

Monday
November 4, 1985



federal register

Briefings on How To Use the Federal Register
For information on briefings in Atlanta, GA, and Philadelphia, PA, see announcement on the inside cover of this issue.

Selected Subjects

- Authority Delegations (Government Agencies)**
 - Federal Reserve System
- Administrative Practice and Procedure**
 - Agricultural Marketing Service
- Animal Diseases**
 - Animal and Plant Health Inspection Service
- Aviation Safety**
 - Federal Aviation Administration
- Color Additives**
 - Food and Drug Administration
- Commodity Futures**
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- Food Assistance Programs**
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 - Pennsylvania Avenue Development Corporation
- Grant Programs—Environmental Protection**
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 - Land Management Bureau
- Privacy**
 - Pennsylvania Avenue Development Corporation

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

Radio Broadcasting

Federal Communications Commission

Surface Mining

Surface Mining Reclamation and Enforcement Office

Tobacco

Agricultural Marketing Service

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

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

- WHEN:** Nov. 21; at 1 pm.
Nov. 22; at 9 am. (identical session)
- WHERE:** Room LP-7,
Richard B. Russell Federal Building,
75 Spring Street, SW., Atlanta, GA.
- RESERVATIONS:** Deborah Hogan,
Atlanta Federal Information Center.
Before Nov. 12: 404-221-2170
On or after Nov. 12: 404-331-2170

PHILADELPHIA, PA

- WHEN:** Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)
- WHERE:** Room 3306/10
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.
- RESERVATIONS:** Laura Lewis,
Philadelphia Federal Information Center,
215-597-1709

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Federal Register

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Permissive Tobacco Inspection; User Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Secretary of Agriculture has revised the fees and charges assessed by the Department for the permissive inspection of tobacco, performed upon request and paid for at a prescribed hourly fee. The primary reasons for the need to increase the assessed fees are as follows: (1) Government-wide salary increases; (2) Cost of workers' compensation and unemployment compensation previously paid for from USDA appropriated budget and which must now be included as part of the administrative costs of this program; and (3) the cost of recruitment and training resulting from the large number of resignations and retirements of tobacco inspectors.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Lionel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2587.

SUPPLEMENTARY INFORMATION: Notice was given (50 FR 32712, August 14, 1985) that the Department was amending the regulations, to increase charges for permissive inspection and certification of tobacco conducted upon request.

Interested parties were given an opportunity to comment upon the proposed rule (50 FR 32712, August 14, 1985).

No comments were received. Therefore, the Department hereby adopts the regulations appearing in the

proposed rule which provided for increased charges for permissive inspection and certification. These charges, as nearly as possible, cover the costs of the services, including administrative and supervisory costs. The authority for these regulations is contained in the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. *et seq.*). The Tobacco Inspection Act requires that permissive inspections, as defined in 7 CFR 29.56, be made available to interested parties on a fee basis. The hourly fee schedule for permissive inspection had not been increased since July 1, 1982 (47 FR 27057). The Department determined that prior to the current proposal the fees for permissive inspections were insufficient to cover the Department's costs of inspection and certification.

The primary reasons for the need to increase the assessed fees are as follows: (1) Government-wide salary increases; (2) Cost of workers' compensation and unemployment compensation previously paid for from USDA appropriated budget and which must now be included as part of the administrative costs of this program; and (3) the cost of recruitment and training resulting from the large number of resignations and retirements of tobacco inspectors. Therefore, it is determined that in order to cover the Department's costs associated with the permissive inspection and certification of tobacco that the prescribed hourly rate is increased from a "basic hourly salary of \$20.45," and "overtime rate of \$24.40," and a "Sunday and holiday rate of \$30.50," to "\$22.30," and "\$26.60," and "\$33.35," per hour, respectively. This increase is based on the average grade and step-in-grade of tobacco graders performing this service. The salary of a GS-9, step 10, is \$13.58 per hour. Adding administrative and supervisory costs, the basic operating cost per hour is \$22.30.

It is anticipated that the increase in fees and charges will generate the revenue necessary to continue the current level of services provided.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and the Secretary's Memorandum 1512-1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) full consideration has been given to the potential economic impact upon small business. All tobacco warehousemen and producers fall within the confines of "small business," as defined in the Regulatory Flexibility Act. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will have no significant economic impact upon all entities, small or large, and will not substantially affect the normal competition in the market place. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco, inspection program.

Finally, minor typographical errors and errors of form are corrected in the citations of authority.

List of Subjects in 7 CFR Part 29

Administrative practices and procedure, Agricultural Marketing Service, Tobacco.

PART 29—[AMENDED]

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29 as follows:

1. The authority citation for 7 CFR Part 29 is revised to read as follows:

Authority: Title II of Pub. L. 98-180; 49 Stat. 731, as amended (7 U.S.C. 511 *et seq.*), unless otherwise noted.

2. The authority citation for 7 CFR Part 29, Subpart B (7 CFR 29.12-29.500) is removed.

3. The authority citation for 7 CFR Part 29, Subpart F (29 CFR 29.9201-29.9281) is revised to read as follows:

Authority: Pub. L. 97-98; 95 Stat. 1268, as amended (7 U.S.C. 1314f).

§ 29.123 [Amended]

4. Section 29.123(b) is amended by removing the figures "\$20.45" "\$24.40" and "\$30.50" and inserting in lieu thereof "\$22.30" "\$26.60" and "\$33.34" respectively.

5. Section 29.9251 is amended by removing the figures "\$20.45" "\$24.40" and "\$30.50" and inserting in lieu thereof "\$22.30" "\$26.60" and "\$33.35" respectively.

Dated: October 29, 1985.

Alan T. Tracy,
Deputy Assistant Secretary, Marketing and
Inspection Service.
[FR Doc. 85-26146 Filed 11-1-85; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 29

Inspection of Tobacco Under the Tobacco Inspection Act, Particularly Relating to the Flue-Cured Tobacco Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: The regulations governing the establishment and operation of the Flue-Cured Tobacco Advisory Committee are amended to permit an additional member and alternate representing a warehouse association.

DATES: Effective November 4, 1985. Comments are due on or before January 3, 1986.

ADDRESS: Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture, Room 502 Annex Building, Washington, DC 20250. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-2567.

SUPPLEMENTARY INFORMATION: Pursuant to the authority contained in the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 *et seq.*), notice is hereby given that the Department is amending Subpart G of 7 CFR Part 29 particularly as it relates to the Flue-Cured Tobacco Advisory Committee. The amendment changes § 29.9403 (b), (d), of Subpart G—policy statement and regulations governing the availability of tobacco inspection and price support services to flue-cured tobacco on designated markets.

Since its inception in 1974, the Flue-Cured Tobacco Advisory Committee has assisted the Secretary in making an equitable apportionment and assignment of tobacco inspectors by recommending opening dates for marketing areas within the flue-cured tobacco growing areas and recommending selling schedules for marketing areas and individual warehouses therein. All segments of the flue-cured tobacco industry—producers, warehousemen, and buyers—are

represented on the Committee, and members and alternates are appointed by the Secretary, after nomination by the individual sectors of the industry.

The Department has received a request for Committee representation from the Florida Tobacco Warehouse Association, Inc. This organization, represents the interests of all tobacco auction warehouses in Florida which were formerly associated with the combined Georgia-Florida Warehouse Association. In 1976 the Florida warehouses formed their own association and now seek to obtain individual membership on the Committee. At a meeting of the Flue-Cured Tobacco Advisory Committee held in Raleigh, North Carolina, on September 20, 1985, the proposed addition to the membership met with unanimous approval by members comprising the existing Committee. The Department has approved the request of the Florida Tobacco Warehouse Association and is amending § 29.9403(b) to increase the membership on the Committee from 38 members and alternates to 39 and thereby increase the number of warehouse representatives from 9 to 10 members.

The Department is amending § 29.9403(d) of the regulations to reflect the addition of the Florida Tobacco Warehouse Association, Inc.

This interim final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet the criteria contained therein for major regulatory actions.

The Administrator of the Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) Most tobacco warehousemen and producers fall within the definition of "small business" as defined in the Regulatory Flexibility Act. (However, certain of those entities are not considered "small business" because they are dominant in their respective areas of operation.); (2) the duties of the Committee are solely advisory; and (3) this action imposes no additional duties or obligations on the business entities involved and will not affect normal competition in the marketplace.

Prior experience has shown that the process of solicitation, selection, confirmation, and appointment of members often takes in excess of six months. The newly authorized members, and other new members, must be

selected and confirmed by the expiration date of the current Committee, which is April 23, 1986. The standard procedure of proposed rulemaking providing thirty days notice for comments would not leave sufficient time to receive and process nominations for membership on the new Committee prior to the expiration date. Therefore, it is hereby found and determined that notice of proposed rulemaking, public procedure thereon, and notice of the effective date hereof are impractical, unnecessary to facilitate the operation of the Flue-Cured Tobacco Advisory Committee and thus to preserve and continue orderly marketing conditions in the flue-cured marketing area under the grower designation plan.

All persons who desire to submit written data, views, or arguments for consideration in connection with this interim final rule may file the same with the Director, Tobacco Division, AMS, Room 502 Annex Building, United States Department of Agriculture, Washington, DC 20250, no later than January 3, 1986.

List of Subjects in 7 CFR Part 29

Administrative practices and procedure, Tobacco.

PART 29—[AMENDED]

Accordingly, the regulations contained in 7 CFR Part 29 are amended as follows:

1. The authority citation for Part 29 reads as follows:

Authority: Title II of Pub. L. 98-160, 49 Stat. 731; 7 U.S.C. 511 *et seq.*

2. In § 29.9403, paragraphs (b) and (d) are revised to read as follows:

§ 29.9403 Flue-Cured Tobacco Advisory Committee.

(b) The Committee shall consist of 39 representatives and 39 alternates of the flue-cured industry—21 producers, 10 warehousemen, and 8 buyers.

(d) Recommendations of the 10 warehouse representatives shall be received from the various belt warehouse associations.

Dated: October 29, 1985.

Alan T. Tracy,
Deputy Assistant Secretary, Marketing and
Inspection Services.
[FR Doc. 85-26245 Filed 11-1-85; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 999

Raisin Import Regulations; Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will change grade requirements for imported Thompson Seedless and Monukka raisins, and include grade requirements for Golden Seedless raisins in the import regulation. This action is pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, which requires raisins offered for importation into the United States to meet the same or comparable requirements applied to domestic raisins under a Federal marketing order. Changes in the domestic grade requirements for packed seedless raisins under the Federal marketing agreement and order program for California raisins, and other factors, necessitate changes in the requirements for imported Thompson Seedless and Monukka raisins pursuant to that act.

EFFECTIVE DATE: December 4, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, Telephone: (202) 447-5053.

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

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The raisin import regulation (7 CFR 999.300) is effective pursuant to the requirements of section 8e of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674). That section requires the Secretary of Agriculture to issue, after reasonable notice, grade requirements on imported raisins which are the same as, or comparable to, those applied to domestic raisins under the marketing agreement and Order No. 989, both as amended (50 FR 1830; 40476). The marketing agreement and order regulate the handling of raisins produced from grapes grown in California and also are effective under the same act.

Notice of this action was published in the Federal Register on July 15, 1985 (50

FR 28585). Interested persons were given until August 26, 1985, to submit written comments. At the close of the comment period, the Association of Food Industries, an organization representing raisin importers, asked that the comment period be reopened because it had insufficient time to analyze the proposal and submit comments after it received notice of the proposal. In response to its request, the period for comments was reopened until September 27, 1985 (50 FR 35564). Three comments were received favoring the proposal.

Changes in the domestic requirements for packed seedless raisins under the marketing agreement and order became effective November 15, 1984 (49 FR 33992), and pertain to tolerances for maturity, pieces of stem, and substandard and undeveloped raisins prescribed in the effective U.S. Standards For Grades of Processed Raisins (7 CFR 52.1841-52.1858). At that time, the minimum percent of well-matured or reasonably well-matured raisins was increased from 55 percent to 62.5 percent. On November 15, 1985, that percentage will increase from 62.5 percent to 70 percent. The current standard for imported raisins is 55 percent, and hence, will be increased to 70 percent pursuant to section 8e of the act. Also, effective November 15, 1984, the tolerances for pieces of stem, and undeveloped and substandard raisins, in U.S. Grade B, in lieu of U.S. Grade C tolerances, became effective for select and mixed-size packed raisins. The tolerances for those factors for midget-sized raisins remained at the U.S. Grade C level, thus no change in the grade and size requirements for imported midget-sized raisins is necessary. The changes in requirements for domestic raisins were effectuated to improve the quality of those raisins and improve their competitiveness in domestic and foreign markets. Pursuant to section 8e of the act, these changes in the domestic requirements also will be applied to raisins offered for importation.

During the development of the raisin import regulation in 1972 the Department found that foreign drying and processing techniques differed from those used in California, and that the resulting foreign produced Thompson Seedless raisins were lighter in color and softer than domestically produced raisins. Because of these variations, it was determined that the application of the requirements for color, stems, and capstems under the marketing order for California Thompson Seedless raisins to foreign produced Thompson Seedless raisins was not practicable and that a comparable standard was necessary.

Therefore, a finding was made under the act that there were variations in the characteristics between the domestic and imported commodity warranting establishment of different standards for imported raisins based on comparability. The requirements on imported raisins: (1) Exempted those raisins from color requirements; (2) permitted not more than two pieces of stem per 2.2 pounds in lieu of the marketing order requirements of not more than 4 pieces of stem per 6 pounds; and (3) permitted not more than 50 capstems for 1.1 pounds in lieu of 35 capstems per pound.

The color requirements in effect under the U.S. Standards for Grades of Processed Raisins (7 CFR 52.1841-52.1858) when the import regulation was issued in 1972 were not as flexible as the color requirements currently in effect. The standards then in effect did not permit inspectors to recognize color variations in domestic and imported Thompson Seedless raisins, and in the absence of the color exemption, the lighter colored Thompson Seedless raisins offered for importation would not have met the same requirements as those imported on domestic raisins under the marketing order. The current standards for both domestic and imported raisins offer inspectors a greater degree of flexibility in recognizing color variations, and the color exemption no longer is necessary. Hence, that exemption will be deleted.

With regard to capstems and pieces of stem, very few lots of imported raisins have failed solely because of excessive pieces of stem and/or capstems. Moreover, imported raisins can be and often are processed to the same extent as California raisins against the tighter domestic tolerances for pieces of stem and capstems, and the reasons originally justifying the different tolerances for pieces of stem and capstems because of the tenderness of the imported product no longer exist. The requirements hereinafter set forth prescribed tolerances for those factors which are the same as those applied to domestic raisins under the marketing order.

The raisin import regulation currently prescribes requirements for Thompson Seedless raisins, Muscat raisins, Layer Muscat raisins, Monukka raisins, and Current raisins. In recent years, however, increasing quantities of Golden Seedless raisins similar to those produced in California have been imported. Therefore, import requirements for this varietal type of raisin will be added to the import regulations. The requirements for imported Golden Seedless raisins are

the same as those applied under the marketing order.

To recognize in-transit foreign lots and to give foreign producers and importers time to prepare to meet these requirements the current standards will continue until November 30, 1985. On December 4, 1985, the changes, hereinafter set forth, will become effective.

List of Subjects in 7 CFR Part 999

Food grades and standards, Imports, Dates, Walnuts, Prunes, Raisins, Filberts/Hazelnuts.

PART 999—[AMENDED]

1. The authority citation for 7 CFR 999.300 continues to read as follows:

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

2. Section 999.300 is amended by revising paragraph (a)(2) and paragraph (b) to read as follows:

§ 999.300 Regulation governing importation of raisins.

(a) * * *

(2) "Varietal type" means the applicable one of the following: Thompson Seedless raisins, Muscat raisins, Layer Muscat raisins, Currant raisins, Monukka raisins, and Golden Seedless raisins.

(b) *Grade and size requirements.* The importation of raisins into the United States is prohibited unless the raisins are inspected and certified as provided in this section. Except as provided in paragraph (e)(2) of this section, no person may import raisins into the United States unless such raisins have been inspected and certified by a USDA inspector as to whether or not the raisins are of a varietal type, and if a varietal type, as at least meeting the following applicable grade and size requirements, which requirements are the same as those imposed upon domestic raisins handled pursuant to Order No. 989, as amended (Part 989 of this chapter):

(1) With respect to Thompson Seedless raisins—the requirements of U.S. Grade C as defined in the effective United States Standards of Grades of Processed Raisins (§§ 52.1841—52.1858 of this title): *Provided*, That at least 70 percent, by weight, of the raisins shall be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized raisin lots, the raisins shall at least meet the U.S. Grade B tolerances for pieces of stem, and undeveloped and substandard raisins, and small (midget) sized raisins shall

meet the U.S. Grade C tolerances for those factors;

(2) With respect to Muscat raisins—the requirements of U.S. Grade C as defined in said standards;

(3) With respect to Layer Muscat raisins—the requirements of U.S. Grade B as defined for "Layer or Cluster Raisins with Seeds" in said standards, except for the provisions therein relating to moisture content;

(4) With respect to Currant raisins—the requirements of U.S. Grade B as defined in said standards;

(5) With respect to Monukka raisins—the requirements for Thompson Seedless Raisins prescribed in paragraph (b)(1) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent;

(6) With respect to Golden Seedless raisins—the requirements prescribed in paragraph (b)(1) of this section for Thompson Seedless raisins and the color requirements for "colored" as defined in said standards.

Dated: October 29, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85-26246 Filed 11-1-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85-107]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

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

DATES: Effective date of the interim rule is November 4, 1985. Written comments must be received on or before January 3, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal

Building, Hyattsville, MD 20782.

Comments should state that they are in response to Docket Number 85-107.

Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

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

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine. This document changes the classification of the State of Mississippi from Class C to Class B.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between.

Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds

from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the State of Mississippi was classified as a Class C State. It had been necessary to classify this State as Class C rather than Class B because of the herd infection rate and the MCI reactor prevalence rate. To attain and maintain Class B status, a State or Area must, among other things, maintain an accumulated 12-month herd infection rate for brucellosis not to exceed 15 herds per 1,000 (1.5 percent) if the State has more than 1,000 herds, and the adjusted MCI reactor prevalence rate for such 12 month period must not exceed three reactors per 1,000 cattle tested (0.30 percent). A review of brucellosis program records establishes that the State of Mississippi, which has more than 1,000 herds, should be changed to Class B since this State now meets the criteria for classification as Class B.

Executive Order and Regulatory Flexibility Act

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

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

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

economic impact on those persons affected by this document.

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

Executive Order 12372

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

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from the State of Mississippi.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register.

Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the Federal Register.

List of Subjects in 9 CFR Part 78

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

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

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

§ 78.20 [Amended]

2. Section 78.20(c) is amended by adding "Mississippi," immediately before "Missouri".

3. In § 78.20(d), "Mississippi," is removed.

Done at Washington, D.C., this 29th day of October 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-28242 Filed 11-1-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0554]

Rules Regarding Delegation of Authority: Delegation of Authority To Waive Prior Notice Period

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending 12 CFR Part 265, its Rules Regarding Delegation of Authority to delegate to the Director of the Division of Banking Supervision and Regulation authority to waive the prior notice period on notices by U.S. banking organizations to establish foreign branches.

EFFECTIVE DATE: October 29, 1985.

FOR FURTHER INFORMATION CONTACT: James Keller, Manager, International Banking Applications, Division of Banking Supervision and Regulation (202/452-2523); or Joy W. O'Connell, Telecommunication Device for the Deaf [TDD] (202/452-3244); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board is amending its delegation rules to permit the Director of the Division of Banking Supervision and Regulation to waive the 45-day notice period for establishment of a foreign branch by a U.S. banking organization under § 211.3(a)(3) of Regulation K (12 CFR 211.3(a)(3)). This corresponds to the current delegation of authority permitting the Director to waive the 45-day prior notification period for an investment under Regulation K.

The provisions of 5 U.S.C. 553 relating to notice, public participation and deferred effective date are not followed in connection with the adoption of this amendment because the changes involved are procedural in nature and do not constitute substantive rules subject to the requirement of that section.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that the amendment

adopted will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 265

Authority delegations [Government agencies], Banks, Banking, Federal Reserve System.

PART 265—[AMENDED]

12 CFR Part 265 is amended as follows:

1. The authority citation for Part 265 continues to read as follows:

Authority: Sec. 11, 38 Stat. 261; 12 U.S.C. 248.

2. 12 CFR Part 265 is amended by revising § 265.2(c)(27) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Bank.

(c) * * *

(27) Under sections 25 and 25(a) of the Federal Reserve Act and Part 211 of this chapter (Regulation K), to waive the 45 days' prior notice period for establishment of a branch by a U.S. banking organization under § 211.3(a)(3) and for an investment that qualifies for the prior notification procedures set forth in § 211.5(c)(2) of Regulation K (12 CFR 211.3(a)(3) and 211.5(c)(2)).

By order of the Board of Governors,
October 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26272 Filed 11-1-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-19-AD; Amdt. 39-5146]

Airworthiness Directives; Beech Model 34C, 50, 60, 65, 70, 90, 99, 100, and 200 Series Airplanes

Correction

In FR Doc. 85-24456 beginning on page 41674 in the issue of Tuesday, October 15, 1985, make the following corrections:

§ 39.13 [Corrected]

1. On page 41676, in Table I, in the second column entitled "Serial No.," the tenth entry is corrected to read: "LU-1 and up".

2. The twelfth entry is corrected to read: "LJ-1 thru LJ-993".

3. The eleventh entry from the bottom is corrected to read: "BB-1040 thru BB-1045".

BILLING CODE 1505-01-M

14 CFR Part 71

[Airspace Docket No. 85-ANM-21]

Alteration of Great Falls, MT, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action redefines the current geographical boundaries of the Great Falls, Montana, transition area to provide additional controlled airspace to ensure that aircraft conducting Instrument Flight Rule (IFR) operations at recently revised minimum vectoring altitudes are separated from aircraft conducting Visual Flight Rule (VFR) operations when the visibility is less than 3 miles, thereby enhancing the safety of such operations.

EFFECTIVE DATE: 0901 G.m.t., January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Telephone (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On June 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations [14 CFR Part 71] to redefine the current geographical boundaries of the Great Falls, Montana, transition area (50 FR 25426). This action is necessary to provide additional airspace to ensure that aircraft conducting IFR operations at recently revised minimum vectoring altitudes are separated from aircraft conducting VFR operations when the visibility is less than 3 miles.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations redefines the current geographical boundaries of the Great Falls, Montana, transition area to ensure aircraft operating under IFR conditions would have exclusive use of that airspace when visibility is less than 3 miles.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; 14 CFR 11.69.

2. By amending § 71.181 as follows:

Great Falls, Montana [Revised]

"That airspace extending upward from 700 feet above the surface within a 17-mile radius of Malmstrom AFB (lat. 47°30'05"N/long. 111°11'20"W) within 3 miles each side of Great Falls VORTAC 157 radial, extending from the 17-mile radius area to 21.5 miles southeast of the VORTAC, and within 9 miles northwest of and 13 miles southeast of the Great Falls VORTAC 225 radial, extending from the 17-mile radius area to 15 miles southwest of the VORTAC. That airspace extending upward from 1,200 feet above the surface within a 60-mile radius of the Great Falls VORTAC; and that airspace beginning 60 miles southeast of the Great Falls VORTAC from the south edge of V-113, east to the west edge of V-187, southeast to the intersect of the east edge of V-257, northwest to the intersect of the 60-mile radius of Great Falls VORTAC; excluding that portion overlying the Billings, Montana, and Helena, Montana, 1,200-foot transition areas."

Issued in Seattle, Washington on September 26, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-26240 Filed 11-1-85; 8:45 am]

BILLING CODE 4904-13-M

**COMMODITY FUTURES TRADING
COMMISSION**
17 CFR Part 33
**Domestic Exchange-Traded
Commodity Options; Expansion of the
Pilot Program for Options on Non-
Agricultural Futures Contracts**

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: In late 1981, the Commission published final rules establishing a strictly controlled, three-year pilot program to permit exchange-traded commodity options on non-agricultural futures contracts. 46 FR 54500 (November 3, 1981). Option trading began on October 1, 1982, following the designation of the first option contract markets. Because the three-year test period for the pilot program is now complete, the Commission is evaluating its overall experience with the program and the option rules. In this regard, the Commission requested comment on whether to terminate the pilot status of the program. 50 FR 35247 (August 30, 1985). In requesting comment on the pilot program, the Commission noted that it would consider removing the limitation on the number of option contracts that can be traded per exchange. The Commission believes that while certain other aspects of the pilot program are still being evaluated, it is appropriate at this time to approve an immediate expansion of the pilot program from five non-agricultural option contracts per exchange to eight.

EFFECTIVE DATE: This amendment will become effective upon the expiration of 30 calendar days of continuous session of the Congress after the transmittal of this rule and related materials to the House Committee on Agriculture and the Senate Committee on Agricultural, Nutrition and Forestry pursuant to section 4(c) of the Commodity Exchange Act, but not before further notice of the effective date is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-6990.

SUPPLEMENTARY INFORMATION: On November 3, 1981, the Commission published final rules establishing a strictly controlled, three-year pilot program to permit exchange-traded commodity options on non-agricultural futures contracts. 46 FR 54500. The establishment of that program was the culmination of the Commission's efforts

to provide for the trading of commodity options in a regulated environment. As part of that program, the Commission limited the number of options which could be traded on each exchange. This limitation enabled the Commission to focus regulatory resources on a few instruments in an effort to prevent the potential for abusive practices and pervasive frauds which had previously characterized the trading in commodity options.

The Commission, on August 30, 1985, proposed revisions to the option rules and requested public comment on the possible termination of the pilot program. Among other things, the Commission asked whether, if the pilot nature of the program were maintained, exchanges should be permitted to trade more than five options on non-agricultural futures contracts. The comment period on those proposed rules ended on October 15, 1985. The Commission received comments from sixteen commentors. Among these were one insurance company, six future commission merchants (three of which were associated with commercial banks), two banks, a large multinational corporation, three commodity futures exchanges, a futures industry association, and a foreign government.

Several of the commentors stated that whatever the merits of terminating the pilot status of the program, the Commission should move with dispatch to expand the pilot program. These commentors noted that the current constraint on the number of options permitted per exchange resulted in certain options on currency futures being unavailable for trading. These commentors further noted that the availability of such options would further the efficiency of their business operations. The Commission has considered the views of these commentors and believes that such an expansion—as an immediate, interim step—has merit.¹

The Commission's program to permit the trading of commodity options has resulted in their phased introduction. For example, the initial option rules permitted one option on a commodity futures contract other than on a domestic agricultural commodity to be traded on each exchange. 46 FR 54501, 54530, November 3, 1981. Subsequently the Commission adopted rules also

permitting the trading of one option per exchange on a physical commodity, 47 FR 56996 (December 22, 1982), and then permitted two options per exchange whether on futures or physicals. 48 FR 41575 (September 16, 1983). Finally, on August 24, 1984, the Commission expanded from two to five the number of option contracts permitted per exchange. 49 FR 33641.

Although in its August 30, 1985, Federal Register notice of proposed rulemaking the Commission identified problems which have arisen in connection with the trading of commodity options which require careful scrutiny before the pilot nature of the program is terminated, the Commission also noted that the program to permit exchange-traded commodity options in the United States overall has been successful. As a result, the Commission has determined immediately to expand the pilot program for domestic non-agricultural commodities from five to eight options per exchange while it considers further the advisability of terminating the pilot status of the program and making other changes to the regulations relating to exchange-traded options.

Related Matters
A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. The Commission previously determined that the proposed regulations would not have a significant economic impact on a substantial number of small entities. Moreover, no comments were received in response to the Commission's invitation from any firms or other persons who believed that the promulgation of these rule amendments might have a significant impact upon their activities. Therefore, in accordance with the provisions of the RFA, the Chairman of the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The rule being adopted does not call for the collection of information from the general public and therefore is not subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects in 17 CFR Part 33

Commodity exchange, Commodity exchange designation procedures, Commodity exchange rules, Commodity

¹ As noted in the proposed rulemaking, 50 FR at 35248, two petitions to expand the number of options permitted on domestic agricultural futures contracts remain pending. In light of the more recent addition of the agricultural pilot program, the Commission believes that it is appropriate to continue to review the advisability of such an expansion.

futures, Commodity options, Contract markets.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1)(A), 4c, 5, 5a, 6, and 8a thereof 7 U.S.C. 2, 4, 6c, 7, 7a, 8, and 12a the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a-1, 13b, 19, 20 and 21 unless otherwise noted.

2. Section 33.4 is amended by revising paragraph (a)(6)(ii) to read as follows:

§ 33.4 Designation as contract market for the trading of commodity options.

- (a) * * *
- (6) * * *

(ii) For commodities not specifically enumerated in section 2(a)(1)(A) of the Act, is not designated for more than seven other commodity options; *Provided, however,* That with respect to options on physicals, no such board of trade may be designated as a contract market for more than two commodity options.

Issued in Washington, D.C. on October 29, 1985 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-28240 Filed 11-1-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 85-183]

Decision on Domestic Interested Party Petition Concerning Tariff Classification of Polypropylene Rope and Twine

AGENCY: Customs Service, Treasury.

ACTION: Final classification decision.

SUMMARY: This document gives notice of a change in the tariff classification of certain polypropylene rope and twine made from fibrillated strips, which are currently classified under the provision for articles of plastics, not specially provided for. This classification carries with it eligibility for an exemption from

duty under the Generalized System of Preferences for merchandise produced in beneficiary developing countries. In the case of baler twine produced in certain countries, there is also eligibility for an agricultural implements exemption. Under this change, this type of rope and twine will be classified as cordage of man-made fibers in either of two tariff schedule items depending on the diameter of the cordage. The document also advises that the tariff classification of certain other plastic twine made from fibrillated strips, now classified as cordage, and certain rope made from nonfibrillated plastic strips, now classified as articles of plastics, not specially provided for, will not change.

EFFECTIVE DATE: This decision will be effective as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after 30 days from the date of publication of this decision in the *Customs Bulletin*.

FOR FURTHER INFORMATION CONTACT: James C. Hill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

This document pertains to the tariff classification of certain imported polypropylene rope and twine. A petition dated November 9, 1982, was filed with Customs under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by the Sunshine Cordage Corporation, an American manufacturer of synthetic polypropylene rope. An amended petition was filed on December 14, 1982.

The petitioner contends that the cordage which is the subject of this petition and which is currently classified by Customs under the provision for articles of plastics, not specially provided for, n.s.p.f., in item 774.55, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), is more appropriately classified under the provision for cordage of man-made fibers in items 316.55 or 316.58, TSUS, depending on diameter. The current rate of duty for articles classified under item 774.55, TSUS, is 6.1 percent ad valorem, and the current rate of duty for articles classified under items 316.55 and 316.58, TSUS, is 4 cents per pound plus 10.3 percent ad valorem and 12.5 cents per pound plus 15 percent ad valorem, respectively. The petitioner correctly notes that articles classified under item 774.55, TSUS, can be entered free of duty under the Generalized System of Preferences (GSP) (see §§ 10.171-10.178, Customs Regulations (19 CFR 10.171-

10.178)), if imported directly from a beneficiary developing country, whereas articles classified under items 316.55 and 316.58, TSUS, cannot be entered free of duty under the GSP.

Classification under either of those items also precludes the agricultural implements exemption in item 870.40, TSUS.

A notice inviting the public to comment on the petition was published in the *Federal Register* on April 29, 1983 (48 FR 19510) and a document correcting certain omissions in that notice was published on May 25, 1983 (48 FR 23513). The original deadline for comments was extended to August 28, 1983, by a *Federal Register* notice published on July 26, 1983 (48 FR 33961). However, since the comments received in response to these notices raised additional issues, another notice was published in the *Federal Register* on March 30, 1984 (49 FR 12801), setting forth these issues and requesting further comments by May 29, 1984. Of the 35 comments received, 28 supported the petition and 7 opposed it.

Description of Merchandise

The merchandise which is the subject of this document is rope made from extruded plastic film or strips which are over one inch wide, but which due to their special chemical and physical properties, are transformed into fibrillated strips while being twisted into rope strands or which are fibrillated beforehand. In the latter case, fibrillation may be accomplished by a separate twisting or by cutting with pins or knives. The final cordage product, depending on the degree of coarseness of the fibers, resembles polypropylene rope made from monofilaments. The rope for which classification will not be changed is made from twisted plastic nonfibrillated film or strips over one inch wide. The twine for which classification will not be changed is made from single strand of twisted fibrillated strip which was one inch or less in width before fibrillation.

Discussion of Comments

Generally

The multiplicity of points made in the responses translate into six major issues, as they relate to the general question of whether the instant merchandise meets the requirement in Headnote 1(a), Part 2, Schedule 3, TSUS, that cordage consist of "assemblages of textile fibers or yarns." Omitted is any discussion concerning the claims made by proponents of the petition that continuation of the lower-rate

classifications will have continuing adverse economic impact on the domestic cordage industry and its suppliers and the claims made by opponents that failure of Congress to enact legislation changing the Customs classifications suggests approval of such treatment. Customs cannot consider claims of that nature.

