon rail lines that have been out of service for at least two years. *Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983). In light of our decision to adopt rules governing imposition of the public use condition in rail abandonment proceedings and our decision to apply a similar test in abandonment exemptions *(B&M Exemption),* we find the CSX suggestion reasonable and it will be adopted. Accordingly, we will modify 49 CFR 1152.50(d)(4) to direct parties interested in seeking public use conditions to our regulations in the abandonment area, 49 CFR 1152.28(a)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

The Commission certified in the prior notice that the proposed rules would neither have a significant economic impact on a substantial number of small entities, nor increase the compliance burdens on regulated carriers or members of the public who have an interest in these proceedings.

List of Subjects

49 CFR Part 1105

Railroads and Environment.

49 CFR Part 1152

Administrative practice and procedure, Railroads, and Environment.

These rules are issued under the authority of 5 U.S.C. 553 and 49 U.S.C. 10321, 10903, and 10906.

Dated: February 16, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Acting Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1105—[AMENDED]

1. Section 1105.11 is amended by adding the following paragraph to the end of the appendix:

§ 1105.11 Environmental notice.

* * * * *

(10) * * * A request for a public use condition under 49 U.S.C. 10906 must be in writing and set forth: (1) The condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the time period. A copy of the request shall be mailed to the applicant.

PART 1152—[AMENDED]

2. Section 1152.25 is amended by adding the following cross reference before the semicolon in paragraph (a)(2)(iv):

[See § 1152.28(a)(2)]

3. Section 1152.28 is amended by redesignating the existing text of paragraph (a) as paragraph (a)(1), and by adding a new paragraph (a)(2) to read as follows:

§ 1152.28 Public use procedures.

(a) * * *

(2) A request for a public use condition under 49 U.S.C. 10906 must be in writing and set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the time period. A copy of the request shall be mailed to the applicant.

* * * * *

4. Section 1152.50(d)(4) is amended by adding the following cross reference between "* * * to the Commission" and "within 20 days * * * *":

[Follow § 1152.28(a)(2)]

[FR Doc. 84-10212 Filed 4-16-84; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Parts 1105, 1152, and 1180

[Ex Parte No. 274, Sub-10; Ex Parte No. 282, Sub-3]

Environmental Notices in Abandonment and Rail Exemption Proceedings; Railroad Consolidation Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: With minor modifications, the Commission adopts proposed rules requiring rail carrier applicants to issue notices of environmental and energy matters in rail abandonment and exemption proceedings to State environmental agencies. Each State is directed to designate a single agency to which notice must be provided. The rules will save the Commission the expense of issuing environmental notices and hasten notification of appropriate State offices. The Commission also adopts a proposal to require assignment of docket numbers to petitions for exemption involving abandonments from the carrier's abandonment (AB) series. This procedure replaces the existing practice of assigning numbers from the Finance Docket series.

DATE: These rules will become effective on July 2, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245

or

Van A. Bosco, (202) 275-7187

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking in this proceeding was published at 48 FR 36284, August 10, 1983. Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Environment and Energy

This action does not significantly affect the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Act

In our decision served August 9, 1983, we certified that these regulations would not have a significant economic impact on a substantial number of small entities. No comments were directed to this certification and our assessment of no significant impact on small entities remains unchanged.

List of Subjects

49 CFR Part 1105

Railroads, Environment.

49 CFR Part 1152

Administrative practice and procedure, Railroads, Environment.

49 CFR Part 1180

Railroads, Common Carriers, Environment.

This notice is issued under the authority of 49 U.S.C. 10321, 10505, and 10903–10906, and 5 U.S.C. 553.

Decided: April 3, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1105—[AMENDED]

1. 49 CFR Part 1105 is amended by redesignating § 1105.11 as § 1105.12. A new § 1105.11 is added to read as follows:

§ 1105.11 Environmental notice.

A carrier filing a notice of intent to abandon a line under 49 CFR 1152.20(d), a notice of exemption under 49 CFR 1180.2(d)(5) or a petition for exemption pursuant to 49 U.S.C. 10505 [except when exemption is sought for an action normally not subject to environmental review under § 1105.6(c) of this part] shall serve upon the designated agency in each State a notice of environmental and energy matters, together with its notice. The environmental notice shall be in the form specified in the appendix to this section.

Appendix—Form for Environmental Notice

(Carrier Letterhead)

(Addresses)

(Date)

Simultaneous with this letter, we are filing with the Interstate Commerce Commission a notice of [intent to exempt a transaction or abandon a line or a petition to exempt a transaction or class of transactions from regulation]. A description of the filing and a map of the affected area are provided in an attachment to this letter. The purpose of this letter is to raise relevant environmental and energy matters.

Areas of concern, which you and other interested State and local agencies are invited to address, include but are not limited to the following:

(1) Local land use plans.

(2) The existing transportation system including alternative transportation modes.

(3) Energy consumption.

(4) Air emissions, ambient conditions, and relevant Federal, State, and local standards.

(5) Bodies of water and overall water quality.

(6) Terrestrial and aquatic ecosystems, limited to unique resources and threatened or endangered species.

(7) Ambient noise levels.

(8) Existing or potential safety hazards.

(9) Cultural, historic, or archaeological sites listed or eligible for inclusion in the National Register of Historic Places.

(10) Potential for use for other public purposes or any property proposed for abandonment, including rights-of-way.

We are providing this notice so that you may inform interested State and local agencies of the proposal, and so that you or they may investigate the affected area and provide the Commission with necessary information in timely fashion. This request for environmental information, however, is not related to any agency's rights to file administrative protests or appeals, which are governed by separate procedures.

Because the applicable statutes impose stringent deadlines for processing this action, response within three weeks would be appreciated. Please address the original of any comments directly to the Section of Energy and Environment, Room 4143, Interstate Commerce Commission, Washington, DC 20423.

The information provided will be considered by the Commission together with other material received in evaluating the overall environmental and energy impact of the contemplated action. If there are any questions concerning the affected area or other matters related to the proposal, please contact *our representative directly.* Questions regarding the form or content of any response to the notice should be referred to the Section of Energy and Environment at the above address. In any communication, please refer to the docket number assigned to this action: (docket number). Our representative in this matter is (name) and may be contacted by telephone at (telephone number) or by mail (address).

(Complementary close)

(Name and title of author of letter)

PART 1152—[AMENDED]

2. 49 CFR 1152.20 is amended by adding new paragraph (d) as follows:

§ 1152.20 Notice of intent to abandon line or discontinue service.

* * * * *

(d) At the same time it serves upon the Commission its notice of intent to abandon a line, the carrier shall comply with the environmental notice procedure provided in 49 CFR 1105.11.

PART 1180—[AMENDED]

3. 49 CFR 1180.4(g)(1) is amended by adding the following sentence at the end.

§ 1180.4 Procedures.

* * * * *

(g) * * *

(1) * * * Before a notice is filed, the railroad shall obtain a docket number from the Commission's Office of the Secretary.

* * * * *

[FR Doc. 84-10213 Filed 4-16-84; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 49, No. 75
Tuesday, April 17, 1984

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

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 5 and 12

[Docket No. 84-12]

Rules, Policies and Procedures for Corporate Activities Recordkeeping and Confirmation Requirements for Securities Transactions; Brokerage Activities To Be Conducted in an Operating Subsidiary

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is proposing a rule, to be codified in 12 CFR 5.52, that sets forth the circumstances in which brokerage activities of national banks should be conducted in operating subsidiaries of such banks. The circumstances are, first, the provision of certain securities brokerage services and, second, receipt of transaction-related fees for brokerage activities conducted on behalf of trust, managing agency or other accounts to which the bank provides investment advice. Alternatively, covered activities could be conducted in nonbank subsidiaries of bank holding company affiliates, consistent with the requirements of the Bank Holding Company Act and Regulation Y under that act.

Under the proposal, national banks could continue to conduct many types of brokerage activities within a department of the bank. This includes national banks publicly soliciting customers for so-called "limited purpose" discount borkerage services provided in conjunction with registered broker-dealers.

The rule is intended to provide this Office with a more efficient means of supervising and examining national banks that engage in brokerage activities. Covered banks' brokerage activities would be subject to supervision and examination by this Office under the banking laws. Brokerage activities conducted in operating subsidiaries of national banks or in nonbank subsidiaries of bank holding companies would be subject to the broker-dealer requirements of the Securities Exchange Act of 1934 ("Exchange Act").

A companion amendment to 12 CFR Part 12 is also being proposed. In particular, an addition would be made to § 12.6 that addresses development of written policies and procedures for national banks that effect transactions in securities for customers. To aid bank examination and to ensure proper conduct, a new paragraph would be added requiring written policies and procedures regarding bank brokerage activities.

DATE: Written comments must be submitted on or before June 1, 1984.

ADDRESSES: Comments should be directed to: Docket No. [84-12], Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219, Attention: Lynnette Carter. Comments will be available for public inspection and photocopying.

FOR FURTHER INFORMATION CONTACT: Lisa J. Lintecum, Investment Securities Division, Office of the Comptroller of the Currency, (202) 447-1164, or Linda Gottfried, Attorney, Securities & Corporate Practices Division, Office of the Comptroller of the Currency, (202) 447-1954.

SUPPLEMENTARY INFORMATION:

Background

In recent years, fundamental changes in the marketplace for financial services have caused an increasing number of national banks to offer securities related services to their customers. The elimination, in May 1975, of fixed minimum commission rates charged by brokers,[1] has made it economically feasible for banks, which traditionally have provided securities execution services, to offer a wider range of brokerage services to their customers. Increased provision of brokerage services by banks represents a natural growth of a traditional banking service and is consistent with the general evolution of the marketplace for financial services.

Brokerage services provided by banks varies, reflecting, in part, differences in their financial markets. Community-oriented banks serve almost exclusively a retail market and discount brokerage services may be one of several financial services provided their customers. Other banks, including many regional and money-center banks, offer a wide range of financial services to the public and through established correspondent relationships. Those banks may provide brokerage services on either a wholesale basis to correspondent banks or directly to retail customers.

Discount brokerage services are generally being provided by banks in conjunction with brokers registered under the Exchange Act. Typically, the clearing broker enters into a contract to perform various brokerage functions for the bank, including opening customer accounts, holding customer funds and securities, making margin loans, confirming customer transactions and preparing and maintaining the business records necessary for operating a brokerage business in accordance with accepted industry standards. In such arrangements, the bank usually has responsibilities for marketing and promoting the brokerage service. The bank may provide account applications which, when completed by the customer, are forwarded by the bank to the clearing broker. While bank employees may answer questions concerning the brokerage services, customer questions concerning trading and their accounts are handled directly by the clearing broker. Banks are compensated for those services, typically a fixed percentage of commissions charged by the clearing broker. Banks performing in this capacity are sometimes referred to as "limited purpose" introducing brokers.[2]

Other banks have established themselves directly in the retail market for brokerage services through a

[1] *See* Rule 19b-3 under the Securities Exchange Act of 1934 ("Exchange Act"), 17 CFR 240.19b-3.

[2] This is similar to the activities engaged in by certain nonbank financial institutions that are participating in "networking" arrangements with registered clearing brokers without that financial institution registering as a broker pursuant to Section 15 of the Exchange Act. Such arrangements have been the subject of a number of SEC staff "no-action" letters. *See, e.g.*, letter dated July 8, 1982, from Jeffrey L. Steele to Savings Association Investment Securities, Inc.

separate corporate entity, such as an operating subsidiary. In the case of national banks, this Office has approved several applications to provide discount brokerage services to customers through an operating subsidiary of the national bank.[3] A national bank operating subsidiary is subject to all provisions of federal banking law applicable to the operations of the bank.[4] The operating subsidiary is also subject to examination and supervision by this Office in the same manner and to the same extent as the bank.[5]

As an alternative to the operating subsidiary model, brokerage services are being offered through nonbank subsidiaries of bank holding companies.[6] Those subsidiaries are subject to the provisions of section 4(c)(8) of the Bank Holding Company Act of 1956, as amended,[7] and § 225.25(b)(15) of Regulation Y, adopted by the Board of Governors of the Federal Reserve System ("Board") under that Act.[8] They are subject to examination by the Board under the Bank Holding Company Act. They are also subject to examination by this Office as an affiliate of a national bank.[9]

In addition, bank operating subsidiaries and affiliates engaged in the brokerage business which are registered under Section 15(a) of the Exchange Act[10] are subject to the provisions of the Exchange Act applicable to brokers. As such, the subsidiary and affiliate can be examined by the SEC or the relevant securities industry "self-regulatory organization,"[11] such as the New York Stock Exchange ("NYSE") or the National Association of Securities Dealers, Inc. ("NASD").

Coordinated Regulatory Scheme

Provision of brokerage services in national bank operating subsidiaries and holding company affiliates has provided the Office with an opportunity to evaluate the advantages of a coordinated approach to the regulation of bank brokerage activities. The Office believes this approach, under certain circumstances, provides a more efficient means of exercising its supervisory responsibilities under the banking laws.

The concept of coordinated regulatory responsibility is not new, either to the banking industry or the securities industry. By establishing the Federal Financial Institutions Examination Council, Congress required a coordinated approach to matters of mutual regulatory interest. In addition, this Office and the FDIC have recently announced a cooperative examination program for national banks, intended to meet their needs for coordination, communication and cooperation in carrying out their complementary responsibilities.[12] Another example is the recent approval by this Office of an operating subsidiary to underwrite credit life insurance. The subsidiary will be regulated jointly by this Office and state insurance authorities.[13]

Within the securities industry, under the Exchange Act regulatory scheme for brokers and dealers, the SEC and designated self-regulatory organizations have developed a coordinated system for allocating regulatory responsibility among self-regulatory organizations have common members.[14] For example, under the SEC's program, when a broker is a member of the NASD and an exchange, the primary regulatory responsibility is vested in one of the two self-regulatory organizations. Finally, the Exchange Act's regulatory scheme provides, in different ways, for coordinated regulatory responsibilities among the SEC and federal banking agencies with respect to municipal securities dealers[15], as well as clearing agencies and transfer agents.[16]

Several legislative proposals currently under consideration in Congress embody a coordinated regulatory approach to bank brokerage activities. Among other things, these proposals would require that, under certain circumstances, bank brokerage and other securities activities be conducted in nonbank subsidiaries of bank holding companies subject to appropriate banking and securities law requirements. (Of course, in the event Congress enacts any of these proposals, the Office would, if necessary, amend the requirements of this regulation to conform with governing law.)

On the basis of its preliminary evaluation, the Office believes that, to carry out its responsibilities under the banking laws in the most efficient manner and to promote continued public confidence in an evolving financial system, banks which engage in certain brokerage activities should conduct their activity in either an operating subsidiary of the bank or an affiliated nonbank subsidiary of its bank holding company. Among other things, activities covered by this rule would be subject to requirements designed specifically to ensure the operational integrity of the brokerage operations and to protect customers. Of course, brokerage activities and non-brokerage activities conducted in operating subsidiaries remain subject to 12 CFR 5.34(d)(2)(i).

Activities Covered by the Rule

The rule, to be set forth in 12 CFR 5.52, would apply to two separate categories of bank brokerage activities. The first category involves banks that provide brokerage services under certain circumstances. See proposed 12 CFR 5.52(d)(1). The second category involves banks that receive transaction related fees for brokerage activities conducted for trust, managing agency and other accounts to which the bank provides investment advice. See proposed 12 CFR 5.52(d)(2).

I. Brokerage Services

With respect to the first category of brokerage activities, a bank must first be deemed to be providing a "brokerage service." That term is defined in proposed 12 CFR 5.52(c)(1), to mean effecting transactions in securities for the account of customers and receiving compensation for that service. Banks offering brokerage services may not

[3] Under this Office's regulations, a national bank may, with the prior approval of the Comptroller of the Currency, engage in activities which are a part of the business of banking or incidental thereto by means of an operating subsidiary. In order to qualify as an operating subsidiary, the parent bank must own at least 80 percent of the voting stock of the subsidiary. *See* 12 CFR 5.34, as amended, 48 FR 48454 (Oct. 19, 1983). For a further discussion of bank discount brokerage services, *see, e.g., Decision of the Comptroller of the Currency Establishing an Operating Subsidiary to be Known as Security Pacific Discount Brokerage Services, Inc.* (Aug. 26, 1982). In at least one instance, the Office has approved an operating subsidiary to provide investment advisory services at a national bank with a separate operating subsidiary furnishing discount brokerage. *See Descision of the Comptroller of the Currency Concerning an Application by American National Bank of Austin, Texas, to Establish an Operating Subsidiary to Provide Investment Advice* (Sept. 2, 1983).

[4] *See* 12 CFR 5.34(d)(2).

[5] *See* 12 CFR 5.34(d)(3).

[6] *See, e.g., Order of the Board of Governors of the Federal Reserve System Approving the Acquisition of Charles Schwab & Co, Inc. by BankAmerica Corporation*, 69 Fed. Res. Bull. 105 (1983).

[7] 12 U.S.C. 1843(c)(8).

[8] 12 CFR 225.25(b)(15), as amended, 49 FR 828 (Jan. 5, 1984).

[9] 12 U.S.C. 161, 481.

[10] 15 U.S.C. 78*o*(a).

[11] Under section 3(a)(26) of the Exchange Act, a "self-regulatory organization" includes any "national securities exchange," or any "registered securities association * * *." 15 U.S.C. 78c(a)(26).

[12] *See* Comptroller of the Currency-Federal Deposit Insurance Corporation, Joint News Release (December 13, 1983).

[13] [Current] Fed. Banking L. Rep (CCH) ¶99,806.

[14] *See* Rules 17d–1 and 17d–2 under the Exchange Act, 17 CFR 240.17d–1 and 17d–2.

[15] *See* Section 15B of the Exchange Act, 15 U.S.C. 78–2.

[16] *See* Section 17A of the Exchange Act, 15 U.S.C. 78q–1.

ultimately be involved in the execution of customer transactions, *e.g.*, on a national securities exchange or in the over-the-counter market. However, to the extent that banks are involved in opening customer brokerage accounts or in transmitting orders to a broker that ultimately executes securities transactions for customers, such banks would be deemed to be effecting transactions in securities.

Since the rule is intended to ensure appropriate regulation of retail brokerage services, certain types of transactions in securities effected by banks, as agent, would be expressly excluded from the definition of "brokerage service." First, transactions effected by a bank, as agent, in municipal securities are excluded. See proposed 12 CFR 5.52(c)(1)(A)(i). Transactions in municipal securities by bank municipal securities dealers are subject to the regulatory scheme provided by Section 15B of the Exchange Act, including rules of the Municipal Securities Rulemaking Board.

Second, transactions effected by a bank, as agent, in U.S. government or federal agency securities are excluded from the definition of brokerage service. See proposed 12 CFR 5.52(c)(1)(A)(ii). Bank transactions in such securities generally are not conducted for retail customers.

Third, transactions effected by a bank for the investment portfolio of affiliated banks are excluded from the definition of brokerage service. See proposed 12 CFR 5.52(c)(1)(A)(iii). Such transactions are not within the intended scope of the rule.

Fourth, there would be an exclusion for sweep account transactions between a customer's deposit account and money market funds or other types of investment companies. See proposed 12 CFR 5.52(c)(1)(A)(iv). Sweep arrangements typically involve money market funds that are registered pursuant to the Investment Company Act of 1940. Distribution of interests in such funds are conducted through a broker or dealer registered pursuant to the Exchange Act. Bank involvement in such arrangements usually includes providing administrative and shareholder services to participating customers.

Fifth, there would be an exclusion for banks with respect to transactions effected as part of dividend reinvestment services and employee stock purchase plans. See proposed 12 CFR 5.52(c)(1)(A)(v). These services are not within the intended reach of the rule.

Sixth, there would be an exclusion for banks that average less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in U.S. Government and federal agency obligations. See proposed 12 CFR 5.52(c)(1)(A)(vi). The volume of such transactions is insignificant and corresponds to an exemption from certain requirements of 12 CFR Part 12.

Critical Conditions. The rule would apply to bank brokerage services only if certain conditions exist. As a preliminary matter, a bank would come within the first category of covered brokerage activities only if it solicits business on behalf of its brokerage service either (i) publicly, through advertisements or otherwise; or (ii) from other banks, through correspondent relationships or otherwise. Assuming the solicitation condition applied, a bank would be subject to the rule only if either one of two other conditions apply. the first involves making margin loans to customers of the brokerage services. The second involves the manner in which securities transactions are effected and customers' securities processed. The latter two conditions, which are discussed below, generally are not present in brokerage services currently being provided by the vast majority of all national banks. Those banks function as a so-called "limited purpose" introducing brokers and could continue to offer their services within the bank.

Margin Lending. The proposed rule is intended to cover situations in which the bank extends or maintains credit to or for a retail brokerage customer as part of its brokerage business. See proposed 12 CFR 5.52(d)(1)(A). Credit extended to a customer for the purpose of effecting transactions in securities would not be covered by the rule, if such customer effects the transaction though someone other than the bank extending the credit.

The intended effect of this provision is to assure that the margin lending function conducted as part of a brokerage business be subject to the initial margin requirements applicable to brokers under the Exchange Act, and to the margin maintenance requirements applicable by virtue of membership in one of the securities industry self-regulatory organizations, such as the NASD or NYSE. Thus, covered bank brokerage activities would be subject to the initial margin requirements of Regulation T [17] rather than Regulation U.[18] Those requirements are administered by the Board pursuant to Section 7 of the Exchange Act.[19] In addition, such activities would be subject to the margin maintenance requirements adopted by self-regulatory organizations.[20]

[17] 12 CFR Part 220.

[18] 12 CFR Part 221.

[19] 15 U.S.C. 78g.

Holding Customer Securities

The proposed rule is also intended to apply to situations in which the bank has not established appropriate procedures relating to the processing of securities transactions and customer securities (either at a retail or wholesale level). See proposed 12 CFR 5.52(d)(1)(B). The rule would apply where, as part of its brokerage service, the bank holds customers' securities unless the bank (i) introduces all transactions and accounts of customers to a registered broker, who carries such accounts on a fully disclosed basis and (ii) "promptly forwards" all securities of customers received in connection with such service to the appropriate parties. The "promptly forwards" criterion would be satisfied if the bank establishes and maintains a system providing for the forwarding of securities no later than noon of the next business day after receipt of such securities. Effecting prompt forwarding of securities would not be required prior to the settlement date of a transaction.

II. Transaction-Related Fees

The second category of brokerage activity that would be covered by the rule relates to transactions effected on behalf of trust, managing agency and other accounts ("covered accounts") to which the bank provides investment advice. See proposed 12 CFR 5.52(d)(2). Banks receiving a separate fee for effecting transactions ("transaction-related fee") on behalf of covered accounts would, under the rule proposal, have to conduct those brokerage activities in an operating subsidiary. The rule would not require trust or advisory services to be conducted in an operating subsidiary.

As a preliminary matter, banks, in effecting transactions on behalf of covered accounts, must assure themselves that all applicable fiduciary standards are met. In particular, banks charging a separate fee for orders effected on behalf of covered accounts can do so only to the extent permissible under applicable fiduciary standards. This Office, in Trust Banking Circular 23, dated October 4, 1983, clarified its position regarding the permissibility of national banks making purchases of securities for trust accounts which they administer through a discount brokerage

[20] *See, e.g.*, NYSE Rule 431; Art. III, Sec. 30 NASD Rules of Fair Practice

affiliate. As discussed in the Circular, receipt of a transaction-related fee by a discount broker affiliate must be based on specific authorization in the appropriate governing instrument of local law. In addition, where all beneficiaries of a particular fiduciary account are ascertained and competent, those beneficiaries may authorize bank receipt of transaction-related fees.

For the purpose of this rule proposal, a bank would not be deemed to receive a transaction-related fee if a charge imposed by a bank only covered the cost of effecting the transaction. Banks must be able to demonstrate that such charges are limited to an amount necessary to recover transaction costs.

Written Policies and Procedures

The Office is also proposing a requirement that national banks adopt written policies and procedures designed to ensure compliance with proposed § 5.52. See proposed 12 CFR 12.6(e). As proposed, every national bank that effects transactions in securities for customers would have to establish such policies and procedures. These banks already maintain written policies and procedures concerning other aspects of their brokerage activities pursuant to 12 CFR 12.6(a)–(d). In addition, these banks are already subject to recordkeeping and confirmation provisions of 12 CFR Part 12. The written policies and procedures requirement would further facilitate this Office's examination of bank brokerage activities.

Special Studies

This Office believes that the impact of its proposal, if adopted, will not be sufficient to warrant either a regulatory impact analysis or a regulatory flexibility analysis. Those conclusions are based on the following reasoning.

A stratified random sample of nearly 500 national banks was recently surveyed to determine the nature and extent of their discount brokerage services. Within each of six districts, the survey reached five percent of the banks with assets less than $300 million, 50 percent of the banks with assets between $300 million and $1 billion and all banks with assets $1 billion and over. The five percent sample reached 217 banks, the 50 percent sample 104 banks and the 100 percent sample 159 banks. There was a 100 percent response rate and 55 percent reported offering discount brokerage services. Among the banks sampled, seven percent of the smallest, 17 percent of the middle and 19 percent of the largest size class offered discount brokerage services in a department of the bank that, without modification, would have to be placed in a subsidiary or holding company affiliate. In brief those banks indicated that they were offering margin loans, securities safekeeping or both as a part of their discount brokerage service.

If those ancillary services were abandoned or modified in accordance with the provisions of the proposed rule, banks could continue offering discount brokerage without incurring the expense of transferring it to a separate corporate entity. Exercise of either option would have a negligible impact on bank earnings and would maintain banks as a vital competitive force in this segment of the financial services marketplace. Those who choose to shift the operation out of the bank could face a one-time charge usually associated with incorporation of a business. That expense would not be met by banks that are members of a holding company that already has a subsidiary offeringdiscount brokerage.

In light of the survey results and the considerations outlined above, the Office has concluded that its proposal will not have a significant economic impact upon a substantial number of small banks. The same reasoning underlies the conclusion that this is not a major rule as defined by Executive Order 12291.

List of Subjects

12 CFR Part 5

National banks, Administrative practice and procedure.

12 CFR Part 12

National banks, Customers' securities transactions.

Accordingly, the Comptroller of the Currency proposes to amend 12 CFR Part 5 and 12 CFR Part 12 as follows:

PART 5—[AMENDED]

1. A new § 5.52 is added to read as follows:

§ 5.52 Bank brokerage services.

(a) *Authority.* The provisions of this section are issued pursuant to 12 U.S.C. 1 *et seq.*, 24 (Seventh), 92a and 93a.

(b) *Policy.* The Office has determined that, to facilitate the more efficient exercise of its supervisory and examining responsibilities under the banking laws, 12 U.S.C. 1 *et seq.*, certain national bank brokerage activities should be conducted in operating subsidiaries of such banks, subject to the prior approval of this Office pursuant to the provisions of 12 CFR 5.34. Securities brokerage activities not covered by this section may be conducted by national banks in a department of the bank. To the extent that the brokerage activities of national bank subsidiaries of bank holding companies are subject to this section those activities can be conducted by the national bank in an operating subsidiary or by the bank holding company in a non-bank subsidiary subject to the requirements of the Bank Holding Company Act of 1956, as amended, and Regulation Y thereunder.

(c) *Definitions.* For the purpose of this section:

(1) A bank is deemed to be providing a "brokerage service" if such bank:

(i) Effects transactions in securities for the account of customers, except where such transactions consist of (A) agency transactions in municipal securities; (B) agency transactions in U.S. government or federal agency securities; (C) transactions effected for the investment portfolio of affiliated banks; (D) transactions effected as part of a program for the investment or reinvestment of bank deposit account funds into any investment company registered pursuant to the Investment Company Act of 1940, so long as the interests in such investment company are distributed by a broker or dealer registered pursuant to the Securities Exchange Act of 1934; (E) transactions effected as part of a dividend reinvestment plan or employee stock purchase plan; (F) average less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in U.S. Government and federal agency obligations; and

(ii) Receives any compensation for effecting such transactions, including but not limited to, receipt of a commission (or any portion thereof) from any person, including any clearing broker involved in effecting the transaction.

(2) The term "retail brokerage customer" shall mean any person from whom, or on whose behalf, a bank in connection with its brokerage business has received, acquired or holds funds or securities for the account of such person, but does not include a broker or dealer.

(3) A bank is deemed to "promptly forward" all securities within the meaning of this section if the bank establishes and maintains a system to provide for the forwarding of securities to or from customers no later than noon of the next business day after the receipt of such securities, provided, however, that such prompt forwarding shall not be required to be effected prior to the settlement date for such transaction.

(4) The term "security" shall have the same meaning set forth in § 12.2(e) of this title.

(d) *Conditions which require brokerage activities to be conducted within an operating subsidiary.* Securities brokerage activities of a national bank shall be conducted in an operating subsidiary of such bank, subject to 12 CFR 5.34, if the bank:

(1) Provides brokerage services (i) publicly through advertisements or otherwise or (ii) for other banks, through a correspondent relationship or otherwise; and either:

(A) Extends credit to or maintains credit for retail brokerage customers with respect to the purchase or sale of securities effected through the bank, or

(B) Holds retail brokerage customers' securities, *unless* the bank (*1*) introduces and forwards all transactions and accounts of customers to a broker registered pursuant to the Securities Exchange Act of 1934 who carries such accounts on a fully disclosed basis and (*2*) promptly forwards all securities of such customers received in connection with its brokerage service; or

(2) Receives a transaction related fee for brokerage activities conducted on behalf of any trust, managing agency or other accounts to which the bank provides investment advice.

2. A new paragraph (e) of § 12.6 would be added to read as follows:

§ 12.6 Securities trading policies and procedures.

* * * * *

(e) Assignment of responsibility for supervision of all bank officers and employees who participate in, or have responsibility for, effecting transactions in securities for customers to ensure compliance with 12 CFR 5.52.

Dated: February 15, 1984.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84-10229 Filed 4-16-84; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1917

[Docket No. H-117]

Grain Handling Facilities

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of informal public hearing; availability of economic analysis, and request for written comments.

SUMMARY: This notice schedules an informal public hearing concerning the proposed standard for grain handling facilities, 29 CFR 1910.272 (49 FR 996, January 6, 1984).

This notice also announces the availability of an economic analysis of the proposal, and extends the comment period on that analysis and on several issues discussed in this notice. At the request of numerous commenters, the period for receiving written comments was subsequently extended until June 8, 1984.

DATES: Notices of intention to appear at the informal public hearing must be received by May 16, 1984. All testimony and evidence which will be introduced into the hearing record must be received by May 30, 1984.

The hearing will begin at 9:30 a.m. and will be held on the following dates:

1. June 12–14: Washington, D.C.
2. June 19–21: Kansas City, Missouri.
3. June 26–28: Minneapolis, Minnesota.
4. July 10–12: Dallas, Texas.

Written comments pertaining to the economic analysis and the specific issues contained in this notice must be received by July 12, 1984.

ADDRESSES: Notices of intention to appear, and testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3662, 200 Constitution Avenue, NW., Washington, D.C. 20210.

The informal public hearings will be held at the following locations:

1. Washington, D.C.: Frances Perkins Department of Labor Building, Auditorium, 200 Constitution Avenue, NW., Washington, D.C. 20210.

2. Kansas City, Missouri: Hyatt Regency at Crown Center, Empire Room, 2345 McGee Street, Kansas City, Missouri 64108–9990, (816) 421–1234.

3. Minneapolis, Minnesota: Regency Plaza, Regency Hall, 41 North 10th Street, Minneapolis, Minnesota 55403, (612) 339–9311.

4. Dallas, Texas: Marriott Quorum, 14901 Dallas Parkway, Dallas, Texas 75240, (214) 661–2800.

Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket H–117, Room S6212, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523–7894.

FOR FURTHER INFORMATION CONTACT:

Hearing: Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3662, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523–8024.

Proposal: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523–8151.

SUPPLEMENTARY INFORMATION: On January 6, 1984, OSHA published in the **Federal Register** (49 FR 996) a notice of proposed rulemaking for grain handling facilities. Written comments, objections and hearing requests in response to the proposed standard were to have been received by March 9, 1984.

At the request of numerous commenters, the period for receiving written comments was subsequently extended until June 8, 1984 (49 FR 6923).

OSHA also received several requests to conduct a public hearing on the proposed standard. The hearing requests were submitted by various interested persons and organizations and addressed a broad range of issues.

Accordingly, pursuant to section 6(b)(3) of the Act, OSHA has scheduled informal public hearings to receive testimony on the proposed standard. To facilitate a thorough discussion, OSHA invites testimony on any of the provisions contained in the proposed standard, including the issues set forth in the preamble to the proposal.

Additionally, in order to obtain more information which will assist the Agency in developing the final standard, testimony and written comments are requested on the following specific issues:

1. OSHA proposed an extended period for compliance with paragraph (i)(2), housekeeping, for small grain elevator facilities in order to lessen their economic burdens. Should OSHA also consider an extended period for compliance with paragraph (i)(2) for small feed mills? If so, how should "small feed mill" be defined?

2. OSHA proposed in paragraph (j) that grate openings have a maximum width and length of 2½ inches. OSHA is interested in receiving information on whether this requirement is unnecessarily stringent. Further, OSHA invites comment on whether a grate with openings of 2½ inch width and no specified length would adequately assure the removal of hazardous foreign objects. Or, would the National Academy of Sciences' (NAS) recommendation provide adequate flexibility and better assure the removal of hazardous foreign objects? The NAS recommendation states that "receiving leg feeds should be protected by a grate

where the greater dimension is less than the cup projection and the lesser dimension is ½ the cup projection" (49 FR 996, Reference 17, pg. 129).

3. OSHA proposed in paragraph (n) that at least two means of escape be provided from tunnels, galleries, scale floors and work areas normally occupied by employees. It has been brought to OSHA's attention that some older facilities with windowless tunnels may have significant difficulty in complying with this provision. OSHA would like information on what alternatives might exist, if any, to providing two means of escape in such tunnels. Should OSHA recognize existing dead-end tunnels as being acceptable? If so, what maximum length tunnel should be acceptable where only a single means of escape is provided? Should OSHA establish a delayed effective date for tunnels to comply with two means of escape? If so, how much time should be given to allow these tunnels to be modified to provide a second means of escape?

Economic Analysis Report

As discussed in the notice of proposed rulemaking for grain handling facilities (49 FR 1004), OSHA contracted with Booz-Allen, Inc., to scrutinize the cost methodology and alternatives in Arthur D. Little's preliminary regulatory impact analysis. Booz-Allen has completed its economic report and it is available for public inspection and copying in the Docket Office (see previous section on addresses).

Public Participation in Hearing

Notice of Intention to Appear: Persons desiring to participate at the hearings, must file a notice of intention to appear by May 16, 1984. The notice of intention to appear must contain the following:

1. The name, address and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The city where the person intends to appear;
4. The approximate amount of time required for the presentation;
5. The specific issues that will be addressed;
6. A detailed statement of the position that will be taken with respect to each issue addressed; and
7. Whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence.

Filing of Testimony and Evidence Before the Hearing: Any party requesting more than 10 minutes for presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of the testimony, including all documentary evidence to be presented at the hearing. The text must be provided to the OSHA Division of Consumer Affairs by May 30, 1984.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with the above requirements may be limited to a 10 minute presentation, and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

Notices of intention to appear, testimony and evidence, will be available for inspection and copying at the Docket Office, Docket H–117, U.S. Department of Labor, Occupational Safety and Health Administration, Room S6212, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523–7894.

The hearing will commence at 9:30 a.m. at the scheduled locations with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have the power necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the power:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The notice of proposed rulemaking will be reviewed in light of all testimony and written submissions received as part of the record, and the proposed standard will be modified or a determination will be made not to modify the proposed standard, based on the entire record of the proceeding.

Authority

This document was prepared under the direction of Patrick R. Tyson, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, D.C., this 13th day of April, 1984.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

[FR Doc. 84–10319 Filed 4–16–84; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS–211012A; TSH–FRC 2566–5]

Response to Citizen's Petition on Asbestos; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Response to Citizen's Petition; Notice of Public Meeting.

SUMMARY: EPA will hold a public meeting as part of its effort to gather data and hear arguments on current options for asbestos abatement in schools and public buildings, pursuant to the EPA response to a citizen's petition announced in the Federal Register of March 7, 1984 (49 FR 8450). Those wishing to request time for statements at the meeting should contact the TSCA Assistance Office as indicated in "**FOR FURTHER INFORMATION CONTACT**" below.

DATES: The meeting will take place on Monday, May 7, 1984 at 9:00 a.m. and adjourn by 4:30 p.m.

ADDRESS: The meeting will be held in the: North Auditorium, North Building, Department of Health and Human Services, 330 Independence Ave., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: 554–1404), Outside the USA: (Operator–202–554–1405).

SUPPLEMENTARY INFORMATION: On November 16, 1983, the Service Employees International Union (SEIU) petitioned EPA, under section 31 of TSCA, to initiate rulemaking to require the abatement of friable asbestos-containing materials in public and private elementary and secondary schools. In addition, the petition requested rulemaking concerning the inspection and abatement of friable asbestos-containing materials in public and commercial buildings.

The specific points of the petition submitted by the SEIU are enumerated below:

1. Establish standards for determining when friable asbestos-containing materials in schools are hazardous.
2. Establish requirements for corrective action when friable asbestos-containing materials are determined to be hazardous.
3. Establish requirements for inspection and abatement of friable asbestos-containing materials in public and commercial buildings.
4. Establish standards for the performance of abatement activities, including standards for the protection of persons performing such activities.

The Agency granted three of the petitioners requests (items 1–3 above) and partially granted the fourth, as published in the Federal Register of March 7, 1984 (49 FR 8450). In granting the petition, the Agency announced that a public meeting would be held to solicit input from experts in this area to provide EPA with data and written views on how EPA should modify the Asbestos-in-Schools program. This meeting will also provide an opportunity for industry, unions, trade associations, public interest groups and other interested parties to furnish information and express their views orally on the details of what the Agency should include in its rulemaking proposals. The Agency is also considering a request by the petitioner to conduct Regional meetings on this topic. These meetings will be discussed in subsequent notices, in the event the Agency grants the peitioner's request.

Written comments must be received by April 23, 1984. Persons submitting comments should identify them by document number OPTS–211012, and send them to: TSCA Public Information Office, Office of Toxic Substances (TS–793), Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, D.C. 20460.

A copy of the petition and all related information and the administrative record in this proceeding are in Rm. E–107, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Interested persons may view or copy these materials between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Dated: April 9, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84–10202 Filed 4–16–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–294; RM–4599]

FM Broadcast Station in La Grande, Oregon; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign Channel 261A to La Grande, Oregon, as that community's second FM allocation, in response to a petition filed by Mark Masterson.

DATE: Comments must be filed on or before May 29, 1984, and reply comments on or before June 13, 1984.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments FM Broadcast Stations. (La Grande, Oregon), MM Docket No. 84–294, RM–4599.

Adopted: March 26, 1984.
Released: April 6, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed by Mark Masterson ("petitioner") seeking the assignment of Channel 261A to La Grande, Oregon, as that community's second FM allocation. Petitioner indicates that he, or an entity of which he is a part, will apply for the channel, if assigned. The channel can be assigned consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

§ 73.202 [Amended]

2. Since the proposed assignment could provide a second FM service to La Grande for the expression of diverse viewpoints and programming, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Rules, as follows:

City	Channel No.	
	Present	Proposed
La Grande, Oregon	252A	252A, 261A

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 May 29, 1984, and reply comments on or before June 13, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Mark Masterson, P.O. Box 787, La Grande, Oregon 97850.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

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

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

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

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

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

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

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

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copoies 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. 84-10174 Filed 4-16-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-515; RM-4398]

FM Broadcast Station In Stephenville, Texas; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 252A to Stephenville, Texas, for use by the licensee of Station KWWM and to delete FM Channel 289. This action is taken in response to a petition filed by Ms. R. K. Jack.

DATES: Comments must be filed on or before May 29, 1984, and reply comments on or before June 13, 1984.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Further Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Stephenville, Texas), MM Docket No. 83-515, RM-4398.

Adopted: March 26, 1984.

Released: April 6, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making,* 48 FR 28493, published June 22, 1983, proposing the assignment of FM Channel 252A to Stephenville, Texas, as that community's second FM channel, in response to a petition filed by Ms. R. K. Jack ("Jack"). Jack and Dixie Broadcasters ("Dixie"), licensee of Station KWWM(FM), Stephenville, Texas, filed comments in response to the *Notice.* Jack filed reply comments.

2. Dixie Broadcasters opposes the assignment and requests that action on this rule making be held in abeyance until a final decision is made on its application for Channel 289 at Stephenville. In BC Docket No. 80-172, 46 FR 20676, published April 7, 1981, Channel 252A was deleted from Stephenville and Class C Channel 289 was substituted therefor. In addition, the license of Station KWWM was modified to specify operation on Class C Channel 289. A site restriction of 24.4 miles was imposed on the assignment of Channel 289. Dixie states that it has been unable to find a suitable site that complies with the restriction. According to Dixie, the majority of land within the restricted area is owned in extremely large tracts by local residents who are unwilling to sell or lease only a small portion of their land for use as the site of a radio tower. Dixie asserts that it is financially infeasible to purchase a large tract for this purpose. Also, a number of landowners are said to be opposed to the construction of a tall radio tower in the area based on environmental concerns. Finally, Dixie argues that the terrain northwest of Stephenville is hilly and may pose a serious threat of signal shadowing to Stephenville from an antenna located in the restricted site area. Dixie had filed an application which was dismissed due to a short spacing of 8-13 miles to seven applicants for Channel 288A at Killeen, Texas. Dixie has filed a petition for reconsideration of the dismissal and seeks a delay of this rule making until the reconsideration is complete.

3. Petitioner states that the sole purpose of her proposal is to seek a second FM service for the community. Jack is aware of the site location problems Dixie has experienced but believes that since almost two years have elapsed since the Commission's *Report and Order* reserving Channel 289, more than ample time has been allowed to resolve these difficulties.

4. Since Dixie has been unable to secure a transmitter location for Channel 289, we believe it appropriate to consider deleting Channel 289 from Stephenville and to assign Channel

252A once again for use by Station KWWM. In so doing, interested parties should comment on site availability for Channel 289 and also whether Station KWWM's license should be remodified to specify Channel 252A. See *Modification of FM and TV Station Licenses,* MM Docket 83–1148, 48 FR 55585, published December 14, 1983.

§ 73.202 [Amended]

5. In view of the foregoing, the Commission seeks comments on the following proposed amendments to the FM Table of Assignments, §73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Stephenville, Texas	289	252A

6. 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 assigned.

7. Interested parties may file comments on or before May 29, 1984, and reply comments on or before June 13, 1984, and are advised to read the attached Appendix for the proper procedures.

8. 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 Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504, and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. 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.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(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 Assignments, §73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

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

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

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

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

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

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

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

[FR Doc. 84–10175 Filed 4–16–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–296; RM–4615]

FM Broadcast Station in Fort Mitchell, Alabama; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 252A to Fort Mitchell, Alabama, as its first local service in response to a petition filed by CLW Communications Group.

DATES: Comments must be filed by May 29, 1984, and reply comments on or before June 13, 1984.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Fort Mitchell, Alabama); MM Docket No. 84-206, RM-4615.

Adopted: March 26, 1984.
Released: April 6, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rulemaking has been filed by CLW Communications Group ("petitioner"), proposing the assignment of FM Class A Channel 252 to Fort Mitchell, Alabama. Petitioner expressed an interest in applying for the channel, if assigned. The channel can be assigned in conformity with the minimum distance separation requirements of § 73.207 of the Rules.

§ 73.202 [Amended]

2. In view of the fact that the proposal could provide a first FM service to Fort Mitchell, Alabama, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Fort Mitchell, Alabama	—	252A.

3. 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 assigned.

4. Interested parties may file comments on or before May 29, 1984, and reply comments on or before June 13, 1984, and are advised to read the Appendix for the proper procedures. A copy of such comments should be filed on the petitioner, as follows: John H. Midlen, Jr., Chartered, 1100—15th Street, NW., Suite 1200, Washington, D.C. 20005 (counsel for the petitioner).

5. 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 Assignments, §73,202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. 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.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

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

2. *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 assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

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

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

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

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

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be acompanied 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. 84-10176 Filed 4-16-84; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1245

[No. 37025 (Sub-1)]

Revision to the Annual Report of Railroad Employees, Service and Compensation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition filed by the Association of American Railroads, the Commission proposes to revise Form ARSC, Annual Report of Railroad Employees, Service and Compensation. The revised form would be identical to Form QRCS, Quarterly Form of Railroad Employees, Service and Compensation. The revision would eliminate annual reporting of 112 individual job classifications and, in lieu thereof, require reporting for six summary classifications.

DATES: Written responses should be filed on or before May 17, 1984. The proposed revision would be effective for the year beginning January 1, 1984.

ADDRESSES: An original and 15 copies, if possible, of any comments should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Copies of the Notice may be purchased from: TS Infosystems, Inc., Room 2227, 12th & Constitution Avenue, NW., Washington, D.C. 20423; 202–275–4357—D.C. Metropolitan Area, 800–424–5403—toll free for outside D.C. Area.

FOR FURTHER INFORMATION CONTACT: Thomas A. Carter, 202–275–7448.

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this proposal have been submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments to OMB by addressing them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Interstate Commerce Commission.

The Commission adopted new reporting requirements in Docket No. 37025, *Revision to the Preliminary Report of Number of Employees of Class I Railroads and the Reports of Employees, Service and Compensation*, filed by Class I Railroads (served November 18, 1982; 367 I.C.C. 63). The Commission extended the original effective date from January 1, 1983, to January 1, 1984 (48 FR 655). In its decision, the Commission adopted Form ARSC, Annual Report of Railroads Employees, Service and Compensation. Form ARSC requires carriers to report data for 112 individual job classifications.

In a Notice of Proposed Rulemaking in Docket No. 37025 (46 FR 19273; March 30, 1981), the Commission proposed that the annual report require data for only six summary classifications. However, the Commission subsequently expanded this to 112 individual job classifications based on the comments filed by the Railroad Retirement Board (RRB) which stated that the reduction would seriously impair its ability to carry out certain public commitments and because the data was used in its statistical publications.

The Association of American Railroads (AAR) petitioned the Commission (filed October 11, 1983) to modify Form ARSC to require annual reporting of only six summary job classifications rather than 112 individual job classifications. This modification would make Form ARSC identical to Form QRSC, Quarterly Report of Railroad Employees, Service and Compensation, which the Commission adopted in Docket No. 37025.

AAR's petition states that the RRB does not need annual individual job classification data and that annual data for the six summary classifications would be sufficient to fulfill the RRB's legislative responsibilities. The RRB has confirmed that AAR's statement is correct.

Because the RRB requires annual data only for six summary classifications, and because this data would be sufficient for the Commission's purposes, we propose to revise Form ARSC. Proposed Form ARSC would be identical to Form QRSC. The Commission believes that the proposed form is the least burdensome necessary to comply with legal requirements and to achieve program objectives. It meets the guidelines set forth in 5 CFR 1320.6, General Information Collection Guidelines.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule directly affects only Class I railroads which have annual revenues of $50 million or more. However, we do request comment on this issue.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1245

Railroad employees, Reporting and recordkeeping requirements, Wages.

These rules are proposed under the authority of 49 U.S.C. 10321 and 5 U.S.C. 533.

Decided: April 10, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–10214 Filed 4–16–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Hutton Tui Chub (Gila bicolor ssp.) and Foskett Speckled Dace (Rhinichthys osculus ssp.)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Hutton tui chub (*Gila bicolor* ssp.) and Foskett speckled dace (*Rhinichthys osculus* ssp.) to be threatened species under the authority contained in the Endangered Species Act of 1973, as amended. A special rule allowing take for certain purposes in accordance with Oregon State laws and regulations is proposed. Critical habitat is not being determined for these two fishes. This action is being taken because these species have a very restricted range, occur in low numbers, and occupy small springs which are extremely vulnerable to destruction or modification. The Hutton tui chub is known only from Hutton Spring (within the now dry Alkali Lake) and the Foskett speckled dace is known only from Foskett Spring (within the Coleman Basin). Hutton Spring and Foskett Spring are located in south central Oregon in Lake County. These springs are located on private property.

This proposal, if made final, would implement Federal protection for the Hutton tui chub and the Foskett speckled dace, as provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public, State, and Federal agencies on this proposal.

DATES: Comments from all interested parties must be received by June 18, 1984. Public hearing requests must be received by June 1, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials

received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For further information on this proposal contact Dr. Jack Williams, Endangered Species Office, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814 (916/440–2791 or FTS 448–2791).

SUPPLEMENTARY INFORMATION:

Background

The Hutton tui chub is found only in Hutton Spring, a small spring system with surface flow in two areas, located in the now dry Alkali Lake, in Lake County, south-central Oregon. Estimated discharge of Hutton Spring is about 1.0 cfs. Its numbers are estimated at no more than 450 (Bills, 1977). The Foskett speckled dace occurs in Foskett Spring, a small spring system found in the Coleman Basin, on the west side of the Warner Valley, Lake County, south-central Oregon. Flow of Foskett Spring has been estimated at 0.5 cfs. Current numbers are estimated at 1,500 (Bond, pers. comm.). A transplant attempt was made in 1982 whereby some Foskett Spring dace were moved to a small pool on the south side of the Foskett Spring system. The evaluation of the success of this transplant is not yet available (Armantrout, pers. comm.).

Both fishes occur on private land and are threatened by modification of their habitats to enhance their use of watering livestock, channeling of the springs for irrigation purposes, and excessive trampling by cattle. These fishes have extremely limited distribution, occur in low numbers naturally, and inhabit springs which are susceptible to human disturbance. Actions which may jeopardize the species include: Ground water pumping for irrigation, excessive trampling of the habitats by livestock, channeling of the springs for agricultural purposes, other mechanical manipulation of the spring habitats, and the presence of a chemical waste disposal site near Hutton Spring.

The tui chub, *Gila bicolor*, and the speckled dace, *Rhinichthys osculus*, were both described by Charles Girard in 1856. Descriptions of the undescribed subspecies, Hutton tui chub and the Foskett speckled dace, are being prepared under the direction of Dr. Carl Bond, Oregon State University.

On December 30, 1982, the Service published a Notice of Review of Vertebrate Wildlife for listing as endangered or threatened species (47 FR 58454–58460). The Hutton tui chub and Foskett speckled dace were included in the review as category 1 taxa indicating that the Service has substantial information on hand to support the proposal of these fishes for protection under provisions of the Endangered Species Act. On April 12, 1983, the Service was petitioned by the Desert Fishes Council to list these two fishes. The Service reviewed and evaluated the petition and determination that it did present evidence that the petitioned action was warranted. The notice of finding for this petition was published in the **Federal Register** on June 14, 1983 (48 FR 27273–27274).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 40 CFR Part 424; under revision to accommodate 1982 Amendments) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Hutton tui chub and the Foskett speckled dace are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Hutton tui chub.* This subspecies is limited in distribution to Hutton Spring and its outflow which is vulnerable to modification or destruction. A portion of Hutton Spring has already been enlarged by mechanical means. Channeling of water or ground water pumping (which could lower the water table) for irrigation purposes could destroy the entire spring ecosystem. Excessive trampling of the habitat by watering livestock has also occurred (Kobetich, pers. comm.; Bond, pers, comm.). Any further livestock trampling of the spring above current use levels could cause extinction of the Hutton tui chub.

Foskett speckled dace: This subspecies has a very restricted distribution occurring in Foskett Spring and its outflow. They may also occur in a small spring pool on the south side of the Foskett Spring system where they were transplanted in 1982. It has yet to be determined if they have become established there. Pumping of ground water and concomitant lowering of the water table pose a potential threat to this subspecies. Mechanical modification of the aquatic ecosystem has occurred in the past as evidenced by remnants of a rock dam. Additional changes could be detrimental to the fish. The spring is also a livestock watering area and use above current levels would have a negative impact. The vulnerability of the habitat is accentuated by its very small size (flow rate less than 0.5 cfs).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no indication that the Hutton tui chub and Foskett speckled dace are overutilized for any purposes.

C. *Disease or predation.* There are no known threats to the Hutton tui chub or Foskett speckled dace from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* The State of Oregon lists both the Hutton tui chub and Foskett speckled dace as "fully protected subspecies" under the State Game Commission regulations. These regulations prohibit taking of the fishes without an Oregon scientific collecting permit. However, no protection of the habitat is included in such a designation and no management or recovery plan exists for these subspecies.

E. *Other natural or manmade factors affecting its continued existence.* Hutton Spring is located approximately 1¾ miles north of a large chemical disposal site. Wastes from this dump have already contaminated the adjacent ground water, surface water, and air in the Alkali Lake area. It is likely that the spring habitat of the Hutton tui chub will become contaminated within the foreseeable future as levels of these toxic chemicals increase. This could endanger the Hutton tui chub and possible result in its extinction if measures are not taken to prevent contamination of its habitat.

For the Hutton tui chub and Foskett speckled dace, additional threats include the possible introduction of exotic fishes into the springs which could have disastrous effects on the endemic Hutton tui chub and Foskett speckled dace either through competitive exclusion, predation, or introduced disease. Because these fishes occur in such limited and remote areas, vandalism also poses a potential threat.

The proposed action is the result of careful assessment of the best scientific information available, as well as the best assessment of the threats faced by these subspecies. Based on this evaluation, it was determined that the status of the Hutton tui chub and Foskett speckled dace are threatened species, as defined in Section 3 of the Act. Threatened status seems appropriate because of the restricted range of these subspecies, and because of the threats to these fishes and their remaining habitat.

Since these species are still extant in their isolated spring habitats and the threats to them can be removed, these species are not in danger of extinction and thus endangered status would not be appropriate.

Critical Habitat

The Endangered Species Act in section 4(a)(3), as amended, requires that to the maximum extent prudent and determinable the Secretary desigate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Hutton tui chub and the Foskett speckled dace.

In the case of the Hutton tui chub and the Foskett speckled dace, the Service believes such critical habitat designations would be imprudent because they would increase the likelihood of vandalism to the small isolated springs that these fishes inhabit. The location of the springs is not well-known. A critical habitat proposal would necessitate publication of detailed maps depicting the exact location of the springs. The Service believes such publicity would not be in the best interest of conserving these fishes.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are presently under revision (see proposal published at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or adversely modify its proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a federally authorized activity may affect a listed species, the Federal agency must enter into consultation with the Service.

Several activities involving Federal agencies are presently known which may have an impact on the Hutton tui chub and Foskett speckled dace. With regard to the Hutton tui chub, during 1976, approximately 25,000 55-gallon drums of 2, 4-dichlorophenoxyacetic acid (2, 4–D) and methylchlorophenoxyacetic acid (MCPA) manufacturing residues were buried along the southwest margin of Alkali Lake. The barrels were severely damaged when initially buried and have since contaminated the ground water, surface water, and air in the alkali Lake area. The disposal site is located approximately 1¾ miles south of Hutton Spring. Environmental dispersal of these herbicides and their by-products threatens the Hutton tui chub by contamination of the aquifers that supply water to the spring, contamination of the spring via surface flows, and by contamination of the spring by airborne evaporites. The BLM and Environmental Protection agency, in cooperation with the Oregon Department of Environmental Quality, is presently considering reclamation of the toxic waste disposal site.

Grazing occurs in the vicinity of both Foskett Spring and Hutton Spring. Although the impact of grazing on these subspecies has not been determined, uncontrolled trampling of the springs by livestock could probably have a negative effect on the aquatic ecosystem.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of prohibitions and exceptions that generally apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale listed species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies. General regulations governing the issuance of permits for carrying out otherwise prohibited activities involving threatened species under certain circumstances are set out at 50 CFR 17.32.

The above discussion generally applies to threatened species of fish and wildlife. However, the Secretary had discretion under section 4(d) of the Act to issue such special regulations as are necessary and advisable for the conservation of a threatened species. These fishes are threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species or by commercialization. Given this fact and the fact that the State regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collection permit system is more than adequate to protect the species from excessive taking, so long as such takes are limited to: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, the special rule allows takes to occur for the above-stated purposes without the need for a Federal permit if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory proposal is necessary and advisable for the conservation of the Hutton tui chub and Foskett speckled dace.

Public Comments Solicited

The Service intends that any final rule adopted will be as accurate and effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the Hutton tui chub and Foskett speckled dace;

(2) The location of any additional populations of the Hutton tui chub and Foskett speckled dace and the reasons why any habitat of these subspecies should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these subspecies; and

(4) Current or planned activities in the subject areas and their possible impacts on the Hutton tui chub and Foskett speckled dace.

Final promulgation of the regulations on the Hutton tui chub and the Foskett speckled dace will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal if requested. Requests must be in writing and received within 45 days of the date of the proposal. Such requests should be addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232.

National Environmental Policy Act

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

References

Bills, Frederick. 1977. Taxonomic status of isolated populations of tui chub referred to as *Gila bicolor oregonensis* (Snyder). M. A. Thesis, Oregon State Univ., Corvallis, Oregon.

Oregon Department of Environmental Quality. 1977. Alkali Lake Disposal Project. Monitoring Reports No. 1 and 2.

Oregon Department of Environmental Quality. 1978. Alkali Lake Disposal Project. Monitoring Report No. 3.

Oregon Department of Environmental Quality. 1979. Alkali Lake Disposal Project. Monitoring Report No. 4.

Author

The author of this rule is Dr. Jack E. Williams, U.S. Fish and Wildlife Service, Endangered Species Office, 1230 "N" Street, 14th Floor, Sacramento, California 95814 (916/440-2791 or FTS 448-2791).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1141 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under "Fishes" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*		*		
Chub, Hutton tui	*Gila bicolor* ssp.	U.S.A. (OR).	Entire	T		NA	17.44( )
Dace, Foskett speckled	*Rhinichthys osculus* ssp..	do	do	T		NA	17.44( )
*	*	*	*		*		

3. It is further proposed to amend Title 50 CFR 17.44 by adding the following: (The position of this special rule will be determined at the time the final rule is published in the **Federal Register**.)

§ 17.44 Special rules—fishes

* * * * *

( ) Hutton tui chub, *Gila bicolor* ssp. and Foskett speckled dace, *Rhinichthys osculus* ssp.

(1) No person shall take these species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of these species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations of in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (1) through (3) above.

Dated: April 9, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-10156 Filed 4-16-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status and Critical Habitat for the Niangua Darter (Etheostoma Nianguae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Niangua darter (Etheostoma nianguae) to be a threatened species and to designate its critical habitat under the authority contained in the Endangered Species Act of 1973, as amended. A special rule allowing take for certain purposes in accordance with State laws and regulations is also proposed. This fish is presently known only from the Osage River Basin of west central Missouri. It is rare, localized in occurrence, and vulnerable to extinction. Reservoir construction, stream channelization, accelerated erosion and sedimentation, nutrient enrichment, and introduction of potential predators are threats to the Niangua darter. The Service is requesting data and comments on the species. This proposal, if made final, would implement needed protection

provided by the Endangered Species Act of 1973, as amended.

DATES: Comments from all interested parties must be received by June 18, 1984. Public hearing requests must be received by June 1, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Office, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Engel (see **ADDRESSES** section) (612/725–3276 or FTS 725–3276) or Mr. John L. Spinks, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Niangua darter, a percid fish, was first described by Gilbert and Meek in 1888 (Gilbert, 1888). Pflieger (1975) describes the fish as a slender darter with about eight dark cross-bars on the back, readily distinguished from other Missouri darters by the presence of two small jet-black spots at the base of the caudal fin. Adults are 3 to 4 inches long. Life colors and other characteristics are described by Pflieger (1975). The only near-relative of the Niangua darter is the arrow darter (*Etheostoma sagitta*) which occurs in eastern Kentucky and northern Tennessee. The Niangua darter is known only from a few tributaries of the Osage River in Missouri (Pflieger 1971). The species inhabits clear, medium-sized streams draining hilly areas underlain by cherty dolomitic bedrocks. It prefers the margins of shallow pools with silt-free gravelly or rocky bottoms. Spawning occurs on swift, gravel riffles. Nymphs of stoneflies and mayflies gleaned from crevices of the stream bottom comprise the diet of the Niangua darter.

The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires determination of whether species of wildlife and plants are endangered or threatened to be based on the best available scientific and commercial data. In 1979, the American Fisheries Society's Endangered Species Committee expressed its opinion that the Niangua darter was a threatened species (Deacon *et al.*, 1979). On December 10, 1980, the Service received a petition from the Ozark Endangered Species Task Force to list the Niangua darter as a threatened species. The petition was based on the comprehensive report on the Niangua darter by Dr. William L. Pflieger of the Missouri Department of Conservation. The report by Pflieger was based on research carried out between 1974 and 1977. It included a thorough review of the literature and information on the distribution and life history of the Niangua darter. It also recommended threatened status for the darter throughout its range. The Service accepted the petition on April 9, 1981, and indicated its intent to prepare a proposed rule to list the Niangua darter as a threatened species (46 FR 21208). The Niangua darter was also included in the Service's Notice of Review of Vertebrate Wildlife published December 30, 1982 (47 FR 58454–60).

The Niangua darter is presently known from 8 populations along 128 miles of stream in the Osage River Basin, Missouri (Pflieger, 1978). Specifically, these populations are located in the Maries River and lower Maries Creek, Osage County; Big Tavern Creek and upper Little Tavern Creek, Barren Fork, and Brushy Fork, Miller County; Niangua River and Greasy Creek, Dallas County; Little Niangua River, Starks Creek, Thomas Creek, and Cahoochie Creek, Hickory and Dallas Counties; Little Pomme de Terre River, Benton County; Pomme de Terre River, Green and Webster Counties; Brush Creek, St. Clair County; and the North Dry Sac River, Polk County. The Niangua darter is part of a diverse fish fauna of 107 species in the Osage Basin. Although historical numbers are unknown, it is believed that the Niangua darter population has declined at most sites in recent years. Pflieger (1978) searched extensively for the species in the Osage River Basin where it was found at 64 of 168 stations sampled. Intensive analyses of habitat, abundance, and life history were made at 64 sites where the species was found. The species is rare, localized in occurrence, and vulnerable to extinction.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments) set forth the procedures for adding species to the Federal lists. A species shall be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to the Niangua darter (*Etheostoma nianguae*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Reservoir construction, siltation, and stream channelization are threats to the Niangua darter. One of the eight populations of Niangua darters reported by Pflieger (1978) has been extirpated. The Truman reservoir has inundated all of the known distribution of the species in Little Pomme de Terre River and repeated sampling has failed to collect any Niangua darters. The reservior also presents a barrier to the movement of the species between habitable tributary streams. Such movements are important to the long-term survival of the species. Stream channelization projects, often associated with highway and bridge construction, straighten and widen stream channels and frequently cause increased erosion and siltation. landowners channelize streams to control local flooding. These practices, leading to sedimentation and pollution, are general and pervasive throughout the range of the Niangua darter and represent a major threat to the species. In addition to stream channelization, the practice of removing woody vegetation from stream channels causes increased erosion changes in the character of the stream substrate, elimination of pools, and the alteration of stream flow which seriously disrupts the stream ecosystem.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no indication that the Niangua darter is overutilized for any of these purposes.

C. *Disease or predation.* Although disease is not known to be a factor affecting the species, the introduction of piscivorous fishes could be detrimental to the Niangua darter. The spotted bass (*Micropterus punctulatus*) and rock bass (*Ambloplites rupestris*) were introduced into the Osage Basin before 1940 and are now widely distributed. Reservoir habitat is ideal for these predators and serves as large population centers. The movement of these predatory fishes from reservoirs into tributary streams inhabitated by the Niangua darter could further reduce the darter population.

D. *The inadequacy of existing regulatory mechanisms.* Current regulations protecting the Niangua darter are limited to the State of Missouri's collecting permit requirements for fishes. At present, there is no mechanism for habitat protection. The Endangered Species Act will provide protection for the species and its habitat through the requirements of Sections 7 and 9.

E. *Other natural or manmade factors affecting its continued existence.* None are known.

The Service has carefully assessed the best scientific information available, rgarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the proposed action is to list the Niangua darter as threatened. The range and numbers of this species have been reduced substantially and alteration of its habitat (e.g., stream channelization, siltation and pollution) continues. Proper and adequate management could prevent the species from becoming endangered. Recent status information has provided essential habitat data and indicates overcollecting is not a major threat. Hence, it appears prudent to propose critical habitat. A decision to take no action would exlude the Niangua darter from needed protection available under the Endangered Species Act.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act and at 50 CFR part 424, means: (i) The specific areas within the geographical area occupied by the Species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

The Act in Section 4(a)(3) requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. The proposed critical habitat for the Niangua darter includes 90 of the 128 miles of streams inhabited by the species plus a 50 foot riparian zone along each side of the 90 miles of stream. The critical habitat is located in Camden, Dallas, Greene, Hickory, Miller, Osage, and St. Clair Counties, Missouri. The 50 foot riparian zone along each side of the stream is included in the critical habitat designation to protect the chemical and physical properties of the stream ecosystem. The riparian zone is helpful in preventing runoff pollutents from entering the stream and reduces siltation. The vegetation in the riparian zone provides shading to the stream which helps stabilize the water temperature and dissolve oxygen levels. The proposed critical habitat is based primarily on the recommendation of the Missouri Department of Conservation.

In considering designation of critical habitat, 50 CFR 424.12(b) requires consideration of the biological or physical constituent elements within the define area that are essential to the conservation of the species involved. With respect to the Niangua darter, the stream reaches proposed as critical habitat satisfy all known criteria for the ecological, behavioral, and physiological requirements of the species. The streams are largely undisturbed and possess the habitat characteristics described for the Niangua darter by Pflieger (1978). Populations of the fish survive and reproduce within the areas proposed as critical habitat.

Section 4(b)(8) of the Act requires, for any proposal or final regulation which determines critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat if undertaken, or may be affected by such designation. In the case of the Niangua darter, such activities could include reservior construction, stream channelization, removal of stream channel vegetation, erosion, sedimentation, and nutrient enrichment from adjoining land, sewage discharge, and introduction of nonnative fishes which are predators or competitors of the species.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of specifying a particular area as critical habitat. The Service will reevaluate the geographical critical habitat designation at the time of the final rule after considering all additional information obtained. The Service is requesting Federal, State, and local government entities within the range of the species to submit information on economic or other impacts of the proposed measure. No activities involving Federal agencies are presently known that may have an impact on the habitat of the Niangua darter.

It should be emphasized that critical habitat designation does not necessarily affect all Federal activities. If appropriate, the impacts will be addressed during consultation with the Service as required by Section 7(a)(2) of the Endangered Species Act of 1973, as amended.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act requires that recovery actions be carried out for all listed species and these are initiated by the Service following listing. The Section 7 responsibilities of Federal agencies and the Act's general prohibitions are discussed in part below.

Subsections 7(a) (2) and (4) of the Act, as amended, require Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. When a species is listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If an effect is expected, the Federal agency must enter into consultation with the Service. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed critical habitat.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of prohibitions and exceptions that generally apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale listed species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies. General regulations governing the issuance of permits for carrying out otherwise prohibited activities involving threatened species under certain circumstances are set out at 50 CFR 17.32.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has discretion under Section 4(d) of the Act to issue such special regulations as are necessary and advisable for the

conservation of a threatened species. The Niangua darter is threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species or by commercialization. Given this fact and the fact that the State regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collection permit system is more than adequate to protect the species from excessive taking, so long as such takes are limited to: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, the special rule allows takes to occur for the above-stated purposes without the need for a Federal permit if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule, all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory proposal is necessary and advisable for the conservation of the Niangua darter.

Public Comments Solicited

The Service intends that the rules finally adopted will be as accurate and as effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interest, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

1. Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the species included in this proposal;

2. The location of and the reason why any habitat of this species should or should not be determined to be critical habitat as provided for by Section 4 of the Act;

3. Additional information concerning the range and distribution of this species; and

4. Current or planned activities in the subject area and their possible impacts on the Niangua darter and its proposed critical habitat.

Final promulgation of regulations on the Niangua darter will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to James M. Engel (see **ADDRESSES** section).

National Environmental Policy Act

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

References

Deacon, J. E., G. Kobetich, J. D. Williams, and S. Contreras. 1979. Fishes of North America—endangered, threatened, or of special concern: 1979. Fisheries 4(2):29–44.

Gilbert, C. H. 1888. Descriptions of new and little known etheostomids. Proc. U.S. Nat. Mus. 10:47–64.

Missouri Department of Conservation. 1974. Rare and endangered species of Missouri. 80 pp.

Pflieger, W. L. 1971. A distributional study of Missouri fishes. Mus. Nat. Hist., Univ. Kansas, Publ. 20(3):229–570.

Pflieger, W. L. 1975. The fishes of Missouri. Missouri Dept. of Conservation. 342 pp.

Pflieger, W. L. 1978. Distribution, status, and life history of the Niangua darter, *Etheostoma nianguae*. Aquatic Ser. No. 16. Missouri Dept. of Conservation. 24 pp.

Author

The primary author of this proposed rule is Mr. John G. Sidle, Endangered Species Office, U.S. Fish and Wildlife Service, Federal Building, Ft. Snelling, Twin Cities, Minnesota 55111.

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.11(h) by adding, in alphabetical order, the following to the List of Endangered and Threatened Wildlife under "Fishes."

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* Fishes	*	*	*	*	*		*
Darter, Niangua	*Etheostoma nianguae.*	U.S.A. (MO)	Entire	T		17.95(e)	17.44( )
*	*	*	*	*	*		*

3. It is further proposed that 50 CFR 17.44 (special rules) be amended by adding a new paragraph as follows:

§ 17.44 Special rules—fishes.

* * * * *

( ) Niangua Darter, *Etheostoma nianguae.*

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: education purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws of regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (1) through (3) above.

* * * * *

4. It is further proposed to amend § 17.95(e) for "Fishes," by adding critical habitat for the Niangua darter as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

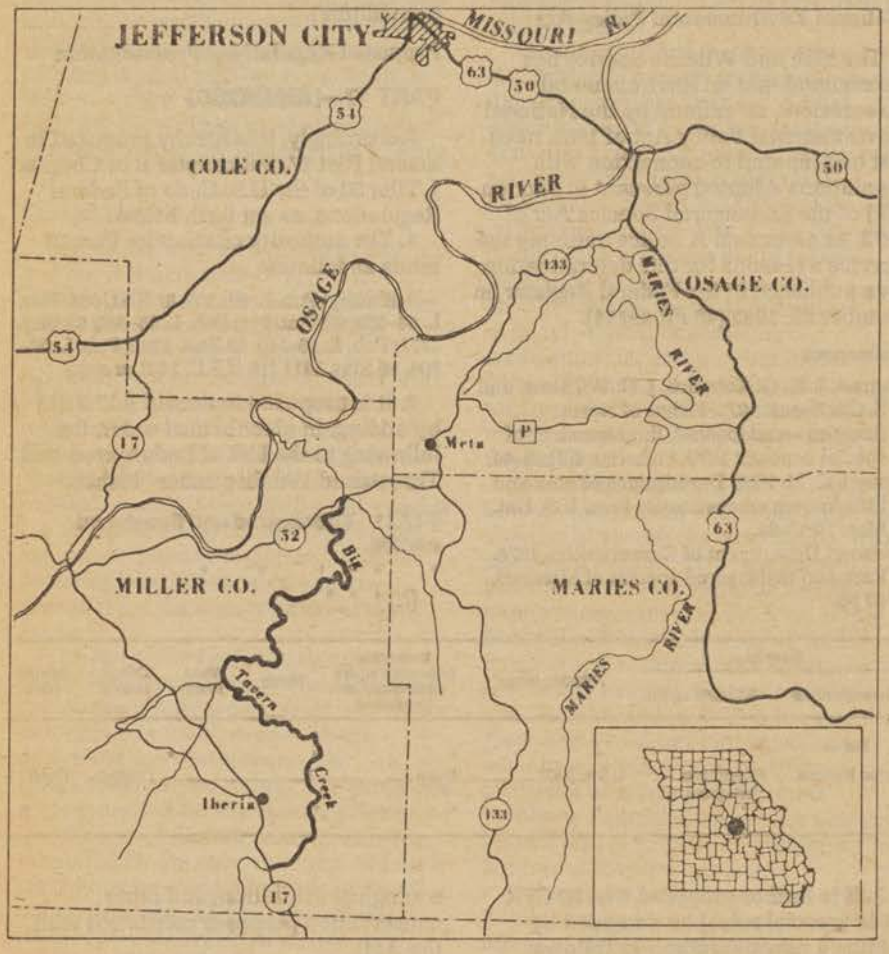
Niangua darter, *Etheostoma nianguae.*

Big Tavern Creek, Miller County, Missouri. Big Tavern Creek and 50 feet along each side of the creek from highway 52 upstream to Highway 17.

Constituent elements consist of medium sized creeks with silt free pools and riffles and moderately clear water draining hilly areas underlain by chert and dolomite. Water ranges from 8 to 46 inches in depth over gravel with scattered rubble.

NIANGUA DARTER

Miller County, MISSOURI



* * * * *

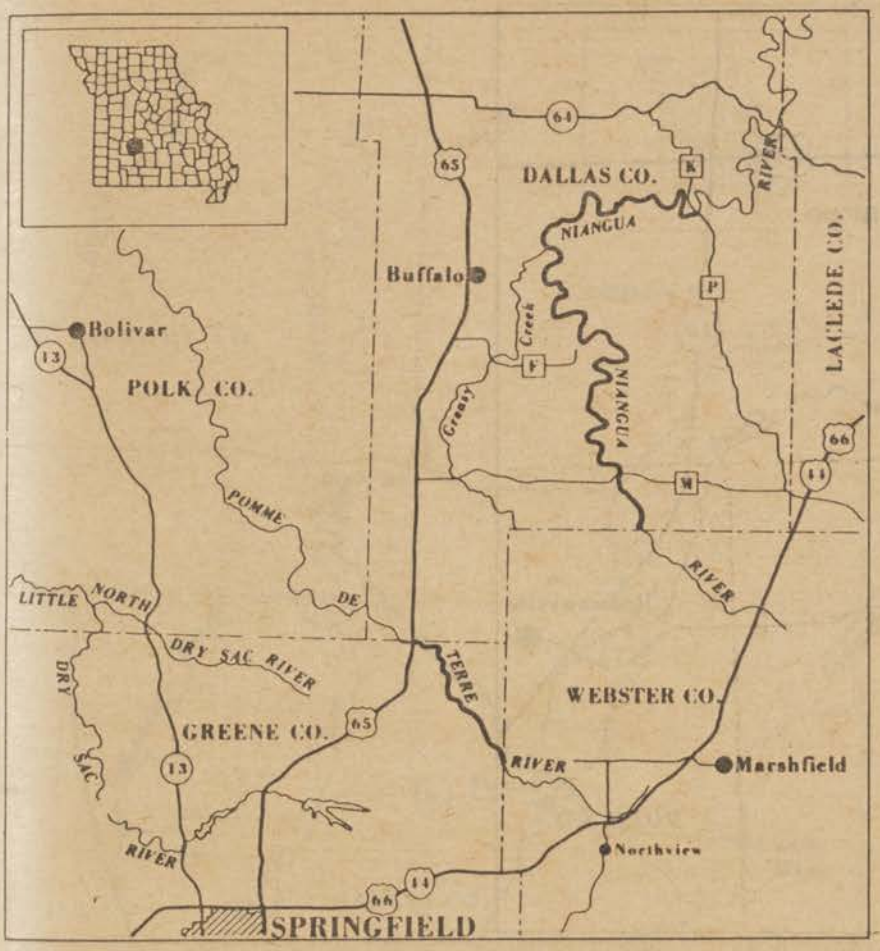
Niangua River, Dallas County, Missouri. Niangua River and 50 feet on each side of the river from county road K upstream to 1 mile beyond county road M to the Webster County line.

Pomme de Terre River, Greene County, Missouri. Pomme de Terre River and 50 feet on each side of the river from Highway 65 upstream to boundary of Greene and Webster County.

Constitutent elements consist of medium sized creeks with silt free pools and riffles and moderately clear water draining hilly areas underlain by chert and dolomite. Water ranges from 8 to 46 inches in depth over gravel with scattered rubble.

NIANGUA DARTER

Dallas and Greene Counties, MISSOURI



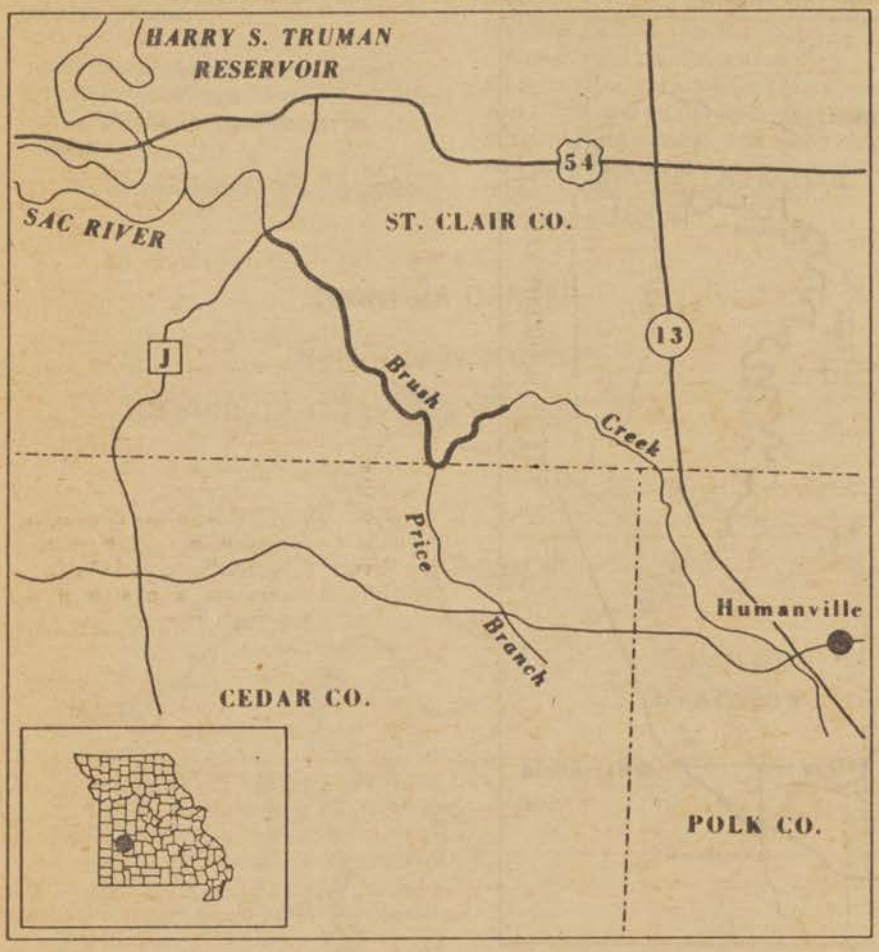
* * * * *

Brush Creek in Cedar, and St. Clair Counites, Missouri. Brush Creek and 50 feet on each side of the creek from county road J upstream to the boundary of Sections 34 and 35, Township 36 N, Range 25 W.

Constituent elements consist of medium sized creeks with silt free pools and riffles and moderately clear water draining hilly areas underlain by chert and dolomite. Water ranges from 8 to 46 inches in depth over gravel with scattered rubble.

NIANGUA DARTER

Cedar and St. Clair Counties, MISSOURI



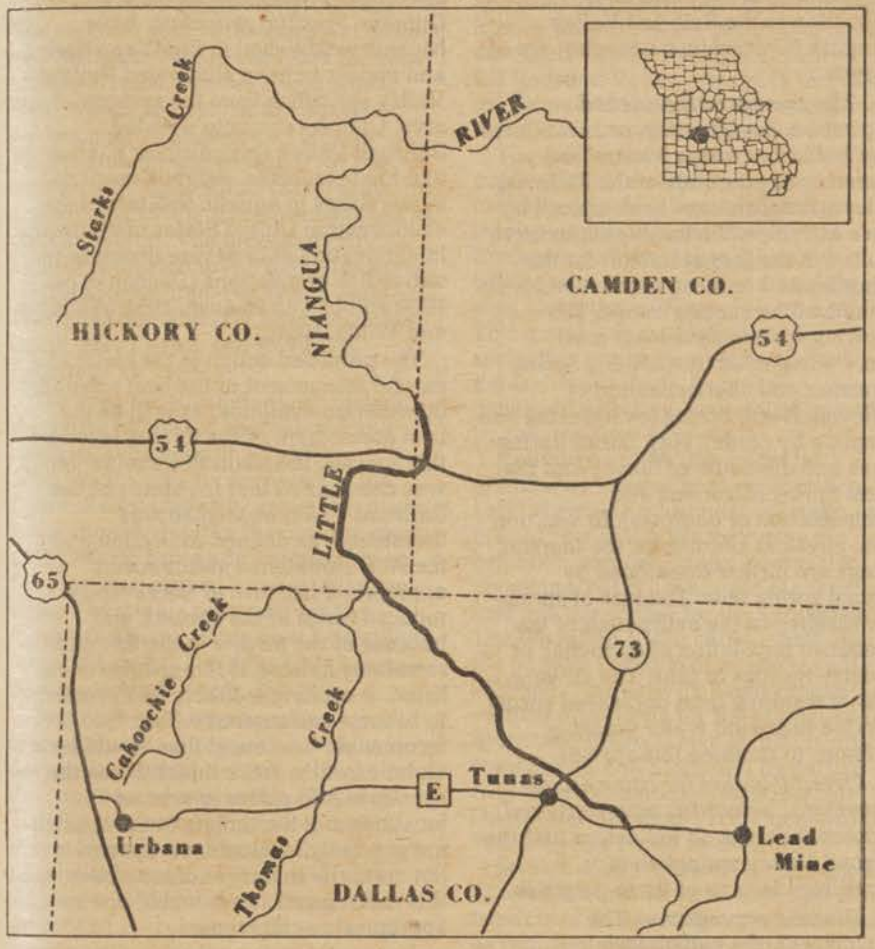
* * * * *

Little Niangua River, Camden, Dallas, and Hickory Counties, Missouri. Little Niangua River and 50 feet on each side of the river from 1 mile below (downstream of) Highway 54, Camden County, upstream to county road E, Dallas County.

Constituent elements consist of medium sized creeks with silt free pools and riffles and moderately clear water draining hilly areas underlain by chert and dolomite. Water ranges from 8 to 46 inches in depth over gravel with scattered rubble.

NIANGUA DARTER

Camden, Dallas and Hickory Counties, MISSOURI



* * * * *

Dated: April 9, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-10239 Filed 4-16-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status and Critical Habitat for the Railroad Valley Springfish, Crenichthys Nevadae

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Railroad Valley springfish (*Crenichthys nevadae*) to be a threatened species with critical habitat. A special rule is proposed which would allow take for certain purposes in accordance with Nevada State laws and regulations. This action is being taken because suitable habitat for this species has decreased since its discovery and the publication of the original description of *Crenichthys nevadae* in 1932. Primary threats to the species include the presence of exotic fishes, habitat alterations and gound water depletion in the Railroad Valley basin. The Railroad Valley springfish occurs only in thermal springs located in Railroad Valley, northeastern Nye County, Nevada. Critical habitat is included with this proposed rule. The proposed action would provide protection to wild populations of this species. Comments and information are sought from all interested parties.

DATES: Comments from all interested parties must be received by June 18, 1984. Public hearing requests must be received by June 1, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Don Sada, U.S. Fish and Wildlife Service, Great Basin Complex, 4600 Kietzke Lane, Building C, Reno, Nevada 89502 (702/784-5227 or FTS 470-5227).

SUPPLEMENTARY INFORMATION:

Background

Hubbs (1932) described the genus *Crenichthys* and the species *nevadae* based on specimens collected from thermal springs in the Duckwater area of Railroad Valley in central Nevada. Since Hubbs described the genus *Crenichthys*, a second species, *C. baileyi* from the White River of eastern Nevada, has been placed in the genus (La Rivers, 1962; Williams and Wilde, 1981). Thus, *Crenichthys* consists of two species confined to separate valleys in central and eastern Nevada.

Railroad Valley springfish are native to four thermal springs near Lockes Ranch (Big, North, Hay Corral, Reynolds) and two thermal springs on the Duckwater Shoshone Indian Reservation (Big Warm and Little Warm), all in Railroad Valley, Nye County, Nevada. Additionally, the species has been introduced into Chimney Springs approximately 6 miles south of Lockes Ranch, and into a seepage area which forms small thermal ponds at Sodaville in Mineral County, Nevada. In these springs, it inhabits the springpools, their outflow, and the adjacent marshy areas.