The Nonfibrillated Strip Issue

The first issue is raised by the petitioner's contention that the requirement in Headnote 3(d), Subpart E, Part 1, Schedule 3, TSUS, that plastic strips, in order to be regarded as textile fibers, must be not over one inch in width in their "unfolded, untwisted, and uncrimped" condition, applies only to articles made of strips which are not folded, twisted or crimped. However, the plain meaning of the headnote is otherwise. The statutory language is clear and unambiguous and, therefore, must be the "primary source for the determination of legislative intent" *Merry Mary Fabrics, Inc. v. United States*, 1 CIT 13, 17 (1980). See also *Le Jeune, Inc. v. United States*, 67 Cust. Ct. 301, C.D. 4289 (1971), in which the tariff classification of crimped strips was evaluated against the headnote one-inch limitation. Accordingly, we find at the outset that the current classification of rope made from nonfibrillated strips over one inch wide is correct.

The One-Inch Width Limitation Issue

The second issue raised in the petition and opposing comments is whether Customs has properly made a distinction between cordage made from fibrillated film or strips which, before fibrillation, are over one inch wide and those which are narrower. It is stressed in the opposing comments that fibrillation of strips does not result in anything other than fibrillated strips and, therefore, the one-inch width headnote limitation applicable to strips is applicable to fibrillated strips. This view, however, is not supported by the authorities which we have consulted which rather suggest fibrillation results in a transformed product. For example, fibrillated strips are often referred to as yarns, although that is not conclusive of what constitutes a yarn for tariff classification purposes. See, for example, *Encyclopedia of Polymer Science and Technology* (1968), vol. 9, p. 410; *Modern Textile & Apparel Dictionary* by George E. Linton (1973), p. 235; *Fiber to Fabric* by Bernard P. Corbman (5th ed. 1975), p. 476.

If not strips and therefore not technically within the one-inch width headnotes limitations, the opponents to the petition contend it is within the

administrative authority of Customs to apply a one-inch width limitation anyhow to establish a standard where objective criteria are called for but are not specifically set forth in TSUS headnotes, and Customs has properly applied such a standard with respect to fibrillated strips. However, arguments promoting standards or product distinctions not otherwise specifically mandated by the TSUS, to create exceptions to broader tariff classification principles otherwise militating against widely disparate tariff treatment for essentially similar merchandise are not persuasive. Nor are the arguments persuasive to the extent they promote a product distinction which for much of the merchandise in question is impractical in its application. For example, for fibrillated strips which are more yarn-like and less coarse or ribbon-like, it is often impossible without a laboratory analysis to determine the width of the film or strips from which the fibrillated product originated. Accordingly, in connection with this review we now find that continuation of the distinction in question as it applies to the tariff classification of cordage is no longer justifiable and must be regarded as an "artificial . . . distinction . . . requiring correction" as dealt with by the court in *United States v. Rembrandt Electronics, Inc.*, 64 CCPA 1, 5, 6, C.A.D. 1175 (1976).

It should be further noted that the artificial one-inch limitation reflects a further misapplication of principles pertinent to determining what material a product is made of. In accordance with General Headnote 9(f)(1), TSUS, an article may be considered as "of" a given material if it is in chief value of that material, and the cost comparison is to be made at the time of final assembly. *Kores Manufacturing Corp. v. United States*, 3 CIT 178 (1982). However, an assembly in which materials of the same composition are joined cannot be a basis for cost comparisons, and the manufacture of cordage is generally not referred to as an assembly. Therefore, we find that the concept incorporated in the TSUS based on what a product is made "of" must be distinguished from what a product is made from. Accordingly, what the instant merchandise is made of must be determined as of the time of its importation in its condition as imported, and as of that time and in that condition it is made of twisted fibrillated fibers which no longer retain the characteristics of the strip or film from which it was made.

The Extrusion or Other Process Issue

The opponents of the petition argue that fibrillated strips are not textile fibers because the provision for fibers made by "other processes" in Headnote 2(b), Subpart E, Part 1, Schedule 3, TSUS, excludes products made by an extrusion since extruded products are otherwise provided for in that headnote, and the intervening fibrillation process disqualifies the merchandise from that provision. However, we find that the intervening fibrillation process warrants the opposite conclusion. It is also contended the *Kores* decision, *supra*, stands for the proposition that textile fibers cannot be formed by cutting film. However, the cutting process discounted by the court in that matter occurred after the point in time when there had to be in existence a textile fiber for component-in-chief-value cost comparisons.

The Plexiform Filament Issue

In arguing that fibrillated strips are not subject to limitations applicable to nonfibrillated strips, the proponents of the petition claim that fibrillated strips otherwise qualify as textile fibers by falling within the definition for "plexiform filaments" in Headnote 3(c), Subpart E, Part 1, Schedule 3, TSUS, which is not subject to any dimensional criteria. The opponents disagree. The issue is whether fibrillated strips are "plexiform filaments" as that term is used in the TSUS.

The opponents cite legislative history extensively, the most pertinent part of which was cited and quoted at length in our Federal Register notice of March 30, 1984. The most pertinent secondary authority cited was *Synthetic Fibers from Petroleum* by Marshall Sittig (1967), p. 267. These materials show that the term "plexiform filaments" was coined as a variation of the term "plexifilaments" which was invented for patent application purposes by the inventors of certain man-made fibers produced by what was called dry spinning or flash spinning techniques. The term "plexiform filaments" otherwise has no current recognition in any technical references or treatises or commercial nomenclature.

Accordingly, technical opinions submitted, which both advocate and oppose the view that fibrillated strips constitute plexiform filaments, have no nexus with technical references and therefore must be regarded as conclusions principally influenced by the legislative history and other considerations from which we must draw our conclusions. However, for the

purpose of the tariff classification of the instant merchandise, we abstain from drawing any such conclusions at this time because whether or not fibrillated strips constitute plexiform filaments is a moot point.

If fibrillated strips do not qualify as plexiform filaments as described by headnote definition, they would still qualify as textile fibers under Headnote 3(f), Subpart E, Part 1, Schedule 3, TSUS, which encompasses "any other fibrous structure suitable for the manufacture of textiles."

The Suitability-for Use Issue

The issue raised by the foregoing position as to whether fibrillated strips are suitable for the manufacture of textiles is pertinent whether or not they are regarded as plexiform filaments since qualifying as a plexiform filament under the headnote definition is also conditioned on the same suitability-for-use criterion. Accordingly, it is claimed by opponents of the petition that even if, or whether or not, they are regarded as plexiform filaments, polypropylene fibrillated strips are used only in cordage, are never used in textiles and cannot be used in textile machines, and, therefore, do not meet the suitability-for-use-in-the-manufacture-of-textiles requirement. The proponents of the petition, however, state that they are suitable for use in textiles and cite as an example use in backing for rugs. The authorities support the latter position. See, for example, *Fiber to Fabric, supra*, where uses in carpet backing are described. See also the *Handbook of Polyolefin Fibres* by J. Gordon Cook (1967), p. 420, where uses on textile machines are also referred to.

The Assemblage Issue

The final issue is whether single strand twine made of a single fibrillated strip, all of the foregoing considerations to the contrary notwithstanding, must still be excluded from the cordage provisions because it does not consist of "assemblages" of fibers. However, as previously discussed, all of the merchandise must be classified primarily in its condition as imported. Accordingly, even though the manufacture of single strand twine starts with a single strip, its characteristics in its fibrillated condition as imported are those of assemblages of fibers.

Tariff Classification

After careful analysis of the comments, and further review of the matter, we find that polypropylene rope and twine made of fibrillated film or strips which in their conditions before

fibrillation are over one inch in width are properly classifiable under the provisions for cordage of man-made fibers in items 316.55 and 316.58, TSUS. Accordingly, the classification of such merchandise under the provision for articles of plastics, n.s.p.f., in item 744.55, TSUS, will be changed, and the petition is allowed to that extent.

The petition is denied to the extent that we find the classification of polypropylene cordage made of nonfibrillated film or strips over one inch wide, under the provision for articles of plastics, n.s.p.f., in item 774.55, TSUS, is correct and will be continued. We also find that the classification of twine made from a single strand of fibrillated polypropylene material, which before fibrillation was one inch or less in width, as cordage, is correct and will be continued. This decision is limited to the described rope and twine and no distinctions will be made between products made by different fibrillation processes or those having different degrees of strand coarseness. Therefore, this decision is not dispositive of the tariff classification of other fibrillated plastic strip or film products. The petitioner may further argue its position on the classification of nonfibrillated rope by filing a notice of intention to contest this decision as provided for in § 175.23, Customs Regulations (19 CFR 175.23). Importers adversely affected by this decision must prosecute their disagreements under the protest procedure in Part 174, Customs Regulations (19 CFR Part 174).

Authority

This notice is published under the authority of section 516(b), Tariff Act of 1930, as amended (19 U.S.C. 1516(b)), Tariff Act of 1930, and § 175.22(a), Customs Regulations (19 CFR 175.22(a)).

Drafting Information

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

William von Raab,
Commissioner of Customs.

Approved: October 17, 1985.

David D. Queen,

Acting Assistant Secretary of the Treasury.
[FR Doc. 85-28267 Filed 11-1-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 84C-0098]

Poly(Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additive for Coloring Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 19, 1985, for a regulation that provides for the safe use of the colored polymeric reaction product formed by chemically bonding Reactive Blue No. 4 with poly(hydroxyethyl methacrylate) to produce tinted contact lenses. This action responds to a petition filed by Bausch & Lomb, Inc.

EFFECTIVE DATE: Effective date confirmed: September 19, 1985.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the Federal Register of August 19, 1985 (50 FR 33336), FDA amended the color additive regulations to provide for the safe use of the colored polymeric reaction product formed by chemically bonding Reactive Blue No. 4 [2-anthracenesulfonic acid, 1-amino-4-(3-(4,6-dichloro-s-triazin-2-yl)amino)-4-sulfoanilino]-9,10-dihydro-9,10-dioxo, disodium salt] with poly(hydroxyethyl methacrylate) to produce tinted contact lenses.

In the final rule, FDA gave interested persons until September 18, 1985, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the Federal Register of August 19, 1985, for the colored polymeric reaction product between poly(hydroxyethyl methacrylate) and Reactive Blue No. 4 should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended [21 U.S.C. 371, 376]) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the August 19, 1985, final rule. Accordingly, the amendments promulgated thereby became effective September 19, 1985.

Dated: October 29, 1985.
 Mervin H. Shumate,
Acting Associate Commissioner for Regulatory Affairs.
 [FR Doc. 85-26206 Filed 11-1-85; 8:45 am]
 BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

**Drug Enforcement Administration
 21 CFR Part 1308**

Schedules of Controlled Substances: Removal of Nalmefene From Control

AGENCY: Drug Enforcement Administration, Justice.
ACTION: Final rule.

SUMMARY: This is a final rule which removes the substance, nalmefene, and its salts from control under the Controlled Substances Act (21 U.S.C. 801 et seq.). Chemically, nalmefene is 17-(cyclopropylmethyl)-4,5-epoxy-6-methylenemorphinan-3,14-diol. Nalmefene has been a Schedule II narcotic by virtue of its derivation from the Schedule II opioid thebaine. The ruling results from the Administrator of the Drug Enforcement Administration finding, based largely upon the recommendation of the Acting Assistant Secretary for Health, that nalmefene does not have sufficient potential for abuse or abuse liability to justify its continued control in any schedule.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

A notice was published in the Federal Register on May 31, 1985 (50 FR 23144)

proposing the removal of nalmefene and its salts from Schedule II of the Controlled Substances Act (CSA) (21 U.S.C. 812(c) Schedule II(a)(1); § 1308.12(b)(1), Title 21 of the Code of Federal Regulations (CFR)). All interested persons were given until July 30, 1985, to submit their objections, comments or requests for a hearing regarding the proposal. No objections were received nor were there any requests for a hearing. One comment was received from a manufacturer of opium derivatives. It expressed support for the proposed action and concern that the uncontrolled importation of decontrolled opiate derivatives manufactured from controlled substances will foster widespread opiate raw material production; therefore, the international controls on narcotic substances would be weakened by adding to the current, large oversupply of the narcotics. Taking into consideration these views, the investigations of the Drug Enforcement Administration and the scientific and medical evaluation and recommendation of the Secretary of the Department of Health and Human Services, received pursuant to 21 U.S.C. 811(b), the Administrator finds that there currently does not exist evidence that nalmefene possesses sufficient potential for abuse to justify its continued control in any schedule of the CSA.

Therefore, under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR 0.100), the Administrator hereby orders that 21 CFR 1308.12(b)(1) be amended by removing nalmefene and its salts from control.

Pursuant to 5 U.S.C. 605(b), the Administrator hereby certifies that the decontrol of nalmefene will have no adverse impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). In addition, nalmefene has not been approved by the Food and Drug Administration for use in medical treatment or to have accepted safety for use as a drug or other substance under medical supervision in the United States.

In accordance with the provisions of 21 U.S.C. 811(a), this proposal to remove nalmefene from Schedule II is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from

the consultation requirements of Executive Order 12291.

PART 1308—[AMENDED]

Accordingly, 21 CFR Part 1308 is amended as follows:

1. The authority citation for Part 1308 continues to read as follows:

Authority: Secs. 201, 202, 501(b), 84 Stat. 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1271; 21 U.S.C. 811, 812, 871(b).

2. Section 1308.12 is amended by revising paragraph (b)(1) to read as follows:

§ 1308.12 Schedule II.

• • • • •
 (b) • • •

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, dextrophan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

(1) Raw opium.....	9600
(2) Opium extracts.....	9610
(3) Opium fluid.....	9620
(4) Powdered opium.....	9639
(5) Granulated opium.....	9640
(6) Tincture of opium.....	9630
(7) Codeine.....	9050
(8) Ethylmorphine.....	9190
(9) Etorphine hydrochloride.....	9059
(10) Hydrocodone.....	9193
(11) Hydromorphone.....	9150
(12) Metopon.....	9260
(13) Morphine.....	9300
(14) Oxycodone.....	9143
(15) Oxymorphone.....	9652
(16) Thebaine.....	9333

• • • • •
 Dated: October 29, 1985.

John C. Lawn,
Administrator, Drug Enforcement Administration.
 [FR Doc. 85-26124 Filed 11-1-85; 8:45 am]
 BILLING CODE 4410-09-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1204

[NHTSA Docket No. 84-08; Notice 2]

Uniform Standards for State Highway Safety Program

AGENCY: National Highway Traffic Safety Administration (NHTSA).

Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends seven of the Uniform Standards for State Highway Safety Programs. The purpose of this action is to clarify the Standards and reduce the apparent imposition of Federal recordkeeping and reporting burdens on State governments. States should continue to have a program in each of these seven areas. However, the recordkeeping and reporting components set forth in the standards will serve only as models. States will now have greater latitude to implement programs solely to suit their individual needs.

DATE: The final rule becomes effective November 4, 1985.

FOR FURTHER INFORMATION CONTACT:

George Reagle, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. (202-426-0837).

Howard Hanna, Chief, Program Development Division, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. (202-426-2131).

SUPPLEMENTARY INFORMATION:

On August 28, 1984, the National Highway Traffic Safety Administration and the Federal Highway Administration issued a notice of proposed rulemaking (NPRM) (49 FR 34513) to amend seven of the 18 Uniform Standards for State Highway Safety Programs. That notice proposed changing the language of 23 CFR Part 1204, which appears to impose mandatory Federal recordkeeping and reporting requirements on the States as a condition of receiving Federal highway safety funds. We proposed retaining these standards while giving States greater flexibility to design their own programs. We sought comment on the impact of this proposed amendment on the States in administering their highway safety programs.

The public comment period on the NPRM closed on October 1, 1984. The agencies had received three comments on the NPRM by the close of the comment period. Since then, we have received an additional six comments.

Generally, the commenters supported the reduction of the restrictive language contained within the standards. The Mitchell County Highway Department, Beloit, Kansas, remarked that in rural areas it had been difficult to find anyone to inspect vehicles with regard to safe vehicle performance because of the paperwork involved. The Oregon

Department of Transportation, Highway Division, noted that the changes will "allow the flexibility to tailor the programs to meet the needs of those they are intended to serve" and will have a positive effect on the programs in the State. The Department of Highways and Traffic, St. Louis County, Missouri, also went on record as endorsing the proposal.

Commenters did suggest modifications and alternatives. To "lessen the binding language contained within the standards," the Michigan Department of State Police urged the agencies to change the "shall" in all lead-in paragraphs to "should". Several commenters suggested changing the language from "standards" to "guidelines." One commenter suggested eliminating the standards entirely.

The agencies have not adopted these suggestions. The purpose of the amendment, as noted in the preamble to the NPRM, is limited to reducing apparent Federal paperwork burdens. The proposals are therefore outside the scope of the rulemaking action. In addition, we believe that this action achieves the goal sought by those commenters who wished the terminology changed from "standards" to "guidelines" while, at the same time, preserving the language of section 402(a) of the Highway Safety Act, which requires States to have highway safety programs "in accordance with uniform standards promulgated by the Secretary". Section 402(c) of the same Act provides for withholding of funds from non-complying States, but it also provides that the agencies need not mandate compliance with every standard, or with every element of every standard, in every State. The amendment in this notice is consistent with these statutory provisions, in that it enables the States to design programs consistent with their own needs and capabilities while recognizing that the seven program areas are vital components of effective highway safety policy.

The Oakland County, Michigan, Board of County Road Commissioners recommended that the preamble to each program standard refer solely to the State's responsibilities, and not to the responsibility of local governments. This modification, the Board felt, would clarify that it is the States and not other governmental units which are responsible for compliance with program standards. The agencies believe that the responsibility of the States for compliance with program standards is manifest in the language of the Act. Additionally, those standards that refer to political subdivisions or

local governments expressly provide that it is each State's responsibility to establish programs and that in doing so it must seek the cooperation of smaller governmental units. The standards do not place the responsibility for compliance on these units. We are retaining references to political subdivisions and local governments in order to make it clear that they should be consulted by the State during States' development and implementation of certain programs.

The Maryland Department of Transportation recommended that the language of the highway safety program standards not affected by this rulemaking also be modified in accord with the new wording. This change, the Department felt, would eliminate any distinctions between the two groups of standards. In addition, the Department suggested revising all the standards to "reflect the extensive knowledge and experience gained, as well as the technological progress that has occurred, since the issuance of the standards." Since the remaining eleven standards do not contain any paperwork requirements, modifications to them are outside the scope of this rulemaking. However, NHTSA and FHWA will take these comments into consideration in any future rulemaking.

The International Association of Chiefs of Police, Inc. stated that eliminating apparent paperwork burdens is a desirable goal provided that the mission of the standards is not jeopardized. The Association was concerned that the flexibility made possible by the modifications might preclude the usefulness of program results for comparison or analysis purposes and proposed that the information reporting be implemented in a uniform manner. To simplify the evaluating and reporting process, the Mitchell County Highway Department proposed using a standard reporting form. The agencies believe that rather than simplify the process, the task of evaluating and reporting would become more onerous with a standard form. The agencies want to give the States latitude in determining the best ways to implement the programs and do not believe that the modifications proposed will have a detrimental affect upon statistical analyses.

Economic Impact and Other Effects

NHTSA and FHWA have analyzed the impact of this action and have determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of Department of

Transportation regulatory policies and procedures. Because these amendments will permit greater flexibility in determining methods to implement Federal standards, but will impose no obligations, the changes will have no major economic impact on State or local governments. Because there will be virtually no economic or other impact from this proposal, a full regulatory evaluation is not necessary.

In accordance with the Regulatory Flexibility Act, the Agencies have evaluated the effects of this action on small entities. Based on this evaluation, we certify that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed changes pertain only to State implementation of highway safety programs and will not affect small business or small governmental units. While some of the programs may use the services of small business contractors, we believe that the programs would not be changed substantially so as to affect those businesses' services. In accordance with this evaluation, no regulatory flexibility analysis has been prepared.

The Agencies have also analyzed this proposed action for the purpose of the National Environmental Policy Act. The Agencies have determined that the proposed amendments will not have any effect on the human environment.

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program and have been satisfied.

List of Subjects in 23 CFR Part 1204

Highway safety programs.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning, and Construction and No. 20.600, State and Community Highway Safety.)

PART 1204—[AMENDED]

In consideration of the foregoing, the following amendments are made to Part 1204 of Title 23 of the Code of Federal Regulations:

23 CFR Part 1204 is amended as follows:

1. The authority citation for Part 1204 is revised to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

§ 1204.4 [Amended]

2. Section 1204.4 Highway Safety Program Standard No. 1 is revised to read as follows:

Highway Safety Program Standard No. 1 Periodic Motor Vehicle Inspection

Each State shall have a program for periodic inspection of all registered vehicles or other experimental, pilot, or demonstration program approved by the Secretary, to reduce the number of vehicles with existing or potential conditions which cause or contribute to accidents or increase the severity of accidents which do occur, and shall require the owner to correct such conditions.

I. A model program would provide, at a minimum, that:

A. Every vehicle registered in the State is inspected either at the time of initial registration and at least annually thereafter, or at such other time as may be designated under an experimental, pilot or demonstration program approved by the Secretary.

B. The inspection is performed by competent personnel specifically trained to perform their duties and certified by the State.

C. The inspection covers systems, subsystems, and components having substantial relation to safe vehicle performance.

D. The inspection procedures equal or exceed criteria issued or endorsed by the National Highway Traffic Safety Administration.

E. Each inspection station maintains records in a form specified by the State, which include at least the following information:

1. Class of vehicle.
2. Date of inspection.
3. Make of vehicle.
4. Model year.
5. Vehicle identification number.
6. Defects by category.
7. Identification of inspector.
8. Mileage or odometer reading.

F. The State publishes summaries of records of all inspection stations at least annually, including tabulations by make and model of vehicle.

II. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

3. Section 1204.4 Highway Safety Program Standard No. 2 is revised to read as follows:

Highway Safety Program Standard No. 2 Motor Vehicle Registration

Each State shall have a motor vehicle registration program.

I. A model registration program would be such that every vehicle operated on public highways is registered and the

following information is readily available for each vehicle:

- A. Make.
- B. Model year.
- C. Identification number (rather than motor number).
- D. Type of body.
- E. License plate number.
- F. Name of current owner.
- G. Current address of owner.
- H. Registered gross laden weight of every commercial vehicle.

II. Each program should have a records system that provides at least the following services.

A. Rapid entry of new data into the records or data system.

B. Controls to eliminate unnecessary or unreasonable delay in obtaining data.

C. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.

D. Data available for statistical compilation as needed by authorized sources.

E. Identification and ownership of vehicle sought for enforcement or other operation needs.

III. This program should be periodically evaluated by the State, and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

4. Section 1204.4 Highway Safety Program Standard No. 5 is revised to read as follows:

Highway Safety Program Standard No. 5 Driver Licensing

Each State shall have a driver licensing program: (a) To insure that only persons physically and mentally qualified will be licensed to operate a vehicle on the highways of the State, and (b) to prevent needlessly removing the opportunity of the citizen to drive. A model program would provide, as a minimum, that:

I. Each driver holds only one license, which identifies the type(s) of vehicle(s) he is authorized to drive.

II. Each driver submits acceptable proof of date and place of birth in applying for his original license.

III. Each driver:

A. Passes an initial examination demonstrating his:

1. Ability to operate the class(es) of vehicle(s) for which he is licensed.
2. Ability to read and comprehend traffic signs and symbols.
3. Knowledge of laws relating to traffic (rules of the road) safe driving procedures, vehicle and highway safety features, emergency situations that arise

in the operation of an automobile, and other driver responsibilities.

4. Visual acuity, which must meet or exceed State standards.

B. Is reexamined at an interval not to exceed 4 years, for at least visual acuity and knowledge of rules of the road.

IV. A record on each driver should be maintained which includes positive identification, current address, and driving history. In addition, the record system should provide the following services:

A. Rapid entry of new data into the system.

B. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.

C. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.

D. Ready availability of data for statistical compilation as needed by authorized sources.

E. Ready identification of drivers sought for enforcement or other operational needs.

V. Each license should be issued for a specific term, and should be renewed to remain valid. At time of issuance or renewal each driver's record should be checked.

VI. There should be a driver improvement program to identify problem drivers for record review and other appropriate actions designed to reduce the frequency of their involvement in traffic accidents or violations.

VII. There should be:

A. A system providing for medical evaluation of persons whom the driver licensing agency has reason to believe have mental or physical conditions which might impair their driving ability.

B. A procedure which will keep the driver license agency informed of all licensed drivers who are currently applying for or receiving any type of tax, welfare or other benefits or exemptions for the blind or nearly blind.

C. A medical advisory board or equivalent allied health professional unit composed of qualified personnel to advise the driver license agency on medical criteria and vision standards.

VIII. The program should be periodically evaluated by the State, and the National Highway Traffic Safety Administration should be provided with an evaluation summary. The evaluation shall attempt to ascertain the extent to which driving without a license occurs.

5. Section 1204.4 Highway Safety Program Standard No. 9 is revised to read as follows:

Highway Safety Program Standard No. 9

Identification and Surveillance of Accident Locations

Each State, in cooperation with county and other local governments, shall have a program for identifying accident locations and for maintaining surveillance of those locations having high accident rates or losses.

I. A model program would provide, as a minimum, that:

A. There is a procedure for accurate identification of accident locations on all roads and streets.

1. To identify accident experience and losses on any specific sections of the road and street system.

2. To produce an inventory of:

a. High accident locations.

b. Locations where accidents are increasing sharply.

c. Design and operating features with which high accident frequencies or severities are associated.

3. To take appropriate measures for reducing accidents.

4. To evaluate the effectiveness of safety improvements on any specific section of the road and street system.

B. There is a systematically organized program:

1. To maintain continuing surveillance of the roadway network for potentially high accident locations.

2. To develop methods for their correction.

II. The program should be periodically evaluated by the State and the Federal Highway Administration should be provided with an evaluation summary.

6. Section 1204.4 Highway Safety Program Standard No. 10 is revised to read as follows:

Highway Safety Program Standard No. 10

Traffic Records

Each State, in cooperation with its political subdivisions, shall maintain a Statewide traffic records system.

A model program would provide, as a minimum that:

I. Information on vehicles and system capabilities should include (conforms to Motor Vehicle Registration standard):

A. Make.

B. Model year.

C. Identification number (rather than motor number).

D. Type of body.

E. License plate number.

F. Name and current owner.

G. Current address of owner.

H. Registered gross laden weight of every commercial vehicle.

I. Rapid entry of new data into the records or data system.

J. Controls to eliminate unnecessary or unreasonable delay in obtaining data.

K. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.

L. Data available for statistical compilation as needed by authorized sources.

M. Identification and ownership of vehicles sought for enforcement or other operational needs.

II. Information on drivers and system capabilities should include (conforms to Driver Licensing standard):

A. Positive identification.

B. Current address.

C. Driving history.

D. Rapid entry of new data into the system.

E. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.

F. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.

G. Ready availability of data for statistical compilation as needed by authorized sources.

H. Ready identification of drivers sought for enforcement or other operational needs.

III. Information on types of accidents should include:

A. Identification of location in space and time.

B. Identification of drivers and vehicles involved.

C. Type of accident.

D. Description of injury and property damage.

E. Description of environmental conditions.

F. Causes and contributing factors, including the absence of or failure to use available safety equipment.

IV. There should be methods to develop summary listings, cross tabulations, trend analyses and other statistical treatments of all appropriate combinations and aggregations of data items in the basic minimum data record of drivers and accident and accident experience by specified groups.

V. All traffic records relating to accidents collected hereunder should be open to the public in a manner which does not identify individuals.

VI. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

7. Section 1204.4 Highway Safety Program Standard No. 14 is revised to read as follows:

Highway Safety Program Standard No. 14

Pedestrian Safety

Every State in cooperation with its political subdivisions shall develop and implement a program to insure the safety of pedestrians of all ages. A model program would provide, as a minimum that:

I. There should be a continuing statewide inventory of pedestrian-motor vehicle accidents, identifying specifically:

A. The locations and times of all such accidents.

B. The age of all of the pedestrians injured or killed.

C. Where feasible, to determine whether the exterior features of the vehicle produced or aggravated an injury.

D. The color and shade of clothing worn by pedestrians when injured or killed, and the visibility conditions which prevailed at the time.

E. The extent to which alcohol is present in the blood of fatally injured pedestrians 16 years of age and older.

F. Where possible, to determine, the extent to which pedestrians involved in accidents have physical or mental disabilities.

II. There should be established Statewide operational procedures for improving the protection of pedestrians through reduction of potential conflicts with vehicles:

A. By application of traffic engineering practices including pedestrian signals, signs, markings, parking regulations, and other pedestrian and vehicle traffic control devices.

B. By land-use planning in new and redevelopment areas for safe pedestrian movement.

C. By provision of pedestrian bridges, barriers, sidewalks and other means of physically separating pedestrian and vehicle pathways.

D. By provision of environmental illumination at high pedestrian volume and/or potentially hazardous pedestrian crossings.

III. There should be established a Statewide program for familiarizing drivers with the pedestrian problem and with ways to avoid pedestrian collisions.

A. The program content should include emphasis on:

(1) Behavior characteristics of the three types of pedestrians most commonly involved in accidents with vehicles: (i) Children; (ii) persons under the influence of alcohol; (iii) the elderly;

(2) Accident avoidance techniques that take into account the hazardous

conditions, and behavior characteristics displayed by each of the three high risk pedestrian groups listed in subparagraph (1).

B. Emphasis on this program content should be included in:

(1) All driver education and training courses;

(2) Driver improvement courses; and

(3) Driver license examinations.

IV. There should be statewide programs for training and educating all members of the public as to safe pedestrian behavior on or near the streets and highways.

A. For children, youths and adults enrolled in schools, beginning at the earliest possible age.

B. For the general population via the public media.

V. There should be a statewide program for the protection of children walking to and from school, entering and leaving school buses, and in neighborhood play.

VI. There should be a statewide program for establishment and enforcement of traffic regulations designed to achieve orderly pedestrian and vehicle movement and to reduce vehicle-pedestrian conflicts.

VII. This program should be periodically evaluated by the States, and the National Highway Traffic Safety Administration and the Federal Highway Administration should be provided with an evaluation summary.

8. Section 1204.4 Highway Safety Program Standard No. 18 is revised to read as follows:

Highway Safety Program Standard No. 18

Accident Investigation and Reporting

I. *Scope.* This standard establishes the requirement that each State shall have a highway safety program for accident investigation and reporting.

IV. *Requirements.* Each State, in cooperation with its political subdivisions, shall have an accident investigation program. A model program would be structured as follows:

A. *Administration.* 1. There should be a State agency having primary responsibility for administration and supervision of storing and processing accident information, and providing information needed by user agencies.

2. There should be employed at all levels of government adequate numbers of personnel, properly trained and qualified, to conduct accident investigations and process the resulting information.

3. Nothing in this standard should preclude the use of personnel other than

police officers, in carrying out the requirements of this standard in accordance with laws and policies established by State and/or local governments.

4. Procedures should be established to assure coordination, cooperation, and exchange of information among local, State, and Federal agencies having responsibility for the investigation of accidents and subsequent processing of resulting data.

5. Each State should establish procedures for entering accident information into the statewide traffic records system established pursuant to Highway Safety Program Standard No. 10. Traffic Records, and for assuring uniformity and compatibility of this data with the requirements of the system, including as a minimum:

a. Use of uniform definitions and classifications acceptable to the National Highway Traffic Safety Administration and identified in the Highway Safety Program Manual.

b. A standard format for input of data into the statewide traffic records system.

c. Entry into the statewide traffic records system of information gathered and submitted to the responsible State agency.

B. *Accident reporting.* Each State should establish procedures which require the reporting of accidents to the responsible State agency within a reasonable time after occurrence.

C. *Owner and driver reports.* 1. In accidents involving only property damage, where the vehicle can be normally and safely driven away from the scene, the drivers or owners of vehicles involved should be required to submit a written report consistent with State reporting requirements, to the responsible State agency. A vehicle should be considered capable of being normally and safely driven if it does not require towing and can be operated under its own power, in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway. Each report so submitted should include, as a minimum, the following information relating to the accident:

- Location.
- Time.
- Identification of driver(s).
- Identification of pedestrian(s), passenger(s), or pedal-cyclist(s).
- Identification of vehicle(s).
- Direction of travel of each unit.
- Other property involved.
- Environmental conditions existing at the time of the accident.

1. A narrative description of the events and circumstances leading up to the time of impact, and immediately after impact.

2. In all other accidents, the drivers or owners of motor vehicles involved should be required to immediately notify the police of the jurisdiction in which the accident occurred. This includes, but is not limited to accidents involving: (1) Fatal or nonfatal personal injury, or (2) damage to the extent that any motor vehicle involved cannot be driven under its own power, in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway, and therefore requires towing.

D. Accident investigation. Each State should establish a plan for accident investigation and reporting which should meet the following criteria:

1. Police investigation should be conducted of all accidents as identified in section IV.C.2 above. Information gathered should be consistent with the police mission of detecting and apprehending law violators, and should include, as a minimum, the following:

a. Violation(s), if any occurred, cited by section and subsection, numbers and titles of the State code, that (1) contributed to the accident where the investigating officer has reason to believe that violations were committed regardless of whether the officer has sufficient evidence to prove the violation(s); and (2) for which the driver was arrested or cited.

b. Information necessary to prove each of the elements of the offense(s) for which the driver was arrested or cited.

c. Information, collected in accordance with the program established under Highway Safety Program Standard No. 15, Police Traffic Services, section I-D, relating to human, vehicular, and highway factors causing individual accidents, injuries, and deaths, including failure to use safety belts.