The long term threat to the Railroad Valley springfish is the alteration of its thermal spring habitat and the introduction of exotic organisms, especially fishes. Most of the springs historically inhabited by the Railroad Valley springfish have been altered by man's activities and springfish populations have decreased in all habitats throughout its range. Diking of springpools, diversion of outflows, and channelization of outflow creeks have reduced suitable habitat for the Railroad Valley springfish at Big, Hay Corral, and Big Warm Springs. North Spring has been impacted by overgrazing cattle on adjacent range land by removing the vegetation causing the area adjacent to the spring to become silty. The area was also trampled by the large number of cattle watering in the spring. The thermal spring habitat of the Railroad Valley springfish is further threatened

by pumping of underground aquifers, which may result in spring failures. The threat of reduced spring flows was realized during 1981 when the habitat of the introduced population at Chimney Springs was lost after the spring flows ceased. Efforts are presently being made to reestablish a population in Chimney Springs. Several other springs to the south of Lockes Ranch also failed during 1981. The adverse effects of ground water pumping of the Railroad Valley springfish continues to threaten this species.

The presence of exotic fishes in the extremely limited habitat of the Railroad Valley springfish represents a serious threat to this species. Guppies, *Poecilia reticulata*, have become established in Big Warm Spring and appear to have eliminated springfish from the main springpool area. The development of the outflow of Big Warm Spring as a catfish farm has almost eliminated the remainder of the population. The presence of guppies and channel catfish in Big Warm Spring greatly increases the possibility that these species will be introduced into nearby Little Warm Spring. The release of largemouth bass into springs inhabited by the Railroad Valley springfish has been considered in the past but no introduction was made.

On December 30, 1982, the Service published a Notice of Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58453–58460). The Railroad Valley springfish was included in the review as a category 1 taxon indicating that the Service has substantial information on hand to support the proposal of this fish for protection under provisions of the Endangered Species Act. On April 12, 1983, the Service was petitioned by the Desert Fishes Council to list the Railroad Valley springfish. The Service reviewed and evaluated the petition and determined that it did present substantial information that the petitioned action might be warranted. The notice of finding for this petition was published in the **Federal Register** on June 14, 1983 (48 FR 27273–27274). This proposed rule represents the Service's finding that the petitioned action is warranted in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Railroad Valley springfish (*Crenichthys nevadae*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Most of the thermal spring habitats of the Railroad Valley springfish have been altered by man's activities. These alterations have resulted in the loss of habitat for the springfish and reduced population levels throughout the species' range. The following springs have been most severely impacted by man: Big Spring (diversion and channelization of outflows), North Spring (overgrazing and trampling by cattle), Hay Corral Spring (dikes and diversion of flows), and Big Warm Spring (diversion and channelization of outflows). In addition to the physical alterations, the thermal springs are further threatened by reduced spring flow. The loss of spring flow resulted in the extirpation of the introduced population of springfish in Chimney Springs in 1981. The adverse impacts resulting from decreased spring flow due to ground water pumping continues to threaten this species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no indication that the Railroad Valley springfish is overutilized for any of these purposes.

C. *Disease or predation.* The development of a catfish farming operation at Big Warm Spring in 1982 has drastically altered Railroad Valley springfish habitat. The loss of habitat associated with construction of this project was a significant threat, but the introduction of channel catfish, *Ictalurus punctatus*, was an even greater threat to the springfish. Operation of a catfish farm adjacent to Big Warm Spring will permit the predacious channel catfish to become established in the spring and its outflow. This could result in the total loss of Railroad Valley springfish in Big Warm Spring. A natural barrier, a waterfall, prevents the movement of channel catfish from Big Warm Spring into Little Warm Spring which is located approximately 1 mile away.

D. *The inadequancy of existing regulatory mechanisms.* The State of Nevada lists the Railroad Valley springfish as a protected species. This classification by the Nevada Department of Wildlife prohibits taking without a scientific collecting permit. However, no protection of the habitat is included in such a designation and no management or recovery plan exists for this species.

E. *Other natural or manmade factors affecting its continued existence.* Guppies, *Poecilia reticulata*, have become established in Big Warm Spring and appear to have eliminated Railroad Valley springfish from the springpool area. Guppies compete with the Railroad Valley springfish for habitat and food resources. Establishment of exotic fishes in aquatic habitats of the southwestern United States often results in elimination of or severe decrease in native fish populations (Deacon *et al.*, 1964; Hubbs and Deacon, 1964; Williams and Wilde, 1981).

The proposed action is the result of a careful assessment of the best scientific information available, as well as the best assessment of the threats faced by this species. Based on this evaluation, it was determined that the status of the Railroad Valley springfish was threatened, as defined in Section 3 of the Act. Threatened status seems appropriate because of the severely reduced range of the species, and because of the threats to the fish and its remaining habitat. If this species is not listed, it could reasonably be expected to become endangered within the foreseeable future and thus would be a violation of the Act's intent. Since the species is still extant in several locations and the threats to the species are generally localized, the species is not currently in danger of extinction and this endangered status would not be appropriate at this time.

Critical Habitat

Critical habitat as defined by Section 3 of the Act means; (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species.

The Act in Section 4(a)(3) requires that critical habitat be designated to the maximum entent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat is being proposed for the Railroad Valley springfish.

Critical habitat for the Railroad Valley springfish includes 6 springs, their outflow pools, streams and

marshes, and a 50 foot riparian zone around the springs, their outflow pools, streams, and marshes located in 2 areas of northeastern Nye County, Nevada. The riparian zone is necessary to protect and maintain the physical and chemical characteristics, such as temperature, clear water, pH, etc., of the aquatic environment. The Service believes that the riparian area is essential for the conservation of the Railroad Valley springfish and it is therefore included as critical habitat. The proposed critical habitat is located in the following areas: (1) Duckwater area: Big Warm and Little Warm Springs and (2) Lockes area: Big, North, Hay Corral, and Reynolds Springs.

The area proposed does not include the entire habitat of this species and modifications to critical habitat descriptions may be proposed in the future. Railroad Valley springfish occur in marginal habitat in the outflow creek of Big Warm Spring downstream from the proposed critical habitat. Also, no critical habitat is proposed for the introduced populations near Sodiville in Mineral County, Nevada, and Chimney Springs in Nye County, Nevada.

Section 4(b)(8) requires, for any proposed or final regulation which designates critical habitat, a brief description and evaluation of those activities (public and private) which may adversely modify such habitat or may be affected by such designation. Any activity which would lessen the amount of the minimum flow or would significantly alter the natural flow and temperature regime in the thermal springs inhabited by the Railroad Valley springfish could adversely impact its proposed critical habitat. Such activities include, but are not limited to, excessive ground water pumping, impoundment, and water diversions. Any activity which would extensively alter the channel morphology in these springs could adversely impact the proposed critical habitat. Such activities include, but are not limited to, channelization, excessive sedimentation from grazing and other watershed disturbances, impoundment, deprivation of substrate source, and riparian destruction. Any activity which would significantly alter the water chemistry in these springs could adversely impact the proposed critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into the waters at a point source or by dispersed release. The introduction, inadvertent or otherwise, of exotic predatory and competitive fishes could adversely affect the Railroad Valley springfish and could reduce or eliminate them within the proposed critical habitat.

Federal agencies which might be planning to construct, fund, authorize, or license projects in the future that could adversely impact the critical habitat of the Railroad Valley springfish include the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA).

The only known activity of BLM that might affect the proposed critical habitat of the Railroad Valley springfish is leasing of public lands near North Spring for cattle grazing. Currently, cattle graze extensively in a marshy area along the outflow of North Spring. This marshy area is inhabited by springfish where they are subjected to excessive silt loads, trampling, increased turbidity, and water pollution by the presence of cattle.

Activities of BIA that might be affected by the designation of critical habitat include additional utilization of the outflow of Big Warm Spring for irrigation purpose by the Duckwater Shoshone Tribe. This could render these habitats unsuitable for the springfish. The operation of the catfish farm along the outflow of Big Warm Spring could be affected. This activity could render the outflow unsuitable for the springfish by decreased flows, water pollution, and competition and predation by catfish. Any future activities of BIA and the Duckwater Shoshone Tribe to alter Little Warm Spring could be affected.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will reevaluate the geographic critical habitat designation prior to the issuance of a final rule, after considering all additional information obtained.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the Federal agency must enter into formal consultation with the Service under Section 7(a)(2).

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of prohibitions and exceptions that generally apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale listed species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies. General regulations governing the issuance of permits for carrying out otherwise prohibited activities involving threatened species under certain circumstances are set out at 50 CFR 17.32.

The above discusson generally applies to threatened species of fish or wildlife. However, the Secretary has discretion under Section 4(d) of the Act to issue such special regulations as are necessary and advisable for the conservation of a threatened species. The springfish is threatened primarily by habitat disturbance of alteration, not by intentional, direct taking of the species or by commercialization. Given this fact and the fact that the State regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collection permit system is more than adequate to protect the species from excessive taking, so long as such takes are limited to: educational purposes, scientific purposes, the enhancement of propagation or survival

of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. Therefore, the special rule allows takes to occur for the above-stated purposes without the need for a Federal permit if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. It shoud be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory proposal is necessary and advisable for the conservation of the Railroad Valley springfish.

Public Comments Solicited

The Service intends that any final rule adopted will be as accurate and effective as possible in the conservation of each endangered or threatended species. Therefore any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, Commercial trade, or other relevant data concerning any threat (or lack thereof) to the Railroad Valley springfish;

(2) The location of any additional populations of this species and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on the Railroad Valley springfish; and

(5) Any forseeable economic and other impacts resulting from the designation of critical habitat.

Final promulgation of the regulations on the Railroad Valley springfish will take into consideration the comments any any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Service's Regional Office (see **ADDRESSES** section).

National Environmental Policy Act

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

Literature Cited

Deacon, J.E., C. Hubbs, and B.J. Zahuranec. 1964. Some effects of introducted fishes on the native fish fauna of southern Nevada. Southwestern Naturalist 12:31–44.

Hubbs. C., and J.E. Deacon. 1964. Additional introduction of tropical fishes into southern Nevada. Southwestern Naturalist 9:249–251.

Hubbs, C.L. 1932. Studies of the fishes of the order Cyprinodontes: XII. A new genus related to *Empetrichthys*. University of Michigan Museum of Zoology Occasional Papers 252:1–5.

La Rivers, I. 1962. Fishes and fisheries of Nevada. Nevada State Fish and Game Commission. 782 pp.

Williams, C.D., and J.E. Williams. In press. Distribution and status of native fishes of the Railroad and allied basins, Nevada. California-Nevada Wildlife Transactions.

Williams, C.D., and J.E., Williams. In press. Loss of an introduced population of Railroad Valley springfish, *Crenichthys nevadae* (Cyprinodonitiae). Southwestern Naturalist.

Williams, J.E., and G.R. Wilde. 1981. Taxonomic status and morphology of isolated populations of the White River springfish, *Crenichthys baileyi* (Cyprinodontidae). Southwestern Naturalist 25:485–503.

Author

The author of this rule is Mr. Don Sada, U.S. Fish and Wildlife Service, Great Basin Complex, 4600 Kietzke Lane, Building C, Reno, Nevada 89502 (702/784–5227 or FTS 470–5227).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under "Fishes" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Fishes							
Springfish, Railroad Valley.	*Crenichthys nevadae.*	U.S.A. (NV)	Entire	T		17.95(e)	17.44( )
*	*	*	*	*	*		*

3. It is further proposed to amend Title 50 CFR 17.44 by adding the following: (The position of this special rule will be determined at the time the final rule is published in the **Federal Register**.)

§ 17.44 Special rules—fishes.

* * * * *

( ) Railroad Valley springfish, *Crenichthys nevadae.*

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any

offense defined in paragraphs (1) through (3) above.

4. It is further proposed to amend § 17.95(e) by adding critical habitat of the Railroad Valley springfish as follows: (The position of this and any following critical habitat entries under § 17.95(e) will be determined at the time of publication of a final rule.)

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

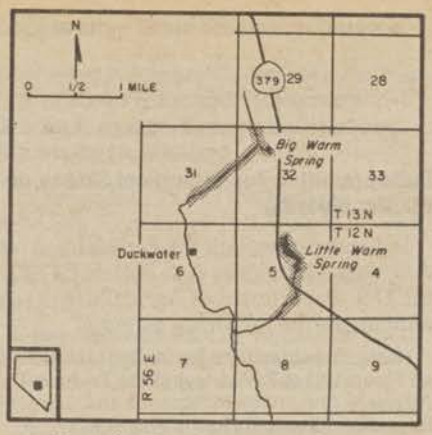
(e) *Fishes.*

* * * * *

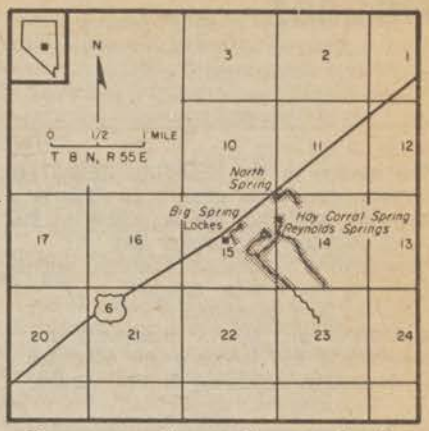
Railroad Valley springfish, *Crenichthys nevadae.*

The proposed critical habitat is located within the following two areas:

1. Nevada, Nye County, Duckwater area. Big Warm Spring and its outflow pools, streams, and marshes and a 50 foot riparian zone around the spring, outflow pools, streams, and marshes in T13N, R56E, NE ¼ Sec. 31, SE ¼ Sec. 31, NW ¼ Sec. 32. Little Warm Spring and its outflow pools, streams and marshes, and a 50 foot riparian zone around the spring, outflow pools, streams and marshes in T12N, R56E, Sec. 5.



2. Nevada, Nye County, Lockes Area. North, Hay Corral, Big, and Reynolds Springs and their outflow pools, streams and marshes, and a 50 foot riparian zone around the springs, outflow pools, streams, and marshes in T8N, R55E, SW ¼ Sec. 11, NW ¼ Sec. 14, SW ¼ Sec. 14, SE ¼ of Sec. 15, NE ¼ Sec. 15, SW ¼ Sec. 15.



Known constituent elements for the Railroad Valley springfish in all areas proposed as critical habitat include clear, unpolluted thermal spring waters ranging in temperature from 29° to 36° C in pools, flowing channels, and marshy areas with aquatic plants, insects, and mollusks.

* * * * *

Dated: April 9, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-10228 Filed 4-16-84; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 49, No. 75
Tuesday, April 17, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Subcommittee for Biological Nitrogen Fixation; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Biological Nitrogen Fixation of the Technical Advisory Committee for Science and Education Research Grants Program.

Date: April 30–May 2, 1984.

Time: 8:00 a.m. to 4:30 p.m.

Place: U.S. Department of Agriculture, Room 024 West Auditors Building, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for research in the Biological Nitrogen Fixation program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92–463.

Contact Person: Iris F. Martin, Associate Program Manager, Nitrogen Fixation Program, Competitive Research Grants Office, Office of Grants and Program Systems, Room 112, West Auditors Building, Washington, D.C. 20251.

Done at Washington, D.C., this 11th day of April 1984.

Orville G. Bentley,

Assistant Secretary, Science and Education.

[FR Doc. 84–10181 Filed 4–16–84; 8:45 am]

BILLING CODE 3410–MT–M

Subcommittee for Biological Stress on Plants; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Biological Stress on Plants (Plant Pathology) of the Technical Advisory Committee for Science and Education Research Grants Program.

Date: April 25–28, 1984.

Time: 9:00 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 024 West Auditors Building, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for research in the Biological Stress on Plants (Plant Pathology) program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Contact Person: Anne Holiday Schauer, Associate Chief, Competitive Research Grants Office, Office of Grants and Program Systems, Room 112, West Auditors Building, Washington, D.C. 20251.

Done at Washington, D.C., this 11th day of April 1984.

Orville G. Bentley,

Assistant Secretary, Science and Education.

[FR Doc. 84–10182 Filed 4–16–84; 8:45 am]

BILLING CODE 3410–MT–M

Subcommittee for Genetic Mechanisms for Crop Improvement; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Genetic Mechanisms for Crop Improvement of the Technical Advisory Committee for Science and Education Research Grants Program.

Date: May 9–12, 1984.

Time: 8:30 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 024, West Auditors Building, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for research in the Genetic Mechanisms for Crop Improvement program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Contact Person: Machi F. Dilworth, Associate Program Manager, Genetic Mechanisms Program, Competitive Reserch Grants Office, Office of Grants and Program Systems, Room 112, West Auditors Building, Washington, D.C. 20251.

Done at Washington, D.C., this 11th day of April 1984.

Orville G. Bentley,

Assistant Secretary, Science and Education.

[FR Doc. 84–10183 Filed 4–16–84; 8:45 am]

BILLING CODE 3410–MT–M

Subcommittee on Human Nutrition; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee on Human Nutrition of the Technical Advisory Committee for Science and Education Research Grants Program.

Date: May 14–16, 1984.

Time: 8:30 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 024, West Auditors Building, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for research in the Human Nutrition program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and

(6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Contact Person: Machi F. Dilworth, Acting Associate Program Manager, Human Nutrition Program, Competitive Research Grants Office, Office of Grants and Program Systems, Room 112, West Auditors Building, Washington, D.C. 20251.

Done at Washington, D.C., this 11th day of April 1984.

Orville G. Bentley,

Assistant Secretary, Science and Education.

[FR Doc. 84–10184 Filed 4–16–84; 8:45 am]

BILLING CODE 3410–MT–M

Subcommittee for Photosynthesis; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Photosynthesis of the Technical Advisory Committee for Science and Education Research Grants Program.

Date: May 22–24, 1984.

Time: 8:30 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 024 West Auditors Building, Washington, D.C.

Pupose of Subcommittee: To provide advice and recommendation concerning support for research in the Photosynthesis program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Contact Person: Olga v.H. Owens, Associate Program Manager, Photosynthesis Program, Competitive Research Grants Office, Office of Grants and Program Systems, Room 112, West Auditors Building, Washington, D.C. 20251.

Done at Washington, D.C., this 11th day of April 1984.

Orville G. Bentley,

Assistant Secretary, Science and Education.

[FR Doc. 84–10185 Filed 4–16–84; 8:45 am]

BILLING CODE 3410–MT–M

Cooperative State Research Service

Technical Advisory Committee for the Science and Education Research Grants Program, Subcommittee for Aquaculture; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Aquaculture of the Technical Advisory Committee for the Science and Education Research Grants Program.

Date: May 16, 17, and 18, 1984.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 023, West Auditors Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: Howard S. Teague, Principal Nonruminant Nutritionist, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20251, telephone (202) 447–3847.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Aquaculture.

Agenda

To review and evaluate research proposals and projects as part of the election process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Done at Washington, D.C., this 12th day of April 1984.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 84–10234 Filed 4–16–84; 8:45 am]

BILLING CODE 3410–22–M

Technical Advisory Committee for the Science and Education Research Grants Program; Subcommittee for Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis, and Other Diseases and Parasites; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis, and Other Diseases and Parasites of the Technical Advisory Committee for the Science and Education Research Grants Program.

Date: May 8, 9, and 10, 1984.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 217, West Auditors Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: Earl J. Splitter, Principal Veterinarian, Cooperative State Research Service, United States Department of Agriculture. Washington, D.C. 20251, telephone (202) 447–5007.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis, and Other Diseases and Parasites.

Agenda

To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Done at Washington, D.C., this 12th day of April 1984.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 84–10231 Filed 4–16–84; 8:45 am]

BILLING CODE 3410–22–M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Beef and Dairy Cattle Reproductive Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Beef and Dairy Cattle Reproductive Diseases of the Technical Advisory Committee for the Science and Education Research Grants Program.

Date: May 9, 10, and 11, 1984.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 023, West Auditors Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: Howard S. Teague, Principal Nonruminant Nutritionist, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20251, telephone (202) 447–3947.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Beef and Dairy Cattle Reproductive Diseases.

Agenda

To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Done at Washington, D.C., this 12th day of April 1984.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 84–10232 Filed 4–6–84; 8:45 am]

BILLING CODE 3410–22–M

Technical Advisory Committee for the Sciences and Education Research Grants Program, Subcommittee for Beef and Dairy Cattle Respiratory Diseases; Meeting

In accordance with Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Beef and Dairy Cattle Respiratory Diseases of the Technical Advisory Committee for the Sciences and Education Research Grants Program.

Date: May 23, 24, and 25, 1984.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 206, West Auditors Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: Howard S. Teague, Principal Nonruminant Nutritionist, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20251, telephone (202) 447–3847.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Beef and Dairy Cattle Respiratory Diseases.

Agenda

To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Done at Washington, D.C., this 12th day of April 1984.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 84–10235 Filed 4–16–84; 8:45 am]

BILLING CODE 3410–22–M

Technical Advisory Committee for the Science and Education Research Grants Program, Subcommittee for Poultry and Horse Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Poultry and Horse Diseases of the Technical Advisory Committee for the Science and Education Research Grants Program.

Date: May 1, 2, and 3, 1984.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 217, West Auditors Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: Earl J. Splitter, Principal Veterinarian, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20251, telephone (202) 447–5007.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Poultry and Horse Diseases.

Agenda

To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Done at Washington, D.C., this 12th day of April 1984.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 84–10230 Filed 4–16–84; 8:45 am]

BILLING CODE 3410–22–M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Soybean Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, October 6, 1972, 86 Stat. 770–776), the United States Department of Agriculture announces the following closed meeting:

Name: Subcommittee for Soybean Research of the Technical Advisory Committee for Science and Education Research Grants Program.

Date and time: June 5 and 6, 1984, Tuesday—8:30 a.m. to 5:00 p.m.; Wednesday—8:30 a.m. to 5:00 p.m.

Place: United States Department of Agriculture, Room 024, West Auditor's Building, 15th Street and Independence Avenue, Washington, D.C.

Type of meeting: Closed to the public.

Contact Person: Charles B. Rumburg, Principal Agronomist, Manager, Soybean Special Grants Program, United States Department of Agriculture, Room 219, West Auditor's Building, Washington, D.C. 20251, Telephone: (202) 447–6074.

Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Soybean Research Program.

Agenda

To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

April 12, 1984.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 84–10236 Filed 4–16–84; 8:45 am]

BILLING CODE 3410–22–M

Technical Advisory Committee for the Science and Education Research Grants Program, Subcommittee for Swine and Sheep Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Swine and Sheep Diseases of the Technical Advisory Committee for the Science and Education Research Grants Program.

Date: May 15, 16, and 17, 1984.

Time: 8:30 a.m. to 5:30 p.m.

Place: Room 217, West Auditors Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, D.C. 20251.

Type of meeting: Closed.

Contact person: Earl J. Splitter, Principal Veterinarian, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20251, telephone (202) 447–5007.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Swine and Sheep Diseases.

Agenda

To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Done at Washington, D.C., this 12th day of April 1984.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 84-10238 Filed 4-16-84; 8:45 am]

BILLING CODE 3410-22-M

Soil Conservation Service

North Powder River Watershed Project, Oregon; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the North Powder River Watershed Project, Baker County, Oregon.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1220 SW. Third Ave., 16th Floor, Portland Oregon 97204, telephone 503–221–2751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the portion of the project covered by this FONSI will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jack P. Kanalz, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this portion of the project.

The project, modified to exclude the dam, concerns a plan for an irrigation distribution system. The planned works of improvement include the installation of irrigation diversion structures, and gravity pressure pipeline systems. The distribution system increment of the plan is feasible on its own.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jack P. Kanalz.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Jack P. Kanalz,

State Conservationist.

April 3, 1984.

[FR Doc. 84-10227 Filed 4-16-84; 8:45 am]

BILLING CODE 3410-16-M

Malone Memorial Park Critical Area Treatment, RC&D Measure, New York; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National evnironmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, givies notice that an environmental impact statement is not being preapred for the Malone Memorial Park Critical Area Treatment RC&D Measure, Franklin County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone: (315) 423–5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns a plan for reducing critical erosion in Malone Memorial Park due to surface water runoff and heavy pedestrian use of sensitive areas. The amount of sediment entering the adjacent Branch Brook and Park Pond will be reduced through the installation of project measures. The planned works of improvement include the installation of two drop box culverts outletting into an underground outlet, installation of timber curbing to reduce erosion of the dam on Park Pond, and seeding, reshaping, and stabilization of an eroding bank.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance program No. 10.901, Resource Conservation and Development Program. Office of

Management and Budget Circular A-95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: April 4, 1984.

Robert J. Klumpe,

Acting State Conservationist.

[FR Doc. 84-10089 Filed 4-16-84; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held May 2, 1984, 9:30 a.m., Herbert C. Hoover Building, Room 1851, 14th Street and Constitution Avenue, NW., Washington, D.C. The Subcommittee will continue to its conclusion on May 3, in Room 3407, Herbert C. Hoover Building. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to: (1) Maintenance of the processor performance tables and further investigation of total systems performance; and (2) investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The Subcommittee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information contact Mrs. Margaret A. Cornejo, (202) 377-2583.

Dated: April 11, 1984.

Milton M. Baltas,

Director of Technical Programs Office of Export Administration.

[FR Doc. 84-10219 Filed 4-16-84; 8:45 am]

BILLING CODE 5510-DT-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265, as amended), will hold a public meeting to allow the shrimp and stone crab industries of Pasco, Hernando, Citrus and neighboring counties to nominate members to serve on Ad Hoc Advisory Panels to advise the Council in resolving a gear conflict.

DATES: The meeting will be convened at 11:00 a.m. on Wednesday, April 18, 1984, and will adjourn at approximately 4:30 p.m.

ADDRESS: The meeting will take place at St. Benedict's Church, Rt. 1, Box 1000, Homosassa, Florida.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228-2815.

Dated: April 12, 1984.

Roland Finch, Director,

Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-10286 Filed 4-16-84; 8:45 am]

BILLING CODE 3510-22-M

New England and Mid-Atlantic Fishery Management Councils; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The New England and Mid-Atlantic Fishery Management Councils, will meet jointly in Newport, RI, on May 10-11, 1984, to discuss foreign fishing/joint ventures, groundfish, budget matters, enforcement, striped bass, and other fishery management and administrative matters.

The New England Council will meet separately in Newport RI, on the morning of May 10, 1984, to discuss groundfish, swordfish, surf clams, striped bass, scallops and other fishery management and administrative matters.

The Mid-Atlantic Council also will meet separately in Newport RI, on the morning of May 10, 1984, to discuss sea scallops, Surf Clam/Ocean Quahog FMP Amendment #4, joint ventures, status of fishery management plans, and other fishery management and administrative matters. The Council may go into closed session to discuss personnel and/or national security matters.

Committee meetings for both the New England and Mid-Atlantic Council will be scheduled in Newport, RI, on May 9, 1984. These meetings will be announced at the Council offices.

Detailed agendas for the meetings will be available to the public around April 27. All meetings are open to the public. For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906; telephone (617) 231-0422 or John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115—Federal Building, 300 South New Street, Dover, DE 19901; telephone (302) 674-2331.

Dated: April 12, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-10287 Filed 4-16-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Charges for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

April 12, 1984.

On April 2, 1984 a notice was published in the **Federal Register** (49 FR 13065) which established a restraint limit of 286,492 pounds for other man-made fiber yarn, wholly of non-continuous filament in Category 604, produced or manufactured in Indonesia and exported during the period which began on December 29, 1983 and extends through June 30, 1984 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, the level for that period has filled and no further entries are being permitted in this category.

The purpose of this notice is to advise the public that, in reviewing the imports charged to the limit for this category, the Committee for the Implementation of Textile Agreements (CITA), has discovered that the charges for imports against this limit should be 235,268

pounds. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to adjust the import charges made to the prorated limit established in the directive of March 28, 1984 to reflect charges in the amount of 235,268 pounds for the period which began on December 29, 1983 and extended through March 30, 1984. As the data become available, further charges will be made to account for the period which began on April 1, 1984.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements,

Commissioner of Customs, Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Textile Agreement of October 13 and November 9, 1982 between the Governments of the United States and the Republic of Indonesia, I request that, effective on April 18, 1984, you adjust the charges made to the level of restraint established for Category 604 in the directive of March 28, 1984 to 235,268 pounds. These charges are for the period which began on December 29, 1983 and extended through March 30, 1984.

The action taken with respect to the Government of the Republic of Indonesia and with respect to imports of man-made fiber textile products from Indonesia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-10220 Filed 4-16-84; 8:45 am]

BILLING CODE 3510-DR-M

Announcing an Import Restraint Level for Certain Wool Textile Products Exported From the Dominican Republic

On February 14, 1984, a notice was published in the **Federal Register** (48 FR 5651) announcing that, on January 31, 1984, the United States Government, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), had requested that the Government of the Dominican Republic enter into consultations concerning exports to the United States of women's, girls', and infants' wool sweaters in Category 446, produced or manufactured in the Dominican Republic.

The United States Government has decided, pending further consultations with the Government of the Dominican Republic to reach a mutually satisfactory solution concerning this category, to control imports of wool textile products in Category 446, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 31, 1984 and extends through January 30, 1985 at a level of 19,550 dozen.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of wool textile products in Category 446 exported during the twelve-month period which began on January 31, 1984 in excess of the designated level of restraint.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the Dominican Republic, further notice will be published in the **Federal Register.**

Effective Date: April 18, 1984.

For Further Information Contact: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C., (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

April 12, 1984.

Committee for the Implementation of Textile Agreements,

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1983; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 18, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 446, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 31, 1984, in excess of 19,500 dozen.[1]

Wool textile products in Category 446 which have been exported to the United States prior to January 31, 1984 shall not be subject to this directive.

Wool textile products in Category 446 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

This action taken with respect to the Government of the Dominican Republic and with respect to imports of wool textile products from the Domician Republic has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-10222 Filed 4-16-84; 8:45 am]

BILLING CODE 3510-DR

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Advisory Committees

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Department of Defense Advisory Committees listed below have been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law.

Office of the Secretary of Defense

Advisory Group on Electron Devices
Board of Visitors, Defense Systems Management College
Defense Advisory Committee on Military Personnel Testing

[1] The level of restraint has not been adjusted to reflect any imports exported after January 30, 1984. February charges have amounted to zero.

Defense Advisory Committee on Women in the Services
Defense Science Board
DoD Wage Committee

Organization of the Joint Chiefs of Staff

Board of Visitors, National Defense University
Scientific Advisory Group for the Joint Strategic Target Planning Staff

Army

Armed Forces Epidemiological Board
Army Advisory Panel on ROTC Affairs
Army Science Board
Command and General Staff College Advisory Committee
Department of the Army Historical Advisory Committee
Environmental Advisory Board, Chief of Engineers
Scientific Advisory Board, Armed Forces Institute of Pathology
U.S. Army Medical Research and Development Advisory Committee

Navy

Academic Advisory Board to the Superintendent, U.S. Naval Academy
Board of Advisors to the President, Naval War College
Board of Advisors to the Superintendent, Naval Postgraduate School
Chief of Naval Operations Executive Panel Advisory Committee
Naval Research Advisory Committee
Navy Resale System Advisory Committee
Secretary of the Navy's Advisory Board on Education and Training
Secretary of the Navy's Advisory Committee on Naval History

Air Force

Advisory Committee on the Air Force Historical Program
Air University Board of Visitors
Community College of the Air Force Advisory Committee
USAF Scientific Advisory Board
Defense Nuclear Agency
Scientific Advisory Group on Effects
Defense Intelligence Agency
Defense Intelligence Agency Advisory Committee
Defense Communications Agency
Defense Communications Agency Scientific Advisory Group
Defense Mapping Agency
Defense Mapping Agency Advisory Committee on Mapping, Charting, and Geodesy (MC&G)
National Security Agency
National Security Agency Advisory Board
Public Cryptography Advisory Committee (PCAC)

Dated: April 12, 1984.

M. S. Healy,

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

[FR Doc. 84-10186 Filed 4-16-84; 8:45 am]

BILLING CODE 3810-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, April 25, 1984, beginning at 1:30 p.m. in the Constitution/Independence Room of the Philadelphia Centre Hotel, 1725 Kennedy Boulevard, Philadelphia, Pennsylvania. The hearing will be a part of the Commission's regular business meeting, which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. in the Constitution Room.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3 Article 11, and/or Section 3.8 of the Compact:

1. *Public Service Electric and Gas Company (D-73-193 CP (Revised)).* Revision of the Hope Creek Generating Station project previously included in the Comprehensive Plan by Docket No. D-73-193 CP. The project is located on Artificial Island in Lower Alloways Creek Township, Salem County, New Jersey. The project has been modified by deleting the second unit of the previously approved two-unit nuclear power plant. The 1067mw facility will withdraw up to 49.8 million gallons per day (mgd) of cooling water from the Delaware River. Consumptive water loss through the single natural draft cooling tower will average 18.4 mgd during the June-August period. Domestic and process make-up water will be supplied by two 900 feet deep wells at an average rate of 0.6 mgd.

2. *North America Silica Company (D-83-41).* An industrial waste treatment facility at the applicant's precipitated silica production plant in the City of Chester, Delaware County, Pennsylvania. The facility will be designed for removal of suspended solids from an average waste flow of 0.41 mgd. Treated effluent will discharge to zone 4 of the Delaware River at River Mile 82.20 via a new diffuser outfall designed for rapid mixing of 85,000 lbs./day of total dissolved solids.

3. *Richard M. Morgan, Jr. (D-84-5).* A ground water withdrawal project for irrigation of the applicant's field crops in Sussex County, Delaware. Proposed combined withdrawals from two wells, designated at Nos. 1 and 2, shall not exceed 25 million gallons during any calendar month. The wells are located near the intersection of State Routes 42 and 624 near the town of Lincoln, in Sussex County, Delaware.

Documents relating to these projects may be examined at the Commission's offices and preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

April 10, 1984.

Susan M. Weisman,

Secretary.

[FR Doc. 84-10210 Filed 4-16-84; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics; Meeting

Summary: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

Date: May 3 and 4, 1984.

Address: 1200 19th Street NW., Room 823, Washington, D.C. 20208.

For Further Information Contact: John W. Christensen, Executive Director, 1200 19th Street NW., (Brown Building) Room 724-G, Washington, DC 20208. Telephone (202) 254-8227.

Supplementary Information: The Advisory Council on Education Statistics is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93-380. The Council is established to review general policies for the operation of the National Center for Education Statistics and is responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence.

The meeting of the Council is open to the public. The proposed agenda includes:

A report on education indicators.

Discussion of methodology issues related to student dropout rate and per pupil expenditures.

A report on teacher supply and demand projections, the focus is on new model development.

A report on the Vocational Education Data Systems.

A report on Integrated Postsecondary Education Data Systems.

Status reports on: Proposed evaluation study on the National Center for Education Statistics, computer literacy, cooperative ventures, and project to reduce school violence.

Such old business and new business as the chairman or membership may put before the Council.

Records are kept of all Council proceedings, and are available for public inspection at the office of the Executive Director, Advisory Council on Education Statistics, 1200 19th Street NW. (Brown Building), Room 724–G, Washington, DC 20208.

Dated: April 12, 1984.

Donald J. Sense,

Assistant Secretary for Education Research and Improvement.

[FR Doc. 84–10205 Filed 4–16–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Agency Information Collections Under Review by the Office of Management and Budget (OMB)

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) plans to request the Office of Management and Budget (OMB) to review and approve the information collection packages listed below. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), DOE will consider comments on information collections that affect the public.

DATES: Comments on these information collections must be submitted on or before April 23, 1984.

ADDRESSES: Comments should be submitted to the person listed with each collection package and to: Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget (OIRA), Room 3001, NEOB, Washington, D.C. 20503, (202) 395–7313.

FOR FURTHER INFORMATION CONTACT: Howard H. Raiken, Director, Management Systems Analysis Division (MA–213), U.S. Department of Energy, Washington, D.C. 20585, (202) 252–9383.

SUPPLEMENTARY INFORMATION:

This section of the notice covers information collection burden packages that are part of the Department of Energy Acquisition Regulations (DEAR) and that have been determined to levy an information collection and/or recordkeeping burden on ten or more members of the public. The DEAR goes into effect on April 1, 1984, superseding the Department of Energy Procurement Regulations (DOEPR) for new procurement contracts as of that date. The DEAR will thus be in effect for one half of Fiscal Year 1984 (4–1–84 to 10–1–84). Accordingly, the respondent and burden hour data is arranged to first show the data for the remainder of FY84 and then, to show annualized data for one year.

Some of the supplementary information is the same for all of these information collection packages, as follows: (1) Purpose—these information collections are required by Departmental management to assure that the Department's procurement activities, resources and requirements are managed efficiently and effectively; (2) Type of respondent—the respondents to these collections are DOE operating and management (GOCO) contractors and offsite contractors; (3) Name, address and telephone number of the DOE packages manager—Richard B. Langston, Office of Procurement Policy (MA–421.1), Department of Energy, Washington, D.C. 20585, (202) 252–8250.

The supplementary information listed below is different for each of the information collection packages. This information is listed, for each separate package, in the following order: (1) Title of information collection package; (2) Estimated number or responses in FY84 only; (3) Estimated total "burden hours" required by respondents to satisfy the information collection, including associated recordkeeping hours, in FY84 only; (4) Estimated annual number of responses; (5) Estimated annual total burden hours.

A. (1) Department of Energy Acquisition Regulations: Small Purchases and Other Simplified Purchase Procedures (DEAR 913); (2) 21,968 responses; (3) 97,857 hours; (4) 43,936 responses; (5) 195,714 hours.

B. (1) Department of Energy Acquisition Regulations: Contracting by Negotiation (DEAR 915); (2) 5,350 responses; (3) 1,901 hours; (4) 10,699 responses; (5) 3,802 hours. C. (1) Department of Energy Acquisition Regulations: Special Contracting Methods (DEAR 917); (2) 239 responses; (3) 5,823 hours; (4) 478 responses; (5) 11,645 hours.

D. Department of Energy Acquisition Regulations: Application of Labor Laws to Government Acquisitions (DEAR 922); (2) 119 responses; (3) 532 hours; (4) 237 responses; (5) 1,064 hours.

E. Department of Energy Acquisition Regulations: Bonds & Insurance (DEAR 928); (2) 25 responses; (3) 75 hours; (4) 50 responses; (5) 150 hours.

F. (1) Department of Energy Acquisition Regulations: Construction & Architect Engineer Contracts (DEAR 936); (2) 4 responses; (3) 16 hours; (4) 7 responses; (5) 32 hours.

G. (1) Department of Energy Acquisition Regulations: Termination of Contracts (DEAR 949); (2) 10 responses; (3) 200 hours; (4) 20 responses; (5) 400 hours.

H. (1) Department of Energy Acquisition Regulations: Solicitation Provisions and Contact Clauses (DEAR 952); (2) 20,568 responses; (3) 21,470 hours; (4) 41,137 responses; (5) 42,940 hours.

I

(1) Department of Energy Acquisition Regulations: DOE Operating and Management Contracts (DEAR 970); (2) 395 responses (3) 712,067 hours; (4) 790 responses; (5) 1,424,132 hours.

II

This section of the notice covers the information collection and recordkeeping burden that is levied by the Department of Energy Procurement Regulations (DOEPR). As noted above, the DOEPR will no longer be used for new procurement contracts after March 31, 1984, when it will be replaced by the DEAR. However, FY84 procurement actions let before April 1, 1984 continue to be governed by the DOEPR until they expire, are terminated or are converted to the DEAR. The associated information collection and recordkeeping burden is thus considered as a burden imposed by the DOEPR, rather than the DEAR. As a result, it is necessary for the Department to request OMB review and approval of the DOEPR-related information collections until such time as all procurement actions governed by the DOEPR have been completed.

The following supplementary information is provided regarding the DOEPR information collections: (1) Title—Department of Energy Procurement Regulations (DOEPR); (2) Purpose—the DOEPR information collections are required by Departmental management to assure that the Department's procurement activities, resources and requirements governed by the DOEPR are managed efficiently and effectively; (3) Type of

respondent—the respondents to this information collection are DOE operating and management (GOCO) contractors and offsite contractors; (4) Estimated annual number of responses—110,681 responses; (5) Estimated annual total burden hours—1,237,451 hours; (6) Name, address and telephone number of the DOE package manager: Richard B. Langston, Office of Procurement Policy (MA–421.1), Department of Energy, Washington, D.C. 20585, (202) 252–8250.

III

This section of the notice covers the Procurement information collection and recordkeeping burden which is levied by the Department but which is not covered by the Federal Acquisition Regulations (FAR), the DEAR or the DOEPR. Primarily, these information collections are levied by DOE field organizations to obtain data for local office procurement requirements and/or for special programmatic requirements. The following information is furnished concerning these information collections: (1) Title—Department of Energy Procurement: Other Procurement Collections; (2) Purpose—these information collections are required by Departmental management to assure that the Department's procurement activities, resources and requirements are managed efficiently and effectively; (3) Type of respondent—the respondents to these collections are DOE operating and management (GOCO) contractors and offsite contractors; (4) Estimated number of responses—24,480 responses; (5) Estimated total hours required to provide the information—376,248 hours; (6) Name, address and telephone number of the DOE package manager: Richard B. Langston, Office of Procurement Policy (MA–421.1), Department of Energy, Washington, D.C. 20585, (202) 252–8250.

IV

Obtaining copies of information collection proposals: A copy of these collection proposals may be obtained from William Hambley, Office of Management and Information Systems (MA–213.2), Department of Energy, Washington, D.C. 20585 (202) 252–6812.

Issued in Washington, D.C. April 12, 1984.

William S. Heffelfinger,

Director of Administration.

[FR Doc 84–10240 Filed 4–16–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP82–119–008]

Algonquin Gas Transmission Corp.; Correcting Comment Date

April 12, 1984.

Take notice that the period for filing protests and interventions in this proceeding as noticed on April 5, 1984 (49 FR 14419, April 11, 1984) is corrected to be April 20, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–10189 Filed 4–16–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–363–000]

Arizona Public Service Co.; Filing

April 12, 1984.

The filing Company submits the following:

Take notice that on April 2, 1984, Arizona Public Service Company (Arizona) tendered for filing as initial rate schedules, two Operating Letters between Arizona and the Maricopa County Municipal Water Conservation District No. 1, Electrical District No. 7 (Districts), and the Arizona Power Authority (APA), executed on February 23, 1984, and March 2, 1984.

Arizona states that these Operating Letters provide for procedures whereby the Districts can bank with Arizona, energy generated from the Hoover Dam and contracted for pursuant to the Boulder Canyon Project Act as an entitlement to the State of Arizona.

Arizona requests that these Operating Letters become effective sixty days from the date of filing.

Copies of this filing have been served upon the Districts, Arizona, and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–10245 Filed 4–16–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–358–000]

CP National Corp.; Filing

April 11, 1984.