2. Accident investigation teams should be established, representing different interest areas, such as police; traffic; highway and automotive engineering; medical, behavioral, and social sciences. Data gathered by each member of the investigation team should be consistent with the mission of the member's agency, and should be for the purpose of determining probable causes of accidents, injuries, and deaths. These teams should conduct investigations of an appropriate sampling of accidents in which there were one or more of the following conditions:

a. Locations that have a similarity of design, traffic engineering characteristics, or environmental conditions, and that have a significantly

large or disproportionate number of accidents.

b. Motor vehicles or motor vehicle parts that are involved in a significantly large or disproportionate number of accidents or injury-producing accidents.

c. Drivers, pedestrians, and vehicle occupants of a particular age, sex, or other grouping, who are involved in a significantly large or disproportionate number of motor vehicle traffic accidents or injuries.

d. Accidents in which causation or the resulting injuries and property damage are not readily explainable in terms of conditions or circumstances that prevailed.

e. Other factors that concern State and national emphasis programs.

V. Evaluation. The program should be evaluated at least annually by the State. Substance of the evaluation report should be guided by Chapter V of the Highway Safety Program Manual. The National Highway Traffic Safety Administration should be provided with a copy of the evaluation report.

Issued on: October 29, 1985.

Diane K. Steed,

Administrator, National Highway Traffic Safety Administration.

R.A. Barnhart,

Administrator, Federal Highway Administration.

[FR Doc. 85-26292 Filed 11-1-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Approval of Permanent Program Amendment From the Commonwealth of Pennsylvania Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Pennsylvania as an amendment to the State's permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to Pennsylvania's subsidence control regulations. Pennsylvania submitted the proposed program amendment by letter dated April 18, 1985 (Administrative Record

No. PA 550). OSM published a notice in the Federal Register on June 5, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 23715). The public comment period ended July 5, 1985.

After providing opportunity for public comment and conducting thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations with one exception, and is approving it while requiring correction of the remaining deficiency. The Federal rules at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South Second Street, Suite L-4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Pennsylvania program was conditionally approved by the Secretary of the Interior on July 31, 1982. Information pertinent to the general background, revisions, modifications, and amendment to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 Federal Register (47 FR 33050-33083).

II. Submission of Program Amendment

On April 16, 1985, Pennsylvania submitted to OSM pursuant to 30 CFR 782.17 proposed amendments to 25 Pa. Code Chapter 89, Subchapter F, pertaining to subsidence control (OSM Administrative Record No. PA 550).

The amendment deletes the existing subchapter in its entirety and sets forth a new subchapter. The new subchapter reflects the revised Federal standards for subsidence control at 30 CFR 784.20 and 817.121-817.126 which were promulgated June 1, 1983 (48 FR 24838).

Also, certain new provisions relating to general mining requirements, protection of perennial streams and notice of anticipated mining activities are included in the amendment. In addition, the State has eliminated redundant information and reporting requirements and reformatted Subchapter F to provide a more precise presentation of requirements.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that the program amendment submitted by Pennsylvania on April 19, 1985 meets the requirements of SMCRA and 30 CFR Chapter VII, with one exception as discussed below.

Finding 1

The Director finds that Pennsylvania requires a subsidence control plan be submitted and approved as part of the permit application for an underground mine consistent with 30 CFR 784.20. The revised Pennsylvania regulations at sections 89.141 and 89.142 provide for application and subsidence control plan requirements in a manner no less effective than the Federal regulations including: a description of the method of coal removal, detailed mapping requirements, description of physical conditions, and a description of subsidence control measures and measures to mitigate or remedy subsidence damage.

Additionally, Pennsylvania requires an applicant to provide descriptive information on surface waters overlying the permit area and adjacent area, and on prior mining within, above, and below the permit area. At § 89.141(d)(4) Pennsylvania requires that the subsidence control plan include a description of other subsidence control measures required by other Pennsylvania statutes, thereby enabling Pennsylvania to more accurately evaluate the subsidence control plan.

Pennsylvania's mapping requirements, at section 89.142, provide for a general mine map and six month mine maps. The general mine map primarily depicts surface features and structures. In a manner no less effective than 30 CFR 817.121(g), the six month mine maps function as detailed plans of the underground workings, which demonstrate how the measures in the subsidence control plan are implemented. They describe underground mine workings in terms of areas to be mined and not mined, areas to be supported by the pillar plan (89.143(b)(3)), coal left in place in compliance with other statutes, and identification of areas of planned and

controlled subsidence. These maps show the area of mining affected over the past six months, as well as the area of mining projected over the next six months.

Finding 2

The Director finds that Pennsylvania provides at section 89.143(a), in a manner no less effective than 30 CFR 817.121(a), that an operator utilize either planned subsidence in a predictable and controlled manner, or support techniques designed to prevent subsidence damage. Similarly, Pennsylvania regulations at section 89.143(e) require that operators adopt measures which maintain the value and reasonably foreseeable use of surface lands, consistent with the Federal regulation. In addition, Pennsylvania provides for a general requirement which prohibits underground mining beneath a structure where the depth of overburden is less than 100 feet.

Finding 3

The Director finds that Pennsylvania's rules require the remedy of material damage resulting from subsidence in a manner consistent with 30 CFR 817.121(c)(1). Pennsylvania's regulation at section 89.145(a) provides for the correction of material damage to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence.

Under Pennsylvania's provision, perennial streams have been explicitly included to clarify that surface land includes the perennial stream running through it.

The Pennsylvania rules do not contain a provision no less effective than 30 CFR 817.121(c)(2) to require the operator to correct any material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensating the owner. The Federal rule (as revised on July 1, 1983—48 FR 24638) was amended on February 21, 1985. (50 FR 7274-7278) to suspend the language limiting the operator's responsibility for damage to structures to the extent required by State law.

The Pennsylvania rule at section 89.143(b) limits the requirement to prevent damage to dwellings, cemeteries, municipal public service operations and municipal utilities, to those structures and facilities in place on April 27, 1966. Therefore, this provision is less effective than 30 CFR 817.121(c)(2), as amended.

Thus, the Director is requiring a program amendment to require an

operator to correct any material damage resulting from subsidence caused to any structure or facilities by repairing the damage or compensating the owner.

Finding 4

The Director finds that Pennsylvania provides for a prohibition of subsidence damage to a limited class of surface structures in a manner no less effective than the 30 CFR 817.121(d). Consistent with the Federal regulation, the Pennsylvania rule at 89.143(b)(1) provides protection for public buildings, churches, schools, hospitals, aquifers, perennial streams, and bodies of water which serve a significant source for a public water supply system, and for impoundments and other bodies of water with a storage capacity of 20 acre feet or more. In addition, the Pennsylvania regulation prohibits subsidence damage to dwellings, cemeteries, municipal public service operations and municipal utilities, in place on April 27, 1966 (in accordance with the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act, BMSLCA) and coal refuge disposal areas. Types of damage prohibited by this subsection are outlined in subsection 89.143(b)(2). In accordance with the Pennsylvania BMSLCA, damage to structures described at 89.143(b)(1) (i) and (ii) need not be prevented if done with the consent of the current owner.

Measures for achieving protection of surface structures listed at subsection 89.143(b)(1) are outlined in subsection 89.143(b)(3). These measures provide for the utilization of conventional mining practices, where coal extraction is limited to 50%, and alternative measures, including full extraction techniques, which result in planned or controlled subsidence if demonstrated by the operator that these measures are at least as effective in prevention of subsidence damage as the conventional practice of 50% mining. When an operator utilizes alternative subsidence control measures, Pennsylvania may require that a monitoring program for detecting subsidence and preventing damage be established.

Additionally, Pennsylvania provides, in a manner no less effective than 30 CFR 817.121(e), for the discretionary authority to suspend mining under or adjacent to any of the features or facilities listed in § 817.121(d) if subsidence causes material damage to such features or facilities. The Pennsylvania rule at subsection 89.143(b)(3)(i)(D) authorizes the regulatory authority to prohibit mining or require the application of more

stringent measures if subsidence damage is not prevented in the utilization of conventional mining methods. Section 9 of the Pennsylvania BMSLCA provides the legal authority allowing the Department to issue orders to aid in the enforcement of the provisions of the Act. Such orders include, but are not limited to, orders modifying, suspending or revoking permits and orders requiring persons to cease operations.

Finding 5

The Director finds that the Federal regulations as revised do not include nonpublic water supply perennial streams as protected structures at 30 CFR 817.121(d) and that Pennsylvania's provision at section 89.143(d) is being adopted strictly as a matter of State law. Pennsylvania has designed this performance standard to ensure that perennial streams (as it is defined in section 89.141(b)), which are not a significant source for a public water supply system are protected against subsidence damage. The Pennsylvania regulation provides that underground mining activities shall be planned and conducted in a manner which maintains the value and reasonable foreseeable uses of perennial streams, such as aquatic life, water supply, and recreation, as they existed prior to mining beneath streams.

Consistent with 30 CFR 817.121(d) Pennsylvania prohibits subsidence damage to aquifers, perennial streams and bodies of water which serve as a significant source of water for a public water supply system. To be a significant source of water for a public water supply system, the aquifer or other body of water, including a perennial stream, must supply water to a public water system as defined in the Pennsylvania Safe Drinking Water Act, of May 31, 1984 (Pub L. 206, No. 43) (at least 15 service connections or regularly serving at least 25 individuals).

Finding 6

The Director finds that Pennsylvania at section 89.143(c) provides for the protection of utilities from damage caused by underground mining activities in a manner no less effective than 30 CFR 817.180. Also, at section 89.143(f) Pennsylvania provides for the mandatory suspension of mining activities, consistent with 30 CFR 817.121(f), beneath urbanized areas, cities, towns, and communities, and adjacent to or beneath industrial or commercial buildings, sold and hazardous waste disposal areas, major impoundments or perennial streams, if the activities present an imminent

danger to the inhabitants of the urbanized areas, cities, towns and communities.

Finding 7

The Director finds that Pennsylvania, at section 89.144, provides for public notice of underground mining operations in a manner no less effective than 30 CFR 817.122. Additionally, Pennsylvania provides requirements including: (1) The notice must be sent certified mail, return receipt requested, to the owner of record of each property, (2) the notice must be sent no more than five years prior to mining beneath the structure, (3) political subdivisions are sent public notice, (4) the notice must include the location of office where a surface owner can submit a written complaint alleging subsidence damage, and (5) the operator must establish and implement a procedure to notify Federal, State, or local government agencies responsible for administering public facilities as to when mining activity beneath or adjacent to a public facility will occur.

IV. Public Comments

Of the Federal agencies invited to comment, only the U.S. Soil Conservation Service (SCS) responded. The SCS commented in support of the State provision in section 89.143(d) which requires that underground mining activities be planned and conducted in a manner which maintains the value and reasonably foreseeable use of perennial streams. The SCS states that those perennial streams not used as a public water supply also are very important to local communities for agricultural, industrial, recreational, and wildlife uses.

The disclosure of Federal agency comments is made pursuant to section 503(b) (1) and (2) of SMCRA of 30 CFR 732.17(b)(10)(i).

OSM received comments from a representative of Citizens with Concern About Water Loss Due to Mining Underground (CAWLM). The commenter showed concern that Pennsylvania's proposed subsidence control regulations, if approved, would not provide protection to springs used as sources of private water supplies. The commenter suggested that the performance standards at 89.143(c) be amended to include springs used as a water supply to the list of protected utilities. It was suggested that the mapping requirements of 89.142(c) be similarly amended. Additionally, this commenter suggested the specific water supply restoration requirements be added to subsection 89.143(a), since springs (aquifers) are integral to the overlying surface land.

While OSM agrees that neither Pennsylvania's approved program nor Pennsylvania's proposed subsidence control regulations provide specific protection for private water supplies from water loss or degradation due to underground mining (subsidence), it has been determined and recently affirmed by the United States District Court for the District of Columbia in Round III, *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79-1144 (D.D.C.) (Memorandum Opinion filed July 15, 1985), that SMCRA does not require replacement of water for underground mines. Therefore, in this regard, the Director finds Pennsylvania's proposed amendment no less effective than the Federal regulations. Pennsylvania's approved program regulations include a general provision requiring that underground mining activities be planned and conducted to minimize changes to the prevailing hydrologic balance. Although this provision does not require water supply restoration or replacement, it may be utilized as a preventative measure in requiring modification of mining practices which show a potential for adverse effect on private water supplies.

V. Director's Decision

Based on the above findings, the Director is approving the amendment to the Pennsylvania program as submitted on April 19, 1985. As discussed above in Finding 3, one deficiency does exist, which Pennsylvania must correct by submission of a program amendment within 12 months of the promulgation of a revised Federal rule. The Director is amending Part 938 of 30 CFR Chapter VII to implement this decision.

VI. Procedural Matters

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

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of Interior has determined that this rule will not have a

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

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

List of Subjects in 30 CFR Part 938

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

Dated: October 30, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

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

2. 30 CFR 938.15 is amended by adding a new paragraph (i) as follows:

§ 938.15 Approval of regulatory program amendments.

(i) The following amendment submitted to OSM on April 18, 1985 is approved effective November 4, 1985. Amendment to Pennsylvania's subsidence control regulations, as contained in 25 Pennsylvania Code Chapter 89, Subchapter F.

3. 30 CFR 938.16 is amended by revising introductory text and adding a new paragraph (b) as follows:

§ 938.16 Required program amendments.

Pursuant to 30 CFR 732.17, Pennsylvania is required to submit the following proposed program amendments by the dates specified.

(b) Within 12 months following promulgation of a revised Federal rule, Pennsylvania shall amend its program no less effective than 30 CFR 817.121(c)(2), to require an operator to correct any material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensating the owner.

[FR Doc. 85-26269 Filed 11-1-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

Land Ownership Adjustments; National Forest Townsites: Correction

AGENCY: Forest Service, USDA.

ACTION: Final rule; correction.

SUMMARY: On July 22, 1985, at 50 FR 29673, the Forest Service published a final rule revising procedures for sales of certain National Forest System lands to governmental entities pursuant to the National Forest Townsite Act of July 31, 1958 (72 Stat. 438; 16 U.S.C. 478a) as amended by the Federal Land Policy and Management Act of 1976 (90 Stat. 2743; 43 U.S.C. 1722). The amendatory language of that rule failed to specify that the rule was revising only Subpart B. If left uncorrected, this amendment would result in the removal of Subparts A and C. This document corrects the amendatory language in the words of issuance of the final rule to ensure that only Subpart B of Part 254 is revised.

FOR FURTHER INFORMATION CONTACT: Marian P. Connolly, Federal Register Officer, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, (202) 235-1488.

Accordingly, the amendatory language for the final rule revising Subpart B of Part 254 that appeared in column 3 of page 29673 of the Federal Register of July 22, 1985, is hereby corrected to read as follows:

"Therefore, for the reasons set forth in the preamble, Subpart B of Part 254 of Title 36 of the Code of Federal Regulations is revised to read as follows:"

Douglas W. MacCleery,
Deputy Assistant Secretary for Natural Resources and Environment.
October 25, 1985.

[FR Doc. 85-26243 Filed 11-1-85; 8:45 am]

BILLING CODE 3410-11-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 902

Fee Schedule Revisions

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Final rule.

SUMMARY: The Pennsylvania Avenue Development Corporation is revising the schedule of fees the Corporation charges for certain services rendered to the

public. The Corporation seeks to increase its fees charged for the reproduction of public documents and the clerical assistance necessary to complete document requests. The purpose of this fee is to allow the Corporation to recover the administrative expenses generated by information requests in light of current personnel and mechanical costs.

EFFECTIVE DATE: December 4, 1985.

FOR FURTHER INFORMATION CONTACT: James Alexander, Staff Attorney, (202) 724-9088.

SUPPLEMENTARY INFORMATION: The Corporation has determined that this regulation will enable the Corporation to recoup the administrative costs incurred by document requests. This change in the fee schedule reflects the actual costs associated with document retrieval and reproduction in light of present clerical and mechanical costs. The fees charged under this regulation do not exceed the cost of research and duplication and are designed to meet increased administrative costs.

List of Subjects in 36 CFR Part 902

Freedom of Information.

PART 902—[AMENDED]

For the reasons set out in the preamble, Part 902 of Chapter IX of Title 36 of the Code of Federal Regulations is amended as follows:

1. Authority citation for Part 902 is revised to read as follows:

Authority: 5 U.S.C. 552.

2. Section 902.82 is amended by revising paragraph (a) to read as follows:

§ 902.82 Fee schedule.

(a) The following specific fees shall be applicable with respect to services rendered to the public under this part:

- (1) Copies made by photostat or similar process (per page) \$25.
- (2) Search of Corporation records, index assistance and duplication, performed by clerical personnel (per hour) \$7.00.
- (3) Search of Corporation records or index assistance by professional or supervisory personnel (per hour) \$11.00.
- (4) Duplication of architectural drawings, maps and similar materials (per copy) \$10.00.
- (5) Reproduction of 35mm slides (per copy) \$1.00.
- (6) Reproduction of enlarged, black and white photographs (per copy) \$10.00.
- (7) Reproduction of enlarged, color photographs (per copy) \$17.00.

(8) Certification of records as "true copy" (per document) \$1.75.

Dated: October 28, 1985.

M.J. Brodie,

Executive Director.

[FR Doc. 85-26220 Filed 11-1-85; 8:45 am]

BILLING CODE 7630-01-M

36 CFR Parts 902, 903, 905, 907, and 908

Address Change

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Final Rule; Technical Amendments.

SUMMARY: The Pennsylvania Avenue Development Corporation seeks to correct its regulations to reflect the Corporation's current address.

EFFECTIVE DATE: December 4, 1985.

FOR FURTHER INFORMATION CONTACT: James Alexander, Staff Attorney, (202) 724-9088.

SUPPLEMENTARY INFORMATION: The Pennsylvania Avenue Development Corporation has moved to new offices at 1331 Pennsylvania Avenue, NW. This final rule is being promulgated to insure that all requests and communications are directed to the Corporation's current address.

PARTS 902, 903, 905, 907 AND 908— [AMENDED]

For the reasons set out in the preamble, Parts 902, 903, 905, 907 and 908 of Chapter IX of Title 36 of the Code of Federal Regulations are amended as follows.

1. Authority citations for Part 902 is revised to read as follows:

Authority: 5 U.S.C. 552.

2. Authority citation for Part 903 is revised to read as follows:

Authority: 5 U.S.C. 552a; 40 U.S.C. 870.

3. Authority citation for Part 905 is revised to read as follows:

Authority: 40 U.S.C. 875.

4. Authority citation for Part 907 is revised to read as follows:

Authority: 40 U.S.C. 875(8); 42 U.S.C. 4321.

5. Authority citation for Part 908 is revised to read as follows:

Authority: 40 U.S.C. 874(e); 40 U.S.C. 875(8); 40 U.S.C. 877(d).

§§ 902.11, 902.31, 902.73, 903.3, 903.6, 903.7, 903.9, 905.735-502, 905.735-503, 907.13 and 908.30 [Amended]

6. Sections 902.11, 902.31(s), 902.73, 903.3(b), 903.6(a), 903.7(a), 903.9(a), 905.735-502(b), 905.735-503, 907.13 and 908.30(b) are amended by revising the address for the Pennsylvania Avenue Development Corporation to read as follows: "1331 Pennsylvania Avenue, NW., Suite 1220 North, Washington, DC 20004."

Dated: October 28, 1985.

M.J. Brodie,

Executive Director.

[FR Doc. 85-26221 Filed 11-1-85; 8:45 am]

BILLING CODE 7630-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2571]

Grazing Administration—Exclusive of Alaska; Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the regulations for the management of livestock grazing on the public lands under the jurisdiction of the Bureau of Land Management. The amendments were developed to implement those provisions of Title I of the Act of October 12, 1984 (Pub. L. 98-473, 98 Stat. 1837), which are applicable to livestock grazing lessees and permittees.

EFFECTIVE DATE: December 4, 1985.

ADDRESS: Any suggestions or inquiries should be sent to: Director (220), Bureau of Land Management, Room 909, Premier Bldg., 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Robert Alexander, (202) 653-9210.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to implement certain provisions of Title I of the Act of October 12, 1984 (98 Stat. 1837), was published in the *Federal Register* on March 11, 1985 (50 FR 9696), with a 30-day public comment period. The provisions, in effect, prohibit any person who holds a permit or lease to graze domestic livestock on public lands from profiting by an assignment or conveyance of the permit or lease. This final rulemaking establishes procedures that will be followed by the Bureau of Land Management in carrying out the statutory requirements of said Act of October 12, 1984 (98 Stat. 1837).

Although these final regulations become effective 30 days after publication in the *Federal Register*, the pertinent provisions of the Act have been effective since October 12, 1984, and violators are subject to penalties as of that date.

The Bureau of Land Management's regulations require that before any person may graze domestic livestock on public lands, that person must either own or control (1) land or water capable of supporting a livestock operation (43 CFR 4110.1) and (2) the livestock to be grazed on the public lands (43 CFR 4130.5). The Bureau has held that any assignment or other conveyance that purposely allows someone to graze livestock on public lands without owning or controlling the base property or livestock is unlawful. The Bureau has historically referred to these unlawful arrangements as "subleases" or "subleasing."

A problem arose because "Subleasing" was not specifically defined. It has been given different meanings by many people. For instance, legal leasing of the entire base property has sometimes been referred to as subleasing.

In April 1984, the Surveys and Investigations Staff of the House of Representatives Committee on Appropriations issued "A Report to the Committee on Appropriations, U.S. House of Representatives, on the BLM Grazing Management and Rangeland Improvement Program". The report stated that the Bureau of Land Management and Forest Service market rental appraisal of grazing on the public rangelands had " * * * identified 880 permittees that were subleasing their allotments to other operators for \$4 to \$12 per AUM [animal unit month] while paying only \$1.40 per AUM to the U.S. Government."

Congress responded by enacting the following provision of Title I of the Act of October 12, 1984:

That the dollar equivalent of value, in excess of the grazing fee established under law and paid to the United States Government, received by any permittee or lessee as compensation for an assignment or other conveyance of a grazing permit or lease, or any grazing privileges or rights thereunder, and in excess of the installation and maintenance cost of grazing improvements provided for by the permittee in the allotment management plan or amendments or otherwise approved by the Bureau of Land Management shall be paid to the Bureau of Land Management * * *.

Congress further provided "[t]hat if the dollar value prescribed above is not paid to the Bureau of Land Management,

the grazing permit or lease shall be canceled."

In the October 11, 1984, *Congressional Record*, Senator James McClure, Chairman of the Senate Committee on Energy and Natural Resources, clarified this language. He stated:

This bill language was to address only the problem of subleasing of Federal grazing permits. This language is not intended to interfere with legal leasing under these permits or with the sale of land associated with grazing permits on public lands.

This statement indicated that Congress did not intend the language of the 1984 Act quoted above to be read to give the term "subleasing" the very broad meaning some people have attributed to it. Equally important, the language in that Act and Senator McClure's clarifying statements indicate that congressional approval of the existing Department of the Interior regulations.

This final rulemaking specifically defines subleasing as "the act of a permittee or lessee entering into an agreement that either (1) allows someone other than the permittee or lessee to graze livestock on the public lands without controlling the base property supporting the permit or lease or (2) allows grazing on the public lands by livestock that are not owned or controlled by the permittee or lessee." Arrangements that allow someone other than the permittee to graze livestock on public lands without owning or controlling the base property and livestock are considered by the Bureau of Land Management to be subleases. Such arrangements have been impliedly prohibited by the regulation in 43 CFR 4110.1 and 43 CFR 4130.5. The final rulemaking expressly prohibits such arrangements.

This final rulemaking also defines the term "control" to mean "being responsible for and providing care and management of base property and/or livestock." The definition of control is necessary for a complete understanding of the term "subleasing".

Under Title I of the Act of October 12, 1984, (98 Stat. 1637) the Bureau of Land Management is required to cancel the permit or lease of any permittee or lessee who subleases and does not pay the Bureau the dollar equivalent of value of compensation received in excess of the Bureau's grazing fee and the installation and maintenance cost of range improvements. Further, under existing regulations at 43 CFR Subparts 4150 and 4170, when subleasing occurs, regardless of whether restitution has been made to the government, the authorized officer may take additional

appropriate action against the permittee or lessee including suspension or cancellation of a permit or lease, and may assess damages and penalties against the owner of the livestock for unauthorized use.

While the provision of the 1984 Act referred to herein expires on September 30, 1985, the prohibition against subleasing as defined in § 4100.0-5 and incorporated in § 4140.1(a)(6) in this final rulemaking will be permanent. Should the authority under the Act requiring payment of the dollar equivalent of value in excess of the grazing fee to the United States by a subleasing violator not be renewed, the authorized officer will rely on 43 CFR 4170.1-1 for a suitable penalty for subleasing.

That section provides authority for the authorized officer to withhold issuing, to suspend in whole or in part, or to cancel a grazing permit or lease and grazing preference for any prohibited act, including subleasing.

The Department of the Interior received 30 comments from the public concerning the proposed rulemaking. General comments will be discussed first, followed by reference to specific sections of the rulemaking.

Support for the proposed rulemaking was received from a wide range of interests including organizations interested in protecting the environment and some agricultural organizations. Comments from environmental interests generally supported the proposal. They were concerned that the public was not receiving a fair return for its forage and believed that the proposed rulemaking would prevent permittees and lessees from profiting directly from what they considered subsidizing of grazing fees.

Eighteen comments voiced general opposition to the proposed rulemaking for various reasons. In summary, these comments felt that by preventing subleasing, the proposed rulemaking would be unfair to ranchers who presently depend on subleasing and would deny them the ability to make a profit from public land resources.

However, most comments opposing the proposed rulemaking based their opposition on the mistaken belief that the proposal would (1) prevent a permittee or lessee from leasing a base property to another livestock operator who would then qualify for a permit or a lease or (2) prevent a permittee or lessee from pasturing another person's livestock even though the permittee or lessee is legally responsible for care and management of the livestock. This is not the case. The final rulemaking will only prohibit and penalize subleasing as

defined. It does not affect the other activities discussed in the comments.

There were numerous suggestions for modification of specific sections or issues of the proposed rulemaking. These are addressed below.

4100.0-5 Definitions

One comment questioned whether the definitions of the terms "control" and "subleasing" were specific enough for field officials to use. After considering this comment, the Department of the Interior has determined that the definition of "subleasing" is adequate for use by field officials and the definition of "control" is the one historically used by field officials.

4130.5 Ownership and identification of livestock

Several comments took issue with this section of the proposed rulemaking. They stated it was too encompassing because it required all agreements between the permittee or lessee and a livestock owner be in writing and filed with the authorized officer. Further, such a requirement would be excessive because many agreements do not involve the public lands or the livestock that graze on the public lands. The comments suggested that a standard Bureau of Land Management form providing notice of agreement and signed by both parties should be sufficient for the Bureau to document control.

After considering these comments, the proposed language is being modified to require that the permittee or lessee file only the agreement providing for control of the livestock. The Department of the Interior believes it is important that the authorized officer have on file the agreement that gives control of the livestock to the permittee or lessee; otherwise there would be no way to determine whether or not the agreement is consistent with regulatory requirements. The Department determined that a standard form would be an additional paperwork burden on the public and would not be in the best interest of the public.

4140.1 Acts prohibited on public lands

One comment urged the Department of the Interior to make clear in the final rulemaking that the prohibition against subleasing is permanent. This was the intent in the proposed rulemaking and § 4140.1(a)(6) is permanent in the final rulemaking. While the provision in section 4170.1-1(d) of this final rulemaking which prevents a permittee or lessee from making excess profit on public lands will expire on September

30, 1985, unless renewed by Congress, the definition of the term "subleasing," and therefore the prohibition against it under 43 CFR 4140, will not expire.

One comment stated that success of the congressional prohibition on subleasing depends entirely on its enforcement and doubted the Bureau of Land Management's ability to enforce the subleasing prohibition. The Department of the Interior agrees that the enforcement of the prohibition is important, and has confidence in the Bureau's ability to enforce the provisions of the prohibition. Bureau officials at the field level will assess the extent of subleasing if any, in their area, and take appropriate corrective actions.

4170.1 Civil penalties

One comment stated that, in effect, the proposed rulemaking assumes that range improvement work will have been done and merits an extension of credit as a matter of course. The comment urged that section 4170.1-1(d) be amended to provide a credit for range improvements only where such costs are shown to have been incurred.

After considering comment, the Department of the Interior modified the proposed rulemaking to clarify that only those costs that were incurred by the permittee or lessee will be considered in the determination of the value of range improvement installation and maintenance. However, in establishing the cost of installation and maintenance of range improvements, the Bureau will consider a reasonable value for labor provided by the permittee or lessee.

One comment questioned the practicality and legality of applying this final rulemaking to actions which occurred after October 12, 1984, but before this rulemaking was adopted as final, and suggested the Bureau of Land Management should be receptive to addressing the interim period with flexibility and equity so not to unfairly penalize or surprise permittees and lessees. In considering the comment, the Department of the Interior has determined (1) that applying the rulemaking retroactively is legal but that such retroactivity applies only as of the date of the Act; (2) that given the limited duration of the Act's provisions for restitution, the intent of Congress against excessive profits would be frustrated if the rulemaking was not applied retroactively; and (3) that all persons have been on notice since October 12, 1984, that such profiting by subleasing will require restitution to the United States. Further, the prohibition against subleasing has existed for years.

Therefore, the Department has found that an interim period with flexibility is not possible and that no undue hardship will arise from the retroactive application of the rulemaking. This rulemaking simply interprets the Act and provides the necessary authorities to the Bureau to enforce the requirements of the Act.

One comment suggested that a suitable penalty for subleasing would be canceling the permit for the following year. The Department of the Interior considered the suggestion and determined that while the proposed rulemaking in § 4170.1-1(d) would provide the authorized officer with the authority to suspend a grazing permit for the following year for a subleasing violation, it does not require the authorized officer nor would it be appropriate for the authorized officer to do so in all circumstances.

One comment stated that since Congress clearly expressed the view that cancellation of a lease or a permit would occur only if the "dollar value" is not paid to the United States within 30 days, that once payment was received within those 30 days, then the provisions of section 4170.1(a) could not be used for cancellation. The Department of the Interior considered the comment but found the existing regulations required a person to own or to control the base property (43 CFR 4110.1) and to own or to control the livestock (43 CFR 4130.5). Under this rulemaking, subleasing is now explicitly a violation of one or both of these requirements. Violating these provisions may result in a penalty such as cancellation of a lease or a permit under 43 CFR 4170.1(a), independent of the Appropriation Act's provision.

One comment asked what criteria or guidelines have been established to quantify the dollar equivalent value required of violators and suggested these criteria or guidelines be published with the final rulemaking. After considering this comment, the Department of the Interior believes that the final rulemaking adequately identifies the authority and responsibility of the authorized officer to collect the dollar equivalent value. Guidelines to authorized officers on how to quantify the dollar equivalent value would be internal in nature and more appropriately placed in internal Bureau of Land Management documents.

One comment suggested that cost for control of the livestock be included along with the cost of the grazing fee and the cost of the installation and maintenance of range improvements when the Bureau of Land Management

determines the amount due from the permittee or lessee. The comment suggested that such costs are important because "whenever a permittee or lessee controls the livestock, he must also assume certain management costs in conjunction with those livestock." The Department of the Interior, in considering this comment, found that the law is specific and does not include such costs in determining the amount that shall be paid to the United States. In addition, costs associated with providing care and management of the livestock generally would not be associated with subleasing where the permittee or lessee does not provide care and management for the livestock.

Copies of the final rulemaking as it appears in the *Federal Register* will be mailed to all permittees and lessees and will be available at Bureau of Land Management field offices.

The principal author of this final rulemaking is Robert Alexander, Division of Rangeland Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291. It has also been determined that this rulemaking will not have a significant negative impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Changes to existing regulations made by these amendments will not significantly affect the compliance burden for those individuals who hold permits or leases to graze livestock on the public lands under the jurisdiction of the Bureau of Land Management.

The information collection requirements contained in this rulemaking were submitted to the Office of Management and Budget for clearance under 44 U.S.C. 3507 and have been approved and assigned clearance number 1004-0047.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management.

Under the authority of the Department of the Interior Appropriations Act for Fiscal Year 1985 (98 Stat. 1837), Parts 4100, 4130, 4140, and 4170, Group 4100, Subtitle—B, Chapter II of Title 43 of the

Code of Federal Regulations are amended as set forth below:

J. Steven Griles,
Assistant Secretary of the Interior,
October 17, 1985.

PART 4100—[AMENDED]

1. The note that appears after the title to Group 4100 is amended by inserting the phrase "1004-0047," between the phrases "1004-0041," and "1004-0051,".

2. The authority citation for Part 4100 is revised to read:

Authority: 43 U.S.C. 315, 315a-315r, 1701 *et seq.*, 1181d, unless otherwise noted and 98 Stat. 1837.

3. Section 4100.0-3 is revised by adding a new paragraph (g) to read as follows:

§ 4100.0-3 Authority.