The filing Company submits the following:

Take notice that on March 30, 1984, CP National Corporation (CPN) tendered for filing Average Cost related to Residential Purchase and Sale Agreement (Agreement between CPN and the Bonneville Power Administration (BPA)):

1. Bonneville Power Administration's written report on Appendix 1 and Average System Cost submitted November 1, 1983.

2. The Average System Cost as determined by Bonneville of 22.64 mills per kilowatt hour.

3. A revised Appendix 1 of CP National wherein the Average System Cost is 22.64 mills per kilowatt-hour.

CPN states that this agreement provides for the exchange of electric power between CPN and BPA for the benefit of CPN's residential and farm customers.

A copy of this filing was served upon BPA and Industrial Customers of BPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–10259 Filed 4–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84-364-000]

Carolina Power & Light Co.; Filing

April 12, 1984.

The filing Company submits the following:

Take notice that on April 2, 1984, Carolina Power & Light Company (CP&L) tendered for filing a Supplemental Contract dated March 19, 1984, between the Government and CP&L. The Supplemental Contract extends the termination period of the Contract between the parties dated March 10, 1983, for an indefinite period. Under the provisions of the Supplemental Contract, the March 10, 1963, Contract will continue in effect until either party has given the other party not less than six months and fifteen days advance written notice of termination.

CP&L requests that the supplement filed herewith is proposed to become effective sixty days after filing.

Copies of this filing have been served upon SEPA and the utility commissions of North Carolina and South Carolina.

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 April 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10246 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-360-000]

Central Illinois Public Service Co.; Filing

April 12, 1984.

The filing Company submits the following:

Take notice that on April 2, 1984, Central Illinois Public Service Company (CIPS) tendered for filing Revised Appendix A to the agreement for the purchase of wholesale electric energy by the City of Sullivan.

CIPS states that said Revised Appendix A modifies the scheduled, supplemental and emergency power charges under the Agreement.

CIPS requests an effective date of April 1, 1984 for the Revised Appendix A, and therefore requests waiver of the Commission's notice requirements.

A copy of the filing has been sent to the City of Sullivan and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10247 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-751-000]

Delmarva Power & Light Co.; Compliance Report

April 12, 1984.

Take notice that on March 30, 1984, Delmarva Power & Light Company (Delmarva) submitted for filing its Compliance Report pursuant to the Commission's letter order dated February 24, 1984.

Delmarva stated that is has filed with this Commission the respective revised tariff sheets and rate schedule.

Delmarva also states that it has refunded the excess revenues collected with interest through March 15, 1984.

Delmarva has filed exhibits that show for the affected customers, the monthly billing determinates and revenues under prior, present and settlement rates, the monthly revenue refund and the monthly interest computed, with a summary of such information for the total refund period.

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 April 25, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10248 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-356-000]

Dayton Power and Light Co.; Filing

April 11, 1984.

The filing Company submits the following:

Take notice that on March 30, 1984, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the City of St. Marys (St. Marys), Ohio.

DP&L states that the proposed Agreement allows St. Marys to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver to St. Marys

DP&L requests an effective date of April 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10260 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-732-000, ER82-732-001, ER83-123-000, and ER83-123-001]

Duke Power Co.; Refund Report

April 12, 1984.

Take notice that on April 2, 1984, Duke Power Company (Duke or Company) submitted for filing its refund report pursuant to Duke's Settlement

Agreement with its wholesale customers.

Duke has advised the Commission that refunds were made pursuant to the fuel clause provisions of the Settlement Agreement to those municipal and cooperative customers who are now being served under the Catawba Nuclear Station Interconnection Agreement.

Duke further states that refunds under the Settlement Agreement were made to the municipal customers in August 1983 and to the cooperative customers in December 1983.

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 April 26, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10250 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-365-000]

Empire District Electric Co.; Filing

April 12, 1984.

The filing Company submits the following:

Take notice that on April 2, 1984, Empire District Electric Company (EDE), tendered for filing a proposed Peaking Power Purchase Contract between EDE and the Kansas Electric Power Cooperative, Inc. (KEPCO).

EDE states that the proposed contract provides for the transmission of 105 Mw of peaking capacity and related energy for KEPCO by EDE beginning May 1, 1984. The charge for transmission shall be $0.927 per KW of contract demand and the energy charge shall be $0.85 per Mwh.

EDE requests an effective date of May 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Kansas Corporation Commission, the Missouri Public Service Commission and KEPCO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10251 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-362-000]

Florida Power & Light Co.; Filing

April 12, 1984.

The filing Company submits the following:

Take notice that on April 2, 1984, Florida Power & Light Company (FPL) tendered for filing two Exhibits A to its FERC Electric Tariff, First Revised Volume No. 1, for the termination of service to City of Starke, Florida at its Starke No. 1 and Starke No. 2 delivery points. In accordance with the terms of these Exhibits A, all load previously serviced at these delivery points will be transferred to a proposed new delivery point. The proposed completion date of new delivery point is on or about June 1, 1984.

The proposed effective date for these Exhibits A is June 1, 1984 to correspond to the anticipated in-service of the new delivery point.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10252 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-354-000]

GPU Service Corp.; Filing

April 11, 1984.

The filing Company submits the following:

Take notice that on March 30, 1984, GPU Service Corporation (GPU) tendered for filing Schedule 4.01, Revision 10, to the Power Pooling Agreement (GPU Power Pooling Agreement) among Pennsylvania Electric Company (Penelec), Metropolitan Edison Company (Met-Ed) and Jersey Central Power & Light Company (JC) collectively referred to as parties), dated July 21, 1969, as heretofore amended and supplemented, which is on file with the Commission under the following rate schedule designations:

Penelec—FERC No. 62
Met-Ed—FERC No. 40
JC—FERC No. 31

GPU requests that the Commission permit this schedule to become effective June 1, 1984 when corresponding change will also become effective under the Pennsylvania-New Jersey-Maryland Interconnection Agreenemt (PJM Agreement) to which the GPU Companies are Signatories.

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 accorndance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10261 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-38-000]

Gulf States Utilities Co.; Application

April 12, 1984.

On March 29, 1984, Gulf States Utilities Company (Applicant) filed an amendment to Docket No. ES82-34-000, issued March 8, 1982, authorizing the issuance of notes in an aggregate

principal amount not to exceed $800,000,000 at any one time outstanding under a loan agreement with certain banks for a term of 7.5 years. The amendment requests authorization for an extension of such previously authorized loan agreement and notes for a period not to exceed three years.

Any person desiring to be heard or to make any protest with reference to the application should on or before April 30, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10253 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-361-000]

Idaho Power Co.; Filing

April 12, 1984.

The filing Company submits the following:

Take notice that on April 2, 1984, Idaho Power Company (Idaho) 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 February, 1984, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement 28
Sierra Pacific Power Company—Supplement 26
Portland General Electric Company—Supplement 21
Montana Power Company—Supplement 25
Southern California Edison Company—Supplement 19
Los Angeles Water & Power Company—Supplement 17
City of Burbank—Supplement 17
City of Glendale—Supplement 17
City of Pasadena—Supplement 17

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10255 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-359-000]

Montana Power Co.; Filing

April 11, 1984.

The filing Company submits the following:

Take notice that on March 30, 1984, Montana Power Company (Montana) tendered for filing its proposed Rate Schedule REC-84, applicable for sales to Bighorn County Electric Cooperative, Inc. (Montana Rate Schedule FERC No. 40) and Central Montana Generation and Transmission Cooperative, Inc. (Rate Schedule FERC No. 39).

Montana states that based on the test year ending December 31, 1982, proposed Rate Schedule REC-84 would have provided it with increased revenues of $10,022,000 from sales to Bighorn and Central Montana. Montana further states that the rate increase has become necessary as a result of increasing costs including the costs of its new coal-fired generating units, Colstrip Units No. 3 and No. 4.

Montana indicates that, insofar as practicable, its cost of service study and proposed rate design for sales to Bighorn and Central Montana are consistent with the cost of service study and rate design recently submitted to the Montana Public Service Commission in connection with Montana's application for an increase in its retail electric rates. Montana has requested waiver of certain FERC regulations in order to print the application to be accepted for filing in the present time.

Montana has proposed that Rate Schedule REC-84 become effective on May 30, 1984. However, in accordance with a Settlement Agreement entered in FERC Docket No. ER83-438-000, Montana has requested that the Commission suspend the effectiveness of the proposed rates for one month, and that they be permitted to become effective after suspension on June 30, 1984.

Copies of the filing were served upon Bighorn, Central Montana and the Montana Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10262 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-73-000 et al.]

State of North Dakota et al.; Settlement

April 11, 1984.

In the matter of State of North Dakota v. Northern Natural Gas Company, Division of InterNorth, Inc. and Midwestern Gas Transmission Company; Docket No. RP83-73-000; Midwestern Gas Transmission Company; Docket Nos. G-18313, *et al.* CP70-24 and CP82-74; Northern States Power Company; Docket No. CP82-62-000; Tennessee Gas Pipeline Company; Docket No. CP82-105-000; Northern Natural Gas Company, Division of InterNorth, Inc.; Docket Nos. CP81-143-000 and CP83-143-001; Notice of Settlement.

Take notice that on March 8, 1984, Presiding Administrative Law Judge Stephen L. Grossman certified a settlement in Docket No. RP83-73-000. This settlement affects Docket Nos. G-18313, *et al.*, CP70-24, CP82-74, CP82-62-000, CP82-105-000, CP81-143-000, and CP81-143-001.

Northern States Power Company (NSP) is a gas distributor operating two discrete systems in North Dakota, Wisconsin, and Minnesota. One area is served exclusively by Midwestern Gas Transmission Company (Midwestern), a wholly-owned subsidiary of Tenneco Inc., while the other area is served exclusively by Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern). Midwestern's rates are significantly higher than those of Northern. On April 14, 1983, the State of North Dakota (North Dakota) filed a complaint alleging that the so-called "availability" provisions in the rate schedules of Northern and Midwestern under which NSP buys gas operate in a

manner that effectively precludes NSP from obtaining the lowest cost gas supply mix for both of its systems. Further, North Dakota alleged that the provisions are anticompetitive.

The Commission set North Dakota's complaint for hearing by order of August 1, 1983 (24 FERC ¶ 61,166). On February 2, 1984, Midwestern and Northern jointly filed a Stipulation and Agreement as an offer of settlement in Docket No. RP83–73–000. Under the proposed settlement:

(1) NSP would terminate its purchases from Midwestern and would become a full requirements customer of Northern, effective November 1, 1984.

(2) An off-system sale and transportation agreement with Tennessee would also terminate on November 1, 1984.

(3) Northern would increase its sales to NSP of 41,800 Mcf per day to serve the requirements of the NSP system currently supplied by Midwestern, effective November 1, 1984.

(4) No take-or-pay payments attributable to the 37,800 Mcf per day previously purchased by NSP will be included in Midwestern's rates.

Under this new arrangement, NSP customers would have the benefit of the lower-priced Northern gas. To implement this settlement, several existing certificated services would necessarily be abandoned and new transportation and sales authority would be required. These abandonments and certificates are as follows:

(1) Abandonment of sales by Midwestern to NSP under Rate Schedule CRL–2, as of November 1, 1984. These sales were authorized in Docket Nos. G–18313, *et al.*, CP70–24, and CP82–74.

(2) Abandonment of sales by NSP to Tennessee under Rate Schedule X–1. These sales were authorized in Docket No. CP82–62–000.

(3) Abandonment of exchange between Tennessee and Northern under Tennessee Rate Schedule X–64 and Northern Rate Schedule X–88. This exchange was authorized in Docket No. CP82–105–000.

(4) Abandonment of transportation by Midwestern for NSP under Midwestern's Rate Schedule T–7. This transportation was authorized in Docket No. CP82–74.

(5) Abandonment of sales by Northern to NSP under Rate Schedule PL–1.

(6) A new certificate for Northern for entitlement transfer of gas for NSP to a new delivery point under a new proposed Rate Schedule CDO–1 and an existing Rate Schedule SS–1.

(7) A new authority under Section 311(a) of the Natural Gas Policy Act for Northern to transport gas for NSP's affiliate Lake Superior District Power Company.

(8) New certificate for Midwestern to transport gas on behalf of NSP.

The Stipulation and Agreement will be treated as the filing for the requested abandonments and certificates and no separate applications will be filed.

Any person desiring to be heard or to make any protest with reference to the proposed settlement should on or before May 2, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–10266 Filed 4–16–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–310–000]

Northern Natural Gas Co., Division of InterNorth, Inc; Request Under Blanket Authorization

April 12, 1984.

Take notice that on March 20, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84–310–000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to construct a new sales tap and appurtenant facilities in Trempealeau County, Wisconsin, to accommodate natural gas deliveries to Midwest Natural Gas (Midwest) under authorization issued in Docket No. CP84–310–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that the proposed volumes would be used to serve the Trempealeau County Hot Mix Plant located within Midwest's service area. It is submitted that the estimated peak day and annual volumes required are 400 Mcf and 40,708 Mcf, respectively, and would be utilized primarily for the processing of asphalt during the summer months and would also be used as required for space heating. The estimated cost to construct the proposed facilities is $92,070.

Northern explains that the sale would be made in accordance with the Rate Schedule CD–1 of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–10256 Filed 4–16–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER 78–490–000, ER78–490–002, ER80–673–000, ER80–673–001]

Ohio Edison Co., Compliance Filings

April 12, 1984.

Take notice that on March 12, 1984, Ohio Edison Company (OPCO) submitted for filing its Compliance Report pursuant to the Commission's Opinion 170, issued June 3, 1983.

This compliance filing is to notify the Commission that there have been no transactions between Ohio Edison and OPCO that would impose any refund obligation on the part of Ohio Power Company under the above order.

Ohio Edison Company states that a copy of this compliance report has been sent to the Public Utilities Commission of Ohio and Ohio Power Company.

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 April 26, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10257 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-288-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

April 12, 1984.

Take notice that on March 8, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-288-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate a sales tap for the delivery of gas by Transcontinental Gas Pipe Line Corporation (Transco), for the account of United, to Livingston Gas and Utility Company (Livingston) under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the sales tap would be located on Transco's existing pipeline located at Section 28, Township 8 South, Range 4 East, Livingston Parish, Louisiana, where Transco would deliver volumes of gas exchanged with United to Livingston, an existing customer of United. United also states that peak day deliveries would be approximately 350 Mcf and that the gas would be used to provide service to Livingston's existing residential customers. It is further stated that the proposal would not cause an increase in Livingston's contractual maximum daily quantity nor entitlements under United's effective curtailment plan.

The tap and related facilities would be constructed by United and are expected to cost approximately $40,000.00. United states that Livingston would reimburse it for all costs incurred.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10267 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-357-000]

Utah Power & Light Co.; Filing

April 11, 1984.

The filing Company submits the following:

Take notice that on March 30, 1984, Utah Power & Light Company (Utah) tendered for filing new service agreements providing for sales under Service Schedule UTAH-1B and UTAH-1C of Volume 2 of Utah's FERC Electric Tariff, under which Utah sells and delivers non-firm energy to electric utilities. The new service agreements are with EL Paso Electric Company, El Paso, Texas.

Utah requests an effective date of March 19, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served on El Paso Electric Company and the regulatory Commissions of Utah and Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10263 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-9-000]

Valley View Energy Corp.; Application and Request for Declaratory Order

April 11, 1984.

Take notice that on March 29, 1984, Vally View Energy Corporation (VVEC) submitted for filing its Application and Request for Declaratory Order allowing VVEC to actively pursue State regulatory approval for establishment of an avoided cost rate for the purchase of energy and capacity made available from VVEC's qualifying facility.

VVEC states that they entered into negotiations to sell power to Public Service Company of Oklahoma (PSO). The parties were close to agreement concerning all terms except rates to be paid by PSO when PSO indicated that it was considering a new policy which would eliminate payments for capacity.

VVEC filed its application, Oklahoma Corporation Commission cause No. 28754, requesting the Corporation Commission of the State of Oklahoma to determine PSO's avoided energy and capacity costs, pursuant to section 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA).

A question has been raised as to the jurisdiction of the Oklahoma Corporation Commission to determine PSO's avoided costs to be applied in establishing the rate for purchase of energy and capacity from a small power production facility located outside the State of Oklahoma.

The Oklahoma Corporation Commission has adopted standards which are consistent with the Federal Energy Regulatory Commission's regulations.

Therefore, VVEC requests that the Commission issue a declaratary order allowing VVEC to actively pursue and obtain a rate for the purchase of its energy and capacity by PSO; that said rate be set by the Oklahoma Corporation Commission; and that said rate be filed with and approved by this Commission prior to its becoming effective.

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 April 18, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10264 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-355-000]

Virginia Electric Power Co.; Filing

April 11, 1984.

The filing Company submits the following:

Take notice that on March 30, 1984, Virginia Electric Power Company (VEPCO) tendered for filing proposed changes in its electric resale rate schedules presently on file with the Commission which are applicable to Rural Electric Cooperatives and Wholesale Municipalities. Based on the test period 12 months ending December 31, 1984 conditions, VEPCO estimates that the proposed changes in resale rates will decrease annual revenues from Cooperative Customers other than Old Dominion Electric Cooperative, by $67 thousand, increase annual revenues from Old Dominion Electric Cooperative by $7.6 million, and from Municipal Customers by $2.2 million. A credit for over collection of rear end nuclear fuel as it pertains to the Company's D.O.E. liability has been included in these changes in annual revenue.

VEPCO states that the increase in wholesale rates is needed to compensate the Company for the increased costs of doing business and to achieve a reasonable overall rate of return of 11.71 percent.

VEPCO requests an effective date of May 31, 1984.

Copies of this filing have been served upon all of VEPCO's jurisdictional Wholesale Customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10265 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS84-45-000, et al.]

Helen M. Adair, Trustee Under Trust Agreement Dated February 24, 1982, et al.; Applications for "Small Producer" Certificates [1]

April 12, 1984.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before April 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS84-45-000	2/27/84	Helen M. Adair, Trustee under Trust Agreement dated February 24, 1982, P.O. Box 161, Bloomfield, N. Mex. 87413.
CS84-46-000	2/27/84	Lubell Oil Co., 1033 Mayo Building, Tulsa, Okla. 74103.
CS84-47-000	2/28/84	Gulf Minerals Operating Co., 11999 Katy Freeway, Suite 250, Houston, Tex. 77079.
CS84-48-000	2/29/84	Jack M. Myers, et al., 4500 Republic Bank Tower, Dallas, Tex. 75201.
CS84-58-000	3/21/84	Patricia Penrose Schieffer, Testamentary Trust, 1640 First City Bank Tower, 201 Main St., Fort Worth, Tex. 76102.
CS84-59-000	4/2/84	Shanley Petrogas, Inc., 9400 N. Central Expressway, Suite 313, Dallas, Tex. 75217.
CS84-60-000	4/2/84	Britoil Ventures, Inc., 1300 West Belt, P.O. Box 42806, Houston, Tex., 77042.

[FR Doc. 84-10254 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-10012-004, et al.]

Val Gas Co., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

April 12, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 25, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
G-10012-004, D, Mar. 26, 1984	Val Gas Co., Post Office Box 500, San Antonio, Tex. 78292.	Trunkline Gas Co., Hidalgo Field, Hidalgo County, Tex.	(1)	
G-10354-001, Mar. 22, 1984	ARCO Oil & Gas Co., Division of Atlantic Richfield Co., Post Office Box 2819, Dallas, Tex. 75221.	Tennessee Gas Pipeline Co., Tabasco Field, Hidalgo County, Tex.	(2)	
G-15306-000, Mar. 21, 1984	Phillips Petroleum Co., 346 HS&L Building, Bartlesville, Okla. 74004.	El Paso Natural Gas Co., Phillips' Fullerton Plant, Section 17, Block A-32, PSL, Andrews County, Tex.	(3)	
G-13324-003, D, Mar. 30, 1984	Mobil Oil Corp., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	ANR Pipeline Co. (formerly Michigan Wisconsin Pipeline Co.), Mocane-Laverne Gas Area, Beaver County, Okla.	(4)	
G-17478-001, D, Mar. 26, 1984	Val Gas Co., Post Office Box 500, San Antonio, Tex. 78292.	Natural Gas Pipeline Co. of America, East Mathis Field, San Patricio County, Tex.	(5)	
CI61-1557-002, D, Mar. 16, 1984	Ladd Petroleum Corp., 830 Denver Club Building, Denver, Colo. 80202.	Ringwood Gathering Co. & Pioneer Gas Products Co., Ringwood Field, Major County, Okla.	(6)	
CI72-593-001 Mar. 21, 1984	Phillips Petroleum Co., 346 HS&L Building, Bartlesville, Okla. 74004.	El Paso Natural Gas Co., Phillips' Fullerton Plant, Section 17, Block A-32, PSL, Andrews County, Tex.	(3)	
CI84-229-000, A, Feb. 27, 1984	Getty Oil Co., Post Office Box 1404, Houston, Tex. 77251.	Transcontinental Gas Pipeline Co., Brazos Block A-133, Offshore Texas.	(7)	14.65
CI84-232-000, B, Feb. 29, 1984	Union National Bank of Wichita, Trustee of the Estate of Walter F. Kuhn d/b/a/ Walter Kuhn Drilling Company, 802 Union Center Building Wichita, Kansas 67202.	Northern Natural Gas Co., Gatterman No. 1 Well, Sec. 8-T29S-R32W, Hugoton Field, Haskell County, Kan..	(8)	
CI84-233-000, F, Feb. 29, 1984	Texaco Inc. (partial successor in interest to Marathon Oil Co.) P.O. Box 2100, Denver, Colo. 80201.	Colorado Interstate Gas Co., Oregon Basin Field, Park County, Wyo.	(9)	
CI84-336-000, B, Mar. 29, 1984	Mobil Oil Exploration & Producing Southeast Inc. Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Transcontinental Gas Pipe Line Corp., West Gueydan Field, Vermilion Parish, La.	(10)	
CI84-337-000, B, Mar. 26, 1984	Hall & Youngblood, Inc	Phillips Petroleum Co., Panhandle Field, Hutchinson County, Tex.	(11)	
CI84-338-000 (CI63-1468), B, Mar. 26, 1984.	Mobil Oil Corp., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Arkansas Louisiana Gas Co., Waukomis Area	(12)	
CI84-339-000, A, Mar. 23, 1984	Mesa Petroleum Co., One Mesa Square, Post Office Box 2009, Amarillo, Tex. 79189-2009.	Texas Eastern Transmission Corp., High Island Block A-567, Offshore Texas.	(13)	14.65
CI84-340-000, A, Mar. 29, 1984	Getty Oil Co., Post Office Box 1404, Houston, Tex. 77251.	Arkansas Louisiana Gas Co., Custer City S.E. Field, Custer County, Okla.	(14)	
CI84-341-000 (CI68-821), B, Mar. 20, 1984.	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., Trull Field, Matagorda County, Tex.	(15)	
CI84-342-000 (G-7115), B, Mar. 26, 1984.	Val Gas Co., Post Office Box 500, San Antonio, Tex. 78292.	Tennessee Gas Transmission Co., Various fields, Victoria County, Tex.	(16)	
CI84-343-000, E, Mar. 28, 1984	Arkoma Production Co., (successor in interest to Texas International Petroleum Co.), 5000 Rogers Ave., Suite 810, Ft. Smith, Ark. 72903.	Arkansas Louisiana Gas Co., Moreland Field, Pope County, Ark.	(17)	14.73
CI84-344-000, E, Mar. 28, 1984	do	Arkansas Louisiana Gas Co., Wilburton Field, Pittsburg County, Okla.	(17)	14.73
CI84-345-000, E, Mar. 28, 1984	do	Arkansas Louisiana Gas Co., Wilburton Field, Latimer & Pittsburg County, Okla.	(17)	14.73
CI84-346-000, A, Mar. 29, 1984	Tenneco Oil Co., Houston Oil & Minerals Corp., TINCO Ltd., Tenneco Exploration, Ltd., and Tenneco Exploration II, Ltd., P.O. Box 2511, Houston, Tex. 77001.	THC Pipeline Co., Eugene Island 215 D, Offshore Lousiana, South Marsh Island 116 A, Offshore Louisiana, Vermilion Block 50, Offshore Louisiana, High Island A-270-B, Offshore Texas, West Cameron 638B, Offshore Louisiana.	(18)	14.73
CI84-347-000, A, Mar. 29, 1984	do	THC Pipeline Co., Eugene Island 215 D, Offshore Lousiana, South Marsh Island 116 A, Offshore Louisiana, Vermilion Block 50, Offshore Louisiana, High Island A-270-B, Offshore Texas, West Cameron 638B, Offshore Louisiana.	(18)	14.73

[1] One of the producer contracts dedicated to Trunkline has been terminated.
[2] Applicant is filing for additional delivery points.
[3] Applicant is filing for an alternative delivery point.
[4] By Partial Assignment of Oil and Gas Lease, July 14, 1975, Mobil assigned to John Morey, all or its right, title and interest in and to that certain producing acreage.
[5] Two of the producer contract dedicated to NGPL has terminated.
[6] Acreage released by purchasers.
[7] Applicant is filing under Gas Purchase Contract dated February 13, 1984.
[8] To accommodate landowner's request for irrigation pumpting fuel.
[9] Texaco Inc. acquired portion of the gas covered by the gas purchase contract dated June 1, 1961.
[10] The pipeline purchaser, in whose favor the interstate dedication exists, Transcontinental Gas Pipe Line Corporation has no interest in purchasing the gas presently dedicated to interstate commerce.
[11] No longer economically productive.
[12] Gathering system no longer available for delivery to Arkansas Louisiana Gas Company due to higher delivery pressure requirements for proposed rollover contract. Low pressure line of an alternative buyer is available. This gas is uneconomic to compress.
[13] Applicant is filing under Gas Purchase Agreement dated February 3, 1984.
[14] Applicant is filing under Gas Purchase Contract dated November 26, 1963.
[15] Cessation of production due to depletion of reserves.
[16] Depletion of reserves and sale of system.
[17] The properties were acquired by Arkoma from four separate small producers during the years 1981 and 1982.
[18] Applicant is filing under Gas Purchase and Sales Agreement dated January 31, 1984.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 84-10288 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OF84-238-000]

Sunapee Power & Light Associates; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 12, 1984.

On March 28, 1984, Sunapee Power and Light Associates (applicant), of P.O. Box 120, Nashau, New Hampshire submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Sunapee, New Hampshire on North Road. The primary energy source will be biomass in the form of wood chips, bark and fines. The power production capacity will be 12.5 megawatts. There is no planned usage of natural gas, oil or coal by the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10258 Filed 4-16-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SA-FRL 2566-5]

Science Advisory Board's Environmental Effects, Transport and Fate Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a two-day meeting of the Science Advisory Board's Environmental Effects, Transport and Fate Committee. The meeting will be held on May 2nd and 3rd, 1984 at the U.S. Environmental Protection Agency, 401 M Street, SW., Conference Room 3906-08. The meeting will begin at 9:15 a.m. and will adjourn at approximately 5:00 p.m. on both days.

This will be the third meeting of the Committee on the assessment of environmental impacts involved with the incineration of hazardous chemical wastes. There will be appropriate briefings by Agency representatives on incineration issues and future Committee projects, principally dioxin clean-up of contaminated soils and revisions to the national water quality guidelines. These briefings will help to enable the Committee to determine an appropriate course of action to carry out its independent scientific review.

The meeting is open to the public. Any member of the public wishing to attend should contact Dr. Douglas B. Seba, Executive Secretary, Environmental Effects, Transport and Fate Committee or Joanna Foellmer, (202) 382-2552 by close of business April 26, 1984.Those wishing to obtain information or submit comments to the Committee should contact Dr. Terry F. Yosie, Director, Science Advisory Board, (202) 382-4126 or Dr. Douglas B. Seba, by close of business April 26, 1984.

Dated: April 9, 1984.

Terry Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84-10203 Filed 4-16-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

New FM Stations; Applications for Consolidated Hearing; Communications, Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. Communications, Ltd., Flagstaff, Arizona.	BPH-830324AB	84-346
B. William Greenwood Tonsmeire, Flagstaff, Arizona.	BPH-830706AA	84-347
C. Trident Communications, Inc., Flagstaff, Arizona.	BPH-830808AL	84-348
D. Wilsha Communications, Inc., Flagstaff, Arizona.	BPH-830808AN	84-349
E. Santa Rosa Broadcasting, Flagstaff, Arizona.	BPH-830808AQ	84-350

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the reference sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A & B
2. Ultimate, A & B

3. If there is any non-standarized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-10163 Filed 4-16-84; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Concho Communications, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. Concho Communications, Inc., San Angelo, Texas.	BPH-830214AI	84-319
B. George Edward Gunter, San Angelo, Texas.	BPH-830328AC	84-320
C. La Unica Broadcasting Company, San Angelo, Texas.	BPH-830520AC	84-321
D. Broadcasting Corporation of the Southwest, San Angelo, Texas.	BPH-830520AF	84-322
E. Torrey Mitchell, San Angelo, Texas.	BPH-830520AR	84-323
F. Samuel K. Stratemeyer d.b.a. San Angelo Media, San Angelo, Texas.	BPH-830520AU	84-324

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings

contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), C
2. Air Hazard, C, D, E
3. Comparative, All
4. Ultimate, All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issues

To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8 * the applicant(s) is financially qualified: C (Unica)

[FR Doc. 84-10168 Filed 4-16-84; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; CMM, Inc., et al. and Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. CMM, Inc., DeRidder, LA	BPH-830301AA	84-339
B. Beauregard Broadcasting Company, DeRidder, LA.	BPH-830518AE	84-340
C. West Central Broadcasting Company, Inc., DeRidder, LA.	BPH-830714BA	84-341

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A,B,C
3. Ultimate, A,B,C,

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-10166 Filed 4-16-84; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Eastover Broadcasting Co., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. Ted Alan McCall & Alton Lloyd Finley, Jr. d.b.a. Eastover Broadcasting Company, Wedgefield, SC.	BPH-830125AA	84-342
B. Radio Wedgefield, Inc., Wedgefield, SC.	BPH-830712AF	84-343
C. W. Erwin & Gail S. Branham, Eastover, SC.	BPH-830713AO	84-344
D. Calvin E. Dailey Jr., et al., d.b.a. Wedgefield Communications, Wedgefield, SC.	BPH-830714AY	84-345

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Main Studio, A
2. Air Hazard, C
3. (See Appendix), C
4. 307(b), A,B,C,D
5. Contingent Comparative, A,B,C,D
6. Ultimate, A,B,C,D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554, Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue

4. If a final environmental impact statement is issued with respect to C (Branham) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commission's Rules and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 84-10170 Filed 4-16-84; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Hayes Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. Haynes Broadcasting, Inc., Greenville, Alabama.	BPH-830321AD	84-357
B. Lavon Lynn Henley, Greenville, Alabama.	BPH-830326AD	84-358
C. Charles Joseph Thompson, Greenville, Alabama.	BPH-830714BE	84-359

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown

* Paragraph 8 reads as follows: The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency—Applicant(s): C (Unica). Deficiency: Paras. 1 & 2, Section III, FCC Form 301 amended from "yes" to "no" on June 14, 1983.

below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Main Studio, A
2. City Coverage, B
3. Air Hazard, A
4. Comparative, A, B, C
5. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue an the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–10171 Filed 4–16–84; 8:45 am]

BILLING CODE 6712–01–M

New FM Stations; Applications for Consolidated Hearing; Jarad Broadcasting Co., Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. Jarad, Broadcasting Company, Inc., Garden City, New York.	BPH–830325AC	84–301
B. Women's Long Island Radio, Inc., Garden City, New York.	BPH–830509AC	84–302
C. Spectron Broadcasting Corporation, Garden City, New York.	BPH–830516AK	84–303
D. Garden City Broadcasting, Inc., Garden City, New York.	BPH–830713AQ	84–304
E. Westplex Broadcasting Company, Garden City, New York.	BPH–830714AE	84–305
F. North Shore Broadcasting, Garden City, New York.	BPH–830714AF	84–306
G. December Ventures, Inc., Garden City, New York.	BPH–830714AG	84–307
H. WINK Radio, Inc., Garden City, New York.	BPH–830714AH	84–308
I. Fonic Broadcasting Co., Garden City, New York.	BPH–830714AI	84–309
J. Mid-Island Broadcasting, Inc., Garden City, New York.	BPH–830714AK	84–310
K. Hempstead Broadcasting Corporation, Garden City, New York.	BPH–830714AS	84–311
L. McComas Broadcasting Corporation, Garden City, New York.	BPH–830714BF	84–312

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the reference sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, All
2. Ultimate, All

3. If there is any non-standarized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–10165 Filed 4–16–84; 8:45 am]

BILLING CODE 6712–01–M

New FM Stations; Applications for Consolidated Hearing; Queen City Broadcasting System, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. Queen City Broadcasting System, Inc., Alma, Georgia.	BPH–830224AG	84–335
B. J. Morgan Dowdy and Charles w. Dowdy, d.b.a. Alma Broadcasters, Alma, Georgia.	BPH–830708AE	84–336
C. Nell Head, Alma, Georgia	BPH–830712AE	84–337
D. Graham Broadcasting, Inc., Alma, Georgia.	BPH–830714BC	84–338

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), B
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

1. If a final environmental impact statement is issued with respect to B(AB) which concludes that the proposed facilities are likely to have an adverse impact on the quality of the environment, to determine:

(a) Whether or not the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether or not, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 84–10169 Filed 4–16–84; 8:45 am]

BILLING CODE 6712–01–M

New FM Station; Applications for Consolidated Hearing; Soho Broadcasting and H & H Broadcasting

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. Benita Soho and Stanley Soho d.b.a. Soho Broadcasting, Williams, Arizona.	BPH–821021AC	84–313
B. Timonthy A. Hunt and Robert Hunter d.b.a. H & H Broadcasting, Williams, Arizona.	BPH–830214AD	84–314

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues

whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A & B
2. Ultimate, A & B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–10164 Filed 4–16–84; 8:45 am]

BILLING CODE 6712–01–M

New FM Station; Applications for Consolidated Hearing; Tri-County Broadcasting, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. Eric E. Carpenter, Gerald E. Carpenter and Louis Musso, III, d.b.a. Tri-County Broadcasting, Coeur d' Alene, Idaho.	BPH–820316AF	84–315
B. Communications Group, Inc., Coeur d'Alene, Idaho.	BPH–820927AG	84–316
C. Ridgeroad Boradcasting, Hayden, Idaho.	BPH–820929AI	84–317
D. Crossroads Media, Coeur d'Alene, Idaho.	BPH–820929BA	84–318

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), A
2. Air Hazard, B, D
3. 307 (b), A, B, C, D
4. Contingent Comparative, A, B, C, D
5. Untimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Mdeia Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202)632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8,* the applicant(s) is financially qualified: A (Tri-County).

[FR Doc. 84–10167 Filed 4–16–84; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean frieght forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reasons why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Harwell and Cary, Inc., 1900 South Broad Street, Mobile, AL 36615. Officers: Leonard Douglas Harwell, Chairman/President, Floyd Edward Cary, Vice Chairman/Executive V.P., Robert O. Crabtree, Vice President

O.V.I. Project Transport Corp., 19 Rector Street, Room 1801, New York, NY 10006. Officers: Hubert Wiesenmaier, President/Director, Evo De Concini, Secretary/Treasurer, Andreas Hoch, Vice President/Director

Mira International Corporation, 2537 N.W. 72nd Avenue, Miami, FL 33122. Officer: Esther B. Urra (FKA Esther B. Arrazola), Sole Officer.

By the Federal Maritime Commission.

Dated: April 11, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–10153 Filed 4–16–84; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 222]

Ray C. Fischer Company, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Ray C. Fischer Company, Inc., 824 Midland Bank Bldg., Minneapolis, MN 55401, was cancelled effective April 4, 1984.

By letter dated March 12, 1984, Ray C. Fischer Company, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 222 would be automatically revoked unless a valid surety bond was filed with the Commission.

Ray C. Fischer Company, Inc. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 9.09(f) dated September 27, 1983;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 222 be and is hereby revoked effective April 4, 1984.

It is ordered, that Independent Ocean Freight Forwarder License No. 222 issued to Ray C. Fischer Company, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal

*Paragraph 8 reads as follows: The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency—Applicant(s): A (Tri-County). Deficiency: Commitment letter from bank and credit letter from equipment supplier not included in application.

Register and served upon Ray C. Fischer Company, Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-10154 Filed 4-16-84; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 84-14]

Fil-American Trading Co.v. The Maersk Line Steamship Co.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Fil-American Trading Co. against the Maersk Line Steamship Company was served April 9, 1984. Complanant alleges that respondent has violated section 18(b)(3) of the Shipping Act, 1916, in connection with ocean transportation rates and changes assessed against numerous shipments of complainant.

This complaint has been assigned to Administrative Law Judge William Beasley Harris. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon 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 matter in issue is such that oral hearing and cross-examination are necessary for the development of the adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 84-10221 Filed 4-16-84; 8:45 am]

BILLING CODE 6730-01-M

The Georgia Ports Authority and United States Lines, Inc.; Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T-4176.

Title: The Georgia Ports Authority and United States Lines, Inc., Container Space Lease Agreement.

Parties:

The Georgia Ports Authority (Authority)

United States Lines (USL)

Synopsis: Agreement No. T-4176, between the Authority and USL provides for the Authority's lease to USL of certain paved premises, located within Containerport at Garden City Terminal, Chatham County, Georgia, to be used for the storage and handling of containers, including trailers and chassis used to transport containers. The term of the lease is for 21 years, which term shall begin upon date of approval by the Commission.

Filing Party:

Robert W. Goethe, Assistant Executive Director, Georgia Ports Authority, Post Office Box 2406, Savannah, Georgia 31402.

By Order of the Federal Maritime Commission.

Dated April 12, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-10223 Filed 4-16-84; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 84-15]

Dr. Ethel M. Hepner v. The Peninsular and Oriental Steam Navigation Co.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Dr. Ethel M. Hepner against The Peninsular and Oriental Steam Navigation Company was served April 9, 1984. Complainant alleges that respondent has violated sections 14, 15, 16 and 20 of the Shipping Act, 1916, in connection with the settlement of a lawsuit arising from injuries complainant allegedly suffered while on board a vessel of respondent.

This proceeding has been assigned to Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon 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 matter in issue is such that oral hearing and cross-examinations are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 84-10224 Filed 4-16-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of January 30-31, 1984

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on January 30-31, 1984.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting indicates that the advance in real GNP moderated in the fourth quarter, following rapid expansion in the spring and summer. In December, industrial production and nonfarm payroll employment increased somewhat further and the civilian unemployment rate declined 0.2 percentage point to 8.2 percent. Retail sales were reported to have changed little in December following sizable gains in preceding months. Housing starts declined in December but for the fourth quarter as a whole were close to their average for the year. Recent data indicate substantial strength in business capital spending. Producer prices were about unchanged on average in November and December, and consumer prices increased at about the moderate pace recorded for the year as a whole. The index of average hourly earnings rose somewhat faster in the fourth quarter than in the previous quarter, but for the year 1983 the index increased more slowly than in 1982.

The foreign exchange value of the dollar against a trade-weighted average of major foreign currencies has appreciated somewhat further since the latter part of December, with most of the rise occurring in early January. In the fourth quarter the U.S. foreign trade

[1] The Record of policy actions of the Committee for the meeting of January 30-31, 1983, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

deficit was markedly higher than in the third quarter, reflecting a sharp rise in non-oil imports.

M2 and M3 have expanded at moderate rates over the past two months. Expansion in M1 apparently accelerated in January, following several months of reduced growth. By the fourth quarter M2 was at a level close to the midpoint of the Committee's range for 1983, M3 was around the upper limit of its range, and M1 was around the middle of the Committee's monitoring range for the second half of the year. Most interest rates have declined somewhat since the latter part of December.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. The Committee established growth ranges for the broader aggregates of 6 to 9 percent for both M2 and M3 for the period from the fourth quarter of 1983 to the fourth quarter of 1984. The Committee also considered that a range of 4 to 8 percent for M1 would be appropriate for the same period, taking account of the possibility that, in the light of the changed composition of M1, its relationship to GNP over time may be shifting. Pending further experience, growth in that aggregate will need to be interpreted in the light of the growth in the other monetary aggregates, which for the time being would continue to receive substantial weight. The associated range for total domestic nonfinancial debt was set at 8 to 11 percent for the year 1984.

The Committee understood that policy implementation would require continuing appraisal of the relationships not only among the various measures of money and credit but also between those aggregates and nominal GNP, including evaluation of conditions in domestic credit and foreign exchange markets.

In the short run, the Committee seeks to maintain the existing degree of pressure on bank reserve positions, anticipating that approach will be consistent with growth of M2 and M3 each at annual rates of about 8 percent and M1 at an annual rate of about 7 percent during the period from December to March. Growth in nonfinancial debt is expected to be within the range established for the year. Lesser restraint would be acceptable in the context of a shortfall in monetary and credit growth from current expectations, while somewhat greater restraint might be acceptable with more rapid expansion of the aggregates, both viewed in the context of the strength of the business expansion and inflationary pressures.

In implementing policy in the weeks ahead, the Manager was instructed to take account of the uncertainties associated with the introduction of the system of more contemporaneous reserve requirements, particularly including the possibility that depository institutions, during a transition period, may desire to hold more excess reserves.

The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, April 10, 1984.

Stephen H. Axilrod,

Secretary.

[FR Doc. 84-10244 Filed 4-16-84; 8:45 am]

BILLING CODE 6210-01-M

Albion Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 9, 1984.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Albion Bancorp, Inc.*, Pen Argyl, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Pen Argyl National Bank, Pen Argyl, Pennsylvania.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Fauquier National Bankshares, Inc.*, Warrenton, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Fauquier National Bank of Warrenton, Warrenton, Virginia. Comments on this application must be received not later than May 10, 1984.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First National Bancorp*, Gainesville, Georgia; to acquire 100 percent of the voting shares of Granite City Bank, Elberton Georgia.

2. *First Sterling Bancshares, Inc.*, Winter Haven, Florida; to become a bank holding company by acquiring at least 80 percent of the voting shares of First Sterling Bank, Winter Haven, Florida. Comments on this application must be received not later than May 7, 1984.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Buscy Corporation*, Urbana, Illinois; to acquire 80 percent of the voting shares of City Bank of Champaign, Champaign, Illinois. Comments on this application must be received not later than May 10, 1984.

Board of Governors of the Federal Reserve System, April 11, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-10192 Filed 4-16-84; 8:45 am]

BILLING CODE 6210-01-M

First National Agency Company of Deer River, Inc.; Formation of, Acquisition by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (49 FR 794) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section

4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the Unied States.