(g) The Department of the Interior Appropriations Act for Fiscal Year 1985 (Pub. L. 98-473, 98 Stat. 1837).

§ 4100.0-5 [Amended]

4. Section 4100.0-5 is amended by adding in appropriate order definitions of the following terms:

"Control" means being responsible for and providing care and management of base property and/or livestock."

"Subleasing" means the act of a permittee or lessee entering into an agreement that either (1) allows someone other than the permittee or lessee to graze livestock on the public lands without controlling the base property supporting the permit or lease or (2) allows grazing on the public lands by livestock that are not owned or controlled by the permittee or lessee.

5. Section 4130.5 is amended by adding new paragraphs (d) and (e) to read:

§ 4130.5 Ownership and identification of livestock.

(d) Where a permittee or lessee controls but does not own the livestock which graze on the public lands, the agreement that gives the permittee or lessee control of the livestock shall be filed with the authorized officer.

(e) The brand and other identifying marks on livestock controlled, but not owned, by the permittee or lessee shall be filed with the authorized officer.

6. Section 4140.1 is amended by adding a new paragraph (a)(6) to read as follows:

§ 4140.1 Acts prohibited on public lands.

(a) * * *

(6) Subleasing as defined in this subpart.

7. Section 4170.1-1 is amended by adding a new paragraph (d) to read:

§ 4170.1-1 Penalty for violations.

(d) Any person who is found to have violated the provisions of § 4140.1(a)(6) since October 12, 1984, shall be required to pay to the authorized officer the dollar equivalent value, as determined by the authorized officer, of all compensation received for the sublease which is in excess of the sum of the established grazing fee and the cost incurred by that person for the installation and maintenance of authorized range improvements. If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of the final decision, the grazing permit or lease shall be cancelled. Such payment shall be in addition to any other penalties the authorized officer may impose under § 4170.1-1(a) of this title.

[FR Doc. 85-26271 Filed 11-1-85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 13

Effective Date and Text of the General Radiotelephone Operator License Restrictive Endorsement

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends § 13.77(b), of the Commission's Rules by changing the text of the future General Radiotelephone Operator License (GROL) endorsement. This Order also fixes January 1, 1986, as the initial date that the endorsement will begin appearing on newly issued GROLs. This Order places the public on notice that the endorsement will appear on all new GROLs issued after December 31, 1985, and clearly invalidates the use of those new GROLs for broadcasting.

EFFECTIVE DATE: December 5, 1985.

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

FOR FURTHER INFORMATION CONTACT: Damon Martin, Field Operations Bureau, Washington, D.C. 20554, (202) 632-7240.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 13

Commercial radio operators, Radio.
Order

In the matter of General Radiotelephone Operator License Restrictive Endorsement.

Adopted: October 28, 1985.
Released: October 29, 1985.

1. In this *Order*, the Commission editorially completes § 13.77(b) of its Rules. Section 13.77(b) presently describes a restrictive endorsement that will appear on every future card-form General Radiotelephone Operator License (GROL). However, pursuant to General Docket 83-322, the Rule purposely omits the date that the endorsement will first be printed on GROLs.

2. Docket 83-322, released May 3, 1984, delayed the endorsement from being printed on GROLs until certain modifications in Rule §§ 90.433 and 94.103 became effective. ¹ Those modifications, stressing station owner and licensee operational responsibilities and encouraging the use of industry-certified technicians, are now effective. Accordingly, this *Order* completes Rule § 13.77(b) by specifying January 1, 1986, as the date that the endorsement will first appear on original GROLs.

3. The text of the endorsement will appear on all new GROLs issued after December 31, 1985, and in Rule § 13.77(b). We have amended the endorsement's text according to the attached Appendix. In addition to listing which radio operations the GROL authorizes, the text will now specify that the GROL is invalid for broadcasting. This editorial amendment does not change the endorsement's meaning. The restrictive GROL endorsement is meant to discourage broadcast personnel from applying for unnecessary GROLs by clarifying that the GROL does not authorize broadcast operations.²

4. The current GROL endorsement only lists which radio operations the GROL authorizes. To discourage broadcasters from applying for unnecessary GROLs, the text of the GROL endorsement is hereby amended to prohibit broadcasting, according to the attached Appendix.

5. This *Order* assures that all new GROLs issued after December 31, 1985, will not confer any broadcasting authority. Section 13.77(b) of the Commission's Rules is also hereby amended according to the attached Appendix to reflect the amended endorsement.

6. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by either the public or licensees. We conclude that the revisions will serve

¹ See, General Docket 83-322, 49 FR 20658, May 16, 1984, at paragraphs 43-45.

² See, General Docket 83-322 at paragraph 45.

the public interest by providing them with an updated, accurate rule text.

7. Because this amendment does not affect the privileges of commercial radio operator licensees, it only constitutes a minor amendment to our rules. The public is not likely to be interested in such a minor amendment. Therefore, we find, for good cause, that compliance with the notice and comment procedures of the Administrative Procedure Act is unnecessary. *See*, 5 U.S.C. 553(b)(B).

8. Because these amendments clarifying our rules merely reflect a rule change that has already been approved by the Commission in a previous Report and Order, we find, for good cause, that the effective date requirements of the Administrative Procedure Act are inapplicable. *See*, 5 U.S.C. 553(d).

9. Since a general Notice of Proposed Rulemaking is not required, the Regulatory Flexibility Act does not apply.

10. Therefore, it is ordered that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules, § 13.77(b) of the FCC Rules and Regulations is hereby amended as set forth in the attached Appendix, effective December 5, 1985.

11. For further information on this Order, contact Damon Martin, Field Operations Bureau (202) 632-7240.

Federal Communications Commission,
Edward J. Minkel,
Managing Director.

Appendix

Part 13 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 13—[AMENDED]

1. The authority citation for Part 13 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. In § 13.77, paragraph (b) is revised to read as follows:

§ 13.77 Required endorsements.

(b) All General Radiotelephone Operator Licenses issued after December 31, 1985, shall bear the following endorsement:

This license confers authority to operate licensed radio stations in the Aviation, Marine and International Fixed Public Radio Services only. This authority is subject to: any endorsement placed upon this license; FCC orders, rules and regulations; United States statutes; and the provisions of any treaties to which the United States is a party. This license does not confer any authority to operate broadcast stations. It is not assignable or transferable.

[FR Doc. 85-26259 Filed 11-1-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 50329-5115]

Atlantic Tuna Fisheries

Correction

In FR Doc. 85-25436, beginning on page 43396, in the issue of Friday, October 25, 1985, make the following correction:

On page 43400, in the first column, in § 285.4 the paragraph designated as (e)(1) is correctly redesignated as (e)(2), and a new (e)(1) is correctly added to read as follows:

§ 285.4 [Corrected]

(e) * * *

(1) Guard Channel 16, VHF-FM if so equipped;

* * * * *

BILLING CODE 1505-01-M

50 CFR Part 663

[Docket No. 41155-5175]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restriction; correction.

SUMMARY: This document corrects an error of geographic location which was repeated three times in the notice of fishing restrictions for the Pacific Coast Groundfish Fishery, published October 9, 1985, 50 FR 41159.

FOR FURTHER INFORMATION CONTACT: R.A. Schmitten, 206-526-8150, E.C. Fullerton, 213-548-2575, or the Pacific Fishery Management Council, 503-221-6352.

In FR Doc. 85-24170, on page 41160, "Cape Blanco" is corrected to read "Coos Bay" where it appears in the following places:

1. Column 2, paragraph (4)(a), line 9;
2. Column 3, paragraph (4)(b), line 2;
3. Column 3, paragraph (4)(c), lines 8 and 9.

[FR Doc. 85-26254 Filed 11-1-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 50, No. 213

Monday, November 4, 1985

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 70

Voluntary Standards and Grades for Poultry

Correction

In FR Doc 85-25383, beginning on page 43204, in the issue of Thursday, October 24, 1985, make the following corrections:

(1) On page 43204, in the first column, in the seventeenth line from the bottom of the page, "poultry" should read "poultry"; also in the first column, in the sixth line from the bottom, "tis" should read "this". And in the third column, in the third line, "poultry" should read "poultry".

(2) On page 43205, in the first column, in the first paragraph, in the eighth line, "merketing" should read "marketing"; also in the first paragraph, in the fifteenth line, "marking" should read "marketing". And in the second paragraph, in the seventh line, insert "and" between "rapidly" and "accurately".

§ 70.1 [Corrected]

(3) On page 43206, in the first column, in § 70.1, in the sixth line, "traches" should read "trachea".

§ 70.15 [Corrected]

(4) In the same column, in § 70.15(c), in the third line, insert "pound" between "quarter" and "or".

§ 70.80 [Corrected]

(5) In the second column, in § 70.80, in the eighteenth line, insert "bulk" between "large" and "containers"; and following the paragraph, insert five asterisks.

§ 70.210 [Corrected]

(6) On page 43207, in the first column, in § 70.210(e)(2), in the fifth line, insert "two" between "make" and "approximately".

§ 70.220 [Corrected]

(7) In the same column, following § 70.220(e), insert five asterisks after the table.

On the same page, in the second column, in the second line, "that" should read "than"; and in the eighth line remove "the".

§ 70.221 [Corrected]

(8) In the same column, in § 70.221(e), in the second line, "provide" should read "provided".

§ 70.222 [Corrected]

(9) On the same page, in the third column, in § 70.222(c), in the fourth line, "lilum" should read "ilum".

§ 70.235 [Corrected]

(10) On page 43208, in the second column, in § 70.235, the second paragraph designated as "(c)" is correctly designated as "(d)", and in the first line of paragraph (c), the first word should read "Poultry".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-114-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which currently requires installation of a low N1 engine rpm caution indication on the pilots' forward panel on Boeing Model 747 airplanes powered by Pratt & Whitney JT9D, General Electric CF6, and Rolls Royce RB211 engines. Since issuing the AD, the FAA has determined that the Rolls Royce RB211-524 engines installed on the Boeing Model 747 series airplanes will operate satisfactorily in icing conditions and do not require the low N1 engine rpm caution indication. Therefore, this proposal would amend the AD by removing the Model 747 airplanes equipped with Rolls Royce

RB211-524 engines from the requirement to install a low N1 indication.

DATES: Comments must be received on or before December 27, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-114-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kanji K. Patel, Propulsion Branch, ANM-140S; telephone (206) 431-2973. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the amendment to the existing airworthiness directive by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed amendment. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerning the subsistence of the proposal will be filed in the Rules Docket.

Availability of the NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rule Docket No. 85-NM-114-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Airworthiness Directive (AD) 84-02-05, Amendment 39-4798 (49 FR 3451), requires revisions to the limitations section in the FAA-approved Boeing Model 747 Airplane Flight Manual (AFM) and installation of a low N1 engine rpm caution indication on the pilots' forward panel. The AD was issued to clarify operation of the thermal anti-icing procedure, ensure that a specified minimum N1 rpm is maintained during icing conditions, and expand the definition of icing conditions. Activation of the low N1 rpm indication cautions the flight crew of engine operations at a lower N1 than required for icing conditions.

Recently, the Civil Aviation Authority (CAA) of Great Britain has approved operations of the RB211-524 engine at idle power of 22.0% N1 during descent in icing conditions. The CAA approval has been accepted by the FAA, New England Region; and to reflect this change, the engine Type Certificate Data Sheet was revised. To account for the installation effects, service bleed, electrical load, and the airplane operational envelope, the Boeing Company has submitted substantiation data which shows that the engine speed under all operating conditions will not drop below 22.0% N1 rpm. This negates the need to require installation of a low N1 rpm indication in the cockpit of the Boeing Model 747 airplanes equipped with Rolls Royce RB211-524 engines. Therefore, the FAA is proposing to amend AD 84-02-05 by removing the Boeing Model 747 airplanes equipped with RB211-524 engines from the requirement to install a low N1 indication on the pilots' forward panel.

Presently, there are no U.S. registered Model 747 airplanes equipped with Rolls Royce RB211-524 engines. Therefore, this proposed AD would have no cost impact on U.S. operators. However, there are a total of fifty-two Model 747's equipped with RB211-524 engines in service worldwide. Of these, eight have been delivered to operators with the low N1 indication system installed in production by the Boeing Company. Under the current AD, if any of the remaining forty-four airplanes were to be registered in the U.S. they would be required to comply with the AD. This proposed amendment would relieve those airplanes from that requirement.

For the reasons discussed above, the FAA has determined that this document: (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.19 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending AD 82-04-05, Amendment 39-4798 (49 FR 3451), by revising paragraph B. to read as follows:

"B. For airplanes equipped with Pratt & Whitney JT9D or General Electric CF6 engines, to alert the flight crew of engine operation at a lower N1 than required for icing condition, install a LOW N1 rpm caution indication system as follows:

Within 24 months from the effective date of this AD, unless already accomplished, provide "LOW N1" indication that will alert the flight crew that the nacelle anti-ice is "ON" and N1 is less than 45 percent N1 below 10,000 feet, and is less than 50 percent N1 above 10,000 feet altitude.

Note. The LOW N1 indication may be provided by incorporating Boeing Service Bulletin S/B 747-77-2060 for airplanes equipped with JT9D Pratt & Whitney engines, or S/B 747-77-2063 for airplanes equipped with General Electric CF6 engines.

Both service bulletins have been approved by the FAA and were released on February 14, 1983. The service bulletins may be obtained from the Boeing Commercial Airplane Company at the following address: The Boeing Company, P.O. Box 3707, Seattle, Washington 98124.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These

documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 23, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-26203 Filed 11-1-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AGL-23]

Proposed Alteration of Transition Area—Tell City, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Tell City, Indiana, transition area to accommodate twin engine turbo prop aircraft operating at Perry County Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before December 9, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 85-AGL-23, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The present transition area is being expanded to accommodate twin engine turbo prop aircraft utilizing a NDB Runway 31 approach procedure. The

expansion is needed to ensure that the procedure will be contained within controlled airspace. The additional airspace designated will be approximately a 1.5 mile radius expansion and an additional .5 mile expansion to the southeast.

The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AGL-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling

(202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Tell City, Indiana.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.8 dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 171.181 as follows:

Tell City, IN

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Perry County Municipal Airport, IN, (lat. 38°01'04" N., long. 86°41'27" W.); and within 3 miles each side of the 109° bearing from the Perry County Municipal Airport extending from the 6.5 mile radius to 8.5 miles southeast.

Issued in Des Plaines, Illinois, on October 21, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85-26202 Filed 11-1-85; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 33 and 190

Amendments to Minimum Financial and Related Requirements for Futures Commission Merchants and Introducing Brokers; Contract Markets and Clearing Associations, Default and Bankruptcy; and Commodity Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Further extension of comment period.

SUMMARY: On August 5, 1985, the Commodity Futures Trading Commission ("Commission") published in the Federal Register: (1) proposed amendments to the minimum financial and related requirements for futures commission merchants ("FCMs") and introducing brokers ("IBs") (50 FR 31612); (2) proposed option margin guidelines (50 FR 31625); and (3) an advance notice of proposed rulemaking regarding the transfer or liquidation of open commodity contracts carried by a clearing member FCM which has defaulted on a margin obligation (50 FR 31623). By letters dated August 28 and August 29, 1985, two exchanges requested a sixty-day extension of the comment period on certain of the matters published for comment. The Commission subsequently extended the comment period for thirty days on each of the above-referenced matters, to October 4, 1985 for the proposed option margin guidelines and to November 4, 1985 for both the proposed amendments to the minimum financial and related requirements for FCMs and IBs and the advance notice of proposed rulemaking regarding the liquidation or transfer of open commodity positions carried by a defaulting clearing member FCM.

By letters dated September 26 and October 10, 1985, an exchange requested a further extension of the comment period on the above-referenced matters, noting that in conjunction with other exchanges, it was in the process of gathering data essential to responding to the issues raised in the Commission's releases. The Commission believes that sufficient time has been provided for

interested parties to gather data in order to respond to the proposals discussed herein, with the exception of the proposal to require FCMs to calculate a concentration charge in computing their adjusted net capital. Accordingly, although the Commission has stated that it did not anticipate granting and further extensions of time on any of the foregoing matters, upon reconsideration and a review of comments already received, and in order to ensure that the Commission has all relevant information and empirical data on the concentration charge proposal and certain other matters specifically addressed in this release, the Commission has determined to grant an extension of the comment period on that one aspect of the August 5 proposals to March 5, 1986, which is an extension of four months beyond the current comment period expiration date and is seven months from the original publication date.

DATE: Notice is hereby given that all comments on the proposed concentration charge for FCMs must be submitted by March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Gary C. Miller, Assistant Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The proposal to require FCMs to calculate a concentration charge in computing their adjusted net capital is contained in the proposed amendment to the introductory text of paragraph (c)(5) of Rule 1.17, a proposed new paragraph (c)(6) of rule 1.17 and a proposed new Rule 1.83. 50 FR 31612, 31614-18, 31621-23, August 5, 1985. Commenters should address the concentration charge as proposed in the August 5 release during the extended comment period. However, the Commission also requests that commenters respond to the questions contained in the this release which have been prompted by a reconsideration of the issues involved and certain comments already received. The Commission believes that the possible modifications to the concentration charge proposal discussed herein may moderate the impact of the rule and may be used in developing a final rule.

1. Credit for Excess Equity

The Commission recognizes that, all other things being equal, a customer account with equity in excess of the minimum margin required in it entails less risk to the carrying FCM than a customer account which has the

minimum required margin for the positions carried. The Commission therefore believes that in computing a concentration charge, it may be appropriate to give credit for excess equity in any account which is included in the preliminary concentration charge amount. The Commission therefore requests comment on how best to recognize this relationship, whether by a full or partial credit for such excess amount, and whether such credit should serve to reduce the number of contracts carried at the account level or be applied at the conclusion of the concentration charge computation. Also, commenters should address the appropriate margin levels to use in computing the amount of an excess equity credit. Should the margin levels be the clearing house or exchange levels, or the FCM's own levels, and, where applicable, should the higher rates for the general public (as opposed to floor traders) be used for all accounts in the computation?

2. Hedge Accounts

The Commission specifically requested comment in the August 5 release as to whether there should be an adjustment in the concentration charge computation for bona fide hedge positions, and commenters were requested to include a procedure to verify the hedge. Some commenters indicated that they believe the accounts of hedgers constitute less risk to firms than equivalent accounts of speculators, because hedgers presumably have possession of offsetting property, contracts or obligations which are experiencing gains or losses which offset the losses or gains being reflected in their accounts at the FCM, or that hedgers have access to credit lines so that they can satisfy their obligations to the FCM without having to liquidate the hedged item. Some commenters therefore have suggested that the accounts of hedgers be excluded from the concentration computation. The Commission still believes that it would be difficult to verify the existence of the items which are being hedged and furthermore, in the event of a margin default, the FCM would not normally be in possession of the hedged items and would therefore be at risk for the entire defaulted amount. However, if the hedged items or warehouse receipts for such items were in the control of the FCM, or if they constituted cover of proprietary positions under Rule 1.17, such circumstances might constitute adequate hedge verification. The Commission therefore urges commenters to consider the effect of eliminating positions from the concentration

calculation where the positions constitute bona fide hedges of items within the FCM's control. Consideration should also be given to the effect of a partial credit for hedge positions where the hedged item is not within the FCM's control. The Commission notes that while hedge margins set by exchanges are less than those for non-hedge positions, the hedge margins are not zero, and perhaps a partial credit in line with the relationship of hedge to non-hedge margin could be considered. Commenters should calculate the effects of hedge credits of 75, 50 and 25 percent where the hedged item is not within the FCM's control. Furthermore, commenters are requested to consider whether the credit should serve to reduce the number of contracts carried at the account level or be applied at the conclusion of the concentration charge computation.

3. Omnibus Accounts.

Omnibus accounts of registered FCMs, it has been argued by some commenters, pose less risk to carrying FCMs than do accounts of single customers, in that registered FCMs are regulated entities whose obligations are supported by a net capital requirement and whose operations are subject to commodity industry self-regulatory organization audit and financial surveillance programs. The Commission's proposed concentration charge provides no special relief for omnibus accounts of registered FCMs, as opposed to accounts of other customers carrying the same positions. The Commission requests comment on the advisability and potential impact upon the proposed concentration charge of excluding omnibus accounts of registered FCMs from the concentration charge computation. Also, in the case of an FCM which has been established principally to clear the trade for its parent firm and other affiliated entities, the Commission requests comment on the advisability and effect of excluding the accounts of the parent firm and affiliated entities from the concentration charge computation.

4. Scale-up Factor

The proposed rule specifies that an aggregation be performed of a firm's long customer positions and of a firm's short customer account position, and that only the greater of the long or short aggregations be multiplied by the standard fluctuation factor in computing the preliminary concentration charge. A scale-up factor would then be applied to the preliminary concentration charge based on the percentage of the

preliminary charge amount controlled by the largest individual. Some commenters have pointed out that the proposal would not take into account concentrations in the side (long or short) with the lesser number of positions, and may lead to little or no concentration charge in situations where a firm's real concentration, and hence risk, is on the lesser side. For example, a computation for a firm with 1000 short contracts and 1001 long contracts, where the 1000 short contracts are all held by one customer and the 1001 long contracts are held by 100 customers would lead to no concentration charge. This may not adequately address the true risk involved. The Commission believes that it may be appropriate to base the determination of the scale-up factor to be used in the concentration computation upon the percentage held by the largest customer, regardless of whether the particular largest customer's positions were on the long side or the short side, and requests comment as to the effect of such a change in the proposal, which could cause an increase in the concentration charge in circumstances such as those cited above.

Some commenters noted that the scale-up factor provides a concentration charge for small, non-concentrated account positions, when those small account positions are carried by a firm also carrying large, concentrated account positions (for the same commodity group). That is, for a given group of small, non-concentrated account positions, the scale-up factor may result in a zero concentration charge where a firm has no large, concentrated account positions and a considerable concentration charge where account positions. Some commenters questioned whether it was the Commission's objective to provide a concentration charge against small, non-concentrated account positions, and noted that the scale-up factor, as noted above, may penalize a firm for carrying concentrated account positions, even though it would seem there is no "concentration" risk associated with such positions. The Commission requests further comment concerning the application of the scale-up factor in different circumstances.

5. Classification of Floor Traders as "Customers"

The Commission's regulations currently classify floor traders as "customers" and hence the accounts of floor traders are included along with all other types of customers in customer segregated funds, and given the protection afforded by section 4d(2) of

the Commodity Exchange Act (7 U.S.C. 6d(2) (1982)). The staff observes that in the failure of Volume Investors Corporation it would have been to the immediate advantage of the non-defaulting customers, other than floor traders, if the accounts of floor traders were excluded from segregation or were segregated separately from general customers. This is because, had floor traders been excluded, Volume's customer segregated margin account at the COMEX Clearing Association ("CCA") would not have been subject to use by CCA and there then would have been sufficient funds to transfer the customer accounts to other FCMs. The Commission wishes comment on whether floor traders should be excluded from the definition of "customers" and therefore the accounts of floor traders excluded from segregated customer funds within the Commission's regulations. Commenters should address what other rules would have to be amended if this modification were made and what other advantages or disadvantages might flow therefrom.

6. Reportable Traders

The Commission's proposal stated that a concentration computation must be done by an FCM on a commodity-by-commodity basis for each commodity for which the FCM was carrying at least one account containing an amount of positions at or above the reportable level after applying the permitted offsets set forth in the proposal. The Commission believes that it might be appropriate to raise that threshold number of accounts, provided the total positions carried by an FCM in that commodity did not exceed some specified percentage of total open interest. The Commission therefore requests comments as to the effect of raising the threshold of accounts at or above the reportable level needed to trigger a concentration computation for a particular commodity in the case of options as well as futures.

7. Standard Fluctuation Factor

Certain commenters have suggested that the proposed standard fluctuation factor (proposed Rule 1.63) would be too high during certain periods in the past. The proposal called for a standard fluctuation factor using a mean plus three standard deviations. The Commission also requests that commenters assess the impact of using a standard fluctuation factor using a mean plus two standard deviations.

As the Commission stated in its August 5 release, it is interested in having FCMs apply the proposed concentration charge to the accounts

which they are carrying and sharing these results of the computation with us. The Commission remains interested in that and is also interested in having commenters use this additional time to assess the effect of the alternatives to the August 5 proposal discussed herein. The Commission will also consider a discussion of whether the basic capital requirement which is based on four percent of segregated funds creates a disincentive to collect additional margin because of the concomitant effect on capital and how this may affect a concentration charge. Commenters who favor a change in the basic capital requirement should include computations demonstrating the effect of any such change on the concentration charge, and commenter who favor treating the concept of concentration in the basic capital requirement as opposed to a charge against a firm's capital should also include comparative data on that issue. Further, the Commission will also consider comments as to how any capital rule amendments would be reflective of or influenced by any conclusions which may be drawn with respect to insurance of customer accounts. Any alternative calculations should be supported by impact data using a representative sample of firms. The Commission believes that this comparative data will aid its ultimate determination on the question of capital. The Commission therefore welcomes written comments from all interested parties who have not yet submitted any written comments, and invites those who already have submitted written comments to supplement their prior submissions in light of the items discussed herein. The Commission also encourages interested parties to share their impact data with the Commission as it is developed rather than waiting until the deadline.

Issued in Washington, DC, on October 30, 1985, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85-26239 Filed 11-1-85; 8:45 am]

BILLING CODE 6351-01-M

17 CFR Parts 145 and 146

Commission Records and Information; Records Maintained on Individuals

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission proposes to revise its regulations governing requests for

Commission records under the Freedom of Information Act ("FOIA") and petitions for confidential treatment of records submitted to the Commission. These revisions are designed to clarify the procedures for submitting and processing FOIA and confidential treatment requests and to reflect recent developments in federal case law. The Commission is also proposing to make one amendment to its Privacy Act regulations.

DATE: Comments must be received on or before January 3, 1986.

ADDRESS: Comments should be sent to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Daniel S. Goodman, Esq., or Tena Friery, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., 20581. Telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION:

1. Requests for Commission Records

One purpose of the proposed regulations is to differentiate between requests for "public records," defined as records generally available from the Commission office or division that maintains those records, and requests for "nonpublic records." Section 145.0(c) of the proposed rules contains a list of Commission records that the Commission has determined should be generally available to the public and identifies the offices from which the records are available.¹ Proposed § 145.2 has been revised to list those Commission records that the FOIA requires to be made available to the public. The changes in §§ 145.4, 145.5, and 145.6 would reflect the distinction between public and nonpublic records. Section 145.3 would be deleted.

Requests for nonpublic records pursuant to the FOIA must be made in writing in accordance with the provisions of proposed § 145.7.² While

¹ These records are available from the Commission divisions indicated, at 2033 K Street, NW., Washington, DC 20581, or, in the case of records available from Commission regional offices, at the addresses listed in § 145.6.

² On rare occasion, a record that would normally be considered a "public record," such as a comment on a proposed rule, is submitted to the Commission subject to a request for confidential treatment. Under the proposed rules, the Commission would continue to treat such records as "nonpublic records" and release them to the public, if at all, only upon consideration of a FOIA request submitted pursuant to § 145.7.

this section would substantially revise the language of current § 145.7, the basic procedure for requesting nonpublic records would remain essentially the same.

Proposed §§ 145.7 (b) and (c) are designed to emphasize the importance of making all FOIA requests in writing and addressing them to the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. Section 145.7(c) would specify that misdirected FOIA request would not be considered as having been "received" by the Commission, for such purposes as processing deadlines or requests' appeal rights, until the requests were actually received by the Assistant Secretary. Under § 145.7(d), requested records would have to be described with enough specificity to enable them to be located by Commission staff. FOIA requests are encouraged to supply names, dates, and detailed subject matter descriptions to assist the staff in retrieving records that will be of use to the requesters. Proposed § 145.7(e) would make it clear that the Commission has no obligation either to create new records in response to a FOIA request or to search for documents not in existence on the date the FOIA request is received.

As under the present regulations, the responsibility for issuing an initial determination with respect to a FOIA request would rest with the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. Proposed § 145.7(g)(1) would, however, make explicit the practice of the Assistant Secretary, in reaching this determination, to consult with the Commission offices and divisions in possession of the requested records. Section 145.7(g)(1) would also codify the frequent Commission practice of furnishing requested documents on a piecemeal basis, as they become available.

Two §§ (145.7(h) and 145.7(i)) of the Commission's current FOIA regulations have been deleted from the proposed regulations as unnecessary in light of the statutory deadlines imposed by the FOIA, *see* 5 U.S.C. 552(a)(6). Circumstances that may cause a delay in the processing of a FOIA request are enumerated in proposed § 145.7(g)(3).

The procedure for obtaining administrative review of an initial denial of a FOIA request is set forth in proposed § 145.7(h). Two changes in the appeal procedure should be noted. First, under the present rules, the Office of General Counsel reviews all FOIA appeals and presents a recommendation to the Commission whether the initial determination should be affirmed,

modified, or reversed. Under the proposed rules, the Commission would delegate the authority to decide FOIA appeals to the General Counsel.

The Commission believes that this delegation of authority would be in the public interest, because it would enable the administrative review process to be carried out more expeditiously. It is expected, however, that the General Counsel would refer appropriate cases involving significant or controversial issues to the Commission for decision. *See* proposed § 145.7(h)(6)(D).

The second change in the FOIA appeal procedure is related to the proposed changes governing confidential treatment requests. If a FOIA requester seeks information submitted to the Commission by a person who requested confidential treatment for that information under proposed § 145.9, the submitter would be permitted to file a written response to the FOIA appeal. (Under proposed § 145.9(e)(1), the submitter would have already provided the FOIA requester with a copy of the detailed written justification for his or her confidential treatment request.)

2. Petitions for Confidential Treatment

The proposed regulations would make several major changes in the Commission's confidential treatment regulations. A major thrust of these regulations is to place greater responsibility on the submitters of information to justify their requests for confidential treatment as is required by law. *See, e.g., National Parks and Conservation Association v. Kleppe*, 547 F.2d 673, 679 n.20 (D.C. Cir. 1976). Proposed § 145.9(d)(1) would clarify the grounds on which a submitter of information could request confidential treatment. In the past, the Commission has received very broad confidential treatment requests that either did not specify the reasons why confidential treatment was being sought or asserted FOIA exemptions designed to protect exclusively governmental interests. Under the proposed regulations, submitters would be required to specify their grounds for seeking confidential treatment and would be limited to those exemptive provisions in the FOIA that protect the interests of the submitters of information.

The proper form and content for petitions for confidential treatment is further specified in proposed regulations § 145.9(d)(2)-(8). These regulations set forth the minimum requirements necessary for the Commission staff promptly and properly to process a confidential treatment request prior to

receiving a FOIA request for the material claimed to be confidential. Of particular note is § 145.9(d)(6). Under that provision, a request for confidential treatment of entire documents would not be recognized if those documents contained reasonably segregable portions that were not exempt from disclosure under the FOIA. This provision is consistent with the Commission's obligation under the FOIA to release to a requester all reasonably segregable non-exempt portions of public documents. 5 U.S.C. 552(b).

Under proposed § 145.9(d)(9), the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance ("Assistant Secretary") is empowered summarily to reject a request for confidential treatment that does not, on its face, satisfy the requirements of § 145.9(d)(1)-(8). Such a request could, however, be refiled in proper form. Failure of the Assistant Secretary summarily to reject a confidential treatment request would not necessarily imply that the request satisfied those requirements. It is not anticipated that the Assistant Secretary will conduct an in-depth review of confidential treatment requests until a FOIA request is submitted seeking access to records for which confidential treatment is being sought. However § 145.9(d)(9) would provide the Assistant Secretary with the authority to deny any confidential treatment request upon receipt when it clearly does not satisfy the basic minimum requirements of the Commission's regulations. Thus, for example, a petition requesting confidential treatment for an entire document could be summarily denied if the document clearly contains reasonably segregable portions (for example, trade literature) that do not implicate any of the FOIA disclosure exemptions. Similarly, a request for confidential treatment could be denied if the submitter of information does not specify the grounds on which confidential treatment is being sought.

Once the Commission receives a FOIA request for information that is subject to a confidential treatment request, the submitter of the information would, under proposed § 145.9(e), be required to provide a detailed written justification for the confidential treatment request. In the past, it has frequently been difficult for the Commission staff adequately to evaluate a confidential treatment request. For example, submitters of information have frequently claimed that public release of the information would cause them competitive injury without offering any explanation why

this was so or describing the competitive environment in which they operate.

For the Commission to analyze confidential treatment requests properly, it must have specific information that the submitters are in the best position to provide. Thus, section 145.9(e) would make it clear that a submitter has the burden of providing the detailed information necessary to support its confidential treatment request. See *Joseph Schlitz Brewing Co. v. SEC*, 548 F. Supp. 6, 8 (D.D.C.), *aff'd*, No. 82-1256 (D.C. Cir. June 30, 1982); *General Electric Co. v. United States Nuclear Regulatory Commission*, 750 F.2d 1394, 1403 (7th Cir. 1984); *Westchester General Hospital v. Department of Health, Education & Welfare*, 464 F. Supp. 236, 239 (M.D. Fla. 1979). Under the proposed regulations, this detailed showing would ordinarily have to be made only in the small percentage of instances when the Commission receives a FOIA request for the information for which confidential treatment is being sought.

The required contents of a detailed written justification of a request for confidential treatment are specified in proposed § 145.9(e)(3)-(4). Attention is directed to § 145.9(e)(4), which requires the submission of affidavits to establish the facts necessary to justify the confidential treatment request. Unless the disposition of a confidential treatment request is clearly governed by precedent, submitters will find it difficult to satisfy their evidentiary burdens without furnishing at least one affidavit along with the detailed written justifications of their requests for confidential treatment.

As provided under proposed § 145.9(e)(5), a submitter's detailed written justification is considered to be a public document. Thus, the Commission normally will not consider requests for confidential treatment of the justifications themselves. Ordinarily, a submitter should be able to justify a confidential treatment request without repeating the very information for which confidential treatment is being sought. In the rare instance when this cannot be done, the submitter should include the confidential information in a separate affidavit attached to the detailed written justification.

Proposed § 145.9(f) places the responsibility for issuing an initial determination concerning a confidential treatment request with the Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance or his or her designee. The Assistant Secretary will consult with the Commission's operating

divisions in formulating these determinations.

In a departure from past Commission practice, § 145.9(f) would require the Assistant Secretary to issue simultaneously an initial determination with respect to both a confidential treatment request and the FOIA request for the documents subject to the confidential treatment request. Such a procedure would permit a consolidated administrative appeal from an initial determination partially denying both requests.

The proposed procedures for administrative appeals are set forth in § 145.9(g). As with appeals from initial denials of FOIA requests, the Commission would delegate authority to consider such appeals to its General Counsel. See § 145.9(g)(3). Under proposed § 145.9(g)(8), the General Counsel would have authority to remand any matter to the Assistant Secretary to correct deficiencies in the initial processing of the confidential treatment request.

One other new aspect of the proposed appeal procedure is the provision permitting a FOIA requester to respond in writing to a submitter's appeal from an initial determination denying a confidential treatment request. See § 145.9(g)(5). Since a FOIA requester would be adversely affected by the granting of such an appeal, the requester should be given an opportunity to rebut the arguments raised by the submitter. Such a procedure should help to create an administrative record that is adequate for judicial review.

As in the current Commission regulations, a submitter whose confidential treatment request has been upheld by the Commission would be required, upon request, to aid the Commission in defending a subsequent lawsuit by the FOIA requester. Cf. *Webb v. Department of Health and Human Services*, 696 F.2d 101, 103 (D.C. Cir. 1982) (Food and Drug Administration requires drug manufacturers to defend Exemption 4 suits; failure to defend is presumed to constitute a waiver of confidentiality). This provision would help to ensure that the Commission does not devote substantial resources to the litigation of confidentiality claims when the submitter no longer cares about maintaining the non-public nature of the submitted documents.

3. Records Maintained on Individuals

While the Commission has not undertaken a comprehensive review of its Privacy Act regulations at this time, it believes that a delegation of authority to

the General Counsel to decide administrative appeals would be consistent with the proposed delegations in the FOIA and confidential treatment areas. Once again, such a delegation would expedite the appeals process while relieving the Commission of decision-making responsibility in an area distinct from its substantive regulatory responsibilities. Accordingly, a proposed § 146.9(f) has been added to these draft rules.

4. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of proposed rules on small entities. It is not anticipated that these proposed rules would impose any new burden on small entities.³ Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule proposed herein, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 145

Freedom of Information Act, Requests for Commission records, Petitions for confidential treatment.

17 CFR Part 146

Privacy Act, Records maintained on individuals.

In consideration of the foregoing, and pursuant to the authority contained in section 2(a)(11) of the Commodity Exchange Act, 7 U.S.C. 4a(j), in the Freedom of Information Act, 5 U.S.C. 552, and in the Privacy Act, 5 U.S.C. 552a, the Commission hereby proposes to amend Parts 145 and 146 of Chapter 1 of Title 17 of the Code of Federal Regulations as follows:

PART 145—COMMISSION RECORDS AND INFORMATION

1. The authority citation for Part 145 continues to read as follows:

Authority: (Pub. L. 89-554, 80 Stat. 383, Pub. L. 90-23, 81 Stat. 54, and Pub. L. 93-502, 88 Stat. 1561-1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (7 U.S.C. 4a(j)).

2. Section 145.0 is revised to read as follows:

³ Although proposed rule § 145.9(e) would make explicit the obligation of all entities, including small entities, to provide the Commission with a detailed written justification of a request for confidential treatment of material that is subject to a FOIA request, this provision, as discussed above, merely reflects an existing obligation under federal case law.

§ 145.0 Definitions.

(a) For the purposes of this Part, "FOI, Privacy and Sunshine Acts Compliance staff" or "Compliance staff" means the staff of the Office of the Secretariat at the Commission's principal office in Washington, DC assigned to respond to requests for information and handle various other matters under the Freedom of Information Act, the Privacy Act of 1974 and the Government in the Sunshine Act; "Assistant Secretary" means the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance.

(b) "Record" means any document, writing, photograph, sound or magnetic recording, videotape, microfiche, drawing, or computer-stored information or output in the possession of the Commission. The term "record" does not include personal convenience materials over which the Commission has no control, such as appointment calendars and handwritten notes, that may be retained or destroyed at an employee's discretion. Further, the term "records," as used in this Part, does not include materials such as Federal Register notices or court filings that are available from public sources other than the Commission.

(c) The term "public records" means, in addition to the records described in § 145.1 (material published in the Federal Register) and in § 145.2 (records required to be made publicly available under the Freedom of Information Act), those records that have been determined by the Commission to be generally available to the public directly upon oral or written request from the Commission office or division responsible for the maintenance of such records. Public records of the Commission include press releases (available from the Office of Communication and Education Services); copies of documents received by the Commission in response to proposed rulemaking (available from the secretariat); copies of complaints and other filings received in connection with administration reparations and enforcement proceedings (available from the Hearing Clerk); copies of publicly available portions of registration documents as specified in § 145.6(b)(1) (available from the National Futures Association or the Commission's Chicago Regional Office) and copies of interpretative letters issued by Commission divisions (available from the Office of Communication and Education Services).

(d) "Nonpublic records" are those records not identified in paragraph (c) of this section or § 145.1 or § 145.2 of the

Commission's rules. Nonpublic records must be requested, in writing, in accordance with the provisions of § 145.7.

3. Section 145.2 is revised to read as follows:

§ 145.2 Records available for public inspection and copying; documents published and indexed.

Except as provided in § 145.5, pertaining to nonpublic matters, the following materials shall be available for public inspection and copying during normal business hours at the offices of the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, located at the principal office of the Commission in Washington, DC and at the regional offices of the Commission:

(a) Final opinions of the Commission, including concurring and dissenting opinions, as well as orders made by the Commission in the adjudication of cases;

(b) Statements of policy and interpretations which have been adopted by the Commission and are not published in the Federal Register;

(c) Administrative staff manuals and instructions to staff that affect a member of the public; and

(d) Indices providing identifying information to the public as to the materials made available pursuant to paragraph (a), (b), and (c) of this section.

§ 145.3 [Removed]

4. Section 145.3 is removal.

5. Section 145.4 is revised to read as follows:

§ 145.4 Public records available with identifying details deleted; nonpublic records available in abridged or summary form

(a) To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Commission may delete identifying details when it makes available "public records" as defined in § 145.0(c). In such instances, the Commission shall explain the justification for the deletion fully in writing.

(b) Certain "nonpublic records," as defined in § 145.0(d), may, as authorized by the Commission, be made available for public inspection and copying in an abridged or summary form, with identifying details deleted.

6. Section 145.5 is amended by revising the introductory text to the section to read as follows:

§ 145.5 Disclosure of nonpublic records.

The Commission may decline to publish or make available to the public

any "nonpublic records," as defined in § 145.0(d), if those records fall within the descriptions in paragraphs (a) through (i) of this section. The Commission shall publish or make available reasonably segregable portions of "nonpublic records" subject to a request under section 145.7 if those portions do not fall within the description in paragraphs (a) through (i) of this section.

7. Section 145.6 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 145.6 Commission offices to contact for assistance; registration records available

(a) Whenever this Part directs that a request be directed to the FOI, Privacy and Sunshine Acts compliance staff at the principal office of the Commission in Washington, DC, the request shall be made in writing and shall be addressed or otherwise directed to the Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance, Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

The telephone number of the compliance staff is (202) 254-3382. Requests for public records directed to a regional office of the Commission pursuant to § 145.0(c) and § 145.2 should be sent to:

Division of Economic Analysis,
Commodity Futures Trading
Commission, One World Trade
Center, Suite 4747, New York, New
York 10048, Telephone: (212) 466-2061.

Division of Trading and Markets,
Commodity Futures Trading
Commission, Sears Tower, Suite 4600,
233 South Wacker Drive, Chicago,
Illinois 60606, Telephone: (312) 353-
5990.

Division of Trading and Markets,
Commodity Futures Trading
Commission, 510 Grain Exchange
Building, Minneapolis, Minnesota
55415, Telephone: (612) 725-2025.

Division of Trading and Markets,
Commodity Futures Trading
Commission, 4901 Main Street, Room
208, Kansas City, Missouri 64112,
Telephone: (816) 374-2994.

Division of Enforcement, Commodity
Futures Trading Commission, 10850
Wilshire Boulevard, Suite 510, Los
Angeles, California 90224, Telephone:
(213) 209-6783.

(b) * * *

(2) The fingerprint card and any supplementary attachments filed in response to items 6-9 and 14-21 of Form 8-R, to item 3 on Form 8-S, to items 3-5 and 9-11 on Form 8-T or to items 9-10 on Form 7-R generally will not be

available for public inspection and copying unless such disclosure is required under the Freedom of Information Act. When such fingerprint cards or supplementary attachments are on file, the FOI, Privacy and Sunshine Acts compliance staff will decide any request for access in accordance with the procedures set forth in §§ 145.7 and 145.9.

8. Section 145.7 is revised to read as follows:

§ 145.7 Requests for Commission records and copies thereof.

(a) *Public Inquiries and Inspection of Public Records.* Inquiries concerning the nature and extent of available public records, as defined in § 145.0(c) of the Commission's rules, may be made in person, by telephone, or in writing to the Commission offices designated in § 145.0(c), § 145.2 and § 145.6.

(b) *Requests for Nonpublic Records.* Except as provided in paragraph (a) of this section with respect to public records, all requests for records maintained by the Commission shall be in writing, shall be addressed to the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance, and shall be clearly marked "Freedom of Information Act Request."

(c) *Misdirected Written Requests/ Oral Requests.* (1) The Commission cannot assure that a timely or satisfactory response will be given to requests for records that are directed to the Commission other than in the manner prescribed in paragraph (b) of this section. Any misdirected written request for nonpublic records should be promptly forwarded to the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. Misdirected requests for nonpublic records will be considered to have been received for purposes of this section only when they actually have been received by the Assistant Secretary. The Commission will not entertain an appeal under paragraph (h) of this section from an alleged denial or failure to comply with a misdirected request, unless the request was in fact received by the Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance.

(2) While the Commission will attempt to comply with oral requests for copies of records designated by the Commission as public records, the Commission cannot assure a timely or satisfactory response to such request. The Commission will not consider an oral request for nonpublic records. An appeal under paragraph (h) of this section from an alleged denial or failure to comply with an oral request will not

be considered. Any person who has orally requested a copy of a record and who believes that the request was denied improperly should resubmit the request in writing in accordance with paragraph (b) of this section.

(d) *Description of Requested Records.* Each written request for Commission records made under paragraph (b) of this section shall reasonably describe the records sought with sufficient specificity to permit the records to be located among the records maintained by or for the Commission. The Commission staff may communicate with the requester (by telephone when practicable) in an effort to reduce the administrative burden of processing a broad request and to minimize fees for copying and search services.

(e) *Request for Existing Records.* The Commission's response to a request for nonpublic records will encompass all nonpublic records identifiable as responsive to the request that are in existence on the date that the written request is received by the Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance. The Commission will not create a new record in response to a FOIA request.

(f) *Fee Agreement.* A request for copies of records pursuant to paragraph (b) of this section must indicate the requester's agreement to pay all fees that are associated with the processing of the request, in accordance with the rates set forth in Appendix B to Part 145, or the requester's intention to limit the fees incurred to a stated amount. If the requester states a fee limitation, no work will be done that will result in fees beyond the stated amount. A requester who seeks a waiver or reduction of fees pursuant to paragraph (a)(8) of Appendix B of this Part must show that such a waiver or reduction would be in the public interest. If the Assistant Secretary receives a request for records under paragraph (b) of this section from a requester who has not paid fees from a previous request in accordance with Appendix B of this Part, the staff will decline to process the request until such fees have been paid.

(g) *Initial Determination, Denials.* (1) With respect to any request for nonpublic records as defined in § 145.0(d), the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance, or his or her designee, will forward the request to the Commission divisions or offices likely to maintain records that are responsive to the request. If a responsive record is located, the Assistant Secretary, or designee, will, in consultation with the Commission office in which the record

was located, determine whether to comply with such request. The Assistant Secretary may, in his or her discretion, determine whether to comply with any portion of a request for nonpublic records before considering the remainder of the request.

(2) Where it is determined to deny, in whole or in part, a request for nonpublic records, the Assistant Secretary, or designee, will notify the requester of the denial, citing applicable exemptions of the Freedom of Information Act or other provisions of law that require or allow the records to be withheld. The Assistant Secretary's response to the FOIA request should describe in general terms what categories of documents are being withheld under which applicable FOIA exemption or exemptions. The Assistant Secretary, in denying initial request for records, is not required to provide the requester with an inventory of those documents determined to be exempt from disclosure.

(3) The Assistant Secretary, or his or her designee, will issue an initial determination with respect to a FOIA request as expeditiously as possible. The following circumstances may, however, result in some delay in the issuance of the initial determination:

- (i) The need to obtain requested records from regional offices, the Federal Records Center, or other establishments that are separate from the office processing the FOIA request;
- (ii) The need to search for, collect, and examine voluminous records;
- (iii) The need to consult with other agencies having a substantial interest in the determination;
- (iv) The need to coordinate a response with several Commission offices;
- (v) The need to obtain records currently being used by members of the Commission, the Commission staff, or the public;
- (vi) The need to respond to a large number of previously-filed FOIA requests.

(h) *Administrative review.* (1) Any person who has been notified pursuant to paragraph (g) of this section that his request for records has been denied in whole or in part may file an application for review as set forth below.

(2) An application for review must be received by the Office of General Counsel within 30 days of the date of the denial by the Assistant Secretary. This 30-day period shall not begin to run until the Assistant Secretary has issued an initial determination with respect to all portions of the request for nonpublic records. An application for review shall be in writing and shall be marked "Freedom of Information Act Appeal."

The original shall be sent to the Commission's Office of General Counsel. If the appeal involves information as to which the FOIA requester has received a detailed written justification of a request for confidential treatment pursuant to § 145.9(e), the requester must also serve a copy of the appeal on the submitter of the information.

(3) The applicant must attach to the application for review a copy of all correspondence relevant to the request, *i.e.*, the initial request, any correspondence amending or modifying the request, and all correspondence from the staff responding to the request.

(4) The application for review shall state such facts and cite such legal or other authorities as the applicant may consider appropriate. The application may, in addition, include a description of the general benefit to the public from disclosure of that information.

(5) If the appeal involves information that is subject to a petition for confidential treatment filed under § 145.9, the submitter of the information shall have an opportunity to respond in writing to the appeal within 10 business days of the date of filing of the appeal. Any response shall be sent to the Commission's Office of General Counsel. Copies shall be sent to the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance and to the person requesting the information.

(6) The General Counsel, or his or her designee, shall have the authority to consider all appeals under this section from initial determinations of the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. The General Counsel may:

- (i) Determine either to affirm or to reverse the initial determination in whole or in part;
- (ii) Determine to disclose a record, even if exempt, if good cause for doing so either is shown by the application or otherwise appears;
- (iii) Remand the matter to the Assistant Secretary (A) to correct a deficiency in the initial processing of the request, or (B) when an investigation as to which the staff originally claimed exemption from mandatory disclosure on the basis of 5 U.S.C. 555(b)(7)(A) or 7 U.S.C. 12(a) is subsequently closed; or
- (iv) Refer the matter to the Commission for a decision.

(i) If the initial denial of the request for nonpublic records is reversed, the Office of General Counsel shall, in writing, advise the requester that the records will be available on or after a specified date. If, on appeal, the denial

of access to a record is affirmed in whole or in part, the person who requested the information shall be notified in writing of (1) the reasons for the denial and (2) the provisions of 5 U.S.C. 552(a)(4) providing for judicial review of a determination to withhold records.

9. Section 145.9 is revised to read as follows:

§ 154.9 Petitions for confidential treatment of information submitted to the Commission.

(a) *Purpose.* This section provides a procedure by which persons submitting information in any form to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. This Section does not affect the Commission's right, authority, or obligation to disclose information in any other context.

(b) *Scope.* The provisions of this section shall apply only where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter.

(c) *Definitions.* The following definitions apply to this section:

(1) *Submitter.* A "submitter" is any person who submits any information or material to the Commission or who permits any information or material to be submitted to the Commission.

(2) *FOIA requester.* A "FOIA requester" is any person who files with the Commission a request to inspect or copy Commission records or documents pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(d) *Written request for confidential treatment.* (1) Any submitter may request in writing that the Commission afford confidential treatment under the Freedom of Information Act to any information that he or she submits to the Commission. Except as provided in paragraph (d)(10) of this section, no oral requests for confidential treatment will be accepted by the Commission. The submitter shall specify the grounds on which confidential treatment is being requested but need not provide a detailed written justification of the request unless required to do so under § 145.9(e). Confidential treatment may be requested only on the grounds that disclosure:

- (i) Is specifically exempted by a statute that either requires that the matters be withheld from the public in such manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to

particular types of matters to be withheld.

(ii) Would reveal the submitter's trade secrets or confidential commercial or financial information.

(iii) Would constitute a clearly unwarranted invasion of the submitter's personal privacy.

(iv) Would reveal investigatory records compiled for law enforcement purposes whose disclosure would deprive the submitter of the right to a fair trial or an impartial adjudication.

(v) Would reveal investigatory records compiled for law enforcement purposes whose disclosure would constitute an unwarranted invasion of the personal privacy of the submitter.

(2) The original of any written request for confidential treatment must be sent to the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. A copy of any request for confidential treatment shall be sent to the Commission division or office receiving the original of any material for which confidential treatment is being sought.

(3) A request for confidential treatment shall be clearly marked "FOIA Confidential Treatment Request" and shall contain the name, address, and telephone number of the submitter. The submitter is responsible for informing the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance of any changes in his or her name, address, and telephone number.

(4) A request for confidential treatment normally should accompany the material for which confidential treatment is being sought. If a request for confidential treatment is filed after the filing of such material, the submitter shall have the burden of showing that he or she could not have requested confidential treatment for that material at the time the material was filed. If access is requested under the Freedom of Information Act with respect to material for which no request for confidential treatment has been made pursuant to this section, it will normally be presumed that the submitter of the information has waived any interest in asserting that the material is confidential.

(5) A request for confidential treatment shall state the length of time for which confidential treatment is being sought.

(6) A request for confidential treatment (as distinguished from the material that is the subject of the request) shall be considered a public document.

(7) On 10 business days notice, a submitter shall submit a detailed written

justification of a request for confidential treatment, as specified in paragraph (e) of this section.

(8) A submitter shall not request confidential treatment for any reasonably segregable material that is not exempt from public disclosure under the Freedom of Information Act. See 5 U.S.C. 552(b). A submitter has the burden of clearly and precisely specifying the material that is the subject of his or her confidential treatment request. A submitter may be able to meet this burden in various ways, including (i) separately binding material for which confidential treatment is being sought; (ii) submitting two copies of the submission, a copy from which material for which confidential treatment is being sought has been obliterated, deleted, or clearly marked and an undeleted copy; and (iii) clearly describing the material within a submission for which confidential treatment is being sought. A submitter shall not employ a method of specifying the material for which confidential treatment is being sought if that method makes it unduly difficult for the Commission to read the full submission, including all portions claimed to be confidential, in its entirety.

(9) If a submitter fails to follow the procedures set forth in paragraphs (d)(1) through (d)(8) of this section, the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance or his or her designee may summarily reject the submitter's request for confidential treatment with leave to the submitter to refile a proper petition. Failure of the Assistant Secretary or his or her designee summarily to reject a confidential treatment request pursuant to this paragraph shall not be construed to indicate that the submitter has complied with the procedures set forth in paragraphs (d)(1) through (d)(8) of this section.

(10) In some circumstances, such as when a person is testifying in the course of a Commission investigation or is providing documents requested in the course of a Commission inspection, it may be impracticable for the submitter to submit a written request for confidential treatment at the time the information is first provided to the Commission. In no circumstances can the need to comply with the requirements of this section justify or excuse any delay in submitting information to the Commission. Rather, in such circumstances, the submitter should inform the Commission employee receiving the information, at the time the information is submitted or as soon thereafter as possible, that the person is requesting confidential treatment for the

information. The person shall then submit a written request for confidential treatment pursuant to paragraph (d) of this section within 10 business days of the submission of the information.

(11) Except as provided in paragraph (d)(9) of this section, no determination with respect to any request for confidential treatment will be made until the Commission receives a Freedom of Information Act request for the material for which confidential treatment is being sought.

(e) *Detailed written justification of request for confidential treatment.* (1) If the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance or his or her designee determines that a FOIA request seeks material for which confidential treatment has been requested pursuant to this section, the Assistant Secretary or his or her designee shall require the submitter to file a detailed written justification of his or her confidential treatment request within 10 business days of that determination. The detailed written justification shall be filed with the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. It shall be clearly marked "Detailed Written Justification of FOIA Confidential Treatment Request" and shall contain the request number supplied by the Commission. The submitter shall also send a copy of the detailed written justification to the FOIA requester at the address specified by the Commission.

(2) The period for filing a detailed written justification shall be extended only under exceptional circumstances.

(3) The detailed written justification of the confidential treatment request shall contain:

(i) The reasons, referring to the specific exemptive provisions of the Freedom of Information Act listed in paragraph (d)(1) of this section, why the information that is the subject of the FOIA request should be withheld from access under the Freedom of Information Act;

(ii) The applicability of any specific statutory or regulatory provisions that govern or may govern the treatment of the information;

(iii) The existence and applicability of prior determinations by the Commission, other federal agencies, or courts concerning the specific exemptive provisions of the Freedom of Information Act pursuant to which confidential treatment is being requested. Submitter shall satisfy any evidentiary burdens imposed upon them

by applicable Freedom of Information Act case law.

(iv) Such additional facts and authorities as the submitter may consider appropriate.

(4) The detailed written justification of a confidential treatment request shall be accompanied by affidavits to the extent necessary to establish the facts necessary to satisfy the submitter's evidentiary burden.

(5) The detailed written justification of a confidential treatment request (as distinguished from the material that is the subject of the request) shall be considered a public document. However, a submitter will be permitted to submit to the Commission supplementary confidential affidavits with his or her detailed written justification if that is the only way in which he or she can convincingly demonstrate that the material that is the subject of the confidential treatment request should not be disclosed to the FOIA requester.

(f) *Initial determination with respect to petition for confidential treatment.* (1) The Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance or his or her designee, in consultation with the Office in which the record was located, shall issue an initial determination with respect to a confidential treatment request for material that is responsive to the FOIA request. This determination shall be issued at the same time as the initial determination with respect to the FOIA request. See § 145.7(g). To the extent that the initial determination grants a confidential treatment request in full or in part, it should specify the FOIA exemptions upon which this determination is based and briefly describe the material to which each exemption applies. See § 145.7(g)(2). To the extent that the initial determination denies confidential treatment to any material for which confidential treatment was requested, it should briefly describe the material for which confidential treatment is denied.

(2) If the Assistant Secretary or his or her designee determines that a confidential treatment request shall be denied in full or in part, the submitter shall be informed of his or her right to appeal to the Commission's General Counsel in accordance with the procedures set forth in paragraph (g) of this section. The material for which confidential treatment was denied shall be released to the FOIA requester if the submitter does not file an appeal within 10 business days of the date on which his or her request was denied.

(3) If the Assistant Secretary or his or her designee determines that a

confidential treatment request shall be granted in full or in part, the FOIA requester shall be informed of his or her right to appeal to the Commission's General Counsel in accordance with the procedures set forth in § 145.7(h).

(g) *Appeal from initial determination that confidential treatment is not warranted.* (1) An appeal from an initial determination to deny a confidential treatment request in full or in part shall be filed with the General Counsel of the Commission. No disclosure of the material that is the subject of the appeal shall be made until the appeal is resolved. If both a submitter and an FOIA requester appeal to the General Counsel from a partial grant and partial denial of a confidential treatment request, those appeals shall be consolidated.

(2) Any appeal of a denial of a request for confidential treatment shall be in writing, and shall be clearly marked "FOIA Confidential Treatment Appeal." The appeal shall include a copy of the initial determination and shall clearly indicate the portions of the initial determination from which an appeal is being taken.

(3) The appeal shall be sent to the Commission's Office of General Counsel. A copy of the appeal shall be sent to the FOIA requester. The General Counsel or his or her designee shall have the authority to consider all appeals from initial determinations of the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance. The General Counsel may, in his sole and unfettered discretion, refer such appeals and questions concerning stays under paragraph (g)(10) of this section to the Commission for decision.

(4) In the appeal, the submitter may supply additional substantiation for his or her request for confidential treatment, including additional affidavits and additional legal argument.

(5) The FOIA requester shall have an opportunity to respond in writing to the appeal within 10 business days of the date of filing of the FOIA Confidential Treatment Appeal. The FOIA requester need not respond, however. Any response shall be sent to the Commission's Office of General Counsel. A copy shall be sent to the submitter.

(6) All FOIA Confidential Treatment Appeals and all responses thereto shall be considered public documents.

(7) An appeal taken under this section will be considered by the General Counsel or his or her designee as expeditiously as circumstances permit. Although other procedures may be

employed, to the extent possible the General Counsel will decide the appeal on the basis of the affidavits and other documentary evidence submitted by the submitter and the FOIA requester.

(8) The General Counsel or his or her designee shall have the authority to remand any matter to the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance to correct deficiencies in the initial processing of the confidential treatment request.

(9) If the General Counsel or his or her designee denies a confidential treatment appeal in full or in part, the information for which confidential treatment is denied shall be disclosed to the FOIA requester 10 business days later, subject to any stay entered pursuant to paragraph (g)(10) of this section.

(10) The General Counsel or his or her designee shall have the authority to enter and vacate stays as set forth below. If, within 10 business days of the date of issuance of a determination by the General Counsel or his or her designee to disclose information for which a submitter sought confidential treatment, the submitter commences an action in federal court concerning that determination, the General Counsel will stay the public disclosure of the information pending final judicial resolution of the matter. The General Counsel or his or her designee may vacate a stay entered under this section, either on his or her own motion or at the request of the FOIA requester. If such a stay is vacated, the information will be released to the requester 10 business days after the submitter is notified of this action, unless a court orders otherwise.

(h) *Extensions of time limits.* Any time limit under this section may be extended for good cause shown, in the discretion of the Commission, the Commission's General Counsel, or the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance.

(i) A submitter whose confidential treatment request has been upheld by the Commission shall, upon request of the General Counsel, aid the Commission in defending a court action to compel the Commission to disclose the information subject to the confidential treatment request. If the submitter is unwilling to aid the Commission in this regard, the General Counsel may, in appropriate cases, make the information available to the public.

PART 146—RECORDS MAINTAINED ON INDIVIDUALS

10. The authority citation for Part 146 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a); Sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (7 U.S.C. 4a(j)).

11. Section 146.9 is amended by adding paragraph (f) to read as follows:

§ 146.9 Appeals to the Commission.

(f) The General Counsel or his or her designee is hereby delegated the authority to act for the Commission in deciding appeals under this section. The General Counsel may, in his or her sole and unfettered discretion, refer such appeals to the Commission for decision.

Issued in Washington, DC, on October 25, 1985, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85-25949 Filed 11-1-85; 8:45 am]

BILLING CODE 6351-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION**36 CFR Part 903****Privacy Act Update; Disclosures of Personal Information During Litigation**

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Proposed rule.

SUMMARY: The Pennsylvania Avenue Development Corporation (PADC) proposes to adopt rules regarding the routine use of records contained in PADC records systems for disclosure to the Department of Justice and to PADC during the course of litigation. The proposed rule is intended to make nonconsensual disclosure of personal information, routinely used in litigation, more consistent with the requirements of the Privacy Act. Recent court decisions require that routine uses of records in Government Record Systems be narrow in scope and protect against unbridled discretion in allowing disclosures as a routine use. The proposed rule sets forth the specific routine uses that support disclosure of Privacy Act records to the Department of Justice and for PADC disclosure in litigation.

DATES: Comments must be received on or before December 4, 1985.

ADDRESS: Comments should be addressed to the General Counsel, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue,

NW., Suite 1220 North, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: James Alexander, Staff Attorney, (202) 724-9088.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 requires Government agencies to obtain the written consent of record subjects before disclosing personal information from the agency systems of records. The Act provides twelve specific exceptions to this requirement. One of the enumerated exceptions provides for the nonconsensual disclosure of records for "routine uses" of the data collected.

In the context of litigation, the government generally initiates disclosures of personnel information as routine use exceptions. A recent federal court decision held that such routine uses must be narrowly drawn to preclude the government from disclosing, as a routine use, personal and embarrassing information about an individual in retaliation for suit being brought against it. Such routine use by the government could discourage meritorious claims from being filed by aggrieved parties.

The Office of Management and Budget (OMB) has selectively reviewed existing routine use for disclosures in support of litigation and has found that such uses could be for purposes that are inconsistent with the intent of the Privacy Act.

List of Subjects in 36 CFR Part 903

Privacy.
For the reasons set out in the preamble, Part 903 of Chapter IX of Title 36 of the Code of Federal Regulations is proposed to be amended as follows:

1. Authority citation for Part 903 is revised to read as follows:

Authority: 5 U.S.C. 552a; 40 U.S.C. 870.

2. Sections 903.11 and 903.12 are redesignated as §§ 903.12 and 903.13 respectively. A new § 903.11 is added to read as follows:

§ 903.11 Routine Uses of records maintained in the system of records.

(a) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

- (1) The Corporation, or any component thereof; or
- (2) Any employee of the Corporation in his or her official capacity; or
- (3) Any employee of the Corporation in his or her individual capacity where the Department of Justice has agreed to represent the employee; or
- (4) The United States, where the Corporation determines that litigation is

likely to affect the Corporation or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice, is deemed by the Corporation to be relevant and necessary to the litigation, provided, however, that in each case, the Corporation determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(b) It shall be a routine use of records maintained by the Corporation to disclose them in a proceeding before a court or adjudicative body before which the Corporation is authorized to appear, when:

- (1) The Corporation, or any component thereof; or
- (2) Any employee of the Corporation in his or her individual capacity;
- (3) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or
- (4) The United States, where the Corporation determines that litigation is likely to affect the Corporation or any of its components, is a party to litigation or has an interest in such litigation and the Corporation determines that use of such records is relevant and necessary to the litigation, provided, however, that, in each case, the Corporation determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

M.J. Brodie,
Executive Director.

Dated: October 28, 1985.
[FR Doc. 85-26219 Filed 11-1-85; 8:45 am]
BILLING CODE 7630-01-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part Ch. 1**

[CC Docket: b. 85-124; FCC 85-570]

Interstate Usage of Feature Group A and Feature Group B Access Service

AGENCY: Federal Communications Commission.

ACTION: Order Inviting Comments In the Matter of Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service—CC Docket No. 85-124.

SUMMARY: The Federal-State Joint Board requests comments concerning

permanent resolution of the issues related to classifying traffic as interstate or intrastate for purposes of applying the relevant access charge tariff. The *Order Inviting Comments (OIC)* asks interested parties to address the relative merits of using unadjusted entry/exit measurements of intrastate traffic and adjusted figures calculated to eliminate "false" intrastate traffic. The *OIC* also requests comments on the proper verification procedures to be used by local exchange carriers and state authorities in confirming the OCCs' measurements of intrastate traffic. This action is taken in order to aid the Joint Board in making recommendations to the Commission on this issue.

EFFECTIVE DATES: Comments are due on or before November 27, 1985. Replies are due on December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Margot Bester and Claudia Pabo at (202) 632-6363.

SUPPLEMENTARY INFORMATION:

Order Inviting Comments

In the matter of determination of interstate and intrastate usage of Feature Group A and Feature Group B Access Service: CC Docket No. 85-124.

Adopted: October 22, 1985.

Released: October 28, 1985.

By the Federal-State Joint Board.

I. Introduction

A. Summary

1. The Federal-State Joint Board hereby requests comments concerning permanent resolution of the issues related to classifying traffic as interstate or intrastate for purposes of applying the relevant access charge tariffs.