The application is available for immediate in spection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 1984.

a. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First National Agency Company of Deer River, Inc.*, Deer River, Minnesota; to become a bank holding company by acquiring an additional 87 percent of the voting shares of First National Bank of Deer River, Deer River, Minnesota; and to engage *de novo* in general insurance activities in communities with populations not exceeding 5,000, within a fifteen mile radius of Deer River, Minnesota.

Board of Governors of the Federal Reserve System, April 11, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-10193 Filed 4-16-84; 8:45 am]

BILLING CODE 6210-01-M

Old Stone Corp., 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 (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 7, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Old Stone Corporation*, Providence, Rhode Island; to engage *de novo* through its subsidiary The Motor Life Insurance Company, Jacksonville, Florida in the underwriting through reinsurance of credit life and credit accident and health insurance pursuant to section 225.25(b)(9) of Regulation Y. Such insurance would be written in connection with extensions of credit by two affiliated bank holding company subsidiaries, UniMortagage Corporation of Colorado and UniMortgage Corporation of New Mexico. These activities would be provided in the States of Colorado and New Mexico.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Barnett Banks of Florida, Inc.*, Jacksonville, Florida; to engage through its subsidiaries, Verifications, Inc. and Verifications Services, Inc. in offering bankcard credit authorization services and credit data-base services relating to bankcard depository merchants. These activities would be provided in the States of Florida, Georgia, North Carolina, South Carolina, Alabama, Mississippi, and Tennessee.

Board of Governors of the Federal Reserve System, April 11, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-10194 Filed 4-16-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Revision of System of Records Notice

AGENCY: General Services Administration.

ACTION: Revision of system of records.

SUMMARY: The purpose of this document is to propose a new routine use for the General Services Administration's system of records, Credit data on individual debtors (GSA/PPFM-7). The routine use will permit the disclosure of information from this system of records to the Internal Revenue Service to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect an indebtedness owed to GSA.

DATES: Any interested party may submit written comments regarding this proposal. To be considered, comments must be received on or before May 17, 1984. The routine use will become effective as proposed without further notice on the 30th day following publication of this notice (May 17, 1984), comments are received that would result in a contrary determination.

ADDRESS: Address comments to General Services Administration (ATRAR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: William W. Hiebert, GSA Privacy Act Officer, telephone (202) 535-7691.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 amends section 6103 of the Internal Revenue Code to

permit the Secretary of the Treasury to disclose the mailing address of a taxpayer for use by employees of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with section 3 of the Federal Claims Collection Act of 1966. In order for GSA to request the mailing address of a taxpayer from the Internal Revenue Service (IRS), GSA has to provide IRS with the necessary information that would enable IRS to identify the taxpayer. GSA proposes to add a new routine use to a system of records in order that such identifying information can be released to IRS.

The following routine use will be added to GSA's system of records, Credit data on individual debtors GSA/PPFM–7. The current notice of this system was published on November 4, 1983, in 48 FR 50965 and 50966.

GSA/PPFM–7

SYSTEM NAME:

Credit data on individual debtors.

* * * * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * * * *

g. Information contained in the system of records may be disclosed to the Internal Revenue Service to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

* * * * * * *

Dated: April 10, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84–10178 Filed 4–16–84; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and the methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Radiopharmaceutical Drugs Advisory Committee

Date, time, and place. May 18, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 4:30 p.m.; Neil M. Abel, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN–150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4260.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drug products for use in diagnostic and thereapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiologly.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will: (1) Review the need for revision of the guidelines for the clinical evaluation of radiopharmaceutical drugs, (2) determine the need, and if necessary, establish a subcommittee to formulate guidelines for the clinical evaluation of radiocontrast agents, and (3) discuss the need for complete and precise (step-by-step) directions for performing nuclear medicine procedures in the package insert.

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time and place. May 18, 9 a.m., Conference Rm. E., Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to conclusion; Frederick J. Abramek, Center for Drugs and Biologics (HFN–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational drugs proposed for marketing for use in the treatment of neurological disease.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss the following: IND 17–213, Gamma Vinyl GABA. Gamma Vinyl GABA is an experimental anticonvulsant that presumably works by inhibiting the enzyme that breaks down, and therefore increases the brain concentration of, GABA (gamma amino butyric acid), an important brain inhibitory transmitter. In early clinical testing, Gamma Vinyl GABA has shown some promise as a potentially useful anticonvulsant: However, chronic animal toxicity testing, being carried out concurrently with human trials of the drug, have revealed a potential concern about the drug's long-term safety. Preclinical tests, conducted in several animal species, have shown that Gamma Vinyl GABA causes pathological changes in several regions of the brain and in the retina of the eye. The physiologic consequences of these lesions and the degree of their "reversibility" are unclear. The committee will be asked to assess the findings and give its opinion about whether testing of this potentially useful anticonvulsant drug should be continued in humans, and, if so, under what conditions and circumstances.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral

presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the Chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: April 10, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–10198 Filed 4–16–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84M–0072]

Capitol Contact Lenses, Inc.; Premarket Approval of PDC (Polymacon) Hydrophilic Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application for premarket approval under the Medical Device Amendments of 1976 of the PDC (polymacon) Hydrophilic Contact Lenses, sponsored by Capitol Contact Lenses, Inc., Kensington, MD. The lenses are to be manufactured under an agreement with National Patent Development Corp., New Brunswick, NJ, which has authorized Capitol Contact Lenses, Inc., to incorporate by reference information contained in its approved premarket approval application for the Hydron® (polymacon) Hydrophilic Contact Lens. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by May 17, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On October 5, 1983, Capitol Contact Lenses, Inc., Kensington, MD 20895, submitted to FDA a supplemental application for premarket approval of the PDC (polymacon) Hydrophilic Contact Lenses. The lenses range in powers from −20.00 diopters to +20.00 diopters and are indicated for daily wear for the correction of visual acuity in persons with nondiseased eyes who are aphakic or not-aphakic and have myopia or hyperopia and refractive astigmatism of 1.50 diopters or less. The application included authorization from the National Patent Development Corp., New Brunswick, NJ 08901, to incorporate by reference the information contained in its approved premarket approval application for the Hydron® (polymacon) Hydrophilic Contact Lens (Docket No. 79M–0244). On February 10, 1984, FDA approved the application by letter to the sponsor from the Acting Director of the Office of Device Evaluation of the Center for Devices and Radiological Health.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drugs, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of the PDC (polymacon) Hydrophilic Contact Lenses states that the lenses are to be used only with certain solutions for disinfection and other purposes. This restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use only with hard contact lenses. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that FDA approves for use with approved contact lenses made of polymers other than PMMA. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision

to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 17, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 11, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-10197 Filed 4-16-84; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1984:

Name: Maternal and Child Health Research Grants Review Committee.

Dated and Time: June 13-15, 1984, 9:00 a.m.-5:00 p.m.

Place: Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on June 13, 1984, 9:00 a.m. to 10:00 a.m.

Closed for remainder of meeting.

Purpose: The Committee is charged with the review of all research grant applications in the program areas of maternal and child health administered by the Bureau of Health Care Delivery and Assistance.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health, who will also report on Program issues, Congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on June 13, 1984, from 10:00 a.m. for the remainder of the meeting for the review of research grant applications. The closing is in accordance with the Provision set forth in section 552b(c)(6), Title 5 United States Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Gontran Lamberty, Dr. P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6-17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301-443-2190.

Agenda items are subject to change as priorities dictate.

Dated: April 12, 1984.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 84-10218 Filed 4-16-84; 8:45 am]

BILLING CODE 4160-15-M

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending June 30, 1984

Section 727 of the Public Health Service Act (42 CFR Part 60, previously 45 CFR Part 126) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools. Section 60.13(a)(4) of the program's implementing regulations provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending June 30, 1984, two interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 12 percent. Using the regulatory formula (45 CFR 126.13(a)(2)(3)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (9.52 percent), and rounding the result (6.02 percent) upward to the nearest ⅛ percent (6⅛ percent). Thus, the variable rate for this 3-month period would normally be at the annual rate of 13⅛ percent (6⅛ percent plus 7 percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. For the previous 3 quarters the variable interest at the annual rate was as follows: 12⅞ percent for the quarter ending September 30, 1983; 11⅞ percent for the quarter ending December 31, 1983; and 11¾ percent for the quarter ending March 31, 1984. Therefore, in order to maintain an average annual rate of 12 percent for the 12-month period ending June 30, 1984, the variable interest rate for the quarter ending June 30, 1984, would be at an annual rate of 12 percent.

2. For fixed rate loans executed during the period of April 1, 1984, through June 30, 1984, and for variable rate loans executed after January 27, 1981, the interest rate is 13⅛ percent. Using the regulatory formula (42 CFR 60.13(a)(3)), in effect since January 27, 1981, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (9.52 percent); adding 3.50 percent (13.02 percent); and rounding that figure to the next higher one-eighth of 1 percent (13⅛ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: April 11, 1984.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 84-10217 Filed 4-16-84; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently in pertinent part at 48 FR 54539, December 5, 1983) is amended to reflect the following changes within the National Heart, Lung, and Blood Institute (NHLBI): (1) Delete the functional statements for the Clinical Applications and Prevention Program (HNH24) and the Epidemiology

and Biometry Program (HNH25); and (2) establish the Division of Epidemiology and Clinical Applications (HNH7), the Clinical Applications Program (HNH72), and the Epidemiology and Biometrics Research Program (HNH73). These changes will enhance the progression of scientific efforts from basic biomedical research toward improved disease prevention, treatment, and health care delivery in the areas of heart, lung, and blood diseases.

Sec. HN–B, Organization and Functions, is amended as follows: (1) Under the heading *National Heart, Lung, and Blood Institute (HNH), Division of Heart and Vascular Diseases (HNH2),* delete the functional statements for the Clinical Applications and Prevention Program (HNH24), and the Epidemiology and Biometry Program (HNH25) in their entirety.

(2) After the statement for the *Division of Intramural Research (HNH6),* insert the following:

Division of Epidemiology and Clinical Applications (HNH7). (1) Plans and directs the Institute's epidemiological and clinical research grant and contract programs in cardiovascular, blood, and respiratory diseases; (2) plans and directs epidemiological studies, targeted research, clinical trials, demonstration and education research, and projects for health promotion and disease prevention; (3) maintains surveillance over developments in the three major program areas of the Institute in order to identify and stimulate research in the prevention, diagnosis, and treatment of cardiovascular, blood, and respiratory diseases; (4) assesses the need for technological development in the application of research findings in these areas; and (5) maintains the necessary scientific management capability to foster and guide an effective attack upon cardiovascular, blood, and respiratory diseases through the translation of basic and clinical research findings to larger patient populations, the general population, population subgroups, and whole communities.

Clinical Applications Program (HNH72). (1) Plans and directs programs of basic and applied research through grant and contract support for conducting clinical trials and research into methods for prevention of cardiovascular, lung, and blood diseases; (2) consults with voluntary health organizations and with professional in identifying research needs and developing programs to meet them; (3) determines program priorities and allocates funds to program areas; and (4) collaborates with the supports program staff within the Institute and NIH-wide in order to pursue a coordinated approach in achieving program goals.

Epidemiology and Biometrics Research Program (HNH73). (1) Plans, directs, and conducts a program of basic epidemiological research and grant and contract support for epidemiological research related to heart, lung, and blood diseases; (2) directs and conducts a program of basic research in the areas of theoretical statistics and biometric methods and provides consultant service for the Institute in these areas; (3) collaborates with the categorical division programs in cardiovascular, lung, and blood diseases in assessing the need for epidemiological research and identifies research opportunities in these program areas; (4) produces reports and analyses to assist Institute staff and advisory groups in their planning, evaluating, and assessment responsibilities; and (5) consults with health and other professional associations to identify relevant research needs and to develop programs to meet them.

Dated: April 9, 1984.

Edward N. Brandt, Jr., M.D.,

Assistant Secretary for Health.

[FR Doc. 84–10204 Filed 4–16–84; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA).

Notice is given that Chapter SB, as published in the **Federal Register** on January 4, 1983 (48 FR 337–343) and on August 15, 1983 (48 FR 36899–36901) is amended to realign division- and staff-level subcomponents and functions under the various offices within the Office of System Operations (OSO).

The new material and changes are as follows:

Sec. SB. 10 *The Office of System Operations-(Organization):*

D. The Office of Computer Processing Operations (SBP) Delete: "4. The Division of Management Information Operations and Control (SBP4)."

Renumber and add as: "4. The Division of Telecommunications Systems Operations (SBP5)."

Delete: "E. The Office of Telecommunications Systems Operations (SBJ)."

Delete: "F. The Office of Operational Planning and Control (SBK)."

Renumber and add as: "E. The Office of System Support and Planning (SB))."

Under the new Subsection E, add:

1. The Division of Operational Capacity Performance Management (SB 1).

2. The Division of Standards and Controls (SB 2).

3. The Division of Operational Resource Management (SB 3).

Sec. SB 20 *The Office of System Operations-(Functions):*

D. The Office of Computer Processing Operations (SBP) Add before the last sentence thereof: "operates SSA's nationwide data communications systems in support of all SSA programmatic and administrative activities. The Office of Computer Processing Operations (OCPO) manages a complex nationwide facility which provides data communications for all SSA components. It maintains operating system software and develops operational standards for telecommunications services. It conducts operational evaluations of data communications facilities and provides advice to the Associate Commissioner for System Operations and other SSA officials on all matters concerning data communications operations. OCPO serves as liaison with other SSA components, other Federal and non-Federal agencies and other organizations on operational data communications matters,"

3. The Division of Computer Operations Systems Software (SBP3):

Delete e, f and g in their entirety.

4. The Division of Management Information Operations and Control (SBP4):

Delete in its entirety.

Renumber and add as: "4. The Division of Telecommunications Systems Operations (SBP 5).

a. Directs the continuous operations of telecommunications, both centrally and at remote concentrator sites, for the transmission of data over SSA-designed networks.

b. Manages traffic flow between the telecommunications complex and other SSA computers. Monitors telecommunications operations, analyzes equipment problems and effects proper maintenance and repair.

c. Directs the implementation of new or revised operating policies and procedures. Recommends new procedures and appraises telecommunications operating instructions.

d. Establishes and enforces standards for controlling workflow and for assuring the integrity of data processed through the various data communications operations.

e. Interfaces with the telephone company and network equipment vendors to maintain operational effectiveness of equipment.

f. Directs the operating performance evaluation of data communications systems.

g. Directs, controls and administers an inventory of all direct access storage allocations; maintains control of all telecommunications production/procedure libraries and assures proper utilization of assigned disk space.

h. Directs the design, development and implementation of software modules to gather and report pertinent statistical information relating to the functioning of telecommunications networks.

i. Manages the tracking, installation, removal and relocation of local and remote telecommunications equipment, assuring compliance with governing Federal regulations.

j. Acts as central contact point for field offices and concentrator sites to report problems."

E. The Office of Telecommunications Systems Operations (SBJ):

Delete in its entirety.

F. The Office of Operational Planning and Control (SBK):

Delete in its entirety.

Add and renumber as: "E. The Office of System Support and Planning (SB): The Office of System Support and Planning (OSSP) directs all OSO operational systems planning and control. It directs the development of broad OSO systems plans and determines planning requirements at various levels in OSO. OSSP reviews and approves technical and operational systems priorities among program areas to ensure maximum use of OSO resources. The Office proposes to the Associate Commissioner for System Operations resource requirements for systems activities in OSO. It plans and develops operational policies, standards and procedures for OSO. OSSP coordinates the resolution of operational problems identified by the Office of System Requirements (OSR) and the users of OSO systems. It directs and coordinates the OSO activities associated with the operational planning, management, utilization measurement, acquisition and renewal of operational ADP equipment, and software and technical services to maintain operational systems and prevent progressive deterioration. OSSP is the central OSO point of contact for the coordination and transition of redesigned application systems developed by the Office of System Integration (OSI) into the OSO production environment. It is the control point in OSO responsible for the integrity of the SSA hardware configuration, production software change control and major production job streams. It serves as liaison with other SSA components, the Department of Health and Human Services (DHHS) and external monitoring authorities, including the General Services Administration (GSA), the Office of Management and Budget (OMB), the General Accounting Office (GAO) and Congress, on SSA's ADP and telecommunications systems operations.

1. The Division of Operational Capacity Performance Management (SB):

a. Evaluates computer performance and monitors resource utilization to ensure that OSO's operational systems are used effectively and efficiently. Analyzes OSO's operational systems capacity and prepares recommendations to OSO management as capacity relates to service objectives. As instructed, performs similar functions for other SSA components.

b. Ensures that sufficient ADP capacity is available to process present and future workloads, coordinating decisions on target systems for new/modified workloads and system configuration changes.

c. With other Systems components, develops an ADP Capacity Plan for day-to-day operations.

d. Ensures that OSO's systems performance objectives are being met and that data bases are efficiently implemented.

e. Provides advice and services to other OSO components in the use of computer performance evaluation tools and techniques and the interpretation of reports and data resulting from evaluation and utilization studies.

f. Uses operations research tools (e.g., construction of symbolic representation models and simulations to investigate programmatic module/functions interrelationships) to obtain necessary data to accomplish the division's mission.

g. Schedule, arranges, conducts and reports on structured systems effectiveness reviews to compare OSO service commitments with existing levels of performance in order to contribute to the improvement of OSO user planning and modifications to existing systems.

h. Coordinates and monitors all OSO service level agreements.

i. Performs a wide range of user coordination functions, including being the user's ombudsman in OSO.

2. The Division of Standards and Control (SBL2):

a. Develops, publicizes and implements standards and mandatory systems procedures within OSO. Develops controls and enforcement mechanisms to ensure adherence to operational standards. Recommends development of operational standards to other OSO components and, based on their responses, reviews, modifies and approve them. Administers the Federal and HHS systems standards programs within OSO.

b. Directs the planning, implementation and evaluation of the physical systems security program in OSO under the HHS, SSA, and OSI privacy and security policies.

c. Serves as OSO liaison with other Systems components in matters of privacy and security.

d. Provides for the physical security of all OSO resources in the centralized OSO computer facility and manages the facility within boundaries established by the Office of Management, Budget and Personnel (OMBP).

e. Provides planning, evaluation and oversight on disaster recovery capabilities in order to maintain continuity of data center operations.

f. Develops, implements and evaluates systems and procedures for the security and protection of data.

g. Performs ongoing analysis of equipment configurations and projects requirements based on technological enhancements, workload changes and growth.

h. Prepares comprehensive reports and technical justifications for management's use.

3. The Division of Operational Resource Management (SBL3):

a. Formulates on OSO-wide Systems Plan and assigns responsibility among major OSO components for various parts of the Plan. Works with OSO components to evaluate their proposed systems objectives in terms of technical feasibility, availability of OSO resources and systems costs. Identifies the major OSO activities and resources needed to support these objectives.

b. Directs and coordinates the OSO activities associated with operational planning and ADP Systems Planning.

c. Coordinates and directs the development of the total OSO technical workpower, equipment and other special costs for the SSA budget process and justifies these on the basis of the Operational Systems Plan. Allocates resources and monitors projects for all

OSO activities, directs the preparation of detailed plans on the project or operational activity level and authorizes the use of resources by OSO components in support of these plans.

d. Monitors progress and use of workpower and equipment resources by OSO components against their approved plans.

e. Assists OSO components in the use of standard methods for project management.

f. Directs OSO participation in the Information Technology Systems (ITS) procurement process.

g. Under guidelines and policies established by OSI, performs the necessary general systems studies, feasibility studies, cost-effectiveness studies, contracting studies and economic analyses in support of any operational procurements.

h. Initiates equipment renewal and maintenance requisitions in support of ongoing operations, and certifies and authorizes invoice payment for the ITS equipment and services.

i. Develops and provides management information for OSO's ITS activities and for the inventory of ITS and telecommunications equipment and facilities."

Dated: April 6, 1984.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 84-10207 Filed 4-16-84; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications; Robert Hayden Brown

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.*):

APP # 560433

Robert Hayden Brown, Dallas, TX

The applicant requests a permit to import one trophy of a captive-bred bontebok (*Damaliscus dorcas dorcas*) culled from the herd of F. Bowker, Grahamstown, South Africa, to enhance the propagation of the herd.

APP # 560137

Animal Advocates, Bothell, WA

The applicant requests a permit to purchase in interstate commerce one Alaska tundra wolf (*Canis lupus tundarum*) for educational purposes.

APP # 153277

USFW—Ecological Services, Cookeville, TN

The applicants request a permit to take (capture and release) the following species: eastern cougar (*Felis concolor cougar*), eastern peregrine falcon (*Falco peregrinus anatum*), red-cockaded woodpecker (*Picoides borealis*), Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), bald eagle (*Haliaeetus leucocephalus*), Cumberland bean and pearly mussel (*Villosa trabilis*), for scientific research purposes.

APP # 53274

William Gruenerwald, Colorado Springs, CO

The applicant requests a permit to import three captive-bred Somali wild asses (*Equus africanus somalicus*) from Hai-Bar Nature Reserve, Israel, for enhancement of propagation.

APP # 560086

Blacks Hills Reptile Gardens, Inc., Rapid City, SD

The applicant requests a permit to purchase in interstate commerce two American crocodile (*Crocodylus americanus*), from Herpetofauna, Inc., Ft. Meyers, FL, for enhancement of propagation.

APP # 584452

Kern National Wildlife Refuge, Delano, CA

The applicant requests a permit to take (capture, mark and release) blunt-nosed leopard lizards [*Gambelia (=Crotaphytus) silus*] at Pixley National Wildlife Refuge, Tulare County, CA, for scientific research.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 North Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish and Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, of data to the Director at the above address. Please refer to the appropriate PRT 2 # or APP # when submitting comments.

Dated: April 11, 1984.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 84-10190 Filed 4-16-84; 8:45 am]

BILLING CODE 4310-55-M

Marine Mammals; Receipt of Application for Permit; Mark D. Lee

Notice is hereby given that an applicant has applied in due form for a permit to import a polar bear rug as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the regulations governing the taking and importing of Marine Mammals (59 CFR Part 18)

1. Applicant: Mark D. Lee, Box 33, Strandquist, MN 56758.

2. Type of permit: Import.

3. Name and number of animals: Polar bear—*Ursus maritimus*—1 rug.

4. Type of activity: Educational display.

5. Location of activity: Importation from Canada, display Strandquist Public School and Kittson County Historical Society, Lake Bronson, MN.

6. Period of Activity: Importation to occur upon issuance of permit. (Permit to be valid for 2 years).

The purpose of this application is to import a polar bear rug from Canada to be included in a collection of furs used for educational purposes.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned application APP #152472. Written data or views, requests for copies of the complete application, or request for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife service (WPO), P.O. Box 3654, Arlington, VA 22203, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements contained in this notice are summaries of those of the applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in Room 601, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: April 11, 1984.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-10191 Filed 4-16-84; 8:45 am]

BILLING CODE 4310-55-M

Public Meetings on Revised Draft Environmental Impact Statement for the Bristol Bay Cooperative Management Plan, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meetings.

As required by section 1203 of the Alaska National Interest Lands Conservation Act, a management plan and environmental impact statement have been prepared for the Bristol Bay region of southwestern Alaska. It is anticipated that the revised draft plan and impact statement will be available for public review and comment on or about April 27, 1984. Pursuant to the provisions of the Council on Environmental Quality's regulations to implement the National Environmental Policy Act (40 CFR Part 1506.6), the U.S. Fish and Wildlife Service will conduct two public meetings on the revised draft impact statement for the Bristol Bay Cooperative Management Plan. The purpose of this **Federal Register** notice is to provide the public advance notification of the schedule for these meetings. Additional information concerning the meetings will also be provided in the Notice of Availability and in newspapers of general circulation and other news media in the State of Alaska. The meeting schedule is as follows:

May 15, 1984: Dillingham, Alaska. (Exact time and location will be announced in the Notice of Availability and through the news media in Alaska.)

May 22, 1984: Anchorage, Alaska. Time: 7:00 p.m. Location: U.S. Fish and Wildlife Service Regional Office, First Floor Conference Room, 1011 East Tudor Road.

For further information concerning the meeting schedule contact Nancy Stromsem, BBCMP, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907–786–3355).

Dated: April 12, 1984.

Walter O. Stieglitz,

Acting Associate Director U.S. Fish and Wildlife Service.

[FR Doc. 84–10201 Filed 4–16–84: 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

California Desert District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the California Desert District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Public Laws 92–463 and 94–579 that the California Desert Districy Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally on May 17, 18 and 19, 1984, in Barstow, California. (The exact location of the meeting has not yet been determined, but notification will be provided to all local area media outlets. Persons wishing information can contact the Barstow Area Manager (619) 256–3591.)

Agenda Items for the meeting will include a review of the 1984 California Desert Conservation Area Plan amendment proposals; the Long-Term Visitor Area program; a report from the land tenure adjustment sub-committee on current proposals and criteria for land exchanges; plans for Fiscal Year 1985 land sales program; discussion of wilderness study areas in San Diego County recommended as suitable or non-suitable for wilderness designation; review of Bureau of Reclamation land withdrawals within the District boundaries; briefings on the burro removal program; and, current status of the Red Mountain townsite.

A two-day field trip for Council members will be conducted as part of the three-day session.

All formal Council meetings are open to the public, with time allocated for public comments and time available, at the discretion of the chair, for public comment during the presentation of agenda items.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Frank W. DeVore, c/o Bureau of Land Management Public Affairs Office, 1695 Spruce Street, Riverside, California 92507.

FOR FURTHER INFORMATION CONTACT: Contact the Bureau of Land Management, California Desert District Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507 (714) 351–6383.

Dated: April 11, 1984.

Gerald E. Hillier,

District Manager.

[FR Doc. 84–10400 Filed 4–16–84; 11:25 am]

BILLING CODE 4310–40–M

[W–48649]

Wyoming; Conveyance, Notice of Termination of Segregation, and Opening Order Exchange of Public Lands for Private Lands in Sublette County

April 6, 1984.

1. Notice is hereby given that pursuant to Section 206 of the Federal land Policy and Management Act of 1976, 43 U.S.C. 1716 (1976), the following described lands, surface estate only, have been conveyed to Lillian E. Harrower, Kemmerer, Wyoming:

Sixth Principal Meridian, Wyoming

T. 28 N., R. 112 W.,
Sec. 9, NE¼SE¼;
Sec. 10, S½N½ and S½;
Sec. 11, SW¼NW¼ and W½SW¼;
Sec. 14, SW¼NE¼, NW¼NW¼, and SE¼;
Sec. 15, N½NE¼ and NE¼NW¼.
Containing 1,000.00 acres.

2. In exchange for the above lands, the United States acquired the following lands, surface estate only, from Lillian E. Harrower:

Sixth Principal Meridian, Wyoming

T. 28 N., R. 114 W.,
Sec. 4, lots 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, and 19.
Containing 456.36 acres.

The Federal mineral estate in the above lands remains withdrawn by Secretarial Orders dated April 22, 1907, and December 9, 1908, and segregated from location for nonmetalliferous minerals under the mining laws.

3. The Federal mineral estate in the lands described in Paragraph 2 was segregated from appropriation under the public land laws, including the mining laws, by Notice of Realty Action W–48649 on March 18, 1983 (48 FR 11519–20) pursuant to 43 CFR 2201.1(b). The segregation imposed by Notice of Realty Action 2–48649 shall terminate upon the date of publication of this notice in the **Federal Register.**

4. Subject to valid existing rights, existing withdrawals described in Paragraph 2, and the requirements of applicable law, the lands described in Paragraph 2, including surface estate and mineral estate, shall be open to operation of the public land laws and to location for metalliferous minerals under the mining laws at 10:00 a.m. on May 14, 1984. All valid applications received prior to 10:00 on May 14, 1984, shall be considered as simultaneously filed at the time. Those received thereafter shall be considered in the order of filing. The lands have been, and shall continue to be, open to operation of the mineral leasing laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with

Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Inquiries concerning the lands should be addressed to the Chief, Branch of Land Resources, P.O. Box 1828, Cheyenne, Wyoming 82003.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 84-10209 Filed 4-16-84; 8:45 am]

BILLING CODE 4310-22-M

New Mexico; Availability of Final San Juan River Regional Coal and Preference Right Lease Application Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

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 (BLM), Department of the Interior, has prepared a final environmental impact statement (FEIS) analyzing: (1) The proposed competitive coal lease sale in the San Juan River Coal Production Region, and (2) the 26 preference right lease application (PRLAs) in the San Juan Basin.

The Department of the Interior is currently under a moratorium imposed by legislation which prohibits the sale or issuance of Federal coal leases until 90 days after the Commission on Fair Market Value Policy for Federal Coal Leasing released its report to Congress. The moratorium legislation, however, permits the Department to continue coal activity planning efforts and PRLA processing, including the publication of draft and final environmental impact statements addressing Federal coal leasing.

The Secretary has decided to defer competitive leasing in the San Juan River regional until the wilderness issues are resolved. The Department may continue to process the PRLAs and, after the leasing moratorium is lifted, issue preference right leases, if appropriate, except in Wilderness Study Areas, where both processing and issuance of PRLAs are specifically prohibited in Fiscal Year 1984 by Section 308 of Pub. L. 98-146. The Final San Juan River Regional Coal Environmental Impact Statement (EIS) is therefore being released at this time because the environmental effects of preference right leasing as well as competitive leasing.

ADDRESSES: Single copies of the FEIS may be obtained from the Albuquerque District Office, Bureau of Land Management, 505 Marquette, NW., Suite 815, Albuquerque, NM 87103, or the Office of Public Affairs, Bureau of Land Management, Interior Building, Room 5600, 18th and C Streets, NW., Washington, D.C. 20240.

Copies of the FEIS will also be available for inspection at the following locations:

Bureau of Land Management, Public Affairs, Interior Building, 18th and C Streets, NW., Washington, D.C. 20240, phone (202) 343-6011.

Bureau of Land Management, Public Assistance, New Mexico State Office, Montoya Federal Building, South Federal Place, Santa Fe, NM 87501, phone (505) 988-6283.

Albuquerque District Office, Western Bank Building, Room 819, 505 Marquette NW., Albuquerque, NM 87105.

Farmington Resource Area, 900 La Plata Highway, Farmington, NM 87401.

FOR FURTHER INFORMATION CONTACT: Lee V. Larson, BLM Farmington Resource Area, 900 North La Plata Highway, Caller Service 4104, Farmington, NM 87499. Phone: Commercial: (505) 325-3581, FTS: 572-6220.

SUPPLEMENTARY INFORMATION: This EIS analyzes the impacts that could occur in San Juan, McKinley, Valencia and Sandoval counties in northwestern New Mexico as a result of leasing Federal coal in two proposed actions: (1) 26 preference right lease applications (PRLAs), and (2) competitive leasing.

In addition to the required No Action Alternative, three options for PRLAs are analyzed. Preference Right Lease Issuance, issuing leases to all PRLAs is they meet regulatory requirements, is the preferred alternative. This alternatve studies leasing of up to 1.15 billion tons of recoverable Federal reserves. Exchange of all PRLAs and exchange of certain PRLAs in sensitive areas are two alternatives analyzed. The "alternative lease terms" alternative, analyzed in the second Draft, has been incorporated into the preferred alternative. Potential impacts would generally be of the same type as those which would be affected by projected development without the new Federal action (the No Action Alternative), although the level of potential impacts would be higher when more coal is produced. The *Environmental Assessment for Preference Right Leasing, New Mexico* (1981) should be referenced for site-specific information.

For competitive leasing, the alternatives are: (1) No Action [which means processing the PRLAs but no competitive leasing]; (2) Bypass, offering 113 million tons of recoverable Federal reserves, (3) Minimum Surface Owner Conflicts, offering 349 million tons, (4) Target, offering 700 million tons, and (5) High, offering 1.09 billion tons for lease sale. The Minimum Surface Owner Conflicts Alternative is the preferred alternative. The regional leasing target is 300 to 400 million tons.

The environmental analysis did not identify any new types of resources that could be affected which were not already identified under the projected development in the region without new competitive Federal leasing. However, the analysis indicated that potential impacts would be greater if more coal is developed.

Approximately 1,700 copies of the second Draft EIS were sent to Federal, State and local agencies, Indian Tribes, organizations and the public in general. A hearing on the second Draft EIS was held in Farmington, New Mexico. All substantive comments on the adequacy of the Draft EIS have been responded to in the Final. The Final San Juan Basin Cummulative Overview and Comment Letters, analyzing the effects caused by the interactions of the proposed coal leasing, the New Mexico Generating Station, and the three Wilderness Study Area proposals, is also part of the Final EIS, as are the foldout maps contained in both first and second Draft EISs.

No decision to issue preference right leases will occur until after the Commission on Fair Market Value Policy publishes its report and the current moratorium on the leasing of Federal coal expires. The moratorium is scheduled to end 90 days after the Commission released its report to Congress. Meanwhile, the Department is releasing a final environmental impact statement for coal leasing in the San Juan River Region. This activity is a step of the coal activity planning process which is not affected by the legislatively imposed moratorium. However, the Secretary has decided to defer competitive leasing in this region until the wilderness issues are resolved. Processing the PRLAs, but not issuance of preference right leases, may continue during the moratorium expect where prohibited by Section 308 of Pub. L. 98-146, which affects seven PRLAs in New Mexico.

Dated: March 7, 1984.

James M. Parker,

Acting Director, Bureau of Land Management.

[FR Doc. 84-10195 Filed 4-16-84; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Outer Continental Shelf; Proposed Development and Production Plan; Availability of Revised Draft Environemental Impact Statement and Intent To Hold Public Hearings

AGENCY: Minerals Management Service, U.S. Department of the Interior.

ACTION: Notice of Availability and Public Hearing for Environmental Impact Statement/Environment Impact Report.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service, Santa Barbara County and California State Lands Commission have jointly prepared a revised draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Exxon Santa Ynez Unit/Las Flores Canyon Development and Production Plan proposed for the western Santa Barbara Channel, offshore Santa Barbara County, California. Single copies of the revised draft EIS can be obtained from Santa Barbara County, Resource Management Department, Energy Division, 123 East Anapamu Street, Santa Barbara California 93101. Technical appendices have been prepared for each issue area and provide detailed supporting data for the revised draft EIS/EIR. The technical appendices may be obtained individually or as a unit by forwarding a written request to the above address. When requesting an individual appendix, refer to the following titles:

Air Quality and Meteorology
Marine Biology
Geology, Surface Water, Ground Water
Physical Oceanography/Marine Water Quality
Project Alternatives
Terrestrial Biology
Systems Safety and Reliability
Socioeconomics
Cultural Resources

Other supporting documents available upon request are:

—Exxon Pipeline Feasibility Study prepared for Santa Barbara County Resource Management Department by Purvin and Gertz, Inc. and County Staff Report.
—Oil Transportation Plan prepared for Santa Barbara County by Woodward Clyde and Authur D. Little Inc.

Copies of the revised draft EIS will also be available for review in the following public libraries:

California State Poly Library, DS 56D, Document Section, San Luis Obispo, CA 93401
County of Ventura Library, Documents Section, P.O. Box 771, Ventura, CA 93001
Santa Barbara Public Library, 40 E. Anapamu Street, Santa Barbara, CA 93101
University of California Library, Santa Barbara Campus, Santa Barbara, CA 93117
County of Los Angeles Public Library, Govt. Pub. Unit, 330 W. Temple, Los Angeles, CA
Long Beach Public Library, Govt. Pub. Dept., Ocean and Pacific, Long Beach, CA 90802
State Library, Govt. Pub. Sec., Attn: Beverly Pettijohn, P.O. Box 2037, Sacramento, CA 95814

Joint Federal/State/County public hearing are scheduled from 1:00 p.m. to close of testimony and 7:00 p.m. to close of testimony on May 15, 1984 at the Santa Barbara County Planning Commission Hearing Room, 123 East Anapamu Street, Santa Barbara, California. The purpose of the hearings is to receive oral and written testimony regarding the revised draft EIS/EIR prepared for the proposed project. The hearing will provide the Minerals Management Service with additional information to help evaluate the potential effects associated with those aspects of the project subject to Fedearl approval.

Written comments on this document will be accepted at the Santa Barbara County address listed above from April 20, 1984 to June 4, 1984. These comments will be addressed by the MMS, Santa Barbara County, and California State Lands Commission in the Final EIS/EIR. Agencies, interested groups or individuals needing further information should call Lynnette Vesco at (213) 688-6745 or (213) 688-7234.

After testimony and comments have been reviewed and analyzed, a final EIS/EIR will be prepared.

Dated: April 13, 1984.

William E. Grant,

Regional Manager, Pacific OCS Region.

[FR Doc. 84-10228 Filed 4-16-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 6, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 2, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Coconino County

Flagstaff vicinity, *Coyote Range,* N of Flagstaff on U.S. 180

Gila County

Globe vicinity, *Besh-Ba-Gowah,* S of Globe

Pinal County

Oracle, *All Saint's Church,* AZ 77

CONNECTICUT

New Haven County

New Haven, *Ninth Square Historic District,* Roughly bounded by Church, State, George, and Court Sts.

DELAWARE

New Castle County

Odessa vicinity, *Fairview,* SE of Odessa
Wilmington vicinity, *Brandywine Power Mills District,* DE 141 and Brandywine River
Wilmington, *Eighth Street Park Historic District (Boundary Increase),* Broom and 10th Sts.
Wilmington, *Mount Lebanon Methodist Episcopal Church,* 850 Mount Lebanon Rd.
Wilmington, *St. Anthony's Roman Catholic Church,* W. Ninth and N. duPont Sts.

ILLINOIS

Adams County

Golden, *Ebenezer Methodist Episcopal Chapel and Cemetery,* NW of Golden

Cook County

Chicago, *Biograph Theater Building,* 2433 N. Lincoln Ave.
Chicago, *Buena Park Historic District,* Roughly bounded by Rapid Transit, Marine Dr., Irving Park Rd., and Montrose Ave.
Chicago, *North Wells Street Historic District,* 1240-1260 N. Wells St.

Lake County

Lake Bluff, *Armour, Lester, House,* Sheridan Rd.

Logan County

Lincoln, *Foley, Stephen A., House,* 427 Tremont St.

Stephenson County

Freeport, *Taylor, Oscar, House,* 1440 S. Carroll Ave.

INDIANA

Clinton County

Colfax, *Rosenberger Building*, 83 Old Main St.

Henry County

Knightstown, *Hinshaw, Elias, House*, 16 W. Main St.

Tippecanoe County

Lafayette, *Ball, Judge Cyrus, House*, 402 S. Ninth St.

KENTUCKY

Daviess County

Owensboro vicinity, *McKay-Thornberry House*, S. Hampton Rd.

MARYLAND

Queen Annes County

Centerville vicinity, *Bachelor's Hope*, MD 18

Somerset County

Marion Station vicinity, *Williams' Conquest*, Charles Cannon Rd.
Upper Fairmount vicinity, *Academy Grove Historic District*, MD 361

MISSISSIPPI

Adams County

Traveller's Rest,

Washington County

Greenville, *Washington Avenue-Main Street Historic District*, Roughly bounded by RR Tracks, Yerger,
Arnold Ave., and Cherry St.

MISSOURI

St. Louis County

Webster Groves, *Ferguson, Charles W., House*, 15—17 W. Lcokwood Ave.

NEVADA

Washoe County

Reno *Mapes Hotel and Casino*, 10 N. Virginia St.

NORTH CAROLINA

Camden County

Camden, *Camden County Jail*, N C 343
Camden, *Widow's Son Masonic Lodge No. 75*, N C 343

Wake County

Raleigh, *Masonic Temple Building*, 427 S. Blount St.

PENNSYLVANIA

Allegheny County

Oakmont Country Club Historic District,

Chester County

Coatesville, *Caln Meeting House*, 901 Caln Meeting House Rd.
Phoenixville vicinity, *Coates, Moses Jr., Farm*, 1416 State Rd.

Greene County

Garards Fort vinicity, *Corbly, John, Farm*, N of Garards Fort

Lackawanna County

Scranton, *Grand Army of the Republic Building*, 303 Linden St.

Lancaster County

Lancaster, *West Lawn*, 407 W. Chestnut St.

Lehigh County

Allentown, *Hotel Sterling*, 343–345 Hamilton St.

McKean County

Kane, *New Thomson House (Penn-Kane Hotel)*, 2 Greeves St.

PUERTO RICO

San Juan County

San Juan, *El Falansterio de Puerta de Tierra (District)*, Bounded by R R Right-of-Way, Fernandez
Juncos Ave., Matias Ledesma and San Juan Bautista Sts.

VIRGINIA

Charottesville (Independent City)

Morea, 209—211 Sprigg Lane

Richmond (Independent City)

Stonewall Jackson School, 1520 W. Main St.
Young Women's Christian Association, 6 N. Fifth St.

Staunton (Independent City)

Stuart Addition Historic District, Roughly bounded by Augusta, Sunnyside, Market, and New Sts.

Albermarle County

Charlottesville vinicity, *Faulkner House*, 2201 Old Ivy Rd.

Bath County

Hot Springs, *Homestead, The*, U.S. 220

[FR Doc. 84–10242 Filed 4–16–84; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30440]

Chesapeake and Ohio Railway Co. and CSX Corp.; Control; Port Huron and Detroit Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application of the Chesapeake and Ohio Railway Company and CSX Corporation to acquire control of the Port Huron and Detroit Railroad Company through the acquisition of stock.

DATE: Written comments must be filed by May 18, 1984.

ADDRESS: An original and 10 copies of all statements referring to Finance Docket No. 30440 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–10215 Filed 4–16–84; 8:45 am]
BILLING CODE 7035–01–M

[Docket No. AB–43 (Sub-111X)]

Illinois Central Gulf Railroad Co., Abandonment in Macon and Dewitt Counties, IL; Exemption

Illinois Central Gulf Railroad Company (ICG) filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. The line to be abandoned is between milepost 765.7 near Maroa and milepost 772.0 near Clinton, a distance of approximately 6.3 miles in Macon and Dewitt Counties, IL.

ICG has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic will be rerouted over other ICG lines, and (2) that no formal complaint filed by a user of rail service on the line or by a State or local governmental entity acting on behalf of such user regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Illinois has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on May 17, 1984 (unless stayed pending reconsideration). Petitions to stay must be filed by April 27, 1984, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed May 7, 1984, with: Office of the Secretary, Case

Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to ICG's representative: Howard D. Koontz, 233 North Michigan Avenue, 26th Fl., Chicago, IL 60601.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 5, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-10216 Filed 4-16-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Alaska Board of Registration for Architects, Engineers, and Land Surveyors

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the Department of Justice publishes copies of the public comments, and its response thereto, on the proposed Final Judgment filed in the case of *United States* v. *Alaska Board of Registration For Architects, Engineers, And Land Surveyors*, Civil Action No. A82-423-CIV.