B. Background

2. On September 11, 1984, MCI Telecommunications Corporation (MCI) filed a Petition for Declaratory Relief asking the Commission to preempt state regulation of the manner of calculating intrastate switched access usage of Feature Groups A and B (FGA and FGB) by the other common carriers (OCCs).¹ MCI objected to the imposition by state authorities of auditing requirements as a condition for certification as an intrastate carrier and to state commission use of estimation of intrastate usage based on an entry/exit

measurement approach.² It requested that the Commission approve, on an interim basis, use of the "allocational factors" currently used by the OCCs to estimate the amount of intrastate switched access traffic to be reported to the local exchange carriers.³ MCI also asked the Commission to institute proceedings or supervise negotiations designed to develop a uniform nationwide "allocational factor" to be applied until equal access is available.

3. On April 16, 1985⁴ the Commission denied MCI's petition, declining to preempt state regulations concerning the calculation of intrastate switched access usage. The Commission also declined to approve the "allocational factors" currently used by the OCCs to adjust for "false" intrastate traffic. Instead, the Commission recommended that, on an interim basis, interstate usage be measured on the "entry/exit measurement approach" generally favored by the states.⁵ On April 19, 1985⁶ the Commission established a Federal-State Joint Board pursuant to Section 410(c) of the Communications Act to develop recommendations concerning a permanent resolution of the issues raised by MCI in its petition.

II. Discussion

4. The Joint Board requests comments concerning permanent measures for resolution of the issues raised by the MCI Petition. In particular, we ask interested parties to address issues concerning the proper classification of OCC, FGA and FGB traffic as interstate or intrastate for access charge billing purposes. Among other things, we are asking commenting parties to address the relative merits of using unadjusted entry/exit measurements of intrastate traffic and adjusted figures calculated to eliminate "false" intrastate traffic as recommended by MCI. We also request comments concerning any other measurement approaches that would accurately reflect the amount of intrastate traffic. In addition, we are

¹ Under this method of estimating intrastate usage, all traffic that enters an OCC's network in the state where the called station is located is treated as intrastate in character.

² These allocational factors are applied by the OCCs to adjust for "false" intrastate traffic, i.e., traffic that appears to be intrastate in nature, for example, because it enters and leaves the OCC network within the same state, but which is actually interstate in nature.

³ MCI Telecommunications Corporation (Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service), FCC 85-145 (released April 16, 1985).

⁴ The Commission recommended that the local exchange carriers reflect this interim measurement approach in their interstate switched access tariffs to be filed with the Commission on July 2, 1985.

⁵ 50 FR 18537 (May 1, 1985).

requesting comments on the proper verification procedures to be used by local exchange carriers and state authorities in confirming the OCCs' measurements of intrastate traffic. We are also asking the OCCs to file any information which they have documenting the relative levels of false intrastate and interstate traffic.

III. Ordering Clauses

5. Accordingly, it is ordered, that comments concerning the classification of traffic as interstate or intrastate for access charge purposes are to be filed with the Secretary, Federal Communications Commission no later than November 27, 1985. Replies are to be filed no later than December 16, 1985.

6. It is further ordered, that all parties filing comments and/or replies are to serve copies on the Joint Board members and staff listed in Attachment A.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Joint Board Members

Chairman Mark S. Fowler, Federal Communications Commission, 1919 M Street, NW, Room 814, Washington, D.C. 20554

Commissioner James H. Quello, Federal Communications Commission, 1919 M Street, NW, Room 802, Washington, D.C. 20554

Commissioner Dennis R. Patrick, Federal Communications Commission, 1919 M Street, NW, Room 844, Washington, D.C. 20554

Commissioner Marvin R. Weatherly, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501 (Use Express Mail or Courier Service)

Chairman V. Louise McCarren, Vermont Public Service Board, 120 State Street, State Office Building, Montpelier, Vermont 05602

Commissioner George H. Barbour, New Jersey Board of Public Utilities, 1100 Raymond Boulevard, Newark, New Jersey 07102

Commissioner Edward B. Hipp, North Carolina Utilities Commission, Box 991, Raleigh, North Carolina 27602

Federal-State Joint Board Staff

Ronald Choura, Chairman, Federal-State Joint Board Staff, Michigan Public Service Commission, 6545 Mercantile Way, P.O. Box 30221, Lansing, Michigan 48909

Ms. Lorraine Plaga, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501 (Use Express Mail or Courier Service)

¹ MCI urged the Commission to find that state authority in this area had been preempted by the FCC-mandated procedures for the determination of interstate and intrastate switched access usage set forth in sections 2.3.14 and 2.3.15 of the National Exchange Carrier Association (NECA) switched access tariff.

Elton Calder, Georgia Public Service Commission, 244 Washington Street, SW., Atlanta, Georgia 30334

Rowland Curry, Texas Public Utility Commission, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757

Guy E. Twombly, Maine Public Utilities Commission, State House, Station 18, Augusta, Maine 04330

Paul Popenoe, Jr., California Public Utilities Commission, 350 McAllister Street, San Francisco, California 94102

Hugh L. Gerringer, Public Staff—NCUC, Communications Division, Box 991, Raleigh, North Carolina 27602

Jim Lanni, Rhode Island Public Utilities Commission, 100 Orange Street, Providence, Rhode Island 02903

Mike Dworkin, Vermont Public Service Board, 120 State Street, Montpelier, Vermont 05602

Heiki Leesment, New Jersey Board of Public Utilities, 1100 Raymond Boulevard, Newark New Jersey 07102

Gary A. Evenson, Director, Communications Bureau, Utility Rates Division, Public Service Commission, P.O. Box 7864, Madison, Wisconsin 53707

Karen L. Hochstein, Director, Congressional and Public Relations, National Association of Regulatory Utility Commissioners, 1102 ICC Building, P.O. Box 684 Washington, D.C. 20044

Claudia Pabo (4 copies), Deputy Chief, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW, Room 544, Washington, D.C. 20554

[FR Doc. 85-26256 Filed 11-1-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 15 and 76

[Gen. Docket No. 85-301]

Terminal Devices Connected to Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the date for initial comments as it appears in the Preamble of the Proposed Rule in this proceeding concerning terminal devices connected to cable television systems (published on October 22, 1985, 50 FR 42729).

DATE: The correct date on which initial comments are due is November 22, 1985, as shown in the text of the Proposed Rule.

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

FOR FURTHER INFORMATION CONTACT: Sharon Briley, Policy Analysis Branch, Mass Media Bureau, Tel: (202) 632-6302.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-26255 Filed 11-1-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 22

[CC Docket No. 85-25; RM-4735; FCC 85-539]

Domestic Public Cellular Radio Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Termination of proposed rulemaking (report and order).

SUMMARY: The Commission had decided not to adopt a rule requiring that all cellular customer equipment have a convenient means for subscriber selection of operation on either frequency block A or B. The Commission determined that switchable equipment is readily available and the marketplace will correct any remaining problems.

FOR FURTHER INFORMATION CONTACT: Kelly Cameron, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION:

Report and Order (Proceeding Terminated)

In the matter of amendment of Part 22 of the Commission's rules relative to the Domestic Public Cellular Radio Telecommunications Service; CC Docket No. 85-25, RM-4735, FCC 85-539.

Adopted: October 4, 1985.

Released: October 11, 1985.

By the Commission.

Background

1. This proceeding was initiated by a Petition for Rulemaking filed by the Law Offices of Matthew L. Leibowitz, P.A. and Arthur K. Peters, P.E., consulting Engineers (petitioners). The petition requested that we adopt a rule requiring that all cellular customer equipment be equipped with a convenient means for subscriber selection of operation on either frequency Block A or Block B, commonly referred to as an A/B Switch. Petitioners feared competition in the Cellular industry would be impaired by the use of cellular equipment without an A/B Switch. Petitioners contended that, because of the headstart enjoyed by wireline carriers in the vast majority of markets, the wireline carrier would build a substantial subscriber base before the non-wireline carrier began

operating. By selling non-switchable equipment wireline carriers could discourage their subscribers from converting to the non-wireline system, according to petitioners.¹ Several parties filed comments in support of the petition. Two commenters proposed additional means of facilitating subscriber conversion from one system to the other. Chase/Post Cellular Systems (Chase/Post) proposed that subscribers be given a proprietary interest in their cellular telephone numbers and be permitted to transfer their numbers to the new system. MCI Cellular Telephone Company (MCI) proposed that we require that telephone numbers be programmable by the customer at the control head or the handset.

2. We adopted a Notice of Proposed Rulemaking (NPRM), FCC 85-55, released February 12, 1985, which proposed various solutions to the perceived problem of diminished competition in the cellular industry due to the use of non-switchable cellular customer equipment. As one option, we proposed to adopt a rule requiring that all cellular customer equipment be equipped with a convenient means for subscriber selection of the frequency block. See NPRM, Appendix A. This was essentially the proposal advocated by petitioners. In addition, however we proposed an alternative rule that would prohibit wireline carriers or affiliated entities from offering for sale or lease non-switchable cellular customer equipment. See NPRM, Appendix B. The petition suggested that the use of non-switchable equipment was a result of the wireline headstart. We therefore reasoned that, because the wireline carriers were reaping such competitive advantage as might accrue from the use of non-switchable equipment, the burden of restoring competitive balance might more fairly be imposed upon the wireline carriers than upon equipment manufacturers.² We requested comment

¹ All cellular units are capable of operating on either cellular system frequency block. At issue here is how the default system—the system the unit seeks out for placing and receiving calls—may be selected. An A/B switch permits the customer to set which system will be sought out by the unit. Non-switchable equipment is internally programmed to seek a cellular system on either Block A or Block B; only when no system is operating on the pre-programmed frequency Block would the unit be able to access the other system. Thus, non-switchable equipment programmed to operate on the wireline system would have to be reprogrammed by a service technician in order to access the non-wireline frequency block.

² As a further alternative, we proposed imposing this rule only on the Regional Bell Cellular Companies.

on these proposals and on the Chase/Post and MCI suggestions described above.

Comments

3. We received comments from 24 parties. Thirteen parties filed reply comments. The comments filed by wireline cellular companies and landline telephone companies generally were opposed to the adoption of any rule. These commenters argue that no rule is necessary. Nyne Mobile Communications Company (NMCC), among others, states that the marketplace is responding to the demand for switchable equipment. BellSouth Mobility, Inc. (BSMI) states that at least 50% of current product lines have an A/B Switch.³ AT&T comments that equipment distributors—both cellular carriers and others—that offer switchable equipment will promote it as they would promote any other equipment feature. Ameritech Mobile Communications, Inc. (AMCI) suggest that no rule is necessary because both carriers will have an incentive to promote switchable equipment. This is because carriers will have roaming agreements with both wireline and non-wireline carriers, as AMCI does, and will therefore have no reason to seek to prevent their subscribers from accessing the other frequency block. In addition, several commenters assert that the cost and inconvenience of converting from one system to the other are minimal.⁴ Moreover, they point out that even a subscriber with a switchable cellular unit would have to have a service technician program a new telephone number into the unit in order to switch home cellular systems. Finally, although the wireline commenters oppose the adoption of any rule, they expressed a preference for a rule of general application. They argue that applying the rule only to them would be discriminatory and would not assure cellular subscribers of the ability to choose carriers freely, particularly subscribers on the non-wireline system.

4. Both the wireline cellular carriers and the landline telephone companies

³ BSMI provides no information as to what percentage of total production these product lines represent.

⁴ NMCC, for example, estimates that this procedure requires replacement of a \$5 Programmable Read-Only Memory (PROM) chip and no more than twenty to forty minutes of a technician's time. NMCC estimates the labor cost at no more than \$16 and suggests that the second carrier in a market could be expected to bear these costs in order to attract subscribers. Indeed, as several commenters point out, this was precisely the strategy used by the non-wireline carrier in Chicago to attract 4,000 subscribers from the wireline system.

unanimously expressed strong opposition to the Chase/Post suggestion concerning customer ownership (or portability) of cellular telephone numbers and MCI's proposal to allow cellular subscribers to program a new number into their cellular telephones. The comments of Southwestern Bell Telephone Co. (Southwestern) on these issues are representative. Southwestern points out, for example, that the two cellular carriers in a given market will generally have different NXX codes. Therefore, either seven-digit routing or data base routing would be required in all end-officers within a LATA to facilitate number portability. Southwestern also contends that number portability would create serious administrative problems relating to customer billing and number assignment. Southwestern opposes MCI's number programmability proposal because of the increased potential it would present for unauthorized use of cellular telephone service.

5. A number of commenters supported adoption of a rule. Telocator Network of America (Telocator), for example, argues that an A/B Switch rule is essential to a universal and competitive cellular market. Telocator points out that, unless subscribers have an A/B Switch, there can be no competition in the roamer market.⁵ Telocator also argues that the marketplace will not function properly because consumers are not aware of the importance of an A/B Switch until they begin to roam. Finally, Telocator speculates that, in markets where roaming will be prevalent, wireline carriers will have an incentive not only to offer non-switchable equipment but to discount it substantially.⁶ Metro Mobile CTS, Inc. (Metro Mobile) also supports the imposition of the rule proposed in Appendix A of the NPRM. Metro Mobile argues, however, that this is not a sufficient remedy. Metro Mobile recommends that we require that landline telephone companies give the prospective non-wireline carrier in each market its own NXX code for use as a reseller on the wireline system during the headstart period. The non-wireline's resale customers could then be shifted to the non-wireline system when it

⁵ Telocator cites as an example of the public interest consequences of this situation the experience of roamers in Washington, D.C., from wireline systems in other cities who are unable to take advantage of the lower roamer rates offered by the non-wireline carrier because of the lack of an A/B Switch.

⁶ Telocator's hypothetical wireline carrier would be selling or leasing equipment to subscribers on its own system who would be roamers on some other system.

became operational.⁷ Metro Mobile believes that our alternative proposed in Appendix B of the NPRM is inadequate because the effect on consumers of non-switchable equipment is the same regardless of who supplies it.⁸

6. The sole manufacturer of cellular customer equipment to respond to the NPRM, Tandy Corporation (Tandy), also supports the proposal in Appendix A.⁹ Tandy asserts that market forces may not work due to consumer's lack of information about the advantages of an A/B Switch. Tandy further states that any of the proposed solutions will impose a burden on manufacturers but that, due to cost savings in volume production, requiring that manufacturers make only switchable equipment may be cheaper than making switchable equipment specifically for wireline carriers.¹⁰ Finally, Tandy states that the added cost of an A/B Switch is minimal, as would be the cost of converting its production line to manufacturing only switchable equipment.

Discussion

7. Initially, we must define the scope of the problem addressed by this proceeding and what relief we can provide. Petitioners have requested that we prohibit the use of cellular customer equipment that does not have a convenient means for subscriber selection of the frequency block. They argue that the wireline carrier will typically build a subscriber base during the headstart period and that the non-wireline carrier will be unable to compete for these subscribers if they are using non-switchable equipment. Based on the record before us, however, we conclude that there is no reason to believe that the continued availability of non-switchable cellular customer equipment will have any appreciable

⁷ This proposal would work equally well if the non-wireline's resale customers were using non-switchable equipment programmed to scan Block A. These units would then default to Block B until the non-wireline system went on the air.

⁸ By contrast, Mobile Communications Corporation of America (MCCA) recommends that we adopt Option B. MCCA believes that the wirelines should correct the problem since they stand to benefit from the use of non-switchable equipment. MCCA also argues that subscribers must be given a proprietary interest in their cellular telephone numbers and a means of reprogramming telephone numbers in order to allow free movement of subscribers. MCCA does not address the technical and administrative objections to these proposals raised by other commenters.

⁹ Tandy recommends that we mandate frequency block selection on the keypad, with appropriate software, as a more user-friendly mechanism than an A/B Switch.

¹⁰ Nothing would prevent a manufacturer from making only switchable equipment, regardless of any action we might take in this proceeding.

impact upon competition for subscribers in the local cellular market. This is particularly true if carriers utilize a transferable NXX scheme, which we find would serve the public interest. Secondly, we conclude that, even were we convinced that local competition were being stifled by non-switchable cellular customer equipment, none of the solutions to this problem is feasible or justifiable.

8. In order for a cellular subscriber to switch home systems, the subscriber must take his cellular telephone to a service technician for reprogramming. This is necessary, even if the cellular unit is equipped with an A/B switch, because the unit must be programmed with a new telephone number.¹¹ An A/B switch would only permit free movement of subscribers if we were to require number portability or programmability, as proposed by Chase/Post and MCI. We agree with the commenters, however, that these proposals are unworkable and are not justified by the record before us. Therefore, because a cellular subscriber desiring to change home carriers must have his cellular telephone reprogrammed regardless of the presence of an A/B switch (except as discussed in the following paragraph), none of the proposed rules would promote competition for local subscribers.

9. The proposal by Telocator and Metro Mobile that we require local telephone carriers to give the non-wireline reseller its own NXX code during the wireline headstart is clearly technically feasible. Indeed, such arrangements have been made in a number of markets. We believe this is a reasonable and pro-competitive means of enabling the prospective non-wireline licensee to compete in the resale market. In cases where the non-wireline, proposing to act as a reseller, has sufficient projected customer volume, we would expect the local landline telephone company to assign an NXX code to it in advance of beginning its own operations, if it is technically feasible to do so. We would also expect the wireline cellular operator (where technically feasible) to make the appropriate software changes to its system to permit the non-wireline carrier's customers to use mobile units programmed with the non-wireline carrier's numbers on the wireline system while the non-wireline is relegated to reselling service. If a non-wireline

carrier chooses this option, it would, of course, be responsible for the cost of implementation. This solution has the advantages of avoiding the need for reprogramming the mobile unit with a new telephone number upon transfer to the non-wireline system and of full compatibility with mobiles that do not have an A-B switch.¹²

10. The remaining question before us is whether non-switchable cellular customer equipment represents a sufficient impediment to competition in the roamer market to justify the adoption of one of the proposed rules. Clearly, a roamer using a non-switchable unit will have no choice of carriers; such a unit will default to a system on the same frequency block as its home system, if one is available. Most cellular subscribers are likely to use roaming service relatively infrequently. Therefore, will be relatively, the ability to select a roamer carrier unimportant to the majority of cellular subscribers. To the extent that this ability is important to consumers, (e.g., as roaming becomes more commonplace) the marketplace will supply switchable cellular equipment. In fact, whereas the petition for rulemaking suggested that non-switchable units were dominating the market, it is clear from the record before us that there is a large supply of cellular customer equipment equipped with an A/B switch. The cellular customer equipment market is highly competitive. Equipment is available from carriers, resellers and consumer electronics retailers. In addition, many subscribers lease their equipment rather than purchasing it and in such a case would normally obtain a new unit upon switching carriers. Thus, even during the headstart period, the wireline carrier does not have a strangle-hold on the equipment supply. Moreover, given the fact that it is equally inconvenient to switch home cellular carriers regardless of whether the subscriber has a cellular telephone equipped with an A/B Switch (unless the NXX option discussed above is used), it has not been demonstrated that the wireline carrier has any substantial incentive to promote the use of non-switchable equipment.¹³ no reason has been suggested to us why the industry would not continue to meet the demand

¹¹ See note 7, *supra*.

¹² The record contains speculation, but no evidence, that wireline carriers are seeking to promote the use of non-switchable equipment. The highly competitive nature of the cellular customer equipment market would make it difficult and even futile for wireline carriers to attempt to promote non-switchable equipment. In any event, the small additional cost of installing a new PROM to scan the non-wireline frequency block—a cost which might be borne by the non-wireline carrier itself—is

unlikely to dissuade a subscriber from switching carriers when he is already prepared to bear the expense and/or inconvenience associated with having his unit programmed with a new telephone number.

Conclusion

11. The record of this proceeding indicates that the cost both to the public and to manufacturers, of imposing an A/B switch requirement would be minimal. The record also demonstrates, however, that the marketplace is meeting consumer demand for switchable cellular customer equipment. Cellular subscribers who wish to have the ability to select carriers when roaming can purchase or lease cellular units that provide this capability. In sum, we do not believe that the present situation poses any threat to competition that requires regulatory intervention. We therefore conclude that the public interest does not require the adoption of either of the rules proposed in the NPRM. (March 22, 1985, 50 FR 11519).

12. Accordingly, it is ordered, that this proceeding, CC Docket No. 85-25, is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-26257 Filed 11-1-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-84; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Confirmation or Revision of Maximum Allowable Operating Pressure for Gas Pipelines

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period to January 3, 1986, for comments to be submitted on Docket No. PS-84; Notice 1, an Advance Notice of Proposed Rulemaking (ANPRM) on the confirmation or revision of maximum allowable operating pressure for gas pipelines. This ANPRM was

unlikely to dissuade a subscriber from switching carriers when he is already prepared to bear the expense and/or inconvenience associated with having his unit programmed with a new telephone number.

¹³ If the subscriber has been leasing his equipment from his original carrier, he may simply have a new unit installed in his vehicle. The presence of an A/B Switch obviously would have no effect in this situation.

published in the **Federal Register**, Volume 50, No. 172, on September 5, 1985, at page 36116.

DATE: Comments due by January 3, 1986.

ADDRESS: Comments should be sent to the Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Please identify the docket and notice numbers. All comments and docket materials will be available in Room 8426 for inspection and copying between the hours of 8:30 a.m. and 5:00 p.m. each working day. Non-Federal employee visitors are admitted to the DOT Headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: Robert F. Langley, (202) 426-2082, regarding this extension of the comment period, or the Dockets Branch, (202) 426-3148, for copies of the ANPRM.

SUPPLEMENTARY INFORMATION: In a letter of October 25, 1985, the Interstate Natural Gas Association of America (INGAA) requested the comment period on Docket PS-84; Notice 1 be extended 60 days. INGAA, which represents a large segment of the operators affected by the regulations involved, states that additional time is needed to establish an industry position on this subject.

Based on the above and also that MTB is interested in having as thorough a review made of the ANPRM as possible, MTB is extending the comment period to January 3, 1986.

Authority: 49 U.S.C. 1672; 40 CFR 1.53; Appendix A to Part 1, and Appendix A to Part 106.

Issued in Washington, D.C., on October 30, 1985.

Lucian M. Furrow,

Acting Associate Director for Pipeline Safety Regulation, Materials Transporting Bureau.

[FR Doc. 85-26277 Filed 11-1-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Public Hearing and Extension of Comment Period on Proposed Endangered Status With Critical Habitat for *Glaucocarpum suffrutescens* (Toad-Flax Cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing, and extension of comment period.

SUMMARY: Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held if requested within 45 days of the publication of a proposed rule. The Service gives notice that a public hearing will be held in Vernal, Utah, on the Proposed determination of endangered status with designation of critical habitat for *Glaucocarpum suffrutescens* (toad-flax cress), and that the comment period on the proposal will be extended.

DATES: The public hearing will be held on November 21, 1985, at 7:00 p.m. Comments on the proposal must be received by December 1, 1985.

ADDRESS: The public hearing will be held at the Uintah County Courthouse, 147 East Main, Vernal, Utah. Written comments and materials should be sent to the Field Supervisor, Endangered Species Office, U.S. Fish and Wildlife Service, Room 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104-5110. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John L. England, Staff Botanist, Endangered Species Office, U.S. Fish and Wildlife Service, Room 2078, Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104-5110 (801/524-4430; FTS 588-4430).

SUPPLEMENTARY INFORMATION:

Background

Glaucocarpum suffrutescens (toad-flax cress) is an herbaceous perennial plant, commonly 8 to 12 inches tall with a deep woody root that forms an above-ground clump of several slender simple stems with an elongated loose inflorescence of yellow flowers. *Glaucocarpum suffrutescens* is in the mustard family and is the only member of its genus. The species is one of several endemics limited to the Green River Formation in the Uinta Basin of eastern Utah. It survives mostly on one calcareous shale stratum, marked by a highly erosion-resistant layer of water deposited volcanic tuff. The species has experienced a significant population and range reduction since its discovery 50 years ago and appears to be threatened with habitat destruction associated with the collection of building stone on the

ground surface of its habitat. The species may be vulnerable to heavy grazing. The species has lost at least two stands to oil and gas exploration and development and is potentially threatened by continued oil and gas development and oil shale development. The Service proposed a determination of endangered status with designation of critical habitat for *Glaucocarpum suffrutescens* in the **Federal Register**, September 5, 1985 (50 FR 36118). The period for submission of public comments on the proposal was originally scheduled to end on November 4, 1985.

By October 21, 1985, the Service had received letters from U.S. Congressman Howard C. Nielson; Dorothy C. Luck, Uintah County Clerk; and several private individuals requesting a hearing on the proposal to determine endangered status with critical habitat designation for *Glaucocarpum suffrutescens* (toad-flax cress). The Service has scheduled this hearing for November 21, 1985, at 7:00 p.m. at the Uintah County Courthouse, 147 East Main Street, Vernal, Utah. Those parties wishing to make statements for the record are encouraged to have a copy of their statements available to be presented to the Service at the start of the hearing. In order to accommodate the hearing, the Service also extends the public comment period on the proposal. Written comments may now be submitted until December 1, 1985, to the Service's Office in the **ADDRESS** section.

Author

The primary author of this notice is Mr. John L. England, Botanist, at the above address.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 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).

List of Subjects in 50 CFR Part 17

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

Dated: October 29, 1985.

Frank Dunkle,

Acting Regional Director, U.S. FWS, Denver, Colorado.

[FR Doc. 85-26238 Filed 11-1-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 50, No. 213

Monday, November 4, 1985

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

Rural Electrification Administration

Oglethorpe Power Corp. Tucker, GA; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Proposed Loan Guarantee.

SUMMARY: Under the authority of Pub. L. 93-32 (87 STAT. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of \$721,171,000 to Oglethorpe Power Corporation (OPC), Tucker, Georgia. This loan guarantee will provide additional funds needed to finance Oglethorpe's continuing participation in the Alvin W. Vogtle Nuclear Plant Project.

FOR FURTHER INFORMATION CONTACT: Mr. F.F. Stacy, General Manager, Oglethorpe Power Corporation, P.O. Box 1349, Tucker, Georgia 30085-1349.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Stacy at the address given above.

In order to be considered, proposals must be submitted on or before December 4, 1984, to Mr. Stacy. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as OPC and REA may deem appropriate. Prospective lenders are advised that the

guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: October 29, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85-26244 Filed 11-1-85; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Environmental Impact; Harrison Mill-Panther Creeks Watershed, AL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a 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 Harrison Mill-Panther Creeks Watershed, Houston, Geneva, and Dale Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama, 36830, telephone (205) 821-8070.

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, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Harrison Mill-Panther Creeks Watershed, Alabama

Notice of a Finding of No Significant Impact

The project concerns a plan for reducing excessive erosion on sloping cropland and preventing rapid and serious deterioration of the resource base. The planned works of improvement include land use conversion on 480 acres of marginal cropland, accelerated conservation land treatment on an additional 6,947 acres of cropland, and installation of 12 grade stabilization structures.

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 Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**. (This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Ernest V. Todd,

State Conservationist.

Dated: October 28, 1985.

[FR Doc. 85-26214 Filed 11-1-85; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Indiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 6:00 p.m. on November 21, 1985, at the University of Notre Dame, Center for Continuing Education, South Bend, Indiana. The purpose of the meeting is to

conduct a seminar on civil rights issues in housing.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Nuechterlein or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-26278 Filed 11-1-85; 8:45 am]

BILLING CODE 6335-01-M

Indiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on November 20, 1985, at the Housing Allowance Office, Inc., 425 North Michigan Street, South Bend, Indiana. The purpose of the meeting is to review information collected on affirmative action in Indianapolis police and fire departments and to prepare for a housing seminar to be held the following day.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Nuechterlein or Clark Roberts, Director of the Midwestern Regional Office, at (312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-26279 Filed 11-1-85; 8:45 am]

BILLING CODE 6335-01-M

Mississippi Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on November 21, 1985, at the Airport Hilton Hotel, 2240 Democrat Road, the Washington Room, Memphis, Tennessee. The purpose of the meeting is to hold a Committee briefing on equality of municipal services in Tunica, Mississippi for a community forum.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Louis Westerfield or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391, (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting. The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR DOC. 85-26280 Filed 11-1-85; 8:45 am]

BILLING CODE 6335-01-M

Mississippi Advisory Committee; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Mississippi Advisory Committee to the Commission originally scheduled for November 22, 1985, at the Tunica Facility Building, Moon Landing Road, Tunica, Mississippi, at 8:30 a.m. to 5:30 p.m., has a new meeting location.

The meeting date, convening and adjourning times will remain the same. The meeting location will change to The Tunica County Courthouse, the Court Room, Tunica, Mississippi.

Dated at Washington, D.C., October 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-26281 Filed 11-1-85; 8:45 am]

BILLING CODE 6335-01-M

South Dakota Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Sub-committee meeting of the South Dakota Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:00 p.m. on November 23, 1985, at the King's Inn, 220 South Pierre Street, the Tower Room, Pierre, South Dakota. The purpose of the meeting is to review the draft memorandum regarding the Surface Transportation Assistance Act.

Persons desiring additional information, or planning a presentation to the Sub-committee, should contact Committee Chairperson, David L. Volk or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844-2211, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-26282 Filed 11-1-85; 8:45 am]

BILLING CODE 6335-01-M

Utah Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 10:00 p.m. on November 21, 1985, at the State Office of Education Building, 250 E. 500 S., Salt Lake City, Utah. The purpose of the meeting is to plan projects for coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844-2211, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 30, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-26283 Filed 11-1-85; 8:45 am]

BILLING CODE 8335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Wholesale Trade; Consideration

Notice is hereby given that the Bureau of the Census is planning to conduct in 1986 the Annual Wholesale Trade Survey. This survey will be conducted under Title 13, United States Code, sections 182, 224, and 225, and will provide data for 1985 covering year-end inventories, purchases, and annual sales of firms engaged in wholesale trade. This survey is the only continuing source available on a comparable classification and timely basis for use as a benchmark for developing estimates of wholesale sales and inventories. Such a survey, if conducted, shall begin not earlier than December 31, 1985.

Information and recommendations received by the Bureau of the Census show that the data will have significant application to the needs of the public, the distributive trades, and governmental agencies, and that the data are not publicly available from nongovernmental or other governmental sources.

Reports will be required only from a minimum selected sample of merchant wholesale firms operating in the United States, with probability of selection based on sales size. The sample will provide, with measurable reliability, statistics on the subject specified above.

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, DC 20233.

Any suggestions or recommendations concerning the data items covered in this proposed survey will receive consideration if submitted in writing to the Director, Bureau of the Census, on or before December 3, 1985.

Dated: October 29, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-26249 Filed 11-1-85; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Northwest and Alaska Fisheries Center, National Marine Fisheries Service

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals 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 (50 CFR Part 216).

1. Applicant:

a. Name: Northwest and Alaska Fisheries Center (P77#16); National Marine Fisheries Service.

b. Address: 7600 Sand Point Way, N.E., Seattle, Washington 98115.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals and Type and Take:

Crabeater seal (<i>Lobodon carcinophagus</i>):	
—Flipper tag.....	500
—Sacrifice.....	600
—Instrument tag.....	100
Total annual take.....	1,200
Leopard seal (<i>Hydrurga leptonyx</i>):	
—Flipper tag.....	200
—Sacrifice.....	150
—Instrument tag.....	100
Total annual take.....	450
Weddell seal (<i>Leptonychotes weddellii</i>):	
—Flipper tag.....	200
—Sacrifice.....	20
—Instrument tag.....	50
Total annual take.....	270
Ross seal (<i>Ommatophoca rossii</i>):	
—Flipper tag.....	100
—Sacrifice.....	20
—Instrument tag.....	30
Total annual take.....	150
Antarctic fur seal (<i>Arctocephalus gazella</i>):	
—Flipper tag.....	600
—Sacrifice.....	20
—Instrument tag.....	100
Total annual take.....	720
Southern elephant seal (<i>Mirounga leonina</i>):	
—Flipper tag.....	300
—Sacrifice.....	20
—Instrument tag.....	50
Total annual take.....	370

4. Location of Activity: Antarctic Peninsula, Weddell Sea and Amundson/Bellinghausen Seas, Antarctic.

5. Period of Activity: 5 years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding

copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, 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 Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., BIN C15700, Seattle, Washington 98115;

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: October 30, 1985.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-26296 Filed 11-1-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 25, 1985.

The meeting of the USAF Scientific Advisory Board Airlift Cross-Matrix Panel to brief the Commander-in-Chief, Military Airlift Command, and senior staff on the results of the Scientific Advisory Board Special Operations Summer Study, published in the Federal Register on October 22, 1985 (50 FR 42753), has been changed to November 25 and 26, 1985. All other information remains the same.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-26213 Filed 11-1-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER85-728-000]

Arizona Public Service Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Denying Motion To Reject, and Granting Waiver

Issued: October 29, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

On August 30, 1985, Arizona Public Service Company (APS) submitted for filing a rate schedule applicable to the Papago Tribal Utility Authority (PTUA) for supplemental service in excess of the 6 MW maximum demand stated in their present Wholesale Power Agreement.¹ The proposed rate is based on a rate currently on file for certain other partial requirements customers.² APS requests waiver of the notice requirements to permit an effective date of October 12, 1985, to correspond with the effective date of the newly-established 6 MW maximum demand.³

Notice of the filing was published in the *Federal Register* with comments due on or before September 23, 1985.⁴ A timely motion to intervene was filed by PTUA which states that APS' rate filing, which was made unilaterally under section 205 of the Federal Power Act (FPA), violates the PTUA-APS contract and the Commission's regulations. PTUA states that the existing contract already covers service above 6 MW. This is because PTUA reads section 2.3 of the agreement as providing that the maximum demand will automatically increase to meet PTUA's peak load if the peak should exceed the maximum (6 MW). PTUA concludes that its entire load is governed by the existing

agreement and that its rates can only be changed prospectively in compliance with the requirements of section 206 of the FPA. In support, PTUA cites *Papago Tribal Utility Authority v. FERC*, 610 F.2d 914 (D.C. Cir. 1979), wherein the court held that the PTUA-APS agreement provides that rates can only be changed by the Commission, after hearing, pursuant to section 206. In addition, PTUA contends that APS' recent refusal to increase the maximum demand to 7.5, as requested by PTUA, is a breach of Section 2.2 of the PTUA-APS agreement,⁵ which violates the true intent of the parties to the contract, and demonstrates APS' bad faith under the contract.