The comment of the Charles Tryck Group was accompanied by documentary exhibits. These appendices are not being published herein. The exhibits will be available for inspection by the public at either the office of the Clerk of the Court, Federal Building & United States Courthouse, 701 C Street, Anchorage, Alaska 99513, or at the Legal Procedure Unit, Antitrust Division, Department of Justice, 10th Street and Constitution Avenue NW., Washington, D.C. 20530.

Joseph H. Widmar,

Antitrust Division, Director of Operations.

In the matter of *United States of America*, plaintiff, v. *Alaska Board of Registration for Architects, Engineers, and Land Surveyors*, defendant; Civil No. A 82-423-CIV.

U.S. District Court for the District of Alaska

Michael R. Spaan, U.S. Attorney, Federal Building and United States Courthouse, Room C-252, Mail Box 9, 701 C Street, Anchorage, Alaska 99513

Edward D. Eliasberg, Jr., Carolyn L. Davis, United States Department of Justice, 10th & Pennsylvania Ave., N.W., Washington, D.C. 20530, Telephone: (202) 633-2582, Attorneys for Plaintiff

Plaintiff's Response to Comments Regarding the Proposed Final Judgment

Plaintiff submits this Response pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(d), which provides that for a 60-day period prior to the entry of a proposed Final Judgment in a civil antitrust suit the United States shall receive and consider any written comments relating to that proposed Final Judgment. The APPA provides that at the close of that period the United States shall file with the District Court and cause to be published a response to such comments.

Three comments, copies of which are attached, were submitted to plaintiff regarding the proposed Final Judgment during the 60-day period which ended on February 1, 1984. They, along with this response, will promptly be published in the **Federal Register** as required by 15 U.S.C. 16(d). After reviewing these comments, plaintiff continues to believe that the proposed Final Judgment should be entered without modification.

A. Response to Comment of the Charles Tryck Group

In a pleading dated January 27, 1984, Charles Tryck, Walter Steige, Kenneth Walsh, Robert Hesseltine, Gustav Johnson, and Sam Best (hereinafter the "Tryck Group"), raise certain objections to the theory underlying the government's suit and to the entry of the proposed Final Judgment. First, they contend that the consent decree is based on a "misunderstanding" of the Board's rules in that those rules do not, they say, disallow competition. Second, they argue that competitive bidding for professional services is harmful to the public interest and will promote "mediocrity." Third, they contend that the Board's ban on such bidding is immune from antitrust challenge under the state action doctrine.[1] Finally, the Tryck Group contends that the proposed Final Judgment "would unduly interfere with legislative options" in that it would bar the Board from adopting future restrictions on competition even if authorized by a "broad" authorization from the state legislature. The relief the Group seeks is that "entry of the decree be delayed for at least six (6) months until the Legislature has had full opportunity to review the decree and its own policy options." It further urges that "if the Court determines to approve the proposed decree * * * the decree should be modified to state specifically that its entry will have no effect upon the power of the Legislature to determine appropriate public policy for procurement of professional services, and the manner of implementing that policy."

A principal contention of the Tryck Group amounts to an argument that the underlying cause of action of this case is without merit. These arguments are not germane to the public interest determination which the Court must make in evaluating a proposed antitrust consent decree under the APPA. 15 U.S.C. 16(e). That Act provides, in relevant part,

> Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—
>
> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

In discussing the appropriate standard for evaluating proposed consent decrees, the Ninth Circuit has held that the Court's determination is not to be an evaluation of the merits or the propriety of plaintiff's case; the Court is not to try and decide the case which the parties have agreed to settle. Instead the test under the APPA is simply whether the proposed judgment is adequate to remedy the violations alleged in the complaint. *United States* v. *Bechtel Corp.*, 648 F.2d 660, 665-66 (9th Cir. 1981), *cert. denied*, 454 U.S. 1083 (1981). *See United States* v. *AT&T*, 552 F. Supp. 131, 149-51 (D.D.C. 1982); *United States* v. *Agri. Mark, Inc.*, 512 F. Supp. 737, 739 (D.Vt. 1981); *United States* v. *Nat'l Broadcasting Co.*, 449 F. Supp. 1127, 1143-45 (C.D. Calif. 1978), *cert. denied*, 444 U.S. 991 (1981); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975). Furthermore, the Court's

[1] The Tryck Group Comment suggests that the procedures leading to the proposed decree were "irregular" and "inadequate for a full review of the important legal and policy issues in this case." The Comment also suggests that the Alaska Assistant Attorney General acted contrary to the wishes of the Board in agreeing to the consent decree.

review is not meant to be "an unrestricted evaluation of what relief would best serve the public," but rather, whether the relief requested in the proposed Final Judgment is consistent with the theory of the case. *Bechtel, supra* at 665–66; *AT&T, supra; Agri-Mark, supra* at 739–40; *NBC, supra* at 1144–45; *Gillette, supra.* The latitude which the reviewing Court should afford to decrees negotiated by the parties is founded on the sound policy of the APPA encouraging entry of consent decrees and leaving the balancing of competing interest affected by the consent decrees to the discretion of the Attorney General. *Bechtel, supra* at 666; *AT&T, supra* at 150–51; *Agri-Mark, supra* at 739; *NBC, supra* at 1141–43; *Gillette, supra* at 716.

In sum, questions raised as to the wisdom of the litigation, the validity of the theory of the case or sufficiency of evidence to support that theory are beyond the scope of the inquiry mandated under the APPA. The comment of the Tryck Group, questioning whether competition is lessened by the Board's rules and whether competitive bidding is harmful to the public interest of whether the state action doctrine should shield the Board's activities obviously go to the merits of the underlying claim in this case. The Court should refuse to consider such contentions under the APPA. *Bechtel, supra* at 666. The Court's task is to assess whether the relief proposed under the decree is adequate to remedy the alleged violation of the antitrust laws. *Id.* The relief proposed, removal of the rules challenged in the complaint, is, we submit, obviously consistent with that standard as set forth in *Bechtel.*

Moreover, the arguments of the Tryck Group relating to the substantive issues in this case would be without merit even it they were now timely. Bans on competitive bidding such as that challenged in this litigation have been held to be *per se* illegal. *National Society of Professional Engineers* v. *United States,* 435 U.S. 679 (1978); *United States* v. *Texas State Board of Public Accountancy,* 464 F. Supp. 400 (W.D. Tex. 1978), *aff'd.,* 592 F.2d 919 (5th Cir. 1979), *cert. denied,* 444 U.S. 925 (1979). *See Catalano, Inc.* v. *Target Sales, Inc.,* 446 U.S. 643, 647 (1980). It is well established that bidding bans are "naked restraints" on competition which will be struck down without regard to the purported public interest arguments that competition is harmful which the Tryck Group makes. *National Society of Professional Engineers, supra* at 695; *Texas State Board of Public Accountancy, supra* at 402–3. Furthermore, the Tryck Group's comments imply, erroneously, that the decree mandates or compels competitive bidding. It does not. It simply permits engineers, architects, surveyors, and their customers to engage in the competitive bidding process if they think it is in their interest to do so.

The comment of the Tryck Group also implies that the Court should give special scrutiny to this proposed decree because, it asserts, the defendant "is without legal representation," i.e., it is represented by the Attorney General of Alaska who has consented to provisions that purportedly are not agreeable to at least some members of the Board. Although the Court may properly consider whether consent was lacking by a party entering into a decree, *Bechtel, supra* at 663, in this case the Attorney General of Alaska possessed the power to negotiate and enter the proposed Final Judgment for the defendant. Under Alaska law, the Attorney General has the sole authority to represent all state agencies in judicial proceedings. AS 44.23.020; AS 08.48.141. That authority includes the power to control and dispose of litigation, including consenting to the entry of a final judgment. *State* v. *First Nat'l Bank of Anchorage,* 660 P.2d 406, 420–21 (Alask. S. Ct. 1982); *Public Defender Agency* v. *Superior Court,* 534 P.2d 947, 949–51 (Alask. S. Ct. 1975). An individual state agency may not overrule the Attorney General of Alaska in the exercise of that discretion. *Public Defender Agency, supra; see* Opinion of Alaska Attorney General Wilson L. Condon to the Department of Internal Revenue (October 7, 1981). The comments do not suggest any procedural irregularity by the Attorney General. Thus, the Attorney General of Alaska had the authority to, and did, consent to the entry of the proposed Final Judgment.

Although this matter has already been stayed by the Court for four months in order to permit the Alaska Legislature to consider legislation regarding competitive bidding (*see,* Minute Order from Chambers, February 24, 1983), the Tryck Group requests yet another stay of six months so that the Legislature can again consider possible legislation and, also "review" this proposed decree. In the alternative, the Group requests that the decree be modified to state that its entry "will have no effect upon the power of the legislature to determine appropriate public policy for procurement of professional services, and the manner of implementing that policy." Such a request is unjustified and unnecessary.

The proposed decree does not prevent the Legislature of the State of Alaska from enacting legislation to prevent or regulate competitive bidding in the rendering of services. For example, the Legislature is clearly free to enact legislation making all or certain kinds of competitive bidding for engineering, architectural or surveying services unlawful or requiring that state agencies not engage in competitive bidding. The only possible conflict with the provisions of this decree would occur if the Legislature enacted new legislation which required, or appeared to require, *the Board* to restrict competitive bidding—legislation which it has previously declined to enact. If such a case arose there would be various questions to resolve including what kind of restraint on competitive bidding was intended by the Legislature and whether such a restraint had been so clearly articulated as state policy as to confer a so-called "state action" defense exemption under the antitrust laws. *Community Communications Co.* v. *City of Boulder,* 455 U.S. 40 (1982); *California Liquor Dealers Ass.* v. *Midcal Aluminum,* 445 U.S. 97 (1980); *New Motor Vehicle Board* v. *Orrin W. Fox Co.,* 439 U.S. 96 (1978).[2] We submit that it is clearly premature to deal with such a hypothetical situation now.

Given the Legislature's past refusals to enact any legislation restricting competitive bidding, the Tryck Group's objection that the legislature may someday enact legislation that would require Board promulgation of a ban on competitive bidding is necessarily speculative. In any event, under Section XII of the proposed Final judgment, the defendant retains the right to request that the Court consider the propriety of amending the judgment if such legislation were ever enacted. A potential conflict between the requirements of a decree and legislation is not grounds to justify rejection of the decree. If substantive changes are required, the modification provisions of the decree are available to defendant. *Cf. Bechtel, supra* at 666.

In the event such legislation were enacted, the Board would be required

[2] As the Tryck Group points out, questions regarding this defense are now before the United States Supreme Court in *Ronwin v. State Bar of Arizona,* 686 F.2d 692 (9th Cir. 1982), *cert. granted sub nom. Hoover v. Ronwin,* 103 S.Ct. 2084 (1983). The issues in that case, however, are inapplicable to the facts of this case. The question in *Ronwin* is under what circumstances a specific statutory grant provides state action protection. In contrast, the present case involves only a general enabling statute. *See generally, City of Boulder, supra.*

under the decree to request that the Court amend the judgment to permit it to act in accordance with the legislation. This procedure is entirely appropriate and in the public interest in that the Court would have the opportunity to determine whether the statute constituted state action and hence would otherwise immunize the Board's conduct from challenge under the antitrust laws.

Finally, the Tryck Group's request for a six months stay prior to entry of the decree should be rejected as unwarranted and improper at this stage of the proceeding. The Court's sole function under the APPA is to either approve the settlement or to state what amendments it will require to the proposed Final Judgment before approving the decree. *AT&T, supra* at 153; *NBC, supra* at 1142–43. It would be inappropriate and inconsistent with the APPA to grant third parties extensions of time to seek what they perceive as curative legislation where as here the parties have stipulated to a decree resolving the controversy. *AT&T, supra* at 153; *NBC, supra* at 1142–43; *Cf., Landis* v. *North American Co.*, 299 U.S. 248 (1936). Indeed, such a stay would be particularly inappropriate in this case since the Court previously has granted the defendant a four month stay in which it unsuccessfully sought legislation. (*See*, Minute Order From Chambers, February 24, 1983).

B. Response to Comment of Donald R. Dent

By letter dated January 27, 1984, Donald R. Dent, a professional engineer and land surveyor in Anchorage, Alaska, made general objections to the bringing and settling of this suit. He noted that he agreed with the comments of the Tryck Group, except he believed that the Final Judgment should be dismissed immediately "as being without basis in fact or law" rather then delayed six months for legislative action as the Tryck Group had requested. He also stated in his letter that he did not believe that the actions taken by the United States or the Alaska Attorney General "have been open and above reproach" in this case and that "the case cited by the [United States] Department of Justice * * * as a basis of attack are applicable to this situation, or this State Agency." He further stated that "many statements made in the Competitive Impact Statement * * * are speculative and without basis in fact" and that "this Final Judgment would allow the Department to avoid proving its allegations." All of Mr. Dent's objections except one are basically among those raised by the Tryck Group discussed above. Our response to their comments are equally applicable to his.

Mr. Dent raises one additional comment concerning Sections IV and V of the proposed Final Judgment. He asserts that these Articles are in conflict with one another in that "the Board * * * would not be able to exercise its rights in 'advocating or seeking legislation concerning competitive bidding' allowed by Article V, without violating Article IV." This is not correct. Article V clearly provides that "nothing in this Final Judgment shall prohibit defendant from advocating or seeking legislation concerning competitive bidding or quoting prices, provided that such advocacy or discussion makes clear that defendant is not thereby suppressing, restraining or discouraging Board certificate of registration holders from submitting competitive bids or price quotations."

C. Response to Comment of Vernon Akin

By a one page letter dated February 1, 1984, Vernon Akin, a consulting engineer with offices in Juneau, Alaska, also made a general objection to the entry of the proposed decree. He indicated that he had read and endorsed the position Charles Tryck and his colleagues had taken in their comment. Mr. Akin also stated that, as was the case with the Tryck Group, his basic position is that the ban does not unreasonably restrain competition, that competitive bidding is harmful to the public interest, and that the present Alaska Attorney General has "sold down the river" the defendant and the profession. He asked that the Court delay entry of the decree until members of the profession have had an opportunity "to prove" that "their stand is valid."

Mr. Akin's objections are among those raised by the Tryck Group. Our response to their comments are equally applicable to his.

Conclusion

After reviewing these comments, the United States still submits that prompt entry of the proposed judgment is in the public interest.

Dated: April 3, 1984.

Respectfully submitted,

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U.S. District Court for the District of Alaska

United States of America, plaintiff, vs. *Alaska Board of Registration for Architects, Engineers, and Land Surveyors*, defendant; Civil Action No. A–82–423 CIV.

Comment Submitted Pursuant to 15 U.S.C. 16

Introduction

Pursuant to 15 U.S.C. 16, the "Antitrust Procedures and Penalties Act", and with the aid of legal counsel, we have prepared comments on the proposed consent decree in this case. Charles Tryck, Walter Steige and Kenneth Walsh are engineers; Robert Hesseltine is an architect; and Gustav Johnson is a professional land surveyor and engineer. Sam Best is a land surveyor, currently serving as Assistant Manager for the Kenai Borough. He is also a member of the defendant Board. The services provided by our professions are referred to herein as "professional services".

Each of us has practiced his profession in Alaska for many years, has participated in a large number of competitive proceedings for procurement of professional services, and is familiar with the events leading to this controversy. We will be affected by the proposed decree, not only as members of our respective professions, but as citizens and ultimate consumers of the services provided by those professions.

Opposition to the consent decree by members of the professions involved may seem to be self-serving. This perception is unfortunate, as it tends to obscure the genuine public policy stakes in the debate. For this reason, we have submitted a variety of exhibits documenting the practical problems with bidding for professional services, including studies and reports from user agencies as well as professional associations.

Summary

The proposed decree is the product of an agreement between the United States Department of Justice and the Attorney General for the State of Alaska. At issue is a regulation adopted by the Alaska Board of Registration for Architects, Engineers and Land Surveyors (the Board). The regulations, codified in 1972 as 12 AAC 36.230(b), states:

> Each architect, engineer or land surveyor shall seek professional employment on the basis of qualifications for the proper accomplishment of the work. He may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding.

The primary effect of the consent decree would be to repeal this regulation and to prevent the Board from enacting any similar regulation in the future.

The procedures leading to the proposed decree were irregular and were inadequate for a full review of the important legal and policy issues in this case. The decree is based upon a flawed understanding of the meaning of the regulation and of the way in which competition operates in our professions. Adoption of the decree would be detrimental to the public interest by promoting mediocrity and conflict in the procurement of professional services. Finally, the decree is an improper incursion on State legislative authority, and imposes restrictions on State action far beyond what would be permissible under prevailing law if the matter were judicially determined.

Background

The Board is established by State law under AS 08.48.011. The legislature delegated to the Board the authority to adopt a code of ethics for the professions within its jurisdiction (the professions). Under Alaska law such regulations have the force of law, and may be modified or repealed by the Legislature only through use of the procedures required for enacting a law. *State* v. *A.L.I.V.E.*, 606 P.2d 769.

In May of 1982, the Department of Justice informed the Attorney General's Office of its opinion that 12 AAC 36.230(b) was an invalid restraint of trade under the Sherman Act. Following a series of efforts to persuade the Board to repeal the regulation, the Department commenced this suit in October of 1982.

As 08.48.141 provides that the Attorney General shall "render legal assistance [to the Board] upon request of its President". The Attorney General declined to defend the Board on the ground that his office had taken the position that the regulation was unlawful. Initially, the Attorney General engaged expert private counsel to represent the Board's position. Private counsel advised the Board that its prospects of prevailing in the lawsuit were good. This prognosis was based on 1) the "*Parker* doctrine", under which a State is exempt from the anti-trust laws, and 2) on the doubtful ability of the government to demonstrate a "conspiracy", a necessary element for anti-trust violation.

With the change of administration in 1982, the Attorney General dismissed the Board's private counsel and announced its intention to concede the invalidity of the regulation and to enter into the proposed consent decree. An Assistant Attorney General informed the members of the Board that, in spite of their policy concerns and their unwillingness to repeal the regulation, it was the decision of the Attorney General's office to nullify the regulation by agreeing to the consent decree. In addition, he warned members of the Board that if they publicly opposed the consent decree in any manner they faced dismissal from the Board, and, perhaps, other legal sanctions. The regulation remains in effect. The Board on several occasions has reaffirmed its belief that the regulation serves the public interest and should remain in effect, though perhaps with some modifications.

Relief Requested

Pursuant to 15 U.S.C. § 16, this Court is authorized to conduct a comprehensive review of any proposed consent decree in an anti-trust case. The Court is directed not to approve the decree unless the Court is convinced that its provisions would promote the public interest. In this case, the public interest would best be served by delay of the decree until the Legislature has considered fully its implications and the available alternatives.

Normally the parties agreeing to a consent decree are themselves the primary "parties in interest". In the absence of collusion, a settlement agreement among these parties does not adversely impact the interests of third parties or of the public. In the present case, the named defendant, the Board, is without legal representation. Because of the unwillingness of the Attorney General to provide for defense of the suit, important issues of federalism and legislative policy may be resolved by *fiat*, without involvement of the public or its elected representatives.

The consent decree would have far-reaching effect on the ability of the State Legislature to act in the area of professional regulation. It is important to maintain the full range of legislative options in this area because the policy assumptions embodied in the proposed decree have not been adequately exposed to analysis and comment. Accordingly, we request that entry of the decree be delayed for at least six (6) months until the Legislature has had full opportunity to review the decree and its own policy options. During the same period the Board could hold hearings and consider alternative wordings of the regulation which could eliminate some of the present confusion.

If the Court determines to approve the proposed decree, we believe that the decree should be modified to state specifically that its entry will have no effect upon the power of the Legislature to determine appropriate public policy for procurement of professional services, and the manner of implementing that policy.

Substantive Issues

A. *The Consent Decree Is Based On A Misunderstanding of 12 AAC 36.230(b).* Apparently, the Justice Department and the Attorney General's Office believe that 12 AAC 36.230(b) bars competition in procurement of professional services. In its complaint, the Justice Department states:

> Competition in the sale of architectural, professional engineering, and land surveying services has been suppressed and eliminated.

In a recent press release, the Attorney General

> * * * noted that the free market system works best where healthy competition is encouraged * * * including competition among individuals who provide professional services, whether they are doctors, lawyers or architects.

This assumption of a lack of competition in our professions is incorrect. The regulation has never been interpreted to bar submission of information as to standard hourly rates or other quantifiable cost items. It is true that, at the initial stages of procurement, competition focuses on qualifications. Price becomes the primary factor in selection after a ranking on the basis of qualification has taken place.

The usual procedure for procurement of professional services by public agencies in Alaska is essentially the same as that utilized by the Federal government, and by a majority of the States. Firms submit their qualifications to perform work on a particular project. Based on this information, three or more firms are selected and ranked. Negotiations as to cost take place with the first ranked firm. If the agency and the firm cannot agree on a fair and reasonable price, negotiations are ended

with the first and undertaken with the second firm, and so on, until a satisfactory agreement is reached.

The regulation does not disallow competition. What it does disallow is a process in which overall cost is a factor, inevitably the primary factor, in the initial stages of procurement. Such "botton line" bidding is appropriate for hiring a general contractor or for procuring other goods and services in accordance with definite specifications. It is not appropriate for professional services, any more than it would be an acceptable basis for engaging a doctor to perform an operation, or an attorney to try a major case.

B. *Competitive Bidding For Professional Services Is Harmful To The Public Interest.* The merits of competitive bidding for professional services have been debated and investigated in many contexts. In 1972, after extensive analysis, Congress adopted the *Brooks Act,* Pub. L. 92–582, 40 USC §§ 541–544. This law provides for procurement of professional services by Federal agencies in the manner described above. The House Committee which drafted the *Brooks Act* explained its rationale as follows:

> Under this system A–E's are under no compunction to compromise the quality of the design or the level of effort they will contribute to it in order to meet the lower "fee" of the other A–E's. They are free to suggest optimum design approaches that may cost more to design, but can save in construction costs and otherwise increase the quality of the building or facility to be constructed.
>
> This system protects the interest of the taxpayers. Having won the competition on the basis of capability, the winning A–E must then negotiate his fee. He must demonstrate on the basis of projected costs that his fee is fair and reasonable. He must accept whatever adjustments the government demands if he wishes to obtain the contract. He knows that if he holds out for an unfair or unreasonable fee, the government will terminate the negotiations and award the contract to another A–E at a fair and reasonable price (H. Rept. 92–1188, June 25, 1972).

See Exhibit 1, p. 2.

The American Bar Association also has studied procurement of architectural-engineering services. Its Model Procurement Code for State and Local Government is patterned after the *Brooks Act.* In explaining why the association recommended a selection process that emphasizes professional qualifications, the A.B.A. reported:

> The principle reasons supporting this selection procedure for architect, engineer and land surveying services are the lack of a definitive scope of work for such services at the time the selection is made, and the importance of selecting the best qualified firm.
>
> In general, the architect, engineer or land surveyor is engaged to represent the (State's) interests and is, therefore, in a different relationship with the (State) from that normally existing in a buyer/seller situation. For these reasons, the qualifications, competence and ability of the three most qualified architect, engineer or land surveying firms are considered initially, and price negotiated later.
>
> It is considered more desirable to make the qualification selection first and then to discuss the price, because both parties need to review in detail what is involved in the work (for example, estimates of man-hours, personnel costs and alternatives that the architect, engineer or land surveyor should consider in-depth). Once parameters have been fully discussed and understood and the architect, engineer or land surveyor proposes a fee for the work, the recommended procedure requires the (State) to make its own evaluation and judgment as to the reasonableness of the fee.
>
> If the fee is fair and reasonable, award is made without consideration of proposals and fees of other competing firms. If the fee cannot be negotiated to the satisfaction of the (State), negotiations with other qualified firms are initiated. Thus, price clearly is an important factor in the award of the architect, engineer or land surveying services contract under this procedure. The principle difference between the recommended procedure for architect, engineer and land surveyor selection and the procedures used in most other competitive source selections is the point at which price is considered.

See Exhibit 1, p. 5.

Of the thirty-one States which have enacted legislation governing AELS selection, twenty-nine embodied the general approach of the *Brooks Act.* Of the States without specific statutes on point, most follow this model as a matter of practice. Only Maryland mandates selection on the basis of initial competitive price proposals. See Exhibit 1, p. 3.

The Maryland law was enacted in response to procurement scandals in that State. However, experience has shown that a competitive bidding system does not eliminate the potential for bribes, price rigging, political influence, and the like. The best way to deal with these problems is to assure openness and public scrutiny at each step of the procurement process, features which may be part of a competitive negotiation as well as a bid process.

The actual experience in Maryland has been disappointing, even for proponents of competitive bidding. A newspaper article in that State observed:

> Maryland's bidding requirement has not served the best interests of that State. In fact a recent survey among consulting engineering firms showed that ninety (90) percent of Maryland's engineering firms do not seek work from the State and that more than eighty (80) percent who sought State work before no longer do so.
>
> * * * * *
>
> Disturbing also were comments by firms responding to the survey who said they believed that competitive price bidding encourages them to submit proposals that are void of innovation and to cut corners by meeting minimum standards in an effort to keep the fees low.

See Exhibit 2.

Problems with bidding for professional services are numerous. In competitive bidding, price becomes the primary factor, not just "*a* factor", because of a procuring agency's difficulty in explaining and justifying a decision not to award to the low bidder. Competitive bidding may actually increase project costs by extending the procurement period, requiring much increased in-house efforts in order to establish reasonably detailed and uniform specifications, and encouraging use of standard designs and other short cuts. See Exhibits 3 and 4.

Design costs are only a small fraction of total life cycle costs of a building. Small savings at the design phase may be offset many times over by increased maintenance, operation and other indirect costs flowing from low cost design. If the design professional is obliged to secure the job by a low bid, he is thereafter motivated to keep his work strictly within that bid rather than to seek actively the most creative and functional long-term approach to the particular design problem. The potential for conflict between owner and professional is increased. See Exhibit 5.

C. *The Legal Theory Underlying The Complaint Is Of Doubtful Validity.* The Court normally is not called upon to resolve the merits of the underlying claims in deciding whether or not to approve a consent decree. However, in a "public interest" determination, we believe that this aspect requires consideration, particulary where the decree may affect the authority of the Legislature to take action in the future.

Regulatory measures undertaken by a State are immune from scrutiny under the anti-trust laws. The position of the Department of Justice in this case, apparently accepted by the Attorney General, is that the Board is not covered by the State Action Exemption. This view places the Board in the paradoxical position of being sufficiently a part of the State for the State Attorney General to concede this case against the Board's wishes, but not

sufficiently part of the State to share the State's anti-trust immunity.

In any event, the theory of both agencies has important implications for operation of other agencies and departments of the State government. The Board's original attorney expressed the point as follows:

> The Board is not a "subdivision" of Alaska; it has statewide authority and authoritatively speaks for the State in its area of competence. If accepted, the Department's argument would substantially interfere with the ability of State government to function efficiently through the delegation of authority that is common throughout the country. It would mean that in all of the many areas governed by State agencies, the State Legislature would have to specifically consider the question of whether a competitive system is appropriate and expressly authorize any deviation from such a system. It is not unreasonable to suggest that this would entail a substantial interference in State government and an infringement of the interests of federalism by which the Court has been consistently guided in its development of the State-action doctrine.

In *National Society of Professional Engineers v. United States*, 435 U.S. 679 (1978), the Supreme Court held that the Sherman Act barred private professional organizations from adopting rules which restricted price competition. This case in no way affected the power of the *State* to make such restrictions. Nor, of course, did the Court purport to pass on the wisdom of such measures. If the consent decree is enacted, the two governmental law departments will have used this Court to implement their own concept of wisdom in this complex policy area.

In the near future, the Supreme Court will provide new guidance as to the anti-trust immunity of state agencies. The Court has agreed to review the decision of the Ninth Circuit in *Ronwin v. State Bar of Arizona*, 686 F.2d 692, raising issues remarkably similar to those in this case. The advantage of viewing the present case in light of a final decision in *Ronwin* is an additional reason to delay approval of the consent decree.

D. *The Consent Decree As Presently Worded Would Unduly Interfere With Legislative Options.* If the Legislature adopted a statute which barred price competition for professional services, the measure would be shielded from anti-trust scrutiny by the *Parker* Doctrine. If the Legislature expressly authorized the Board to enact a regulation barring such competition, presumably the "State Action" requiremnt also would be satisfied. However, the Legislature could choose to act more generally, and simply authorize the Board to enact "such reasonable regulations relating to price competition as it may consider to be in the public interest". Recent cases indicate that such an authorization would be sufficient to immunize action taken by the Board pursuant thereto. See, e.g., *Ajax Aluminum, Inc, v. Goodwill Industries of Muskegon County*, No. G 82–31, (W.D. Mich. 1983). The proposed Decree and Final Judgment would preclude this third approach. Paragraph IV of the decree bars the Board from:

> (B) Promulgating, maintaining, adopting, disseminating, publishing, enforcing or seeking adherence to any rule, by-law, guideline, code of ethics, statement of principle, policy, or collective statement which has the purpose or effect of suppressing restraining or discouraging Board certificate of registration holders from submitting competitive bids or price quotations, or which states or implies that competitive bidding or quoting prices is prohibited, unethical, unprofessional or contrary to any policy of defendant.

The Decree requires the Board to send to all persons registered under its auspices a letter which includes the following paragraph:

> In addition, the Final Judgment, which was entered by Federal District Judge von der Heydt, prevents the Board from adopting in the future any new regulation, rule or policy statement which would prevent, discourage, or label as unprofessional the use, submission, or solicitation of price quotations and competitive bids.

These provisions, read literally, would prevent the Board from adopting *"Brooks Act"* regulations, even if the authorization from the Legislature was sufficiently broad to permit such regulations. In other words, under the Decree, the Legislature itself would be required to enact the full details of any procurement system which would in any way limit price competition. This is an unreasonable burden to place upon the Legislature. It interferes with the Legislative prerogative of delegating such rulemaking authority to administrative agencies, and inhibits the flexibility and public access to the process which administrative rulemaking is designed to secure.

Conclusion

For these reaons, we ask the Court to review the consent decree and these comments with special care. The Court may wish to provide for a hearing at which persons knowledgable in this area may present additional testimony and respond to questions. In any event, we urge the Court to avoid a short-circuit of the legislative process by delaying entry of the decree until there has been a more complete opportunity for review and discussion by the Legislature, the Board and the interested public.

Dated at Anchorage, Alaska this 27th day of January, 1984.

Charles Tryck.

Before me appeared Charles Tryck on this 27th day of January, 1984, and, being duly sworn, executed this document, affirming that it is true and correct to the best of his knowledge, information and belief.

Melissa Lyn Gard.

Notary Public in and for Alaska.
My Commission Expires: June 1, 1986.

Robert Hesseltine.

Before me appeared Robert Hesseltime on this 27th day of January, 1984, and, being duly sworn, executed this document, affirming that it is true and correct to the best of his knowledge, information and belief.

Melissa Lyn Gard.

Notary Public in and for Alaska.
My Commission Expires: June 1, 1986.

Gustav v. Johnson.

Before me appeared Gustav v. Johnson on this 27th day of January, 1984, and, being duly sworn, executed this document, affirming that it is true and correct to the best of his knowledge, information and belief.

Melissa Lyn Gard.

Notary Public in and for Alaska.
My Commission Expires: June 1, 1986.

Samuel Best.

Before me appeared Samuel Best on this 28th day of January, 1984, and, being duly sworn, executed this document, affirming that it is true and correct to the best of his knowledge, information and belief.

Richard W. Garnett III.

Notary Public in and for Alaska.
My Commission Expires: May 22, 1986.

Kenneth Walch.

Before me appeared Kenneth Walch on this 27th day of January, 1984, and, being duly sworn, executed this document, affirming that it is true and correct to the best of his knowledge, information and belief.

Melissa Lyn Gard.

Notary Public in and for Alaska.
My Commission Expires: June 1, 1986.

Walter Steige.

Before me appeared Walter Steige on this 27th day of January, 1984, and, being duly sworn, executed this document, affirming that it is true and correct to the best of his knowledge, information and belief.

Melissa Lyn Gard.

Notary Public in and for Alaska.
My Commission Expires: June 1, 1986.

Dated this 27 day of January, 1984 at Anchorage, Alaska.

Respectfully submitted,
Erwin, Smith & Garnett.

By:
Richard W. Garnett III.

Explanation of Exhibits

1. Statement by Philip A. Hutchinson, Jr., to Transportation Committee, Connecticut State Legislature.
2. (A) Article dated March 25, 1983, *Baltimore Daily Record*, relating to experience in Maryland with competitive bid procedure. (B) Editorial, dated January 9, 1981, *Richmond Times Dispatch*, concerning problems with "Bidding for Experts".
3. Letter dated May 2, 1979, from Bureau of Facilities Management to Wisconsin State Assembly. Analyzes particular cases illustrating how competitive bidding for professional service may increase costs.
4. Letter dated June 29, 1981, from Charles R. Ward, Legislative Research Analyst to Professional Services Advisory Committee. Compares different methods of procurement of professional services and reviews experience of several other jurisdictions.
5. Letter dated February 24, 1983, from Senior Vice-President, Design Professionals Financial Corporation, relating to effect of competitive bidding from insurance perspective.

January 27, 1984.

Mr. John W. Poole, Jr.,
Chief,
Special Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C.

Re: United States v. Alaska Board of Registration for Architects, Engineers and Land Surveyors, Civil No. A 82–423 CIV.

Sub: Public Comment on Final Judgement Pursuant to 15 USC §16.

Dear Mr. Poole; I wish to enter my personal comments and objections to the Final Judgement, as filed with the United States District Court for the District of Alaska.

I am a resident of the State of Alaska, and a Professional Engineer and Land Surveyor, registered under AS 08.48. I have practiced engineering and Land surveying in Alaska for nearly 19 years. I believe that I will be directly and adversely, effected by approval by the Court of the Final Judgement submitted.

I have observed the progress of actions taken by the U.S. Department of Justice and the Alaska Attorney General's office, since the Departments first threat of legal action, and its attempt to orchestrate the State Board of Registrations internal actins, in May, 1982. I do not believe that the actions taken by the Department, or the Attorney Generals office, have been open and above reproach. Nor do I believe that the cases cited by the Department of Justice (see attachment #4) as a basis of attack are applicable to this situation, or this State Agency. Case law supports this belief.

Many statements made in the Competitive Impact Statement, entered to support the Department of Justice position, are speculative and without basis in fact. This Final Judgement would allow the Department to avoid proving its allegations. It is unbelieveable that the Justice Department would attempt to use the Court in this manner.

I have read the comments submitted by Charles Tryck, Walter Steige, et al, and support and agree to them. I do not agree, in entirety, with the Relief Requested, therein. I believe that the six (6) months delay for Legislative action will only leave uncertainty in the minds of the legislators, who may otherwise support pending legislation presently before them, which is also supported by the design professions.

I believe that this Final Judgement should be dismissed as being without basis in fact or law. I believe that this Final Judgement has been offered to the Court for action based on misrepresentation.

The foregoing is my opinion, based on actions of which I have record, from conversations that I have had with witnesses to these various actions, from public precord and documents, from applicable cases that I have read, and, my interpretation by reading the Final Judgement and its supporting material.

Sincerely,

Donald R. Dent, Jr., *PE/RLS.*

Attachments:
1. Basis of Objections
2. Chronology of Events
3. Background
4. Telecopy letter, dated April 30, 1982 Eliasberg to Froehlich

Attachment 1

Mr. John W. Poole, Jr.,
U.S. v. Alaska Board of Registration, Civil No. A 82–423 CIV, Public Comment.

January 27, 1984.

Basis for Objection

1. The Consent Decree is entered as an *agreement* by the Board of Registration. The members of the Board *have not agreed.* The Alaska Attorney General has agreed by stipulation in the name of the State of Alaska. The State of Alaska is not named as a party to the Complaint.

2. The introductory statement entitled "Final Judgement" specifically states that the Final Judgement would be entered "* * * without trial or adjudication of any issue of fact or law * * *", yet Article VI of the Final Judgement says the "[S]ubsection 230(b) of the defendants Rules of Professional Conduct "* * * is hereby declared null and void because the subsection *is in* violation of Section 1 of the Sherman Act * * *." There has been no adjudication sustaining that statement. Recent case law refutes the presumption of violation. This appears to be an attempt to inject an intentional non-truth into the Decree, for a purpose unknown except to the Justice Department.

3. The Board of Registration offered to reword the last sentence of 230(b), which contains the words "competitive bidding". The Department of Justice is insisting on removal of the *entire* Section 230(b) which also includes the following statement:

"Each architect, engineer or land surveyor shall seek professional employment on the basis of qualifications and competence for proper accomplishment of the work."**

**This is the correct wording of the first sentence of 230(b), which is *incorrectly* quoted in the Final Judgement notice.

Removal of this first sentence, also, must indicate that the Department of Justice views "qualifications and competence" in the design professions as a violation of the Sherman Act, as well.

4. Articles IV and V of the Final Judgement are in conflict with one another. The Board of Registration would not be able to exercise its rights in "advocating or seeking legislation concerning competitive bidding", allowed by Article V, without violating Article IV.

5. Article VII, last sentence, appears to usurp any subsequent Alaska legislative actions. Here again is the statement that 230(b) violates the Sherman Act, *unproven in a Court of Law.*

6. Appendix A, by its wording for the "Notice", will direct that all proposals *should be* on the basis of competitive bidding. This is not the true intent of the Judgement. The statement will be misleading to the general public.

7. *Competitive Impact Statement.*

I. Nature and purpose of the Proceeding.

A conspiracy is alleged by the Department of Justice. The Board of Registration, a State Agency, has acted in compliance with the Alaska statutes in its promulgation of Rules of Professional Conduct. The allegation seems to imply that *any* State agency complying with the laws of the state when promulgating regulations which effect persons controlled by those regulations, is conspiring to restrain trade. This rational would negate *all* regulations of all the 50 states. The Department of Justice has not put forth any proof of a conspiracy, *only compliance with the laws of the state.*

II. Description of Practices Involved in the Alleged Violation.

Under this section the Department of Justice makes many allegations implying that the Board and practitioners (licensees) did inform purchasers of professional services of the rule (230(b)) *in order* to restrain trade and for other questionable purposes. Although not acknowledged by the Department of Justice, rule 230(b) was lawfully promulgated under Alaska statutes and, as such, is the law, until *determined* otherwise. The Court, by accepting the Final Judgement with its statements concerning the violation of the Sherman Act, without hearing any but the unilateral *opinions* of the Justice Department, I feel, would be doing a grave injustice, not only to the practitioners of the design professions in Alaska, but those all over the United States. It doesn't take a chrystal ball to deduce that the Justice Department intends to use this Final Judgement, in its present form, as a basis of attack against every other state with a similar regulation or statute.

If a person approves, or disapproves of a law, he may say so, as allowed by the First Amendment. If a person informs another of the law, and his intent to abide by that law, he should not be accused of violating the law. If a person conforms to the law, he should not be accused of conspiring with others to violate the law. The Justice Department has made these assertions. It would appear, from the Department of Justices allegations and

assertions, that the Department strongly supports Civil Disobedience, and that the First Amendment should be suppressed.

Attachment 2

Mr. John W. Poole, Jr.,
U.S. v. Alaska Board of Registration, Civil No. A 82-423 CIV, Public Comment.
January 27, 1984.

Chronolgy of Events

Summary of Events leading up to, and through, October 27, 1983. Information taken from public record and correspondence. Italics are added for emphasis.

4/30/82 Notice to Alaska AG's Office (through Peter Froehlich) from U.S. Dept. of Justice (DOJ), by E.D. Eliasberg, that DOJ "has opened an inquiry into" the Alaska AELS Boards (BOR) ban on competitive bidding by professionals, as stated in 12 AAC 36.230(b). As indicated from the letter, a call had taken place between Eliasberg and Louise Ma of DOJ, with Froehlich, prior to this date.

5/6-7/82 Presentation to BOR by Froehlich, of an "Emergency Repeal of 230(b)", for signature of the Vice-president of BOR. This procedure was suggested to Froehlich by Eliasberg. BOR did not vote to repeal 230(b).

5/12/82 Notice issued by Commissioner of Commerce & Economic Development for a Public Hearing to repeal 230(b), to be held on 6/10/82.

5/13/82 Letter from Froehlich to Eliasberg, stating:

1. The Board refused to repeal 230(b);
2. The AG's Office *could not defend* BOR upon its refusal to follow *Froehlich's* recommendations;
3. Hearing for repeal is set for 6/10/82;
4. AGs Office *could* file a repeal order with the Lieutenant Governor 60 days after the hearing, to take effect 90 days after the hearing, about August 14;
5. Froehlich was to be contacted by DOJ to provide anything further.

5/17/82 Letter from Froehlich to Eliasberg submitting copy of the Public Hearing notice for repeal of 230(b), and a copy of *Drafting Manual for Administrative Regulations.*

5/18/82 Copies of Public Hearing Notice for Repeal of 230(b) sent to all BOR members.

6/10/82 Public Hearing held on repeal of 230(b), in Anchorage. Essence of comments were: support of retention of 230(b); manner in which Public Hearing was called was contrary to Alaska statutes; questionable legal and ethical manner in which Asst. AG Froehlich was handling the problem; that there should be no further BOR action until proper and competent research and information be made available to BOR; any additional Public Hearings should be advertised according to Alaska statutes. The fact was stated by BOR staff that the notice for this hearing was *ordered* by the AGs Office. Also stated that BOR had requested proper Public Hearings for later in the summer.

7/2/82 Advertisement for (2nd) Public Hearing on repeal of 230(b). Hearing was set for 8/5/82, via Legislative Teleconference Network. This notice was proper, according to AK statutes.

July thru Sept 82 Several meetings and Teleconference conversations took place in Washington, D.C. by engineering groups and individuals with DOJ attorneys attempting to educate them on the purposes of retaining 230(b). This fell on DOJ's deaf ears.

July thru Nov 82 Alaska Congressional Delegation contacted and advised of the situation, the DOJ's and AG's attitude, and the threat of suit by DOJ. On October 4, 1982, Jay Hammond *assured* Senator Stevens that the matter could properly be handled "internally".

8/5/82 The 2nd hearing on repeal of 230(b) was held. BOR to review comments.

8/22/82 It was discovered by Governor Hammond's Washington staff that AG Condon was unaware of the position taken by his Asst. AG regarding the defence of the BOR, or of the problems and threat of suit by DOJ.

9/24/82 Letter from Froehlich to Eliasberg, informing of the AK AGs drafting of (1) a mini-Brooks bill, similar to that considered in the 1982 Legislative session, and (2) a bill giving *specific* legislative authority of a ban on competitive bidding by professionals, similar to wording of 230(b). Transcripts of the August 5th Public Hearing, and written comments, were forwarded to Eliasberg with this letter.

10/6/82 Meeting with a key person in Gov. Hammond's Office to assist in resolving the dilemma over the Asst. AGs position. Result was provision of $10,000 for legal assistance for BOR.

10/12/82 DOJ files Complaint against the BOR, as Defendent. State of Alaska is not named in the Complaint.

Nov '82 Independent Counsel (IC) hired for the BOR.

11/22/82 Response to DOJ Complaint filed by IC.

Dec 82 New AG (Gorsuch) informs DOJ that Independent Counsel is no longer handling the case.

1/10/83 Former IC sends Memorandum to new AG, which outlines elements of the case, defences, and *high* percentage probability of success in *winning* the case if litigated. Emphasis is that DOJ *must prove* that 230(b) is a violation of the Sherman Act. Preponderance of Case law cited shows that DOJ could not prevail.

1/15/83 AG submits to Governor Sheffield, a bill revising AS 08.48, which would install that portion of 230(b) prohibiting competitive bidding by professionals in statute. Hearing was set for March 15, 1983, but the proposed bill was *withdrawn by the AG* before that date.

1/28/83 Motion to Stay proceedings, pending legislative action, to May 31, 1983, filed by *Independent Counsel*, with Memorandum in Support of Motion.

2/14/83 DOJ files Memorandum in Opposition of Defendents Motion to Stay Proceedings.

5/31/83 No Legislative Action. In June, AG Gorsuch claims that no bill (see 1/15/82 above) was introduced *because BOR couldn't find a sponsor.* This bill was actually an Administration Bill, and should have been introduced by it.

6/10/83 Froehlich states to DOJ that *he* was prepared to enter a Consent Decree with DOJ which:

1. Declared Rule 230(b) null and void;
2. Required that notice be sent to all interested parties about the terms of the settlement;
3. Required publication of decree in appropriate print media;
4. Mandated deletion of text of 230(b) by the State of Alaska within a set time period.

He also tentatively agreed to provisions of the consent decree that would prevent the BOR from adopting a similar regulation, or in any way discourage the use of price bids through the adoption of policy statements or non-renewal of licenses or those professionals who did participate in competitive bidding.

7/15/83 First Draft of Consent Decree prepared by DOJ.

7/26/83 Markup of First Draft prepared by Froehlich.

8/31/83 Second Draft of Consent Decree, prepared by DOJ, and revised per Asst. AGs markup, which states that:

1. BOR *consents* to the decree (BOR has not consented);
2. 230(b) violates the Sherman Act. (Violation or non-violation has not been determined in open court proceedings. Violation is contention of DOJ and AG, only);
3. Decree stands in effect for 10 years.

10/27/83 AG Gorsuch signs *stipulation* to settle the suit (without concurrence of BOR). This stipulation means that the proposed Consent Decree is to be published in the **Federal Register** for a 60-day *public* comment period, prior to submittal to the Federal District Court Judge for entering of the Decree. Public comments go to the Washington DOJs Office.

Attachment 3

Mr. John W. Poole, Jr.,
U.S. v. Alaska Board of Registration, Civil No. A 82-423 CIV, Public Comment.
January 27, 1984.

Background

1. On or about May 1, 1982, the Alaska Assistant Attorney General, who is named in the Judgement as acting for the Board of Registration, refused, on behalf of the Attorney General's office, to act as counsel for the Board in the face of the threat of legal action by the U.S. Department of Justice. This same Assistant Attorney General subsequently notified the Department of Justice, in writing, of his refusal, as well as, offer the Department his assistance to support the Departments allegations. Alaska statute AS 08.48.141 states that the "Attorney General *shall* act as legal advisor to the board and *render legal assistance upon request of its president.*" The Board of Registration has, thus, been without legal counsel, except briefly in November and December, 1982. (Italics for emphasis.)

2. Through the date of filing of the complaint, (October 12, 1982), by the Department of Justice, the Board of Registration was without legal counsel. It was only through concerted citizen and registrant efforts that the Governor directed that independent counsel be appointed to answer the Justice Department Complaint. Attorney General Condon had not been kept apprised of the internal actions being taken

by his staff. Legal counsel was then appointed to represent the Board of Registration.

3. On or about December 15, 1982, *Acting* Attorney General Gorsuch dismissed the Boards legal counsel. The Attorney General has maintained an adversarial status against the Board, even to the point of *assisting* the Department of Justice in writing the Final Judgment, and acting contrary to the Boards wishes, while proclaiming to be acting as the Boards legal counsel.

4. On October 27, 1983, Attorney General Gorsuch signed a stipulation with the Department of Justice, in the name of the State, to settle the suit. The State of Alaska *is not* named in the Complaint. The Attorney General had taken unilateral action, without the consent, or acknowledgement, of the Board.

5. Members of the Board of Registration *have not* consented to the stipulations or conditions of the Consent Decree. The Department of Justice has, with the concurrence of the Attorney General, stated in the Decree that the Board *has agreed.* A plain mistatement of fact.

6. Members of the Board of Registration have been advised by the Attorney General's office that they *may not,* whether individually or collectively, respond or advise the Court of the Boards *lack of consent.* The Board members have been advised that if they do respond, that action will lead to their dismissal and possible economic sanctions. There were non-Board member witnesses to this act.

7. The Board of Registration, at its meeting in November, 1983, prior to the beginning of the 60-day publication period, beginning December 3, 1983, offered to reword the rule 230(b), but were informed by the Assistant Attorney General that it would not be allowed, and the action was too late to resolve the question. There were non-Board member witnesses to this act.

By Telecopier

Peter Froehlich, Esquire,
Assistant Attorney General, Office of the Alaska Attorney General, Pouch K, Juneau, Alaska 99811

Re: Alaska Board of Architects, Engineers, and Land Surveyors' Ban on Competitive Bidding

Dear Mr. Froehlich: As I mentioned to Louise Ma and you during our recent telephone conversations, the Department has opened an inquiry into the Alaska Board of Architects, Engineers, and Land Surveyors' ban on competitive bidding, 12 Alaska Admin. C. 36.230(b). That provision provides that

Each architect, engineer or land surveyor shall seek professional employment on the basis of qualifications and competence for proper accomplishment of the work. He may not knowningly solicit or submit proposals for professional services on the basis of competitive bidding.

That provision is comparable to a competitive bidding ban which the Supreme Court held to be illegal on its face in *National Society of Professional Engineers* v. *United States,* 435 U.S. 679 (1978). It was apparently promulgated pursuant to the Board's general enabling statutes, Alaska Stat. §§ 08.48.101 and 08.48.111. Those statutes are similar to the general enabling statute which *United States* v. *Texas State Board of Public Accountancy,* 464 F. Supp. 400 (W.D. Tex. 1978), *mod'fd and aff'd,* 592 F. 2d 919 (5th Cir. 1979), cert. denied, 444 U.S. 925 (1979), held was insufficient to shield another competitive bidding ban from successful Sherman Act challenge. Furthermore, the Department in 1980 filed an antitrust suit against another state engineering board, the Mississippi State Board of Registration for Professional Engineers and Land Surveyors, with a comparable ban and enabling statute. Only a few weeks ago Assistant Attorney General Baxter authorized suit against a state accounting board also having a similar ban and enabling statute. Suit was avoided in that case only because the Board instituted an emergency repeal of the professional conduct provisions in question.

Given what we believe is the quite clear-cut illegality of provisions such as this, the staff intends to press its investigation vigorously and forward a recommendation to Assistant Attorney General Baxter as soon as possible. You have indicated that the Board has a meeting on May 6–7 at which you will convey to them our concern. We also understand that under Alaska law it would be possible for the Board to repeal the rule under an emergency procedure. I think that that would be a very constructive approach and hope that you will pursue it with the Board.

Thank you again for your courteous consideration of this matter.

Sincerely yours,

Edward D. Eliasberg, Jr.,
Attorney, Antitrust Division.

cc: Louise E. Ma, Esquire (regular mail)

February 1, 1984.

John W. Poole, Jr.,
Chief, Special Litigation Section, Dept. of Justice, Washington, D.C. 20530

Dear Mr. Poole: I am a registered engineer in the State of Alaska, and responding to the notice for the Consent Judgment regarding the civil antitrust case of the *United States* versus the *Alaska Board of Registration for Architects, Engineers, and Land Surveyors,* Civil No. A82–423 CIV.

I have read the comments submitted by attorney Richard W. Garnett III of Erwin, Smith and Garnett on behalf of six registered engineers, architects, and land surveyors, and am in favor of the stand taken by the comments. The present arrangement does not bar competition as the owner can select the designer based partially upon the cost, after the scope of the work has been defined and is clear to both parties. Design of systems that rely on the innovativeness of the designer cannot be made upon costs alone. This would be a serious detriment to the design field and ultimately would be to the owners' detriment. As stated in the comments, this arrangement is harmful to the public interest. We can explain this more fully if required.

We feel that we have been "sold down the river" by the present Attorney Generals Office for the State of Alaska. By statute they are bound to defend the Board of Architects, Engineers, and Land Surveyors, but they refused to do so. The board and members of the professional group have been advised by legal counsel that their stand is valid, so we would like a chance to prove it. Therefore we request that the Court review the consent decree and delay the entry of the decree until an opportunity has been afforded us to present our side of the controversy.

Cordially,

Vernon Akin.

[FR Doc. 84–9874 Filed 4–16–84; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of labor will publish a list of the Agency forms under review of the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Department Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Evaluation of Worksharing Project
ETA–RC73
Singletime
Business or other for-profit; small businesses or organizations
1,050 responses; 525 hours; 2 forms

This project will evaluate worksharing unemployment insurance in the three States with the greatest program experience. It will provide the Department of Labor with information that may be used in developing and implementing State worksharing programs and for its reports to Congress as required by Section 194 of Pub. L. 97–248. Respondents will include firms that used worksharing and those that did not.

Extension

Employment and Training Administration
Statement from Courts of Other Agency; Statement from Institutions; Recommendation for Job Corps
1205–0026; ETA 655, 655A, 655B
On occasion
State or local governments
14,800 responses; 5,550 hours; 3 forms

This information is an essential part of the screening and admissions process for Job Corps enrollment. This is especially true due to the residential nature of the program, where the youth who has a history of behaviorial problems can be evaluated. This information is essential in deciding whether the youth will be admitted into the program.

Extension

Employment and Training Administration
Enrollment and Departure Report
1205–0032; ETA 657
On occasion
State or local governments; non-profit institutions
61,000 responses; 5,063 hours; 1 form

This form is used to ascertain whether the Job Corps applicant accepts the center assignment indicated on the Travel Authorization received from the ETA Regional Office. The RO notifies the screener and if the youth accepts the assignment, the form is completed and accompanies the youth to the Center. It is also a vehicle for collecting data on assignments refused by youth.

Employment and Training Administration
Job Corps Enrollee Allotment Determination
1205–0030; ETA 658
On occasion
State or local government; non-profit institutions
3,500 responses; 700 hours; 1 form

This form is used when an applicant is assigned and going to a Job Crops Center and has a dependent and wishes to apply for an allotment while in the program. It is also used to obtain evidence to support the applicant's claim for qualification for the allotment.

Signed at Washington, D.C. this 12th day of April 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84–10280 Filed 4–16–84; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Steelton and Highspine Railroad Co.; et al.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 2, 1984–April 6, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased ablsolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases of the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,023; Steelton & Highspine Railroad Co., Steelton, PA
TA–W–14,973; Cleveland Twist Drill Co., Cleveland, OH

Affirmative Determinations

TA–W–15,011; Cuyuna Engine Co., Crosby, MN

A certification was issued covering all workers separated on or after March 15, 1983.

TA–W–15,048; Mighty Atlas Shoe Corp., Nashua, NH

A certification was issued covering all workers separated on or after August 30, 1982 and before January 31, 1984.

TA–W–15,048A; Thalbert Shoe Corp., Santa Isabel, PR

A certification was issued covering all workers separated on or after August 30, 1982 and before October 31, 1983.

TA–W–15,045; Winig Shoe Corp., Skowhegan, ME

A certification was issued covering all workers separated on or after September 15, 1982 and before October 31, 1983.

TA–W–14,641; Nannette Manufacturing Co., Glassboro, NJ

A certification was issued covering all workers separated on or after February 1, 1983.

TA–W–14,929; Metcoa, Inc., Solon, OH

A certification was issued covering all workers separated on or after September 14, 1982 and before August 31, 1983

TA–W–15,015; Metcoa, Inc., Pulaski, PA

A certification was issued covering all workers separated on or after September 14, 1982 and before August 31, 1983.

TA–W–14,955; David Peyser Sportswear, Inc., Bayshore, NY

A certification was issued covering all workers separated on or after April 10, 1983 and before May 10, 1983.

TA–W–14,964; Hein-Werner Corp., Waukesha, WI

A certification was issued covering all workers engaged in employment related to the production of hydraulic jacks who became separated on or after August 20, 1982.

TA–W–15,018; Bethlehem Steel Corp., Steelton Plant, Steelton, PA

A certification was issued covering all workers of the Steelton Plant of Bethlehem Steel Corp., Steelton, PA engaged in employment related to the production of steel rails who became totally or partially separated from employment on or after September 15, 1982 and before March 31, 1983.

I hereby certify that the aforementioned determinations were issued during the period April 2, 1984–April 6, 1984. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 10, 1984.

Marvin M Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84–10278 Filed 4–16–84; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; American Felt Slipper Co., et al.

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 23, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade adjustment Assistance, at the address shown below, not later than April 23, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 9th day of April 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Felt Slipper Company (workers)	Brewer, Maine	3/28/84	3/28/84	TA-W-15,287	Slippers—men's women's and children's.
Columbia Match Co. (workers)	Cleveland, Ohio	4/3/84	3/27/84	TA-W-15,288	Matches—book, paper.
Florian Sewing Co., Inc. (ILGWU)	Cleveland, Ohio	4/4/84	3/29/84	TA-W-15,289	Sew—dresses, ladies.
Milford Shoe, Inc. (workers)	Milford, Massachusetts	4/3/84	3/29/84	TA-W-15,290	Shoes—men's.
Scovill, Inc., Apparel Fasteners Div. (company)	Victoria, Virginia	4/3/84	3/28/84	TA-W-15,291	Fasteners (zippers) slide, plastic for garments and non-apparel industries.
Stackpole Components Co. (company)	Farmville, Virginia	4/3/84	3/29/84	TA-W-15,202	Computer keyboards and slide and rocker switches.
Standard Plastics (Leathergoods & Plastic workers)	Edison, New Jersey	4/3/84	3/26/84	TA-W-15,293	Parts—toy, plastic.

[FR Doc. 84–10279 Filed 4–16–84; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–83–40–M]

Franklin Consolidated Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Franklin Consolidated Mining Company, Inc., P.O. Box 508, Idaho Springs, Colorado 80452 has filed a petition to modify the application of 30 CFR 57.4–43 (building within 100 feet of mine openings; fire protection requirements) to its Franklin 73 Mine (I.D. No. 05–00630) located in Clear Creek County, Colorado. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that buildings which are within 100 feet of mine openings used for intake air and mine openings that are designated escapeways in exhaust air be constructed of fire resistant materials.

2. A hoist house, mill, and compressor shed are located within 100 feet of the inclined shaft which serves as an escapeway. The hoist house is a 24 by 44 foot structure of wood stud construction. The outside, wooden sheathing of the building is covered by an asphalt-base, rolled roofing on both the sides and roof. The inside walls and ceilings are covered with a ⅝-inch thick gypsum wallboard, except for the hoist room which has ¼-inch imitation wood paneling from the floor to the roof. The floor is concrete, and the building contains two wooden workbenches and the hoist motor. A small cap lamp charging station is located on one of the benches. The mill is of typical sidehill construction with the ore dump point at the same elevation as the shaft collar and with the mill discharge at a lower tier cut into the hillside. The mill has wood and steel support members, and all of the interior has been sprayed with a fire retardant impregnated cellulose insulation known as Thermocon. There are very few exposed combustibles inside the building. The flotation units, mills and other equipment are set on concrete foundations. The exterior of the building has been covered with the same asphalt-based, rolled roofing as the hoist house. Some timber is stored along the outside of the mill. A small 10 by 10 foot shed enclosed on three sides

protects an electric driven compressor. The outside of the studs is covered with wood sheathing, which in turn is covered by the rolled roofing. The interior is painted with fire retardant paint that was used in the 200 foot collar area of the shaft.

3. As an alternate method, petitioner proposes to construct a sprinkler-type fire suppression device in the hoist building. Piping will be mounted overhead through all rooms of the building, with sprinkler spray-type nozzles designed to spray walls and ceilings simultaneously. An audible warning smoke alarm will be installed in each room. Water supply will come from the mill water supply tanks, a group of eight buried tanks with a total capacity of 57,600 gallons. These tanks are directly connected by two-inch pipe to a water storage pond located west of the mill building with a capacity of 1.6 acre feet maximum. The pumping system to operate the sprinkler system will draw water from the mill water supply tanks and will be pressurized with a pump installed strictly for fire control. To prevent failure of the system due to the freezing of the pipes during winter, the system will be left drained and the pump manually started by trained surface personnel. Piping will be installed on grade so that after its use, it can be back drained and tested with compressed air.

4. Fire control for the exterior area of the buildings as well as the general area around the headframe will be provided by installing a fire hydrant and suitable fire hose in a location central to the three buildings.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 17, 1984. Copies of the petition are available for inspection at that address.

Dated: April 10, 1984.

Patricia W Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-10275 Filed 4-16-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-33-C]

Shannopin Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Shannopin Mining Company, Box 364, Bobtown, Pennsylvania 15315 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Shannopin Mine (I.D. No. 36-00907) located in Greene County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return airways be examined in their entirety on a weekly basis by a certified person.

2. The return airways, A, B, C, and D have deteriorated. Roof falls and a height of only 24 inches exist in certain places, making travel of these airways for weekly inspections hazardous to the miners affected. Rehabilitation of these airways would expose the miners to extremely hazardous conditions by requiring them to support the roof fall areas, remove the roof fall material, and crawl along portions of the airways, resulting in a diminution of safety.

3. As an alternate method, petitioner proposes to establish and maintain air monitoring checkpoints at specified locations to routinely monitor both air quantity and quality in the airway. Methane and air readings will be made by a certified person; methane will not be allowed to accumulate in these return aircourses beyond legal limits; a date board or book will be located at each measuring station; air and methane readings will be taken and recorded; and a diagram showing the direction of air flow in this area will be posted at the measuring stations and other strategic locations.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons intersted in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 17, 1984. Copies of the petition are available for inspection at that address.

Dated: April 10, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-10273 Filed 4-16-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-84-C]

Texas Utilities Mining Co.; Petition for Modification of Application of Mandatory Safety Standard (Amendment)

Texas Utilities Mining Company, (formerly known as Texas Utilities Generating Company), Skyway Tower, 400 North Olive Street, L.B. 85, Dallas, Texas 75201 has filed an amendment to a petition for modification. On August 23, 1982, Texas Utilities submitted a petition to modify the application of 30 CFR 77.211(b) (methane tests) to its Martin Lake Strip (I.D. No. 41-02632) located in Panola County, Texas; its Monticello Strip (I.D. No. 41-01900) located in Titus County, Texas; and its Sulphur Springs Strip (I.D. No. 41-02776) located in Hopkins County, Texas. On October 14, 1983, MSHA Published notice of the petition in the **Federal Register** (48 FR 46871), allowing interested parties 30 days to submit comments. On March 19, 1984, the petitioner submitted a request to amend the originally submitted petition for modification to add a paragraph specifying an alternate method of compliance to the original **Federal Register** notice, as follows:

3. As an alternate method, petitioner proposes to take a sample of freshly mined lignite coal once each calendar year from the active workings of each mine to be tested by an independent laboratory for the presence of methane; the sample can be taken under the direction of MSHA personnel. The test results will be sent to the MSHA District Manager, or designee, and a copy will be kept for five years at the mine office.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 17, 1984. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: April 10, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-10276 Filed 4-16-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-39-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its No. 3 Mine (I.D. No. 01-00758) located in Jefferson County, Alabama. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns that requirement of 30 CFR 75.326 that intake and return aircourses be separated from belt haulage entries.

2. Conditions in the mine require high volumes of intake air to dilute the large quantity of methane liberated from the coal at the working face, and to remove the methane from the return airways.

3. On July 2, 1980, petitioner was granted a modification of 30 CFR 75.326 to use belt haulage entries as intake aircourses to ventilate active working places (docket number M-79-160-C). Petitioner was granted a modification of the standard to isolate the belt entries which are used as intake entries from other intake and return entries with the use of continuous permanent-type stoppings.

4. Petitioner now proposes to construct permanent-type stoppings of substantial, incombustible material, such as concrete, concrete blocks, cinder blocks, bricks or tile with mortared joints. If the blocks are merely stacked to form a stopping, they will be plastered on one side with a material having the same strength as that of mortared joints. In order to take advantage of technological advancements in stopping construction techniques and materials, petitioner proposes to construct permanent stoppings and other ventilation controls with other equivalent, in combustible material not specified above as may be approved in the mine's Ventilation Systems and Methane and Dust Control Plan.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 17, 1984. Copies of the petition are available for inspection at that address.

Dated: April 10, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-10274 Filed 4-16-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-83-C]

Texas Utilities Mining Co.; Petition for Modification of Application of Mandatory Safety Standard (Amendment)

Texas Utilities Mining Company (formerly known as Texas Utilities Generating Company), Skyway Tower, 400 North Olive Street, L.B. 85, Dallas, Texas 75201 has filed an amendment to a petition for modification. On August 23, 1982, Texas Utilities submitted a petition to modify the application of 30 CFR 77.201-1 (methane tests) to its Martin Lake Strip (I.D. No. 41-02632) located in Panola County, Texas; its Monticello Strip (I.D.No. 41-01900) located in Titus County, Texas; and its Sulphur Springs Strip (I.D. No. 41-02776) located in Hopkins County, Texas. On October 14, 1983, MSHA published notice of the petition in the **Federal Register** (48 FR 46871), allowing interested parties 30 days to submit comments. On March 19, 1984, the petitioner submitted a request to amend the originally submitted petition for modification to add a paragraph specifying an alternate method of compliance to the original **Federal Register** notice, as follows:

3. As an alternate method, petitioner proposes to take a sample of freshly mined lignite coal once each calendar year from the active workings of each mine to be tested by an independent laboratory for the presence of methane; the sample can be taken under the direction of MSHA personnel. The test results will be sent to the MSHA District Manager, or designee, and a copy will be kept for five years at the mine office.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 17, 1984. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: April 10, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-10277 Filed 4-16-84; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 84-32; Exemption Application No. D-4229 et al.]

Grant of Individual Exemptions; Advest, Inc. et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been avaiable for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102

of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471 April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Advest, Inc., Located in Hartford, Connecticut

[Prohibited Transaction Exemption 84–32; Exemption Application No. D–4229]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply effective March 1, 1983, to: (1) the consummated and prospective sales at fair market value of debentures (the Debentures) issued by The Advest Group, Inc. (AGI) to retirement plans benefiting owner-employee (the Keogh Plans) and Individual retirement accounts (the IRAs) [1] for which Advest, Inc. (Advest), a wholly-owned subsidiary of AGI, acts as a custodian; and (2) the consummated and prospective extension of credit between Keogh Plans and the IRAs (collectively, the Plans) and AGI, provided that the following conditions are met with respect to the purchase of the Debentures:

(a) Advest has disclosed in writing the nature of its relationship to AGI and that it is not acting as an investment advisor or other fiduciary with regard to investment decisions of either the IRAs or the Keogh Plans. Such disclosure also states that all decisions with respect to purchase of the Debentures are the sole responsibility of the individual buyers as fiduciaries for their IRAs or as participants exercising investment control over individual accounts in the Keogh Plans; and

(b) Following receipt of the information required to be disclosed and prior to the execution of the transaction, a fiduciary unrelated to Advest and AGI, in the case of the IRAs, or a participant exercising investment control over an individual account, in the case of the Keogh Plans, acknowledges receipt of the information described in subsection (a) above and approves the transaction on behalf of the IRA or the Keogh Plan.

Effective Date: The effective date of the exemption is March 1, 1983.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 5, 1983 at 48 FR 30799.

Written Comments

The Department received one comment from the owner of an IRA who objected to the granting of the exemption on the grounds that some Advest account executives have considerable persuasive ability and might influence IRA owners to purchase AGI Debentures. The commentator was contacted by the Department and stated that he knew of no coercion by any Advest personnel with regard to sales of the Debentures. While the commentator recognized that IRA investments are directed by their owners and felt that he exercised independent judgment with regard to his own IRA, he nevertheless was concerned that other IRA owners would not be as independent as he in their investment decisions.

The applicant has responded to these comments by reiterating its representations contained in the pendency notice that no special effort was made to notify IRA owners and Keogh participants of the Debenture offering and that investment decisions with respect to the Debentures were left to such owners and participants. No action was taken by Advest which would render it a fiduciary with respect to either an IRA or a Keogh Plan. Furthermore, the applicant points out that should an Advest account executive in fact assume fiduciary responsibility with regard to the purchase of the Debentures by IRA or Keogh Plans, the exemptions would not provide relief to Advest since the exemption does not extend to fiduciary self-dealing violations.

After consideration of the entire record, including the comment and the applicant's response thereto, the Department has determined to grant the exemption as originally proposed.

FOR FURTHER INFORMATION CONTACT: Mary Jo Fite of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Richard O'Connell & Company Profit Sharing Trust (the Plan) Located in Coral Gables, Florida

[Prohibited Transaction Exemption 84–33; Exemption Application No. D–4655]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of certain parcels of unimproved real properties by the Plan to Richard O'Connell, a disqualified person with respect to the Plan, provided the price paid is not less than the fair market value of the properties on the date of sale. Since Mr. O'Connell is the sole shareholder of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3 (b) and (c)(1). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1984 at 49 FR 7314.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Greenwood Medical Laboratory, Inc. Retirement Trust (the Plan) Located in Greenwood, Indiana

[Prohibited Transaction Exemption 84–34; Exemption Application No. D–4937]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain real property (the Property) to Mr. Robert J. Lessard, the trustee of the Plan and a party in interest with respect to the Plan, for cash in the amount of $25,000, provided that such amount is not less than the fair market value of the Property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 2, 1984 at 49 FR 7889.

[1] To the extent that the IRAs meet the conditions contained in 29 CFR 2510.3–2(d) and the Keogh Plans do not have an employee as defined in 29 CFR 2510.3–3(b), there is no jurisdiction over the respective plans under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8972. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employes of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 12th day of April, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84–10241 Filed 4–16–84; 8:45 am]

BILLING CODE 4510–29–M

[Application No. L–4771 et al.]

Seafarers Harry Lundeberg School of Seamanship et al.; Proposed Exemptions

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Seafarers Harry Lundeberg School of Seamanship (the Training Plan) Located in Piney Point, Maryland

[Application No. L–4771]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act shall not apply to: (1) The proposed purchase of a parcel of real property (the Real Property) by the Lundeberg Maryland Seamanship School, Inc. (the Corporation), a subsidiary of the Training Plan, from Steuart Investment Company (Steuart), a party in interest with respect to the Training Plan; (2) the past payment by the Training Plan of a $50,000 good faith deposit (the Deposit) to Steuart in connection with the proposed purchase; (3) the payment by Steuart to the Training Plan of interest on the Deposit on the date of settlement; and (4) a $100,000, 90 day interest free extension of credit by Steuart to the Training Plan as part of the subject purchase transaction, provided that the terms and conditions of the transactions are at least as favorable to the Training Plan as those which the Plan could receive in similar transactions with an unrelated party.

Effective Date: The effective date of the proposed exemption, if granted will be: (1) April 1, 1983 as to the payment of the Deposit; and (2) the date of the grant of this exemption as to the proposed purchase, the payment of interest on the Deposit and the extension of credit.

Summary of Facts and Representations

1. The Training Plan is an employee welfare trust which provides job training and upgrading to employees of employers which have collective bargaining relationships with the Seafarers International Union of North America (the Union) or its affiliates. It is administered by a board of trustees (the Trustees), half of whom are appointed by the Union and half by employers. It is funded through contributions from

approximately 220 employers, pursuant to the terms of collective bargaining agreements with the Union. The Training Plan had a net worth of $25,067,916 as of December 31, 1982.

2. The Corporation, a title holding company wholly owned by the Training Plan, holds title to the training facilities. In addition, the Corporation is responsible for the day-to-day operation of the training facilities.

3. Steuart is a 90% owner of Steuart Transportation Company (the Subsidiary), which operates tug boats and barges and other equipment used for the transportation of petroleum products. The Subsidiary is a party to a collective bargaining agreement with the Union, under which agreement it makes contributions to the Training Plan. The Subsidiary accounts for less than one percent of the annual employer contributions to the Training Plan.

Neither Steuart nor the Subsidiary appoint or have the power to appoint trustees to the Training Plan. No individuals affiliated with either Steuart or the Subsidiary are trustees of the Training Plan.

4. The applicant represents that the Training Plan is structured to approximate certain conditions at sea which include the need for self sufficiency. In order to foster self sufficiency skills and for reasons of cost savings, the Training Plan maintains cattle and hog herds to provide meat for its trainees and staff. The applicant further represents that since 1967 the Corporation has owned farm land on which it grows feed for its cattle and hogs.

5. The applicant represents that the cleared portion of farm land owned by the Corporation became insufficient for its purposes and that in 1977 the Corporation began renting approximately 155 acres of farm land (the Land) from Steuart. The Land is located near the training facility. The initial lease for the Land (the Lease) dated February 14, 1977, provided for a rental rate of $15 per acre or $2,325 per year. The Training Plan continued to lease the Land at the same rental rate through December 31, 1982. The Training Plan has continued to use the Land for crop production in 1983 but no lease payments have been made in anticipation of the purchase of the Real Property by the Corporation nor are any payments contemplated. The applicant represents that the Lease is exempt under Prohibited Transaction Exemption 78–6.[1]

[1] The Department expresses no opinion as to whether the Lease is covered by Prohibited Transaction Exemption 78–6.

6. The Land is part of the Real Property, a 505 acre tract owned by Steuart. The Real Property is located adjacent to the facilities of the Training Plan. In early 1983 the Trustees and Steuart began discussing the purchase of the Real Property by the Corporation, as Steuart was interested in selling the Real Property. The applicant represents that the Training Plan is interested in obtaining the Real Property in order to continue and expand its farming activities and in anticipation of future expansion of its training facility. The Trustees represent that the proposed purchase of the Real Property is in the best interests and protective of the participants and beneficiaries of the Training Plan as it will enable the Training Plan to meet these expansion needs. The Corporation and Steuart orally agreed that the Corporation would purchase the Real Property. On April 1, 1983, the Deposit was transferred from the Training Plan to Steuart and on April 19, 1983, a $1,100,000 contract of sale was prepared and signed only by a representative of Steuart. Steuart will pay interest on the Deposit. The interest will be calculated based on 90 day certificate of deposit rates as computed and paid by the Maryland National Bank, Leonardtown, Maryland during the period April 1, 1983 to date of settlement and will be paid as a lump sum on the date of settlement. In the event that settlement is not consummated, Steuart will return the Deposit, plus interest.

7. The applicant seeks an exemption to permit the Corporation to purchase the Real Property from Steuart for $1,100,000, including the previously paid Deposit, $950,000 in cash and a $100,000 interest free promissory note payable by the Corporation 90 days after settlement. On April 4, 1983, Carl R. Baldus, Jr., Accredited Rural Appraiser and Michael J. Martin of Baldus Real Estate, Inc. appraised the Real Property and determined that it had a fair market value of $1,500,000. On April 14, 1983, Leo K. Farrall, III, Residential Member, American Institute of Real Estate Appraisers, appraised the Real Property and determined that it had a fair market value of $1,103,000. On April 20, 1983, J. Spence Howard, Jr., a real estate agent appraised the Real Property and determined that it had a fair market value of $1,300,000.

8. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (1) The Trustees represent that the proposed purchase of the Real Property is in the best interests and protective of the participants and beneficiaries of the Training Plan; (2) the proposed purchase is essentially a one time transaction where the purchase price will be completely paid within 90 days of settlement; and (3) the proposed purchase prices less than the price determined by three independent appraisers.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Garrett Book Company Employee Pension Trust (the Plan) Located in Ada, Oklahoma

[Application No. D–4802]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale, on October 15, 1982, of certain real property (the Real Property) by the Plan to Mr. and Mrs. Lionel Garrett (the Garretts) for the cash amount of $20,000, provided the price paid for the Real Property was not less than its fair market value at the time the sale was consummated.

Effective Date: This proposed exemption, if granted will be effective as of October 15, 1982.

Summary of Facts and Representations

1. Garrett Book Company (Garrett) is an Oklahoma corporation maintaining its principal offices at 130 East 13th Street, Ada, Oklahoma. Garrett is engaged in the business of selling library books to schools and school libraries located in the Southwest.

2. Effective July 31, 1974, Garrett established the Plan, which is a prototype defined benefit plan sponsored by The Equitable Life Assurance Society of the United States. As of May 31, 1983, the Plan had 18 participants and net assets of $174,479. The Plan is administered by four members of the Garrett family who serve as the Plan trustees (the Trustees) and as such, make its investment decisions. These individuals are also shareholders and directors of Garrett.

3. On November 19, 1980, the Plan acquired an undeveloped lot consisting of approximately 1.6 acres from unrelated parties. The Real Property is

located in the Valley View Subdivision of Ada, Oklahoma and is more particularly described as follows: "The West 244 feet of Block 5, Valley View Subdivision of the W/2 of SE/4 of Section 4, T3N, R6E, Pontotoc County, Oklahoma." The Plan purchased the Real Property for $19,150. The purchase price was paid in cash at the time of closing.

4. At the time the Plan acquired the Real Property, it appeared that the Valley View Subdivision would become a growth area for the City of Ada. Therefore, the Trustees authorized the purchase since the investment promised an excellent return on the invested funds. In addition, since it appeared that the Plan would be able to reap a profit from the resale of the Real Property within a short period of time, the Trustees arranged for an informal listing of the Real Property with a local real estate agent.

5. The Real Property did not appreciate in value as the Trustees had anticipated nor could a sale be arranged with unrelated parties. These problems were attributed to several factors. High interest rates depressed the demand for housing of the type envisioned for the Valley View Subdivision. In addition, a competitive development opened up near the Valley View Subdivision thereby absorbing much of the demand for similar type housing in the Ada area. Furthermore, the Plan received only two offers from unrelated parties to purchase the Real Property. Since these offers were less than the original purchase price, the Trustees decided they were unacceptable.

6. In the Fall of 1982, the Trustees resolved to liquidate the Plan's real estate holdings in an attempt to extricate the Plan from what had turned out to be a poor investment. The application states that the Real Property remained a non-income producing vacant lot which was neither leased nor used by anyone. During its period of ownership, the Plan paid real estate taxes totaling $53.40 and it also incurred a total grass mowing expense of $716.70. Accordingly, Mr. Garrett, one of the Trustees, offered to purchase the Real Property at its highest appraised value as determined by independent appraisers. Mr. Garrett did not participate in the decision to make the sale.

7. The other Trustees then obtained appraisals of the Real Property from three independent real estate appraisers who were personally familiar with the real estate market in Ada, Oklahoma and possessed considerable appraisal experience. On April 29, 1982, Mr. Ralph Evans, the owner of Evans Realty Company as well as a real estate investment planner, placed the fair market value of the Real Property at $20,000. On September 14, 1982, Mr. Wayne Maxwell, a certified real estate appraiser, valued the Real Property at $19,500. On September 15, 1982, Mr. E.Q. Denton, a real estate appraiser affiliated with E.Q. Denton Realty, determined that the Real Property was worth $19,000.

8. Based on the appraisals, the Trustees and Mr. Garrett executed a sales and Purchase Contract dated October 15, 1982. Under the terms of the agreement, Mr. Garrett and his former spouse purchased the Real Property from the Plan for $20,000. The Garretts paid $20,000 in cash upon closing. All costs, including appraisal fees incurred on the sale were assumed by the Garretts.

9. At the time of the sale, the Trustees were unaware of the fact that the sale constituted a prohibited transaction under the Act. Therefore, a retroactive exemption is requested with respect to the sale.

10. In summary, it is represented that the transaction satisfied the statutory criteria of section 408(a) of the Act because: (a) The sale was a one-time transaction for cash; (b) the sale price for the Real Property was based on its highest appraised value as determined by three independent appraisers; (c) the Plan did not incur any real estate commissions or fees in connection with the sale; and (d) the Plan was able to divest itself of an asset producing no income.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Alaska Teamsters-Employer Pension Trust (the Plan) Located in Anchorage, Alaska

[Application No. D–4919]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the grant of memberships by the Plan in the Desert Horizons Country Club (the Club) to parties in interest (including fiduciaries) and the payment by said party in interest members of all fees, dues and other levies for the use of the Club's facilities; and (2) the eventual conversion of these non-proprietary memberships into proprietary ownerships when the Club is sold to its members, provided that the terms of the transactions are no less favorable to the Plan than similar transactions with unrelated third parties.[1]

Summary of Facts and Representations

1. The Plan is part of a defined benefit, collectively bargained, multiemployer pension plan established in 1966. The Plan has over 15,000 participants and current assets exceeding $325,000,000

2. In 1977, the Plan purchased 100% of the stock of Desert Horizons, Inc. (Desert Horizons), a California corporation. Desert Horizons is the owner of certain real property located in Indian Wells, California. Desert Horizons was created to develop a residential planned community consisting of single-family homes accompanied by a golf course/country club and clubhouse complex. Desert Horizons has constructed 135 of the up to 500 residential units it plans to develop on its 275 acres of land. To date, approximately 94 of the 135 units have been sold. The golf course and clubhouse have been completed and are now functioning.

3. The Club is comprised physically of a golf course and clubhouse located within the Desert Horizons residential development. In order for Desert Horizons to succeed financially, the applicant represents both of its component parts, the Club and the residential units, must be successful financially.

4. On November 10, 1982, the Department granted a temporary exemption to the Plan from certain prohibitions of the Act. Specifically, the exemption permitted (1) the sale of residential units from Desert Horizons to non-fiduciary parties in interest with respect to the Plan and (2) the proposed extension of credit by the Plan to parties in interest in connection with such sales.[2]

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[1] The proposing of this exemption does not constitute an opinion or approval by the Department with regard to the appropriateness or prudence of the Plan's decision to invest its assets in Desert Horizons, Inc. or in the development of the Desert Horizons' properties. Nor does the proposing of this exemption indicate the Department's opinion or approval with respect to any future decision by the Plan to construct additional residential units in the Desert Horizons development.

[2] See PTE 82–184, 47 FR 52248, November 19, 1982.

5. Under section 406(a)(1) of the Act, the applicant represents, however, that Desert Horizons may be prohibited from offering memberships in the Club to parties in interest. In addition, transactions involving the Club and Plan fiduciaries may involve violations of section 406(b) of the Act. Under the temporary exemption issued by the Department there is a substantial possibility that some people who will purchase residential units in Desert Horizons will be parties in interst with respect to the Plan. The people who purchase residential units are almost always interested in memberships in the Club. Since non-fiduciary parties in interest are allowed to purchase residential units, the applicant represents it would bring financial hardships to Desert Horizons and the Plan if these people were not then allowed to purchase Club memberships. Moreover, potential purchasers who are non-fiduciary parties in interest will find acquisition of Desert Horizons' units less appealing if they are ineligible for membership in the Club. The applicant represents that preclusion from Club membership would negate most of the advantages inuring to participants and beneficiaries as a result of the temporary exemption.

6. Accordingly, the applicant requests an exemption so that Desert Horizons may sell Club memberships to all financially qualified individuals, including Plan fiduciaries and other parties in interest, so long as the memberships are offered at the same price and terms to parties in interest as they are to the general public, and are in conformance with the laws of the State of California governing the Club, and all other applicable federal and state law.[3] The exemption request also encompasses the payment of all appropriate dues, levies, fees and other bills incurred by the members once he or she has been accepted. All such membership dues and other payments shall be made pursuant to applicable Club rules applied on a non-discriminatory basis to all members regardless of party in interest status, or race, creed, religion, ethnic group, etc. All fees, dues and the like imposed by the Club shall be uniform across each class of Club membership as set out in Club Offering Circular, By-Laws, Rules and Regulations, Declaration of Restrictions, Corporate Securities Rules, and Application for Membership.

7. The applicant states that unlike the temporary exemption covering purchase of Desert Horizons homes, the purchase of memberships in the Club, as well as the payment of any fees, costs, dues, or other reimbursement upon acceptance into the Club, shall not be financed in any way through the Plan. There shall be no extension of credit or loans, directly or indirectly, to parties in interest who seek membership in the Club.

8. An individual, in order to acquire membership in the Club fills out a standard form application and submits it to the Club's Managing Agent.[4] With the submission of an application, an applicant must tender that portion of the membership fee associated with the class of membership for which the application is being made. While the By-Laws state that the Managing Agent shall approve or deny applications, the Managing Agent has delegated that authority to a membership committee made up of Club members. The By-Laws specifically state, at Article IV, Section 3, that an application for membership shall be accepted and consideration be given for membership in the Club without regard to race, creed, religion or sex. Desert Horizons will notify summarily the independent fiduciary described below of any changes to its By-Laws, Rules and Regulations, Offering Circular, Corporate Securities Rules Form, Membership Application, or Declaration of Restrictions.

9. Memberships in the Club are non-proprietary until the Desert Horizons project is complete. Once the last residential unit is sold, the Club will be converted to a proprietary club. Homeowners will have the first priority to convert to proprietary memberships. Only if fewer than 400 homeowners convert to proprietary memberships will the remaining proprietary memberships be open to other membership classes. Prior to the time the last residential unit is sold, interim members are given full use of Club facilities in accordance with the Rules and Regulations of the Club. In the Application for Membership, each applicant must attest that he or she understand(s) that a membership in the Club is a non-transferrable, non-proprietary license to use the Club facilities only, and that membership does not entitle them to a proprietary interest in the assets of the Club. The applicant must also attest, in writing, that he or she agrees to be bound by the By-Laws, Rules and Regulations and policies of the Club now or hereafter established by the Club and/or Managing Agent and to pay all membership fees, dues or charges on a timely basis.