PTUA also requests that the rate filing be rejected for failure to submit a cost of service study as required under section 35.13 of the Commission's regulations. PTUA opposes APS' use of the rates contained in Docket No. ER84-450-000 because those rates apply to partial requirements customers, whereas PTUA contends that its contract with APS is a full requirements contract. PTUA also argues that the Period II test period (1984) which was used to support the rates in Docket No. ER84-450-000 is stale and cannot serve as a basis for the proposed rates in the present filing. Finally, PTUA opposes APS' requested waiver of the notice requirements.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), PTUA's timely, unopposed motion to intervene serves to make it a party to this proceeding.

With regard to PTUA's arguments regarding its maximum demand, the current contract provides that 6 MW is the maximum amount to which PTUA is entitled and which the company is obligated to provide. The contract in section 2.2 states that PTUA may request an increase in the stated maximum demand level, but also clearly provides that APS may refuse such a request, as it did here in 1983.⁶ Section 2.3 of the contract provides that, while APS may elect to provide for certain increases in demand above the contractual maximum, APS may, at its option, hold PTUA to the maximum

demand stated in the contract. Thus, APS is providing service up to 6 MW as is required in the contract and subject to the section 206 procedures. The excess above 6 MW which APS has not agreed to provide under contract, is a supplemental requirement,⁷ and not subject to the terms of the contract or the rate setting procedures of section 206. We conclude that APS properly filed under section 205 of the FPA, its proposed rates for service that is beyond the contracted-for 6 MW.

With regard to the data submitted to support the rate filing, the Commission notes that APS is not precluded from incorporating by reference in this filing its cost data from Docket No. ER84-450-000.⁸ In our view, however, the company, has not yet provided a sufficient justification or rationale for the application of this particular rate to PTUA. APS has also included an 11-month billing demand ratchet for PTUA which is not contained in the rate on file and which could result in overcharges to PTUA because the present rate was developed utilizing unratcheted billing units. With regard to PTUA's assertion that the cost-of-service data underlying the settlement rate may be stale, we are not prepared to conclude that this support is necessarily inappropriate, where APS is seeking to apply a filed rate to an additional service. APS will be required to provide prior to the hearing in this proceeding its case-in-chief, including testimony, exhibits, and work papers supporting its application of the proposed rate and demand ratchet to the supplemental PTUA load. Any question regarding support for the rate can be pursued in the course of the hearing. Having evaluated the company's submittal, the Commission believes that it minimally satisfies our threshold filing requirements and is not patently deficient. The Commission will, therefore, deny PTUA's request for rejection.

Our review of APS' filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing, and we shall suspend them as ordered below.

⁷The contract clearly does not provide for full requirements service. Thus, APS properly designated the additional service as supplemental service.

⁸Incorporation by reference of cost of service data from another docket is permitted, where appropriate, under § 35.19 of the Commission's regulations.

¹ See Attachment A for rate schedule designations.

² The rate on file is a settlement rate approved by the Commission on February 21, 1985, in Docket No. ER84-450-000 (30 FERC ¶ 61,205).

³ In a letter dated July 25, 1985, the Commission accepted an earlier amendment to the Wholesale Power Agreement which reflected PTUA's notification in October of 1978 of its desire to reduce its maximum demand from 30 MW to 6 MW (Docket No. ER85-588-000).

⁴ 50 FR 37,576.

⁵ Section 2.2 and other salient provisions of the contract are quoted in Attachment B to this order.

⁶ By letter dated October 7, 1983, PTUA notified APS of its desire to increase the maximum demand from 6 MW to 7.5 MW to be effective on the day the scheduled 6 MW was to go into effect: October 12, 1983. APS responded to this request within the required 30 days, by refusing to accept the increase. Both parties, therefore, complied with the notice requirements of section 2.2 of the contract.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we explained that our suspension decisions will generally depend upon the extent to which a preliminary review of the rates suggests that they may be excessive. We added, however, that other considerations might also be controlling. Here, before considering whether the rate proposed (including a ratchet) is appropriate in the first instance for the service being offered, it would be extremely difficult to assess the magnitude of any expected excess. However, it is clear that a maximum suspension would interfere with APS' delivery of uninterrupted service to PTUA in amounts above 6 MW. Thus the proposed filing will be suspended for a nominal period and set for hearing. Furthermore, notwithstanding PTUA's motion to reject APS' request for waiver of notice, we shall grant the waiver of notice requirements so that the rate schedule can become effective as of October 12, 1985, simultaneous with the implementation of the 6 MW maximum demand under the existing rate schedule. Given our interpretation of APS' rights under the contract, this is the only way to ensure that PTUA will be able to obtain the desired service for loads above 6 MW. We shall, therefore, suspend APS' rates to become effective on October 12, 1985, subject to refund.

The Commission orders:

(A) PTUA's motion to reject is hereby denied.

(B) APS' request for waiver of the notice requirements is hereby granted.

(C) APS' proposed rates are hereby accepted for filing and suspended to become effective on October 12, 1985, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of APS' rates.

(E) Within thirty (30) days of the date of this order, APS shall file its case-in-chief, consisting of complete cost of service statements AA through BL, as specified in § 35.15 of the regulations, together with testimony and complete work papers.

(F) The Commission staff shall serve top sheets in this proceeding within

thirty (30) days after APS' submittal of its case-in-chief.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately ten (10) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates, including the submission of a case-in-chief by APS, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(H) Subdocket -000 in Docket No. ER85-728 is hereby terminated. Docket No. ER85-728-001 is assigned to the evidentiary proceeding ordered herein.

(I) The Secretary shall promptly publish this order in the *Federal Register*.

By the Commission.

Kenneth F. Plumb,
Secretary.

Attachment A—Rate Schedule Designations Docket No. ER85-728-000 Arizona Public Service Company

Other Party: Papago Tribal Utility Authority.

Designations	Description
(1) Supplement No. 24 to Rate Schedule FPC No. 52.	Rates for Power and Energy in excess of 6 MW.
(2) Supplement No. 1 to Supplement No. 24 to Rate Schedule FPC No. 52.	Exhibit A—Fuel Cost Adjustment Clause.
(3) Supplement No. 1 to Supplement No. 1 to Supplement No. 24 to Rate Schedule FPC No. 52.	Exhibit A(1)—Fuel Adjustment Clause Rider.
(4) Supplement No. 2 to Supplement No. 1 to Supplement No. 24 to Rate Schedule FPC No. 52.	Exhibit B—Experimental Adjustment Clause.
(5) Supplement No. 2 to Supplement No. 24 to Rate Schedule FPC No. 52.	Transmittal Letter dated August 29, 1985.

Attachment B—Wholesale Power Supply Agreement Papago Tribal Utility Authority

The contract provides in pertinent part as follows:

2.1 Company will supply or make available, and PTUA will take or pay for electric power and energy in the amount of its requirements up to maximum demand (defined hereafter) of 6 Mw, unless said limit is changed as provided in section 2.2.

2.2 In the event PTUA shall desire to increase the maximum demand as specified in section 2.1, it may do so by notice given in writing two (2) years in

advance of the effective date of such increase, provided, however, that Company shall have the right to refuse to accept such proposed increase in demand by notice given to PTUA within thirty (30) days after receipt of notice of such desire to increase the maximum demand.

2.3 Once a peak demand (hereinafter defined) has been established, which is higher than the maximum demand, specified in section 2.1, whether or not inadvertent or occurring without notice or consent of Company, this shall constitute a new maximum demand for the current billing period and for all subsequent billing periods hereunder, unless and until increased pursuant to the terms and conditions of this contract, subject to the right of Company to have the maximum demand in effect prior to such peak demand remain in effect unaffected by the existence of such peak, and, in addition PTUA shall reimburse Company for any expenses or damages incurred by Company, as a result, of the occurrence of such peak demand.

3.4 In the event that Hecla Mining Company and/or Newmont Mining Company shall exercise rights under their respective power purchase contracts with PTUA so as to cancel their respective purchase obligations under either or both such contracts effective at any time after ten (10) years from the effective date of this Agreement, PTUA shall have the right, by written notice, given within three (3) months after notice by Hecla or Newmont, as to exercise of such cancellation right, to effect a reduction hereunder equivalent in amount to the amount cancelled under such purchase contract or contracts, provided that in such event PTUA shall forthwith pay the Company for unused power production and integrated transmission system capacity according to the following terms and conditions:

A. The previously established maximum demand Kw will be reduced by the amount specified in the notice given by PTUA to establish a new maximum demand Kw. Thereafter the maximum demand Kw will be determined according to the provisions of Section 2 hereof.

3.5 "Peak Demand"—the highest 30 minute integrated demand measured at the delivery point during any month.

"Maximum Demand"—the maximum demand is the maximum number of

Kilowatts that PTUA is entitled to receive and the maximum number of Kilowatts that Company is obligated to furnish.

3.6 The rates hereinabove set out in this Section 3 and Exhibits thereto are to remain in effect for the initial one (1) year of the term of this contract and thereafter unless and until changed by the Federal Power Commission or other lawful regulatory authority, with either party thereto to be free unilaterally to take appropriate action before the Federal Power Commission or other lawful regulatory authority in connection with changes which may be desired by such party.

[FR Doc. 85-26231 Filed 10-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-563-001]

Arkansas Power and Light Co.; Filing

October 30, 1985.

Take notice that on October 16, 1985 Arkansas Power and Light Company (AP&L) tendered for filing six copies of rate schedules containing rates redetermined pursuant to the settlement agreement filed in ER85-563-000 and accepted by Commission by letter order dated August 6, 1985. AP&L said the redetermined rates correspond to the retail rates approved by the Arkansas Public Service Commission. Accordingly AP&L requests a corresponding effective date for the rates submitted in this filing and to the extent necessary requests waiver of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211, 385.214. All such motions or protests should be filed on or before November 5, 1985. 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 desiring to become a party must file a motion to intervene. Copies of this filing are file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26222 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-29-000]

The Cincinnati Gas & Electric Co.; Filing

October 30, 1985.

Take notice that The Cincinnati Gas & Electric Company (Cincinnati) tendered for filing on October 24, 1985, new Service Agreements, dated October 1, 1985, between Cincinnati and its subsidiary companies, The Union Light, Heat and Power Company (Union Light) and The West Harrison Gas and Electric Company (West Harrison).

The new Service Agreements become effective January 1, 1986 and supersede existing Agreements with Union Light and West Harrison.

Cincinnati states that the Agreements are in the form as specified in the "Form of Service Agreements" included in and on file with the Commission as Original Sheet No. 11 of First Revised Volume No. 1. No rate change of any kind is contemplated by the Service Agreements until changed by an appropriate filing made in accordance with section 205(d) of the Federal Power Act.

A copy of the filing was served upon Union Light and West Harrison.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such petitions or protests should be filed on or before November 8, 1985. 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. 85-26223 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-54-000]

The Connecticut Light and Power Co.; Filing

October 30, 1985.

Take Notice that on October 24, 1985, The Connecticut Light and Power Company (CL&P) tendered for filing as an initial rate schedule an agreement (the Agreement) between CL&P, Western Massachusetts Electric Company (WMECO, and together with

CL&P, the NU Companies) and Baltimore Gas and Electric Company (BG&E). The Agreement, dated as of October 1, 1985, provides for the NU Companies to sell to BG&E energy from the systems of the NU Companies (system power) that may be available on a daily or weekly basis (a transaction). CL&P states that the timing of transactions cannot be accurately estimated but that the NU Companies would offer to sell such system energy to BG&E only when it was economic to do so. BG&E would only accept such offer if it was economical to do so.

BG&E will pay an energy reservation charge to the NU Companies for each transaction in an amount equal to the megawatt-hours of system energy reserved for BG&E by the NU Companies during each hour of a transaction multiplied by the energy reservation charge rate which is negotiated prior to each transaction. BG&E will pay an energy charge to the NU Companies for each transaction in an amount equal to the megawatt-hours delivered by the NU Companies during such transaction multiplied by the energy charge rate. The energy charge rate is based on the heat rate and the replacement fuel price of the generating unit(s) which the NU Companies determine to be available to provide energy at the time of a transaction.

CL&P requests that the Commission waive its customary notice period and allow the Agreement to become effective on October 22, 1985, the date of the filing letter.

WMECO has filed a Certificate of Concurrence in this docket.

The Agreement has been executed by CL&P, WMECO, and by BG&E (Baltimore, Maryland) and copies have been mailed or delivered to each of them.

CL&P further states that the filing is in accordance with section 35 of the Commission's Regulations.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and 385.214). All such motions or protests should be filed on or before November 8, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26224 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-720-000, and ER85-689-000 and ER85-707-000]

Connecticut Light & Power Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Motions, Consolidating Dockets, and Establishing Hearing and Price Squeeze Procedures

Issued: October 24, 1985

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

On August 30, 1985, the Connecticut Light & Power Company (Connecticut) tendered for filing a two-phase increase in its FERC Electric Tariff Resale Service Rate W-2 (proposed W-3 rate). Connecticut provides partial requirements service pursuant to this tariff to the Second and Third Taxing Districts of the City of Norwalk and the Town of Wallingford, Connecticut (Towns). Connecticut also filed a phased increase in its FERC Electric Tariff Resale Service Rate F-2 under which it provides full requirements service to Bozrah Light and Power Company (Bozrah) (proposed F-3 rate).¹ The Phase One rates combined would increase revenues by approximately \$638,000 (2%) based on the calendar 1986 test period. The Phase Two rates would increase total revenues by approximately \$13.7 million (47.2%).

Connecticut requests effective dates of October 30 and 31, 1985, for the Phase One and Two rates. However, inasmuch as the Phase Two rates reflect a full year's operation of the new Millstone No. 3 generating unit, Connecticut agrees to a suspension until the later of five months beyond October 31, 1985, or the date of commercial operation of Millstone Unit 3. If the Phase Two rates are not suspended or are suspended for one day, Connecticut requests that the Phase One rates be deemed withdrawn.

Notice of Connecticut's filing was published in the *Federal Register*,² with comments due on or before September 23, 1985. On September 23, the State of Connecticut Department of Public Utility Control (CDPUC) filed an intervention which raised no substantive issues. On the same date, the Towns filed a motion to intervene which included several

additional motions. The Towns request that Connecticut's filing be deemed deficient, alleging that various workpapers were either inadequate or missing. The Towns also request that the Commission strike certain portions of the testimony of Connecticut's witness Mr. Brown, to the extent that they refer to the basis for prior settlement rates in Docket No. ER83-55. According to the Towns, such information is privileged. The Towns request a maximum suspension of the W-3 rates, raising a number of cost of service and rate design issues,³ and ask the Commission to institute price squeeze procedures because of the inclusion of Millstone Unit 3 annualized costs. In addition, Towns allege that the Northeast Utilities Generation and Transmission (NUG&T) Agreement may be unreasonable once Millstone Unit 3 costs are included in rate base and they request that the reasonableness of that Agreement be investigated during the hearing. Finally the Towns request that the Commission not initiate expedited hearing procedures in this case.

On September 27, 1985, Bozrah filed an untimely motion to intervene. That customer raised no specific substantive issues.

On October 4, 1985, Connecticut filed a timely answer to the Towns' pleading. While not opposing the motions to intervene, the utility denies that a five month suspension or a deficiency letter is required or that price squeeze procedures are warranted.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely interventions serve to make the CDPUC and the Towns parties to this proceeding. Given its interests, the early stage of this proceeding, and the absence of any undue delay or prejudice, we find that good cause exists to grant Bozrah's untimely motion to intervene.

Notwithstanding the Towns' challenge to the sufficiency of the cost support supplied by Connecticut, we find that

¹The Towns dispute: (1) The reasonableness of the requested rate of return; (2) the use of a 254 day CP demand allocation methodology; (3) the claimed cash working capital allowance; (4) the amount and allocation of operation and maintenance expenses; (5) the projected purchased power expense; (6) amortization of alleged tax deficiencies; (7) amortization of cancelled plant costs of Seabrook Unit No. 2; (8) decommissioning expenses of Millstone Units Nos. 1, 2, and 3; (9) adjustments made to spent nuclear fuel costs for the three Millstone Units; and (10) the prudence of constructing Millstone Unit 3. The Towns also raise questions regarding (1) whether NEPOOL/NEPEX savings are properly reflected in the cost of service, and (2) the propriety of Connecticut's method of annualizing Millstone costs.

the filing substantially complies with Commission regulations and that no other basis for rejection has been shown. Therefore, we shall deny the motion to issue a deficiency letter.

We shall deny without prejudice the Towns' motion to strike certain parts of Mr. Brown's testimony. We believe that such a decision affecting the content of record evidence is best resolved by the presiding judge. With respect to the Towns' request that expedited hearing procedures not be applied to this proceeding, we shall leave this decision to the discretion of the Chief Administrative Law Judge.

Our review of Connecticut's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our examination suggests that the Phase One rates may yield substantially excessive revenues. Therefore, we shall suspend those rates for five months to become effective, subject to refund, on March 30, 1986. Our preliminary examination also indicates that the Phase Two rates may be substantially excessive. Accordingly, we shall suspend the Phase Two rates to become effective subject to refund on the later of March 31, 1986, or as requested, the in-service date of Millstone Unit 3.

One of the issues raised by the Towns concerns the allowance for decommissioning costs of Millstone Unit 3. Similar costs have also been included by Holyoke Water Power Company and Holyoke Power and Electric Company in rates filed in Docket No. ER85-689-000, and by Western Massachusetts Electric Company in rates filed in Docket No. ER85-707-000. We find that common questions of law and fact may also be presented in this docket. As a result, we shall phase the decommissioning cost issue, and shall consolidate the phased proceedings, as ordered below.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall also phase the price squeeze issues raised by the Towns.

² See Attachment for rate schedule designations.
³ 50 FR 37402 (1985).

The Towns further request that we institute an investigation pursuant to sections 206 and 306 of the Federal Power Act into the justness and reasonableness of the rates charged to Connecticut as a result of the NUG&T Agreement. The NUG&T Agreement provides for sharing of costs among the operating utilities of Northeast Utilities Inc., a public utility holding company of which Connecticut is a wholly-owned subsidiary. We do not find that such an investigation has been shown to be warranted at this time. While the intervenors allege that the NUG&T Agreement passes on unjust and unreasonable costs, they have not supported their allegations in any detail. Further we do not believe that the matter is properly pursued in the present docket, which concerns Connecticut's rates to its wholesale customers. An investigation of the NUG&T Agreement is a complex undertaking which should be pursued, if at all, in a separate proceeding. We shall therefore deny the intervenors' request for an investigation; our denial, however, is without prejudice to their filing a complaint pursuant to section 306 of the Federal Power Act.

The Commission orders

(A) The motion for issuance of a deficiency letter is hereby denied.

(B) The motion to institute an investigation into the justness and reasonableness of the Northeast Utilities Generation and Transmission Agreement is hereby denied without prejudice, as discussed in the body of this order.

(C) The motion to strike testimony is hereby denied without prejudice, as discussed on the body of this order.

(D) Connecticut's proposed Phase One rates are hereby accepted for filing and are suspended for five months to become effective, subject to refund, on March 30, 1986. Connecticut's proposed Phase Two rates are hereby accepted for filing, and are suspended, to become effective, subject to refund, on the later of March 31, 1986, or the commercial operations date of Millstone Unit 3.

(E) Connecticut shall notify the Commission within 10 days of the date of commercial operation of Millstone Unit 3.

(F) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 of thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Connecticut's rates.

(G) The Commission staff shall serve top sheets in this proceeding within 10 days of the date of the order issued herein.

(H) Subdocket -000 in Docket No. ER85-720-000 is hereby terminated. The evidentiary proceedings ordered herein shall be assigned Docket No. ER85-720-001.

(I) The issues concerning decommissioning costs for Millstone

Unit 3 are hereby phased, as discussed in the body of this order.

(J) Docket No. ER85-720-001 is hereby consolidated with Docket Nos. ER85-689-001 and ER85-707-001, for purposes of hearing and decision of the Millstone decommissioning cost issues.

(K) The Chief Administrative Judge shall designate one or more administrative law judges to preside over the separate and consolidated aspects of these dockets. The presiding judge(s) is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rule of Practice and Procedure.

(L) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of price squeeze phase of this proceeding.

(M) The Secretary shall promptly publish this order in the Federal Register.

By the Commission,
Kenneth F. Plumb,
Secretary.

CONNECTICUT LIGHT & POWER CO., DOCKET NO. ER85-720-000, RATE SCHEDULE DESIGNATIONS

Designation	Description
Under FPC Electric Tariff 1st Revised Volume No. 1	
(1) Fifth Revised Sheet No. 9 (Supersedes Third Revised Sheet No. 9)	Terms and Conditions for Rate W-3 W-3 Monthly Payments. W-3 Monthly Payments (additional revision for Phase II). W-3 Monthly Payments. Do. W-3 Monthly Payments (additional revision for Phase II). W-3 Monthly Payments. Do. Specification Sheet for Norwich—2nd Tax District. Specification Sheet for Norwich—3rd Tax District. Specification Sheet for Wallingford.
(2) Eighth Revised Sheet No. 10 (Supersedes Fifth Revised Sheet No. 10)	
(3) Ninth Revised Sheet No. 10 (Supersedes Eighth Revised Sheet No. 10)	
(4) Sixth Revised Sheet No. 11 (Supersedes Fifth Revised Sheet No. 11)	
(5) Seventh Revised Sheet No. 11 (Supersedes Sixth Revised Sheet No. 11)	
(6) Fourth Revised Sheet No. 11A (Supersedes Third Revised Sheet No. 11)	
(7) Fifth Revised Sheet No. 12 (Supersedes Fourth Revised Sheet No. 12)	
(8) Fifth Revised Sheet No. 13 (Supersedes Third Revised Sheet No. 13)	
(9) Service Agreement No. 12 (Sheets Nos. 6 and 7) (Supersedes Service Agreement No. 8)	
(10) Service Agreement No. 13 (Sheets Nos. 6 and 7) (Supersedes Service Agreement No. 9)	
(11) Service Agreement No. 14 (Sheets Nos. 6 and 7) (Supersedes Service Agreement No. 10)	
Under FPC Electric Tariff, Original Volume No 2	
(1) Second Revised Sheet No. 1 (Supersedes First Revised Sheet No. 1)	Service Agreement Title Page for F-3 Rate. Terms for F-3 Rate. Monthly Charges for F-3 Rate. Do. Do. Do. Do. Service Agreement for Bozrah. Specification Sheet for Bozrah.
(2) First Revised Sheet No. 5 (Supersedes Original Sheet No. 5)	
(3) Second Revised Sheet No. 10 (Supersedes First Revised Sheet No. 10)	
(4) Third Revised Sheet No. 10 (Supersedes Second Revised Sheet No. 10)	
(5) First Revised Sheet No. 11 (Supersedes Original Sheet No. 11)	
(6) Second Revised Sheet No. 11 (Supersedes Original Sheet No. 11)	
(7) First Revised Sheet No. 12 (Supersedes Original Sheet No. 12)	
(8) Service Agreement No. 2 (Supersedes Service Agreement No. 1)	
(9) Supplement No. 1 to Service Agreement No. 2 (Supersedes Supplement No. 1 to Service Agreement No. 1)	

[FR Doc. 85-26232 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-724-000]

New England Power Co.; Order Accepting for Filing and Suspending Rates, Noting Intervention, and Establishing Hearing Procedures

Issued: October 30, 1985.

Before Commissions: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

On August 30, 1985, New England Power Company (NEP) tendered for filing revised rates for its unit sales contract with Public Service Company of New Hampshire (PSNH) that would result in increased revenues of approximately \$1 million (2%) over the twelve month period ending October 31, 1986. Under the contract, NEP sells capacity and related energy to PSNH from NEP's Brayton Point Unit No. 4 and from NEP's entitlement in the Wyman Unit No. 4. NEP requests an effective date of November 1, 1985, the date specified in the contract for annual revisions.

Notice of NEP's filing was published in the *Federal Register*,¹ with comments due on or before September 23, 1985. PSNH filed a timely motion to intervene and protest in which it requested that the rates be suspended for four months² and set for hearing. It raised a variety of cost of service issues.³

On October 7, 1985, NEP filed a timely answer. While not opposing PSNH's motion to intervene, NEP denies that a four month suspension is warranted.

Discussion

Under Rule 214 of the Commission's

Rules of Practice and Procedure,⁴ the timely motion to intervene makes PSNH a party to this proceeding.

Our preliminary examination of NEP's filing and the pleadings indicates that the rates have not shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates of filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that NEP's rates may not yield substantially excessive revenues. Therefore, we shall suspend the rates for one day, to become effective on November 2, 1985, subject to refund.

The Commission orders

(A) NEP's proposed rates are hereby accepted for filing and are suspended for one day, to become effective, subject to refund, on November 2, 1985.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the

Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of NEP's rates.

(C) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Such conference shall be held for purposes of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) Subdocket No. -000 in Docket No. ER85-724-000 is hereby terminated. The evidentiary hearing established herein is assigned Docket No. ER85-724-001.

(F) The Secretary shall promptly publish this order in the *Federal Register*.

By the Commission,
Kenneth F. Plumb,
Secretary.

NEW ENGLAND POWER CO., DOCKET NO. ER85-724-000, RATE SCHEDULE DESIGNATIONS

Designation	Description
(1) Supplement No. 4 to Supplement No. 2 to Rate Schedule FERC No. 309 (Supersedes Supplement No. 3 Supplement No. 2)	Capacity Charges for Brayton Point Unit No. 4.
(2) Supplement No. 3 to Supplement No. 1 to Rate Schedule FERC No. 309 (Supersedes Supplement No. 2 to Supplement No. 1)	Capacity Charge for Wyman Unit No. 4.

[FR Doc. 85-26233 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

¹ 50 FR 37577 (September 16, 1985).

² PSNH does not explain the significance of the four-month suspension period which it seeks.

³ The issues raised include: (1) Whether the

proposed rate changes should be based on a thirteen month average of plant balances; (2) whether operating and maintenance expenses associated with other Brayton units were

improperly allocated to Brayton Unit No. 4; (3) the use of an end-of-year capital structure; and (4) other unspecified items which allegedly are improperly calculated or allocated.

⁴ 18 CFR 385.214(c)(1).

[Docket No. ER85-725-000]

**Northern States Power Co.—
Wisconsin; Order Accepting for Filing
and Suspending Rates, Noting
Interventions, Granting Waiver of
Notice Requirements, and Establishing
Hearing and Price Squeeze
Procedures**

Issued: October 29, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

On August 30, 1985, Northern States Power Company—Wisconsin (NSPW, or the company) tendered for filing a proposed increase in its firm power rates to fifteen full requirements municipal customers and to North Central Power Company, Inc. (North Central).¹ The proposed rates would produce increased revenues of approximately \$588,000 (3.0%) for the calendar year 1986 test period. The company requested an effective date of October 30, 1985, for the proposed rates. However, NSPW requested that in the event the Commission were to accept a settlement agreement in its prior rate case, Docket No. ER85-398-000, the proposed rate increase be suspended until January 1, 1986, in accordance with a moratorium provision in that settlement agreement.²

North Central and two of the municipal customers, the Cities of Wakefield, Michigan and Medford, Wisconsin, are presently served under wholesale service agreements with NSPW's affiliate, Lake Superior District Power Company (LSDP). LSDP has assigned these agreements to NSPW in anticipation of certain changes in corporate structure whereby LSDP will serve only Michigan retail customers. NSPW requests waiver of the notice requirements to permit the assignments to become effective as of September 25, 1985, the first meter reading date after September 1, 1985. In addition, NSPW has tendered for filing amendments to the assigned contracts to incorporate the present rate increase and certain minor changes in terms and conditions. Pending implementation of the proposed rate increase, NSPW would continue serving these customers at LSDP's present rates.

Notice of the company's filing was published in the *Federal Register*,³ with

comments due on or before September 23, 1985. The Public Service Commission of Wisconsin filed a timely notice of intervention, but raised no substantive issues. A timely motion to intervene was filed by the Cities and Villages of Bangor, Barron, Bloomer, and Medford, Wisconsin, and the Wisconsin Public Power Incorporated System for its delivery points at the Cities of Black River Falls, New Richmond, River Falls, Westby, and Whitehall, Wisconsin (Municipals). The Municipals request a hearing and a five month suspension. They raise several cost of service issues in support of their requests.⁴ They further claim, without elaborating, that NSPW's proposal to bring Medford under its proposed rate schedule, by means of an assignment of LSDP's contract with Medford and unilateral changes in the contract by NSPW, may be illegal, discriminatory and unjust and unreasonable as a method of modifying the rates to be charged to Medford. The Municipals also allege a possible price squeeze.

On October 3, 1985, the company filed a timely response to the Municipals' pleading. While not opposing the Municipals' motion to intervene, the company denies that a five month suspension is warranted. NSPW opposes each of the Municipals' objections and states that a minimum suspension period should be imposed.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely notice and motion to intervene serve to make the Public Service Commission of Wisconsin and the Municipals parties to this proceeding.

Our preliminary review of the company's filing indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,169 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose

⁴ The issues raised involve: (1) Test year wholesale billing demands; (2) projections for test year hydro O&M expense; (3) stated income tax expense; (4) estimated fuel costs in the fuel adjustment clause; (5) the level of a high voltage adjustment; and (6) the sale of NSPW generating plants to LSDP.

a nominal suspension. Here, our examination suggests that the proposed rates may not yield substantially excessive revenues. However, the company has requested that we implement the provisions of its settlement agreement in Docket No. ER85-398-000, by fixing the effective date of the proposed rates as January 1, 1986. Consistent with that request, we shall suspend the proposed rates until January 1, 1986, subject to refund.

As noted, NSPW requests waiver of the notice requirements to permit the assignment of LSDP's contracts with the Cities of Wakefield, Michigan, and Medford, Wisconsin and with North Central to become effective on September 25, 1985, the first meter reading date after September 1, 1985. The proposed effective date is consistent with the executed contracts, and no party opposes waiver with respect to the contract assignments. Therefore, we find that good cause exists to grant waiver of the notice requirements.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the Municipals.

The Commission orders

(A) NSPW's request for waiver of the notice requirements is hereby granted. The assignment of LSDP contracts shall become effective on September 25, 1985.

(B) NSPW's proposed rates and its amendments to the assigned contracts are hereby accepted for filing and suspended to become effective on January 1, 1986, subject to refund.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of NSPW's rates.

(D) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen

¹ See Attachment for rate schedule designations.

² The settlement was approved by letter order dated September 27, 1985.

³ 50 FR 38026 (1985).

(15) days after the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(F) The Commission hereby orders initiation of price squeeze procedures

and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the

initiation of the price squeeze phase of this proceeding.

(G) Subdocket -000 in Docket No. ER85-725 is hereby terminated. Docket No. ER85-725-001 is assigned to the evidentiary proceeding ordered herein.

(H) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission,
Kenneth F. Plumb,
Secretary.