10. There are four classes of memberships available, not all of which include the right to convert to a proprietary ownership interest in the Club and its facilities. Prior to the conversion, the Club will remain owned and managed by Desert Horizons and if an operational deficit is incurred by the Club during this period, Desert Horizons will fund the deficit at no additional charge to the members. After the Club is sold, the Club's operations, membership selection, and finances will be the sole responsibility of the Club members.

The first class of membership is known as a class A membership. These people are unit owners in Desert Horizons who seek a regular golfing membership. This class is limited to 400 membership. In order to qualify, the person must own a unit in the project and only one membership is available per unit.[5] As with other classes of membership, all applicants must be approved by the Club's membership committee.

A class B membership is known as an interim golfing, non-unit owner/joint owner's membership. Class B memberships are open to the general public, plus unit owners not designated as class A members or unit owners after class A memberships are sold out. Like class A memberships, class B applicants must be approved by the membership committee. Class B members can only convert to proprietary members if at the time of sale of the Club, not all of the class A memberships are sold or if not all class A members elect to purchase a proprietary membership. The Club will accept no more than 200 class B members.

A class C membership, known as a non-proprietary, lifetime membership, is a family membership open to the general public but not to unit owners. If a class C member becomes a unit owner he must sell his class C membership to the Club and purchase a type of membership for which unit owners are eligible as soon as one is available.

[3] Since its creation, the Club has authorized a limited number of outside memberships, i.e., members who are not owners of the homes in the Desert Horizons development. Such an arrangement is represented to be common with similar developments/country clubs in the Palm Springs area. This exemption request is intended to include non-resident memberships to be purchased by qualified members of the public who meet all of the requirements imposed by the Club on non-resident members.

[4] Article I of the Membership By-Laws state that the Managing Agent "shall mean the Club, a California corporation, or the person or entity designated from time to time by Desert Horizons, Inc., a California corporation, to manage and operate the Club."

[5] Note that the grant of this exemption will not give fiduciary parties in interest an ability to acquire a Class A membership, since they may not acquire a residential unit from Desert Horizons.

Class C members have no option to convert to a proprietary membership.

The final class is a class D, social—lifetime membership. These members are entitled to full use of club facilities other than the golf course. They have no option to convert to a proprietary membership. Class D memberships are open to unit owners and the general public. Unlike the other three classes of membership, where dues are $185.00 per month, class D membership dues are lower because of the lack of golf privileges. Class D members pay $90.00 per month as dues.

The applicant represents that the conversion to proprietary membership will occur after the earlier of two events: within six months of the close of escrow on the sale of the last unit or on December 31, 1988. Club members at that time will have to elect whether to purchase a proprietary membership or not. The applicant represents that the conversion from non-proprietary ownership to proprietary ownership when the Club is turned over to its members will constitute a sale prohibited under section 406(a)(1)(A) of the Act.

11. In the Desert Horizons temporary exemption Mr. Jay D. Wahlen (Mr. Wahlen) was appointed to serve as independent fiduciary on behalf of the Plan. Mr. Wahlen is a CPA with his own practice (the Accountancy Corporation) in Palm Springs, California. He has no relationship to Desert Horizons, or the Plan other than the independent fiduciary relationship established pursuant to the temporary exemption. The applicant proposes to use Mr. Wahlen to (1) oversee transactions between the Club and parties in interest seeking to acquire and maintain membership and (2) eventually, to review the transaction occurring if an when a party in interest member seeks to convert to proprietary status.

When a party in interest applies for membership in the Club, his or her membership application forms will be provided to Mr. Wahlen. Mr. Wahlen will review the documents and all applicable Club fee schedules, rules, by-laws, regulations and other requirements, including applicable California law, to determine whether the applicant meets the requirements of the Club and whether the applicant's tender of membership dues and other fees is in line with the Club's standard practices. Only if both the membership committee and Mr. Wahlen approve admission of the party in interest applicant will the individual become a member of the Club. However, no sale of Club memberships or proprietary interests will be affored to fiduciaries of the Plan on a priority or preferential basis. Additionally, the Club will submit periodically to Mr. Wahlen records of the individual account of each party in interest member, so that Mr. Wahlen can determine that all expenses, periodic dues, fees for use of the facilities or consumption of food or beverages, etc. are curent or are in line with Club practices applicable to all non-party in interest members. Should Mr. Wahlen determine that irregularities exist, he will be required to inform in writing the President and/or Chief Operating Officer of Desert Horizons, the Managing Agent, the membership committee and take whatever further action he deems necessary to protect the Plan's interest.

Mr. Wahlen will also oversee the transaction through which a party in interest member converts to proprietary membership. Mr. Wahlen's role will be the same for the conversion process as it is for membership acquisition. After being given access to the pertinent documents, he will review them to make sure the transaction is in accordance with applicable rules and law and is identical to the terms under which non-party in interest members are converted. No party in interest conversion transaction will take place unless approved by Mr. Wahlen. If irregularities exist, he will be under the same notification requirements that apply if he finds irregularities in the membership acquisition process.[6]

The applicant agrees to provide Mr. Wahlen with access to all pertinent Desert Horizons' documents needed to assess the appropriateness of each transaction with a party in interest. Finally, Mr. Wahlen shall be paid by Desert Horizons no more than reasonable compensation.

12. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The issuance of Club memberships and the sale of proprietary interests in the Club will be approved by the Club membership committee and by Mr. Wahlen; and

(b) The issuance of Club memberships and the sale of proprietary interests in the Club to parties in interest will be on terms at least as favorable to the Plan as those made available in transactions involving unrelated parties.

Notice to Interested Persons: Within 30 days of the publication of this proposed exemption in the **Federal Register**, notice will be provided to all interested persons in the manner agreed upon by the applicant and the Department. Comments and requests for a public hearing are due within 60 days of the date of publication of this notice in the **Federal Register.**

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

[6] The Department is not proposing an exemption for any prohibited transaction involving Mr. Wahlen, or any prohibited transaction resulting from Mr. Wahlen's relationship with the individual involved.

Central States, Southeast and Southwest Areas Pension Fund (the Plan) Located in Chicago, Illinois

[Application No. D–5093]

Proposed Exemption and Revocation of Exemption

The Department is proposing to grant a temporary new exemption that would replace certain portions of Prohibited Transaction Exemption (PTE) 77–11 (42 FR 54041, October 7, 1977).[1] It is also proposing to revoke PTE 77–11.

Authority to grant the proposed exemption and to revoke PTE 77–11 is given to the Department under section 408(a) of the Act, section 4975(c)(2) of the Code and ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

If the proposed exemption is granted, for the temporary period described below, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the arrangement by the Equitable Life Assurance Society of the United States (Equitable) and Victor Palmieri and Company Incorporated (VPCO) for the provision of supplemental services (described in Part V of PTE 77–11) on behalf of the Plan.

In addition, if the proposed exemption is granted, for the temporary period described below, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the code, shall not apply to the following:

(A) The adjustment and/or continuation by investment managers of any pre-existing loan, lease, service agreement, or other arrangement, or the holding by the Plan of any pre-existing employer security or real property, as described in Part VIII of PTE 77–11.

(B) New transactions between the Plan and certain non-fiduciary parties in

[1] Part IX of PTE 77–11 was extended by the Department by the granting of PTE 83–57 (48 FR 14091, April 1, 1983).

interest and disqualified persons, as described in Part IX of PTE 77–11 and as extended by PTE 83–57.

Effective Dates: If granted, the proposed exemption would be effective beginning January 20, 1984. It would expire with respect to each investment manager on the earlier of (1) January 20, 1985, or (2) when the investment manager ceases to have responsibility for the management of Plan assets under its investment management contract with the Plan that became effective on January 20, 1984. If PTE 77–11 is revoked, the revocation will be effective with respect to transactions taking place after 30 days following the date the notice of revocation is published in the **Federal Register.**

Background and Summary of Applicant's Representations

The Applications. The proposed exemption is requested in an application filed with the Department on December 29, 1983 by Morgan Stanley, Inc. (MSI). Equitable and VPCO have joined in the application. In addition, MSI has informed all the other investment managers of the Plan of the application.[2]

The Plan. The Plan is a jointly-administered, multiemployer defined benefit pension plan established and maintained under collective bargaining agreements between employers and certain affiliated unions of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The Plan is jointly administered by eight trustees (the Trustees) consisting of an equal number of employee and employer representatives under section 302(c)(5) of the Labor Management Relations Act, 1947, as amended.

More than 9,000 employers presently make contributions to the Plan under approximately 7,000 separate collective bargaining agreements involving over 290 local union organizations. The number of active and retired participants and beneficiaries in the Plan exceeds 450,000.

The total of the Plan's managed assets is currently valued at approximately $4.8 billion, of which approximately 11 percent (about $540 million) is invested in real estate mortgage loans. The remainder of the Plan's managed assets is invested in common stocks, bonds and other securities-related assets.

[2] The application also has a request that a temporary exemption be granted to cover transactions described in PTE 77–12 (42 FR 62219, December 9, 1977). Because the Department believes that PTE 77–12 continues to be in force, it is not proposing a new exemption for the transactions described therein.

Chronology—Loss and restoration of the plan's tax-exempt status. Prior to 1977, the Plan had been the subject of investigations by the Justice Department, the Internal Revenue Service (the Service), the Department of Labor and other Government agencies. It had also been the subject of numerous Congressional inquiries and hearings. In published statements of Government agencies and Congressional committees, as well as in other publicly available information, there had been widespread criticism and allegations of civil and criminal abuse in connection with the management of the Plan's assets.

In 1976, the Chicago District Director of the Service revoked the Plan's tax exempt status after the Service had delayed the application of the revocation four times while attorneys for the Government and the Plan engaged in a series of negotiations on problem areas.

On March 14, 1977, the Department and the Service issued a joint release (USDL 77–232, IR 1775) announcing the resolution of certain issues respecting asset management of the Plan in a manner that met the Government's objectives. Among other matters, the release stated that the Trustees had resolved to delegate to one or more investment managers the control of all investments of the Plan.

Subsequently, the Service issued a determination letter announcing the qualification of the Plan for tax years beginning after December 31, 1975. This determination letter was subject to a number of conditions and required that the Trustees place all Plan assets and receipts (except funds reasonably retained by the Plan for payment of benefits and administrative expenses) under the direct continuing control of independent professional investment managers. The Trustees were also required to adopt appropriate amendments to the trust agreement to accomplish this condition and expeditiously to transfer the assets to the investment managers.

The selection of independent investment managers for the Plan was regarded by the Government as a crucial objective. The Department felt that it was imperative that those who contributed to the Plan should not see its assets dwindle because of mismanagement.

The 1977 agreements. On June 30, 1977, the Trustees of the Plan entered into an agreement (the 1977 Named Fiduciary Agreement) with Equitable and VPCO under which Equitable was appointed as the named fiduciary of the Plan with exclusive authority and responsibility over the Plan's investment managers for securities-related assets and custodians. Equitable was also given exclusive authority and responsibility to allocate investments of the Plan among different types of investment vehicles and different investment managers (subject to directions from the Executive Director of the Plan with respect to transfers of funds to the Plan's Benefits and Administration Account for the payment of pension benefits and administrative expenses of the Plan). Under the 1977 Named Fiduciary Agreement, Equitable was appointed as an investment manager of approximately 25 percent of the Plan's securities-related assets and approximately one-third of the Plan's real estate-related assets by book value. The remaining real estate-related assets were managed by VPCO. The 1977 Named Fiduciary Agreement became effective on October 3, 1977.

In addition to the 1977 Named Fiduciary Agreement, the Trustees entered into a series of investment management agreements dated June 30, 1977 and effective October 3, 1977 with Equitable, VPCO and three other independent investment managers who were appointed by the Trustees as the Plan's investment managers.

The 1977 Named Fiduciary Agreement also gave Equitable the sole discretion to name additional and/or substitute investment managers for securities-related assets of the Plan and the responsibility to monitor the performance of these managers. (As of December 29, 1983, there were eleven investment managers for securities-related assets in addition to Equitable.)

Together with the Trustees, Equitable has been responsible for monitoring the performance of VPCO as an investment manager for real estate-related assets. The Trustees have been responsible for monitoring the performance of Equitable as the named fiduciary and as investment manager for securities-related and real estate-related assets.

PTE 77–11. In 1977, the Department and the Service issued PTE 77–11, a nine-part exemption, to resolve a number of questions which arose with respect to the prohibited transaction provisions of section 406 of the Act and section 4975 of the Code regarding the management of the Plan's assets under the 1977 Named Fiduciary Agreement and the individual investment management agreements. As stated previously, Part IX of PTE 77–11 was extended by the Department on April 1, 1983 by PTE 83–57, effective as of October 3, 1982. By its terms, PTE 83–57 "* * * expire[d] with respect to each

independent asset manager when the manager cease[d] to have responsibility for [Plan] assets under the [then] current asset management agreements that [were] in effect since October 3, 1977." 48 FR at 14091.

PTE 77–11 was granted on the basis of applications filed with the Department and the Service that represented that, given the circumstances then existing, it was necessary to ensure satisfactory implementation of the 1977 Named Fiduciary Agreement and individual investment management agreements, and adequate protections existed to prevent abuse.

Raymond J. Donovan, Secretary of Labor v. *Frank Fitzsimmons, et al., Civil Action No. 78C342 (the Consent Decree).* On September 22, 1982, the United States District Court for the Northern District of Illinois, Eastern Division (the Court), entered the Consent Decree. It requires that a named fiduciary meeting certain qualifications shall at all times have exclusive responsibility and authority to do the following:

(i) To control and manage all assets of the Plan (except for those liquid assets held in reserve for payment of benefits and administrative expenses);

(ii) To appoint, replace and remove the investment managers, including real estate investment managers, as it shall in its sole discretion determine is necessary to manage the assets of the Plan;

(iii) To allocate the Plan's assets among various investment managers and types of investments.

The Consent Decree also states that the named fiduciary shall have responsibility and authority to monitor the performance of the investment managers. In addition, the named fiduciary shall develop investment objectives for the Plan after consultation with the Trustees.

The named fiduciary may be removed without cause by the Trustees upon six months written notice. The named fiduciary may also be removed by the Court for good cause shown after 60 days notice is given to the named fiduciary and the Secretary of Labor. However, the removal of the named fiduciary, with or without cause, may only occur concurrent with Court approval of the appointment of a similarly qualified successor named fiduciary.

The Consent Decree also provides for the appointment by the Court of an independent special counsel (the Independent Special Counsel) to oversee and report on the Plan's performance of the undertakings established in the Consent Decree. The Court has appointed Mr. William B. Saxbe, former Attorney General of the United States, as the Independent Special Counsel.

The 1983 named fiduciary agreement. Acting under the Consent Decree, on November 16, 1983, the Trustees adopted a resolution appointing MSI as the named fiduciary of the Plan to succeed Equitable, subject to Court approval. On November 17, 1983, they implemented that resolution by entering into a contract with MSI appointing MSI as the named fiduciary, effective January 20, 1984, and establishing the rights and obligations of MSI in that capacity (1983 Named Fiduciary Agreement). They also served notice of MSI's appointment on the Secretary of Labor and the Independent Special Counsel, as required by the Consent Decree. In addition, they served upon Equitable a notice of intent to terminate Equitable's appointment as the named fiduciary in 60 days. Neither the Secretary of Labor nor the Independent Special Counsel objected to Court approval of the appointment. On January 17, 1984, the Court gave its approval.

The applicants represent that the 1983 Named Fiduciary Agreement differs from its 1977 predecessor primarily in the identity of the named fiduciary. They also state that MSI, as the new named fiduciary, will have the same or greater independence, authority, duties, obligations and responsibilities as Equitable did. Moreover, MSI operates under virtually identical contractual authority as that which has been in place since 1977.

1983 investment management agreements. Under the 1983 Named Fiduciary Agreement, MSI contracted with the investment managers that served under the 1977 agreements to continue managing for a transitional period the same funds they had been managing. MSI asserts that the differences between the contracts under which the managers operated before January 20, 1984 and the current contracts are minor. They point out the following differences:

(i) MSI operates as named fiduciary rather than Equitable.

(ii) The indemnification provisions have been altered. Under the old contracts, the Trustees, acting on behalf of the Plan, were required to indemnify the investment managers against certain losses, claims, damages or liabilities. Under the new contracts, the investment managers are required to indemnify MSI against losses, claims, damages or liabilities.

(iii) The real estate management contracts have been changed so that Equitable and VPCO are no longer permitted to provide supplemental services. However, they continue to decide what constitutes a supplemental service. In addition, their fees are based on a percentage of the value of the assets managed on the last day of the preceding month rather than a flat amount. Moreover, the provisions describing which real estate-related services are "basic" and which are "supplemental" have been condensed. Finally, there are new restrictions on the time and procedure for payment of supplemental service providers.

(iv) The Trustees are not parties to the new investment management contracts. The contracts run between MSI as named fiduciary for the Plan and the managers. However, the Trustees do retain monitoring authority over certain transactions along with MSI.

MSI states that these changes do not diminish the protection of plan participants and beneficiaries. It also asserts that the independence of the oversight of the investment managers under the new contracts is as good as or better than what it was under the prior contracts.

Exemptive relief sought.—Justification. MSI believes it is in the interest of participants and beneficiaries of the Plan to continue the Plan's present association with the investment managers and real estate investment managers until MSI has had sufficient time to perform an in-depth review of the performance of these managers, the investments of the Plan and the investment policy of the Plan. After the in-depth review has been conducted, MSI will be able to make a permanent selection of investment managers. MSI represents that it will complete its in-depth review with respect to each category of Plan assets under management, select the investment managers for each category and enter into new or amended agreements with those managers as soon as it is prudent under the circumstances, taking into consideration its fiduciary responsibilities under the Act.

To avoid a disruption in the continuity of investment advice and services, MSI requests that the Department grant a new exemption. The proposed new exemption, if granted, would provide relief similar to that permitted by Parts V, VIII and IX of PTE 77–11.

Discussion of prior exemptions—Part V of PTE 77–11. Part V of PTE 77–11 permitted Equitable and VPCO to provide or arrange for "supplemental services" to the Plan in connection with the management of the Plan's real estate assets. In addition, Equitable and VPOC would have been reimbursed for their direct expenses if they had provided

supplemental services themselves, in addition to their regular compensation for providing "basic" real estate asset management services. Under their present investment management contracts, Equitable and VPCO are still responsible for determining which services are "basic" and which are "supplemental." However, neither Equitable nor VPCO will be permitted to perform supplemental services. Insasmuch as Equitable and VPCO will continue to determine which services are basic and which are supplemental, the applicants believe that continued availability of Part V of PTE 77–11 is necessary. According to MSI, the rights or interests of participants and beneficiaries will be protected because MSI as the named fiduciary will review and monitor the determinations made by Equitable and VPCO as to what constitutes a basic or supplemental service.

Part VIII of PTE 77–11. Part VIII of PTE 77–11 provided a conditional exemption that permitted the Plan's investment managers to adjust or to continue any pre-existing loan, lease, service agreement or other arrangement entered into before the implementation of the 1977 Named Fiduciary Agreement and the individual investment management agreements. It also allowed the continued holding by the investment managers of employer securities or employer real property acquired before the effective date of the 1977 agreeements. The applicants represent that many of the investments currently held by the Plan were made prior to the 1977 agreements and may continue to pose the same potential prohibited transaction problems under the 1983 Named Fiduciary Agreement and the 1983 investment management agreements. For example, the Plan continues to hold loan investments made prior to October 3, 1977 that involve parties in interest with respect to the Plan. According to MSI, because all of the investment managers would be able to make use of the exemption contained in Part VIII only if they complied with the conditions of Part VIII to the same extent as was previously required, the interests of Plan participants and beneficiaries would continue to be protected.

Part IX of 77–11 as extended by PTE 83–57. Part IX of PTE 77–11 provided an exemption for new transactions between the Plan and certain categories of parties in interest, including service providers (other than any trustee, administrator or investment manager, or any persons related thereto) and employers whose contributions for the preceding Plan year are less than five percent of the total for that year, and persons related thereto. Part IX required Plan investment managers to report to the Department on any transaction engaged in by the manager on behalf of the Plan with a person whom the manager actually knows to be a Plan service provider or a party in interest by reason of a relationship to a service provider. To the best of MSI's knowledge, only one such report was filed. MSI asserts that an exemption of this kind continues to be needed under the 1983 Named Fiduciary Agreement and the agreements entered into by MSI with the investment managers. MSI believes the exemption's conditions would safeguard the interests of participants and beneficiaries of the Plan.

MSI's monitoring duties—Part V of PTE 77–11. To monitor the performance of Equitable and VPCO in their determination of what constitutes a "basic" or "supplemental" service, MSI has adopted procedures wherein Equitable or VPCO is required to furnish prompt written notice to MSI whenever one of them engages any person to provide a "supplemental" service. The notice must set forth the name, address and the qualifications of the person; the scope of the service to be provided; a description of the compensation to be paid to the person engaged; and such other information as is requested by MSI. The investment managers are also required to provide MSI with monthly reports of the fees paid for supplemental services.

Part VIII of 77–11. MSI represents that Equitable did not undertake any special monitoring activities while it was the named fiduciary with respect to transactions described in Part VIII. However, MSI states that as the named fiduciary, it requires all investment managers to include in their monthly reports to it a statement as to whether during the preceding month they have discovered or been notified of the involvement of any party in interest in any transaction with respect to the existing assets under their management. If the investment managers report any of this type of activity, they are required to submit in writing to MSI the particulars of the transaction or the asset involved, the name and nature of the involvement of the party in interest, a determination of whether the continuation or modification (other than rescission or termination) of the transaction involved is in the best interest of the Plan, and an explanation of whether the determination has been promptly communicated to the Department and the Service.

Part IX of PTE 77–11. With respect to any proposed new transaction that involves a person whom the investment manager knows to be a party in interest, the investment manager is required, prior to engaging in the transaction, to furnish to MSI a description of the terms of the proposed transaction together with an analysis of why the transaction is no less favorable to the Plan than the terms that would be obtained in an arm's-length transaction with an unrelated party, why the transaction is in the best interset of the Plan and its participants and beneficiaries, and how the terms of the transaction protect the rights of the participants and beneficiaries of the Plan.

In addition, MSI requires each investment manager to continue its parctice of obtaining from each new party involved in a transaction a representation that it is not a party in interest. The names of all parties submitting these representations are then furnished to the Plan for its review and determination of whether the named parties are, to the Plan's knowledge, parties in interest.

Views of the Independent Special Counsel. As required by the Consent Decree, Mr. Saxbe, the Independent Special Counsel for the Plan, must file quarterly reports with the Court. In his quarterly report dated January 1, 1984. Mr. Saxbe recommended that the prior exemptions be continued. "Failure to reaffirm these exemptions in a timely manner , at least on an interim basis," he stated, "could result in a substantial detriment to the Fund."

Mr. Saxbe stated in a letter to the Department dated January 24, 1984 that, "it is not part of my function as Independent Special Counsel to make a comprehensive evaluation of the performance of the investment managers. This is the function of the named fiduciary." He further stated that he receives periodic reports from an investment consultant concerning the investment performance of the Plan, and that, "based upon advice received from that firm and my own observations, I persently have no reason to object to Morgan Stanley's continuation of the persent investment managers on an interim basis."

Additional Background With Respect To The Revocation of The 1977 Exemptions

Section 9.01 of ERISA Proc. 75–1 provides that, "An exemption which is granted shall be effective to the extent and under the conditions described in such exemption." 40 FR at 18743. PTE

77–11 was granted when Equitable was the Named Fiduciary under the 1977 Named Fiduciary Agreement. As has been discussed earlier in this notice, the current investment management agreements vary in several material respects from the prior investment management agreements. In addition, as noted above, PTE 83–57 expired with respect to each investment manager when the manager ceased to have responsibility for Plan assets under asset management agreements that had been in effect since October 3, 1977. Therefore, there is some question regarding the extent to which the previously granted relief is still valid.

To eliminate the uncertainty inherent in this situation and to prevent a recurrence of similar uncertainty, the Department is taking two actions. The first is to propose the new exemption, which is discussed in the earlier portions of this notice. If granted, the exemption will remove any doubt concerning whether the transactions described therein are exempt. The second is to propose revoking PTE 77–11 under section 9.02 of ERISA Proc. 75–1, effective for transactions taking place after 30 days following announcement of that revocation in the **Federal Register**. This action reflects the Department's belief that no exemptive relief for the transactions described in PTE 77–11 should extend beyond the interim period without the merits of that relief being the subject of further exemption proceedings once MSI has completed its in-depth review of the situation and is in a position to determine what course of action it wishes to take respecting the investment managers.

Section 9.02 of ERISA Proc. 75–1 provides that—

> The Secretary may at any time revoke or limit an exemption. Before ordering any such revocation or limitation, the Secretary shall give the applicant and any persons who filed comments or testified at a hearing with respect to the application for exemption at least 30 days notice of the proposed revocation or limitation, including the reasons therefor, and an opportunity to comment with respect to such revocation or limitation. 40 FR at 18473.

For Further Information Contact: Ms. Jan. D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 11th day of April, 1964.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84–10282 Filed 4–16–84; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater 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 Theater Advisory Panel (Challenge/Advancement Section) to the National Council on the Arts will be held on May 3–5, 1984, from 9:00 a.m.–5:30 p.m. in room 714 of the Nacy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and 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.

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, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–10208 Filed 4–16–84; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer Research.

Date and Time: May 2, 1984 1:00 p.m. to 5:00. p.m.; May 3, 1984 (9:00 a.m. to 5:00 p.m May 4, 1984 and 9:00 a.m. to 3:00 p.m.

Place: Rooms 628 and 338, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of Meeting: Part Open—May 2 Closed—1:00 p.m. to 5:00 p.m.; May 3, Open—9:00 a.m to 5:00 p.m.; and May 4—Open—9:00 a.m. to 3:00 p.m.

Contact person: Mr. Kent K. Curtis, Acting Division Director, Division of Computer Research, Room 339, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550. Telephone: (202) 357–9747. Anyone planning to attend this meeting should notify Mr. Curtis no later than April 27, 1984.

Purpose of Committee: To provide advice and recommendations concerning support for research in Computer Research.

Summary Minutes: May be obtained from the Contact Person at the above address.

Agenda

Wednesday, May 2, 1984, Room 628—1:00 p.m.—Closed

1:00 p.m.–5:00 p.m.—Oversight Review of Theorectical Computer Science Program

Thursday, May 3, 1984, Room 338—9:00 a.m. to 5:00 p.m.—Open

9:00 a.m.—Kent K. Curtis, Introduction, Review of Agenda and DCR Status
9:30 a.m.—Edward A. Knapp, Remarks
10:00 a.m.—M. Kent Wilson, MPS Plans
10:30 a.m.—W. Richards Adrion, CSNET Status
11:00 a.m.—John W. Connolly, Plans of the Office of Advance Scientific Computing
12:00 Noon—Working Lunch
12:30 p.m.—Robert Sedgewick, Brown University, Demonstration, Room 1224, "A Demonstration of the Brown University Algorithm Animation Environment."
3:00 p.m.—Nancy A. Lynch, Oversight Review of Theoretical Computer Science Program

Friday, May 4, 1984, Room 338—9:00 a.m. to 3:00 p.m.—Open

9:00 a.m.—Kent K. Curtis, Program Priorities for FY 1986 and beyond
12:00 Noon—Lunch
1:00 p.m.—Ray E. Miller, Committee Business
3:00 p.m.—Adjourn

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NFS, on July 6, 1979.

Dated: April 12, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–10200 Filed 4–16–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61 issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The amendment would modify the Technical Specifications (TS) for Haddam Neck to reduce the allowable peak linear heat generation rate and narrow the current axial offset tent in accordance with the licensee's application for amendment dated March 30, 1984.

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 previoulsy evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee plans to operate the Haddam Neck Plant in the coastdown mode for approximately 2 months in order to maintain a balanced generation mix in the New England region and to relieve the competition for outage support resources within Northeast Utilities. The proposed amendment involves the implementation of more restrictive limitations on core performance requirements during coastdown operations to ensure continued conformance with the Interim Acceptance Criteria for Emergency Core Cooling Systems and in particular, the allowable maximum peak clad temperature (PCT) of 2300° F.

The Commission has provided guidance concerning the application of standards for making a no significant hazards determination by providing certain examples (April 6, 1983, 48 FR 14870). Example (ii) illustrates proposed actions which would not involve a significant hazards consideration in that the actions constitute additional limitations, restrictions or controls not presently included in the TS such as a more stringent surveillance requirement. In the licensee's application, new limitations and restrictions currently not a part of the Technical Specifications are proposed to be incorporated for coastdown. The proposed amendment would permit coastdown operation at a reduced peak linear heat generation rate and a reduced permissible axial offset. These additional limitations will ensure safe operation of the Haddam Neck Plant throughout its coastdown phase of operation up to and including 450 effective full power days of operation for Cycle 12. These limitations ensure that the probability or consequences of a LOCA are not increased, nor is the possibility of a new type of accident introduced. The proposed changes ensure that previous safety margins are maintained, and as such the staff proposes to determine that the requested action does not constitute 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 May 17, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects 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 a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 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 Dennis M. Crutchfield: 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 Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Russell Library, 119 Broad Street, Middletown, Connecticut 06457.

Dated at Bethesda, Maryland, this 11th day of April 1984.

For the Nuclear Regulatory Commission.

J. E. Lyons,

Acting Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 84-10238 Filed 4-16-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

A-76 Inventory

AGENCY: Office of Personnel Management.

ACTION: Notice of OPM's approved inventory of commercial activities subject to OMB Circular No. A-76.

SUMMARY: The attached list represents OPM's inventory of commercial activities.

FOR FURTHER INFORMATION CONTACT: Joseph P. Reid, Chief, Management Systems Branch, Office of Management, Administration Group, 632–4533.

SUPPLEMENTARY INFORMATION: This Inventory represents OPM's list of commercial activities and includes information on staffing levels, location, and projected cost-comparison survey initiation dates.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, under the authority of OMB Circular No. A-76, OPM presents its inventory of commercial and industrial activities.

[Transmittal No. OPM-84-16]

Office of Personnel Management, Management Systems Branch, 1900 E Street, NW., Room 1308, Washington, D.C. 20415

A-76 Inventory—The following table lists OPM's inventory of commercial activities, as required by the Office of Management and Budget under OMB Circular No. A-76. This is not an invitation for bids, however, OPM will maintain a file of organizations expressing interest in these activities for future reference, as appropriate.

Activity *	Survey date	FTEs
1. Providing records management, search and file services	9/84	70
2. Health Unit	9/84	2
3. Stocking forms and publications	12/84	7
4. Data entry for correspondence	3/85	16
5. Mail delivery	5/85	11
6. Labor Agreement Information Retrieval System (LAIRS)	6/85	6
7. Library	7/85	10
8. Debt collection	9/85	12
9. Qualification and classification standards	12/85	52
10. Training	12/85	500

Activity *	Survey date	FTEs
11. Civilian Personnel Data File (CPDF)	6/86	60
12. Processing annuitant enrollment changes	9/86	62
13. Retirement claims processing	12/86	177
14. Pay comparability	2/87	4
15. Health benefits Open Season	4/87	9
16. Insurance contract auditing	5/87	31
17. ADP services	9/87	250

* All activities are located in Washington, D.C. with the exception of No. 1 which is in Boyers, Pa., No. 10 which includes regional activity, and No. 17 which includes positions located in Macon, Ga.

[FR Doc. 84-10281 Filed 4-16-84; 8:45 am]

BILLING CODE 6325-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #3010; Amdt. No. 5]

Kansas; Declaration of Physical Disaster Loan Area Pursuant to Pub. L. 98-166

The above numbered declaration (48 FR 55797, Amendments #1—48 FR 57396, #2—49 FR 1958, #3—49 FR 7322, and #4—49 FR 9988) is amended pursuant to the Secretary of Agriculture's designation authorizing Farmers Home Administration (FmHA) to accept emergency loan applications in the following area:

STATE OF KANSAS

FmHA		Incident and date	Counties
No.	Date		
S103	3/21/84	*Damages and losses to crops caused by drought beginning June 1, 1983, and continuing through October 1, 1983. **Winds occurring on September 19 and 20, 1983.	*Dickinson, *Jewell, *Saline and **Stanton.

As a result of this designation, I have determined the above counties in the State of Kansas constitute a disaster loan area for agricultural enterprises which are ineligible for disaster assistance from the FmHA because of alien status; corporations, partnerships and cooperatives not being primarily engaged in farming; farm owners who do not operate their farms; etc., and for Economic Injury Disaster loans for non-farm small business concerns.

The interest rates for eligible applicants under this designation in Dickinson, Jewell and Saline Counties are as follows:

	Percent
Agricultural enterprises with credit available elsewhere	10.5
Agricultural enterprises without credit available elsewhere	8.0
Non-farm small businesses enterprises (economic injury)	8.0

The interest rates for eligible applicants under this designation in Stanton County are as follows:

	Percent
Agricultural enterprises with credit available elsewhere	1105
Agricultural enterprises without credit available elsewhere	8.0
Non-farm small businesses enterprises (economic injury)	9.0

Loan applications for Physical Disaster Loans from eligible agricultural enterprises may be filed for a period not to exceed thirty days from the date of the letter of referral from FmHA, provided that the application for EM assistance from FmHA or the formal written request for a letter of referral by FmHA was filed within the time limits set forth in the FmHA designation. Loan applications for Economic Injury for non-farm small businesses may be filed until the close of business on September 21, 1984. The number assigned to this disaster is 3010 for Physical damage to eligible agricultural enterprises and is 610801 for Economic Injury. Eligible enterprises may file applications for loans for physical damage or economic injury at: U.S. Small Business Administration, Area 3 Disaster Office, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, (800) 527-7735 and in Texas (800) 442-7206, or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-10269 Filed 4-16-84; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 615700]

Texas; Designation of Disaster Loan Area

Atascosa and Tarrant Counties in the State of Texas constitute a disaster area because of a freeze which occurred during December 1983. Eligible small businesses may file applications for economic injury assistance until the close of business on January 9, 1985, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051; or other locally announced locations. The interest rate for eligible applicants is 8%.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 10, 1984.

Heriberto Herrera,

Acting Administrator.

[FR Doc. 84-10270 Filed 4-16-84; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Women's Business Ownership; Public Meeting

The President's Advisory Committee on Women's Business Ownership will hold a public meeting on Monday, April 30, 1984 from 9:30 am to 5:00 pm at the University of South Florida, College of Business Administration, Fowler Avenue, Tampa, Florida, to hear statements on Women Business Ownership. The meeting will be open to the public, however, space is limited.

Persons wishing to present written statements should notify Ms. Barbara Spyridon, Special Assistant to the Administrator, Small Business Administration, Room 1046, 1441 L Street, NW., Washington, D.C. 20416 in writing or by telephone (202) 653-6167 no later than April 25, 1984.

Dated: April 10, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-10272 Filed 4-16-84; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Women's Business Ownership; Public Meeting

The President's Advisory Committee on Women's Business Ownership will hold a public meeting on Wednesday, May 2, 1984 from 10:00 am to 5:00 pm at the Republican Bank San Antonio, 325 North St. Mary's, San Antonio, TX, to hear statements on Women Business Ownership. The meeting will be open to the public, however, space is limited.

Persons wishing to present written statements should notify Ms. Barbara Spyridon, Special Assistant to the Administrator, Small Business Administration, Room 1046, 1441 L Street, NW., Washington, D.C. 20416 in writing or by telephone (202) 653-6167 no later than April 25, 1984.

Dated: April 10, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-10271 Filed 4-16-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Maritime Advisory Committee; Charter Extension

AGENCY: Maritime Administration (MARAD), DOT.

ACTION: Notice of extension of committee charter.

SUMMARY: MARAD announces the extension of the Maritime Advisory Committee. The Charter sets forth the requirements for the Committee's operation. The Charter was originally filed on April 16, 1982, with an expiration date of April 16, 1984. The Charter has been extended for a 1-year period.

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr., Deputy Chief Counsel, Maritime Administration, MAR–220.1, Room 7232, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–5711.

Background

Under the requirements of the Federal Advisory Committee Act (5 U.S.C. App. I), MARAD announced the establishment of the Maritime Advisory Committee in the **Federal Register** (47 FR 13949) on April 1, 1982. In this Notice, MARAD is announcing the extension of the Committee's Charter for the period of one year. The Committee consults with and advises the Maritime Administrator with respect to the development and maintenance of a coordinated and comprehensive national maritime policy designed to promote the U.S. maritime industry required by our domestic and foreign commerce and national defense. The results of the Committee will be in the form of reports and recommendations.

Dated: April 11, 1984.

By order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 84–10225 Filed 4–16–84; 8:45 am]

BILLING CODE 4910–81–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 75
Tuesday, April 17, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TIME AND DATE: 9:30 a.m. (Eastern Time), Tuesday, April 17, 1984.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: April 13, 1984 (49 FR 14831)

CHANGE IN THE MEETING: The following item has been added to the open portion of the agenda for the subject meeting:

Consideration of Waiver of Closed Hearing Regulation contained in Sec. 29 CFR 1613.218.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of Change:

Clarence Thomas, Chairman
Tony Gallegos, Commissioner
William Webb, Commissioner

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

This Notice Issued April 12, 1984.

Treva McCall,

Executive Secretary to the Commission.

[FR Doc. 84-10317 Filed 4-13-84; 11:45 am]

BILLING CODE 6570-06-M

2

FEDERAL COMMUNICATIONS COMMISSION

April 12, 1984.

Deletion of Agenda Item From April 11th Open Meeting

The following items were deleted from the list of agenda items scheduled for consideration at the April 11, 1984 Open Meeting and previously listed in the Commission's Notice of April 4, 1984.

Agenda, Item No., and Subject

Common Carrier—4—Title: First Report and Order in CC Docket No. 81-216. Summary: The Commission will consider the matter of the installation of business and residential one and two-line (non-system) premises telephone wiring under Part 68. It will also consider a definition of "demarcation point" for purposes of Part 68 and other Commission decisions.

Audio—3—Title: Application for voluntary assignment of license of radio station WXXR (foremerly WKUL), Cullman, Alabama, for Cullman Broadcasting Co., Inc., to Piney Hills Broadcasting, Inc., under the Commission's distress sale policy without either having the WXXR license designated for revocation hearing or designating its license renewal application for hearing. Summary: The Commission considers the application for voluntary assignment of license of radio station WXXR (formerly WKUL), Cullman, Alabama, under the Commission's distress sale policy before designating the co-pending license renewal application for hearing.

Audio—4—Title: License Renewal Application of Station KTTL (FM), Dodge City, Kansas, licensed to Mr. & Mrs. Charles Babbs, d/b/a Cattle Country Broadcasting. Summary: The Commission considers petitions to deny KTTL's renewal application filed by the Dodge City Citizens for Better Broadcasting and the National Black Media Coalition; informal objections to KTTL's renewal application filed by the Attorney General of the State of Kansas, Robert T. Stephan, on behalf of the State of Kansas, the Anti-Defamation League of B'nai B'rith, the Jewish Community Relations Bureau of Kansas City, Missouri, and the Jewish War Veterans of the U.S.A.; a timely-filed application from Community Service Broadcasting, Inc., seeking a construction permit for a new FM broadcasting station in Dodge City, Kansas, which is mutually exclusive with the renewal application of KTTL; and an application for assignment of license from the licensee to Mr. Van Smith.

Policy—6—Title: Amendments of Parts 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorization. Summary: The Commission will consider Petitions for Reconsideration of the *First Report and Order* in BC Docket No. 82-536, FM subchannels.

Enforcement—3—Title: Applications for License and for Consent to Transfer Control of Station WEVV-TV, Evansville, IN. Summary: The Commission will consider whether to grant these applications.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-10290 Filed 4-13-84; 11:28 am]

BILLING CODE 6712-01-M

3

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 2:30 p.m., Tuesday, April 24, 1984.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. *Special Counsel* v. *Susan M. Suso*, MSPB Docket No. HQ12068210017.
2. *Special Counsel* v. *Esmail D. Zanjani*, MSPB Docket No. HQ12068310023.
3. *Thomas J. Allen* v. *Department of Transportation, Federal Aviation Administration*, MSPB Docket No. BN075281F0230, *Charles Alfaro* v. *Department of Transportation, Federal Aviation Administration*, MSPB Docket No. NY075281F0428, *Richard Lawlor* v. *Department of Transportation, Federal Aviation Administration*, MSPB Docket No. NY075281F0918, *Keith T. Werts* v. *Department of Transportation, Federal Aviation Administration*, MSPB Docket SE075281F0756, *William Sedgwick* v. *Department of Transportation, Federal Aviation Administration*, MSPB Docket No. AT075281F2351, *Carl Vaughn* v. *Department of Transportation, Federal Aviation Administration*, MSPB Docket No. PH075281F1084.
4. *Gerald Phillips* v. *Department of Transportation*, MSPB Docket No. DE3538210033.
5. *Aldean Porter* v. *Department of Agriculture*, MSPB Docket No. AT07528211337.
6. *Robert Smith* v. *OPM*, MSPB Docket No. PH831L8210490.s
7. *James Berry* v. *Department of Energy*, MSPB Docket No. DC03518210050.
8. *Malcolm Ashe* v. *Tennessee Valley Authority*, MSPB Docket No. AT03518211263.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Secretary, (202) 653-7200.

For the Board.

Dated: April 12, 1984, Washington, D.C.

Robert E. Taylor,

Secretary.

[FR Doc. 84-10310 Filed 4-13-84; 11:45 am]

BILLING CODE 7400-01-M

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Federal Register

Vol. 49, No. 75

Tuesday, April 17, 1984

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H.R. 4202/Pub. L. 98–260

To designate the air traffic control tower at Midway Airport, Chicago, as the "John G. Fary Tower". (Apr. 13, 1984; 98 Stat. 144) Price: $1.50

S.J. Res. 148/Pub. L. 98–261

To designate the week of May 6, 1984, through May 13, 1984, as "National Tuberous Sclerosis Week". (Apr. 13, 1984; 98 Stat. 145) Price: $1.50

S.J. Res. 171/Pub. L. 98–262

To provide for the designation of July 20, 1984, as "National P.O.W./M.I.A. Recognition Day". (Apr. 13, 1984; 98 Stat. 146) Price: $1.50

H.J. Res. 407/Pub. L. 98–263

Designating the week beginning April 8, 1984, as "National Hearing Impaired Awareness Week". (Apr. 13, 1984; 98 Stat. 147) Price: $1.50

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