NORTHERN STATES POWER CO.—WISCONSIN, DOCKET NO. ER85-725-000, RATE SCHEDULE DESIGNATIONS

Designation	Other party	Description
(1) Supplement No. 16 to Rate Schedule FERC No. 52 (Supersedes Supplement No. 15)	Trempealeau	Rate W-1
(2) Supplement No. 17 to Rate Schedule FERC No. 55 (Supersedes Supplement No. 16)	Westby	Do.
(3) Supplement No. 14 to Rate Schedule FERC No. 56 (Supersedes Supplement No. 13)	Rice Lake	Do.
(4) Supplement No. 13 to Rate Schedule FERC No. 58 (Supersedes Supplement No. 12)	Bangor	Do.
(5) Supplement No. 13 to Rate Schedule FERC No. 59 (Supersedes Supplement No. 12)	Cornell	Do.
(6) Supplement No. 15 to Rate Schedule FERC No. 60 (Supersedes Supplement No. 14)	New Richmond	Do.
(7) Supplement No. 9 to Rate Schedule FERC No. 61 (Supersedes Supplement No. 8)	Cadott	Do.
(8) Supplement No. 7 to Rate Schedule FERC No. 62 (Supersedes Supplement No. 6)	Bloomer	Do.
(9) Supplement No. 10 to Rate Schedule FERC No. 64 (Supersedes Supplement No. 9)	Spooner	Do.
(10) Supplement No. 16 to Rate Schedule FERC No. 68 (Supersedes Supplement No. 15)	River Falls	Do.
(11) Supplement No. 15 to Rate Schedule FERC No. 70 (Supersedes Supplement No. 14)	Black River Falls	Do.
(12) Supplement No. 8 to Rate Schedule FERC No. 71 (Supersedes Supplement No. 7)	Barron	Rate W-1
(13) Supplement No. 7 to Rate Schedule FERC No. 72 (Supersedes Supplement No. 6)	Whitchell	Do.
(14) Rate Schedule FERC No. 74 (Redesignates LSDP Rate Schedule FERC No. 27, as supplemented)	Medford	Contract for Electric Service dated Sept 1, 1977.
(15) Rate Schedule FERC No. 75 (Redesignates LSDP Rate Schedule FERC No. 28, as supplemented)	Wakefield	Do.
(16) Rate Schedule FERC No. 76 (Redesignates LSDP Rate Schedule FERC No. 29, as supplemented)	NCPC	Contract for Electric Service dated July 14, 1978.
(17) Supplement No. 1 to Rate Schedule FERC No. 74 (Redesignation of Supplement No. 3 to LSDP Rate Schedule FERC No. 27)	Medford	Amendment effective Aug. 1, 1982.
(18) Supplement No. 2 to Rate Schedule FERC No. 74 (Redesignation of Supplement No. 4 to LSDP Rate Schedule FERC No. 27)	Medford	Letter dated July 13, 1983.
(19) Supplement No. 1 to Rate Schedule FERC No. 75 (Redesignation of Supplement No. 3 to LSDP Rate Schedule FERC No. 28)	Wakefield	Amendment effectively Aug. 1, 1982.
(20) Supplement No. 2 to Rate Schedule FERC No. 75 (Redesignation of Supplement No. 4 to LSDP Rate Schedule FERC No. 28)	Wakefield	Letter dated July 13, 1983.
(21) Supplement No. 1 to Rate Schedule FERC No. 76 (Redesignation of Supplement No. 3 to LSDP Rate Schedule FERC No. 29)	NCPC	Amendment effective Aug. 1, 1982.
(22) Supplement No. 2 to Rate Schedule FERC No. 76 (Redesignation of Supplement No. 4 to LSDP Rate Schedule FERC No. 29)	NCPC	Letter dated July 13, 1983.
(23) Supplement No. 3 to Rate Schedule FERC No. 74	Medford	Assignment
(24) Supplement No. 3 to Rate Schedule FERC No. 75	Wakefield	Do.
(25) Supplement No. 3 to Rate Schedule FERC No. 76	NCPC	Do.
(26) Supplement No. 4 to Rate Schedule FERC No. 74 (Supersedes Supplement No. 1)	Medford	Amendment
(27) Supplement No. 4 to Rate Schedule FERC No. 75 (Supersedes Supplement No. 1)	Wakefield	Do.
(28) Supplement No. 4 to Rate Schedule FERC No. 76 (Supersedes Supplement No. 1)	NCPC	Do.
(29) Supplement No. 5 to Rate Schedule FERC No. 74	Medford	Rate W-1.
(30) Supplement No. 5 to Rate Schedule FERC No. 75	Wakefield	Do.
(31) Supplement No. 5 to Rate Schedule FERC No. 76	NCPC	Rate NCP-1.

[FR Doc. 85-26234 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No G-7004-036]

Pennzoil Co.; Twenty-Second Amendment to Application for Immediate Clarification or Abandonment Authorization

October 25, 1985.

Take notice that on October 23, 1985, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston, Texas 77001, filed in Docket No. G-7004-036 an application for immediate clarification of Order dated November 24, 1980 in the above-referenced docket or abandonment authorization for as much gas as is required to allow sales of gas to fourteen new applicants for residential

service in West Virginia in addition to those applicants specified in Pennzoil's original application filed on October 25, 1982. In filing this Twenty-Second Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants and existing customers would be provided from gas supplies that would otherwise be sold to Consolidated Gas Supply Corporation (Consolidated), an interstate pipeline.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that

immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil "to show cause, if any it can, why it should not be found to be in violation of its duty . . . to provide adequate gas service to all applicants . . . and why it should not be required to provide service to domestic customers in West Virginia when requests are received for same.

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any

protest with reference to said amendment to the original application should on or before, November 4, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connection with Pennzoil's original application in Docket No. G-7004-006 need not seek intervention herein. Each such person will be treated as having also intervened in Docket No. G-7004-036.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26116 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 662-000]

**Pinedale Power and Light Co.;
Proposed Acceptance of Surrender of
License**

October 29, 1985.

Before its dissolution, Pinedale Power and Light Company was the licensee for the Pinedale Project, a hydroelectric project located on Pine Creek in Sublette County, Wyoming. The licensee was voluntarily dissolved on October 8, 1974. The Commission hereby gives notice that it proposes to accept surrender of the license for the Pinedale Project. The Commission proposes to find that Pinedale Power and Light Company surrendered the license.

On August 27, 1943, the present license for the Pinedale Project was issued to Pinedale Power and Light for a 50-year term beginning February 12, 1942.¹ It appears that power generation at the project ceased some time between 1963 and 1970. On July 1, 1974, Pinedale Power and Light sold the project to Lincoln Service Corporation. After the sale of the project, Pinedale Power and

Light was dissolved on October 8, 1974.² The dissolution was voluntary. Lincoln Service Corporation subsequently sold the project to Utah Power and Light Company on January 1, 1981. Utah Power and Light has informed the Commission that it does not consider itself to be the licensee for the project.

By the terms of section 8 of the Federal Power Act,³ the voluntary sale of a project, such as occurred in this case, cannot in itself effect a transfer of the license to the purchaser of the project. Thus, at the time of its dissolution, Pinedale Power and Light held the license for the Pinedale Project. However, by its actions Pinedale Power and Light has demonstrated an intent to surrender the license. First, Pinedale Power and Light abandoned operation of the project at least 15 years ago in contravention of the terms of its license. Next, the licensee abandoned all interest in the project by selling it, also in contravention of the terms of its license. Finally, by dissolving itself, Pinedale Power and Light has surrendered any ability to carry out the terms and conditions of the license and the responsibilities of a licensee under the Federal Power Act. Accordingly, pursuant to the terms of section 6 of the Federal Power Act,⁴ the Commission hereby gives 30 days' public notice that it proposes to find that under these circumstances Pinedale Power and Light has surrendered the license for the Pinedale Project. The Commission proposes to accept the surrender.

Any person may submit comments, a protest in accordance with Rule 211 of the Commission's Rules of Practice and Procedure,⁵ or a motion to intervene in accordance with Rule 214.⁶ In determining what action is appropriate, the Commission will consider all comments, protests, and motions to intervene timely filed, but only those who file a motion to intervene may become parties to the proceeding. Any comments, protests, or motions to intervene must be received by the Commission's Secretary within 30 days of the date of publication of this Notice in the *Federal Register*. Such filings should be sent to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

¹ Letter from Thyra Thomson, Secretary of State of Wyoming, to Enforcement Section, FERC (Feb. 19, 1985).

² 16 U.S.C. 801 (1982). Section 8 provides, in pertinent part, "[t]hat no voluntary transfer of any license, or of the rights thereunder granted, shall be made without the written approval of the commission."

³ 16 U.S.C. 799 (1982).

⁴ 18 CFR 385.211 (1985).

⁵ 18 CFR 385.214 (1985).

DC 20426, and should refer to Project No. 662.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26236 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-170-001]

**Texas Eastern Transmission Corp.;
Compliance Filing**

October 29, 1985.

Take notice that on October 16, 1985, Texas Eastern Transmission Corporation (TETCO) tendered for filing a response to comments filed by National Gas and Oil Corporation concerning TETCO's direct billing allocation of retroactive production-related costs. TETCO's filing is in purported compliance with the Federal Energy Regulatory Commission Order that was issued September 30, 1985, in Docket No. RP85-170-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26235 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-658-000]

**Wisconsin River Power Co.; Amended
Filing**

October 30, 1985.

Take notice that on October 18, 1985, Wisconsin River Power Company (WRPCo.) submitted for filing materials to supplement the rate schedule and supporting information previously filed in this docket number:

1. *Amended and Restated Power Purchase Agreement, Dated as of September 1, 1985.* This document is intended to replace the Power Purchase

¹ Pinedale Power & Light Co., Project No. 662 (F.P.C. Aug. 27, 1943).

Agreement among Wisconsin River Power Company (WRPCo.) and its three owner/customers which was originally filed in this proceeding.

2. *Revised Schedule 5-2, Together With Supporting Schedules 5-2-1 Through 5-2-5.* In the original filing, the income tax calculations used in computing cost of service data for 1985 improperly depicted a reduction in cost of service attributable to federal investment tax credits. WRPCo. is subject to the general rule set forth in section 46(f)(1) of the Internal Revenue Code of 1954, as amended, which does not accommodate such a reduction in cost of service. Consistent with section 46(f)(1), WRPCo.'s calculation of Net Investment (rate base) reflects a reduction attributable to investment tax credits which is restored ratably. Recomputation of income taxes allocable to this rate for the 1985 test year resulted in revisions to Schedule 5-2 of the original filing. The result is an increase in 1985 test year revenues of \$7697 above that which was shown on Schedule 5-2 of the original filing. Amended Schedule 5-2 and the attached supporting Schedules thereto reflect the proper method of allocating income taxes to the cost of service under this rate; in addition, Schedules 5-2-1 contain supplemental information showing the derivation of book income before taxes, which has been omitted from the original filing.

3. *Test Year Computation of Annual Rates & Charges.* In the format prescribed in Attachment 1 of the enclosed Power Purchase Agreement, WRPCo. has calculated the estimated total rates and charges which would be payable by its customers for the calendar year 1985, if the new rate schedule had been in effect throughout that year.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are

on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26225 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-871-000 et al.]

Natural Gas Certificate Filings; K N Energy, Inc. et al.

October 24, 1985.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP85-871-000]

Take notice that on September 11, 1985, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP85-871-000 a request pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate two residential sales taps and appurtenant facilities under the certificate issued in Docket No. CP83-140, et al., 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.

Specifically, K N proposes to construct a residential sales tap in Holt County, Nebraska, and another residential sales tap in Wayne County, Nebraska. The peak day deliveries of each tap would be 2 Mcf of natural gas.

Comment date: December 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Great Lakes Gas Transmission Company

[Docket No. CP86-12-000]

Take notice that on October 4, 1985, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP86-12-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to provide interruptible transportation service for Michigan Consolidated Gas Company (Mich Con) between two points in Michigan and to construct and operate meter facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that Mich Con has requested Great Lakes to provide transportation, on an interruptible basis, of up to 400 Mcf of gas per day from a

point in Summerfield Township, Clare County, Michigan, where Mich Con would build facilities that would interconnect with the facilities of Great Lakes, to an existing point of interconnection between the facilities of Great Lakes and Mich Con, at Belle River Mills, Michigan. It is explained that Mich Con and Great Lakes have agreed that this transportation service would be provided for a primary term of ten years, subject to renewal on a year-to-year basis.

Great Lakes states that the gas to be transported would be purchased by Mich Con from various producers, and would be used as part of its general system supply. The parties have agreed upon an initial rate of 7.879 cents per Mcf for this service.

Great Lakes proposes to build, own, and operate a meter station at Summerfield Township, Clare County, Michigan, to implement this service. The total cost of the meter station is estimated at \$132,700 which cost would be reimbursed by Mich Con.

Comment date: November 14, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP86-6-000]

Take notice that on October 2, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-6-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove one 1,250 horsepower compressor unit known as the Egan compressor station and related facilities located in Acadia Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states it has suspended operation of the Egan Compressor Station and related facilities and does not anticipate a future need for their use. Applicant states the subject facilities served to connect the pipeline facilities of Columbia Gulf Transmission Company and Trunkline Gas Company to effectuate the redelivery of Applicant's Gulf Coast reserves for further transportation. Applicant states a gas exchange agreement dated February 14, 1979, between Applicant and United Gas Pipe Line Company (United), eliminates the need for the Egan compressor station and related facilities since the offshore gas which was once transported to Egan is now

exchanged for United's Canadian volumes.

Applicant states the subject compressor unit would be removed and utilized elsewhere on Applicant's system or sold to a potential buyer.

Applicant states the estimated cost to remove the facilities is \$125,000 and the estimated salvage value of the facilities is \$95,000.

Comment date: November 14, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-7-000]

Take notice that on October 2, 1985, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-7-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing a transportation service for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport on an interruptible basis for Southern up to the thermal equivalent of 10,000 Mcf of natural gas per day, pursuant to a transportation agreement dated July 1, 1985. Applicant states that Southern would purchase such gas from Elf Aquitaine, Inc., successor to Texas Gulf, Inc., in Brazos area, South Addition, Block A-47. Applicant states that it would normally receive all such quantities at the terminus of its Central Texas Gathering System (CTGS) near its compressor station No. 30 in Wharton County, Texas, following transportation by Southern through its own capacity in the looping on such system known as Project Central Texas Loop (PCTL). However, should be combination of Southern's Block A-47 quantities and other Southern gas moving through PCTL exceed Southern's capacity, then Applicant would receive excess Block A-47 quantities into its CTGS at Block A-47, it is explained.

Applicant further states that it would deliver quantities thermally equivalent to those received at either of the above points, less a percentage for gas lost and unaccounted for and fuel, to Trunkline Gas Company (Trunkline) for the account of Southern at the existing interconnection between Applicant and Trunkline near Katy, Waller County, Texas.

Initially, Applicant states, it would charge 4.3 cents per dt equivalent of gas for the transportation of quantities

received at the terminus of its CTGS and 12.4 cents per dt equivalent for the transportation of quantities received at Block A-47. Applicant would also retain, initially, 6 percent of all quantities received for transportation to compensate for compressor fuel and line-loss make up and, in the case of Block A-47 receipts, would retain fuel gas for dehydration at the CTGS Markham plant in Matagorda County, Texas, based on Southern's proportional share of all fuel gas used in dehydration there.

Comment date: November 14, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP86-41-000]

Take notice that on October 15, 1985, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86-41-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation and delivery of industrial sales gas to Warren Petroleum Company, a Division of Chevron U.S.A. Inc. (Warren), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it is authorized to transport and deliver industrial sales gas to Warren near Overton in Rusk County, Texas, pursuant to authorization in Docket No. G-1869. It is indicated that Warren has ceased operations at its facilities at this location. It is further indicated that Applicant and Warren have agreed to cancel the industrial gas sales contract dated May 1, 1982. Applicant requests that the proposed abandonment be made effective as of November 1, 1984.

Comment date: November 14, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Williston Basin Interstate Pipeline Company

[Docket No. CP85-877-000]

Take notice that on September 13, 1985, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP85-877-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Ecological Engineering Systems, Inc. (EES), on behalf of Hebron Brick Company (Hebron) through existing facilities, all as more fully set forth in the application which is on file

with the Commission and open to public inspection.

Williston Basin proposes to transport up to 8,000 Mcf of natural gas per month which is owned and/or produced by EES on behalf of Hebron as the end-user pursuant to a gas transportation agreement dated August 1, 1985, having a term of two years from the date of initial deliveries. Williston Basin states that the natural gas would be received into its transmission system at the Boxcar Butte plant in McKenzie County, North Dakota, and the Temple plant in Williams County, North Dakota, and redelivered for use as fuel at Hebron's brick manufacturing facilities located in Morton County, North Dakota.

Williston Basin states that the initial charge for transportation of the natural gas for EES would be under its Service Class I, Rate Option B of Williston Basin's Rate Schedule T-4 which was authorized, subject to refund, for Williston Basin's parent company, Montana-Dakota Utilities Co. in Docket No. RP-84-93-000, 28 FERC ¶ 61,060. Williston Basin states that the rate it would charge EES for the transportation service is 17.674 cents per Mcf with all fuel and losses provided by EES.

Comment date: November 14, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within

the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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. 85-28226 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

Canyon Creek Compression Co.; Change in FERC Gas Tariff

[Docket No. RP85-8-002]

October 29, 1985.

Take notice that on October 23, 1985, Canyon Creek Compression Company (Canyon) submitted for filing the below listed tariff sheets to be a part of its FERC Gas Tariff to be effective November 1, 1985:

Second Substitute First Revised Sheet No. 4
Original Sheet No. 128
Original Sheet No. 129

Canyon states that the purpose of this filing is to implement the settlement rates effective pursuant to Canyon's Docket No. RP85-8 Stipulation and Agreement approved by the Commission's order issued September 18, 1985.

A copy of the filing was mailed to Canyon's jurisdictional customers and to all parties set out on the official service list at Docket No. RP85-8.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or Before November 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26227 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

Determination Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued: October 25, 1985.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under Section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the new procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On September 20, 1985, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 409 leases were issued as a result of OCS

Sale 98 for the Central Gulf of Mexico on May 22, 1985. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA Section 102:

A. Effective date and expiration date: 7/1/85-6/30/90

OCS-G

7601, 7607, 7619, 7626, 7629, 7633, 7635, 7651, 7652, 7654, 7655, 7660, 7663, 7727, 7740, 7746, 7748, 7479, 7750, 7754, 7757, 7765, 7771, 7774, 7796, 7800, 7801, 7802, 7807, 7809, 7810, 7811, 7820, 7822, 7834, 7835, 7836, 7837, 7838, 7840, 7841, 7842, 7843, 7850, 7852, 7853, 7856, 7860, 7862, 7863, 7864, 7874, 7875, 7885, 7887, 7888, 7889, 7890, 7891, 7893, 7894, 7896, 7897, 7903, 7907, 7909, 7911, 7912, 7913, 7917, 7918, 7919, 7920, 7921, 7922, 7923, 7927, 7950, 7951, 7956, 7968, 7972, 7981, 7982, 7985, 7986, 7988, 7989, 7990, 7991, 7992, 7993, 7994, 7996, 7997, 7999, 8001, 8002

B. Effective date and expiration date: 7/1/85-6/30/95

OCS-G

7914, 7915, 7916, 7924, 7925, 7926, 7938, 7939, 7944, 7945, 7946, 7947, 7948, 7953, 7954, 7955, 7957, 7958, 7959, 7962, 7963, 7969, 7970, 7974, 7975, 7976, 7977, 7978, 7979, 7980, 7983, 7995, 7998, 8000, 8003, 8004, 8005, 8006, 8007, 8008, 8009, 8010, 8011, 8012, 8013, 8014, 8017, 8018, 8019, 8020, 8021, 8022, 8023, 8024, 8025, 8026, 8027, 8028, 8029, 8030, 8031, 8032, 8033, 8038

C. Effective date and expiration date: 8/1/85-7/31/90

OCS-G

7595, 7596, 7597, 7598, 7599, 7602, 7603, 7608, 7609, 7610, 7611, 7612, 7613, 7615, 7616, 7617, 7618, 7721, 7625, 7628, 7638, 7639, 7640, 7643, 7645, 7646, 7647, 7648, 7653, 7666, 7667, 7672, 7676, 7680, 7682, 7688, 7689, 7699, 7700, 7701, 7702, 7703, 7710, 7716, 7717, 7718, 7719, 7720, 7721, 7722, 7723, 7725, 7726, 7728, 7729, 7730, 7741, 7742, 7743, 7753, 7755, 7756, 7759, 7760, 7762, 7764, 7768, 7779, 7780, 7783, 7784, 7785, 7786, 7788, 7789, 7803, 7806, 7821, 7823, 7824, 7825, 7839, 7844, 7845, 7846, 7854, 7855, 7857, 7858, 7901, 7928, 7935, 7940, 7941, 7949, 7960, 7961, 7964, 7965, 7966, 7967, 7971, 7973, 7964

D. Effective date and expiration date: 8/1/85-7/31/95

OCS-G

7929, 7930, 7931, 7932, 7933, 7934, 7936, 7937, 7942, 7943, 7952, 8015, 8018, 8034, 8035, 8036, 8037

E. Effective date and expiration date: 9/1/85-8/31/90

OCS-G

7600, 7605, 7622, 7623, 7624, 7627, 7631, 7632, 7636, 7637, 7641, 7642, 7644, 7649, 7650, 7656, 7657, 7658, 7659, 7661, 7662, 7664, 7665, 7673, 7675, 7677, 7678, 7679, 7681, 7683, 7684, 7685, 7689, 7690, 7691, 7692, 7694, 7695, 7704, 7706, 7707, 7709, 7711, 7712, 7713, 7731, 7732, 7733, 7735, 7736, 7737, 7738, 7739, 7744, 7745, 7747, 7751, 7752, 7761, 7766, 7767, 7769, 7772, 7773, 7775, 7776, 7777, 7778, 7787, 7790, 7791, 7793, 7795, 7797, 7798, 7799, 7804, 7805, 7806, 7812, 7813, 7814, 7815, 7816, 7817, 7818, 7826, 7827,

7828, 7829, 7831, 7832, 7847, 7848, 7849, 7851, 7859, 7861, 7865, 7866, 7868, 7869, 7870, 7871, 7872, 7873, 7876, 7877, 7878, 7879, 7881, 7882, 7883, 7884, 7886, 7892, 7895, 7898, 7899, 7900, 7904, 7905, 7906, 7908, 7910, 7987

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-26230 Filed 11-1-85; 8:45 am]
BILLING CODE 5717-01-M

[Docket Nos. ER85-515-004 and ER85-515-005]

Florida Power and Light Co.; Order Granting Rehearing in Part, Denying Rehearing in Part, and Establishing Hearing Procedures

Issued: October 31, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

On August 14, 1985, Seminole Electric Cooperative, Inc. (Seminole), and certain Florida Cities (Cities)¹ filed in Docket Nos. ER85-515-004 and ER85-515-005, respectively, requests for rehearing of the Commission's order issued in this proceeding on July 15, 1985, 32 FERC ¶ 61,059. In that order, the Commission accepted for filing, without suspension or hearing, to become effective May 1, 1985, Florida Power and Light Company's (FP&L) revised daily capacity charges for short-term interchange service under FP&L's interchange agreements with Seminole and the Cities.² The Commission also granted FP&L's request for waiver of the notice requirements and terminated the dockets.³

¹ Cities include Gainesville, Starke, Kissimmee, St. Cloud, Lakeland and Vero Beach, Florida; Gainesville Regional Utilities; the Sebring Utilities Commission; the Orlando Utilities Commission, and the Fort Pierce Utilities Authority.

² Cities are all served under Service Schedule B. Seminole takes service under Service Schedule B and, for purchases only of short-term interchange power for the purpose of obtaining replacement power and energy, Service Schedule B-S.

³ On September 13, 1985, the Commission issued an order granting rehearing for the purpose of further consideration. That order erroneously referred to the requests for rehearing as subdockets -003 and -004 to ER85-515.

On rehearing, Cities request that the Commission suspend FP&L's filing for one day, to become effective subject to refund, and initiate a hearing on the issue of the appropriated return on equity. In support, Cities contend that (1) the Commission's inclusion of transmission fixed costs in its analysis of the rates is contrary to the service contracts and therefore violated the *Mobiles-Sierra*⁴ doctrine, (2) the order failed to provide a reasoned basis for attributing transmission fixed costs to these interchange services, and (3) the Commission erroneously failed to establish a just and reasonable return on equity. Absent suspension and the imposition of a refund obligation, Cities request that the Commission establish expedited hearing procedures.

Seminole also renews its initial requests for (1) a one day suspension and refund obligation, (2) consolidation of this proceeding with the proceeding in Docket No. ER85-380-000 (concerning rates for transmission services), and (3) summary disposition on the issue of return on equity. In support of its request for suspension and a refund obligation, Seminole states that (1) the order of July 15, 1985, is based on an erroneous finding that Seminole had not alleged that FP&L's rate level is unreasonable, (2) Seminole already compensate FP&L for transmission fixed costs under a 1984 Amended Transmission Agreement, (3) transmission fixed cost charges are not properly includible in evaluating these interchange rates, and (4) the finding in the order that the rates will not yield excessive revenues is a mere assertion without record support. Finally, Seminole contends that FP&L's filing was made in the context of a formula rate and, therefore, may be suspended, notwithstanding that the charges would be decreased.⁵

Discussion

The contention that the Commission erred in determining that FP&L's charges are not a formula rate and that the revised charges may not be subject to refund is not correct. While FP&L's daily capacity charge may be set by reference to a formula, the actual rate itself is not a formula but a fixed charge. Further, as we noted in the order of July 15, 1985, the annual revision to the charge has not operated as an automatic adjustment clause, but has been subject to the filing

and notice requirements of section 205 of the Federal Power Act. Therefore, we again reject the argument that FP&L's filing involves a formula rate.

Cities' contention that our evaluation of FP&L's rates violates the *Mobiles-Sierra* doctrine is also incorrect. That doctrine holds that a rate filing made in violation of contractual obligations is invalid. It does not establish any standard by which the Commission must evaluate the justness and reasonableness of rate filings. Thus, while FP&L may be bound to develop a rate for interchange services by reference to certain cost components, the Commission is not barred, in assessing the reasonableness of the price, from considering other variables pertinent to the services at issue.

With respect to the allegations that the Commission improperly "allocated" transmission fixed costs to the Service Schedule B rates and failed to adequately quantify its determination that the inclusion of those costs results in rates that will not yield excessive revenues, we also find intervenors' arguments unpersuasive.

In *Fort Pierce Utilities Authority v. FERC*, 730 F.2d 778 (D.C. Circuit 1984), the intervenors argued that it was improper to allocate any fixed costs to certain wheeling services provided by FP&L because FP&L could decline to provide the services if it did not anticipate having enough transmission capacity to wheel interchange power to customers who purchase such power from a different utility. They contended that provision of the wheeling services did not require FP&L to plan, construct, or maintain any additional transmission capacity. The Commission reversed the finding in the initial decision that the services should be regarded as firm.⁶ However, the Commission found that while the offer to provide services was not firm, the "services do in a sense become firm once they are undertaken."⁷ The Commission therefore permitted FP&L to include fixed costs in developing the rates. The court disagreed that the services were fairly characterized as firm and indicated that the services might not contribute to FP&L's peak load or require FP&L to incur a planning or construction function to meet additional capacity. Thus, the court found that the Commission's decision appeared to contradict the prior Commission orders in *Kentucky Utilities Company*, 15 FERC ¶61,002 (1981), *reh. denied* 15 FERC ¶61,222 (1981). In *Kentucky Utilities*, the

⁴ *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 322 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 346 (1956).

⁵ Generally, "rate increased" can be made subject to refund under section 215 of the Federal Power Act.

⁶ 21 FERC at 61,245.

⁷ *Id.*

Commission discussed the general principle that in developing rates, fixed costs should not be allocated to services that do not cause the utility to plan, construct, or maintain capacity. The court concluded that the Commission had not adequately explained any distinction between the rates at issue in *Fort Pierce* and the rates at issue in *Kentucky Utilities* (where the Commission did not allocate fixed costs) both of which were for interruptible transmission service. As a result, it remanded the proceeding for further consideration and a fuller explanation.

The proceeding in *Fort Pierce* was subsequently settled by the parties. Thus, the Commission did not have an opportunity to reconsider or to expand upon its reasoning with respect to pricing of coordination services.

The services at issue in the instant docket do not cause the utility to plan or construct new capacity. The services are offered only when existing capacity, constructed to meet native load, is temporarily available. These transactions are commonly known as coordination services or opportunity sales. Applying the general rule enunciated in *Kentucky Utilities*, it would not be appropriate to allocate any fixed costs in developing the rates.

However, if FP&L (or another utility) was limited to recovering only the variable costs of providing coordination services, it would have very little, if any, incentive to provide the service since the recovery of only incremental costs provides no benefit to the supplier's native load. To provide that incentive, the Commission allows utilities to price coordination sales at a rate which includes, in addition to variable costs, a contribution to the utility's fixed costs.⁸ That is not to say that fixed costs properly allocated to native load customers will be permitted to be allocated again to coordination services. The contribution provided by coordination sales to fixed costs is not an allocation of fixed costs to the service.

The Commission will generally permit rates for coordination services to recover, in addition to variable costs, an amount up to the contribution to fixed costs that would have been made by requirements customers using the same facilities. As a benchmark, this permits the Commission to compare the same or other services offered by the utility or by other sellers to determine the

reasonableness of the rate. Such pricing provides an incentive for utilities to use temporarily idled capacity (while avoiding any overrecovery of costs) because the contribution to fixed costs derived from the sale benefits the native load customers in the form of revenue credits.

Thus, in evaluating FP&L's rates for coordination service under Service Schedule B, we do not, as alleged by Cities, allocate fixed costs to the service. Rather, we have evaluated the rates in light of the policy that some contribution to fixed costs by coordination customers is appropriate. FP&L must use both its production and transmission facilities when it sells under Service Schedule B and, therefore, the contribution is evaluated against both production and transmission investment. Since the rates paid by firm requirements customers provide the company with a 100 percent contribution to capital costs, this is an appropriate benchmark for comparison. Here, the proposed rates produce a contribution of less than 100 percent of the fixed production and transmission costs. Thus, proposed rates are below the benchmark and produce an earned return below that advocated by Seminole and Cities.

Nonetheless, intervenors argue on rehearing that the rate level for Service Schedule B is excessive. Because we shall set the Service Schedule B-S rates for hearing in any event, as discussed below, we shall also set the Service Schedule B rates for hearing. The issue is whether the filed rate, which is within a zone delineated by the contribution to fixed costs made by the seller's requirements customers at the top, and by no contribution to fixed costs (i.e. a rate restricted to the seller's variable costs) at the bottom, is unjust and unreasonable.

With regard to the Service Schedule B-S rates, Seminole has raised on rehearing an argument not raised in its intervention. Seminole points out that Service Schedule B-S excludes all transmission costs in recognition of the fact that Seminole compensates FP&L for transmission costs relate to Service Schedule B-S under a different rate schedule.⁹ Thus, evaluation of the rates under Service Schedule B-S should consider production investment costs only. Upon further consideration, we conclude that Seminole is correct that evaluation of the Service Schedule B-S rates without reference to transmission fixed costs is appropriate, given the existence of a specific, concurrent rate

schedule under which Seminole contributes to the transmission fixed costs that we attributed to Service Schedule B-S.

Our review of FP&L's submittal with respect to Service Schedule B-S, using only production investment, indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall set these rates for hearing. Inasmuch as FP&L's proposed rate represents a decrease from the existing level, any change in rate shall become effective on a prospective basis. For the same reason, any change in the Service Schedule B rates shall also be prospective. With regard to Cities' request for expedited hearing procedures, we believe that matters of scheduling are best left in this case to the discretion of the presiding administrative law judge.

Seminole has presented no arguments with respect to its request for summary disposition of the return on equity issue that was not previously considered and rejected in the order of July 15, 1985. With regard to consolidation, the above discussion makes it apparent that these rates raise different issues than the transmission rates at issue in Docket No. ER85-380-000. Thus, rehearing on these issues is denied. In all other respects, Seminole and Cities have made no arguments which were not previously considered and rejected in the order of July 15, 1985. Thus, in all other respects, rehearing will be denied.

The Commission orders

(A) Except as indicated above, Cities' and Seminole's requests for rehearing are hereby denied.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 4029a of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of FP&L's Service Schedule B and B-S rates.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days from the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North

⁸ We recently explained this in our *Notice of Inquiry, Regulation of Electricity Sales for Resale and Transmission Service (Notice of Inquiry)*, Docket No. RM85-17-000 (Phase I), 50 FR 23445 and 23446, June 4, 1985.

⁹ The "1984 Amended Transmission Agreement."

Capitol Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's rules of practice and procedure.

(D) Docket No. ER85-515-004 and ER85-515-005 are hereby terminated. A new Docket No. ER85-515-006 is hereby initiated in which the above mentioned hearing will be held.

(E) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-26229 Filed 11-1-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-4-000]

Pacific Gas Transmission Co.; Change to Executed Service Agreement and Request for Expedited Consideration

October 29, 1985.

Take notice that on October 21, 1985, Pacific Gas Transmission Company (PGT) tendered for filing a "Notice Of Revision To Exhibit "A" Of Executed Service Agreement With Pacific Gas And Electric Company To Reflect Already Issued Authorizations For The Export And Import Of Extended Volumes Of Canadian Natural Gas And Request For Expedited Consideration", pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c, and § 154.63 of the Commission's regulations, 18 CFR 154.63. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until October 22, 1985.

PGT states that the proposed revision to Exhibit "A", to be effective November 1, 1985, incorporates certain export license extensions recently issued by the National Energy Board of Canada to PGT's Canadian Supplier, Alberta and Southern Gas Co., Ltd. and certain related extensions of PGT's import permits issued by the Economic Regulatory Administration. This change is embodied in the Seventh Revision of Exhibit "A".

PGT also states that the revised volumes of Canadian natural gas set forth in Exhibit "A" are subject to the existing provisions of the PGT-PG&E Service Agreement.

PGT has requested that its filing receive expedited consideration, and that if and to the extent necessary, the

Commission waive the notice requirements in its regulations, 18 CFR Part 154, to allow the Seventh Revision of Exhibit "A" to be effective, without suspension, on November 1, 1985.

PGT states that corresponding changes to Schedule "A" of the Gas Sale Contract with Alberta and Southern have been made and are being submitted to the Economic Regulatory Administration.

PGT advises that copies of its filing have been mailed to its customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-26228 Filed 11-1-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-4315-001 et al.]

Cities Service Oil & Gas Corp.; Application

October 30, 1985.

Take notice that on October 4, 1985, Cities Service Oil and Gas Corporation (Applicant), of P.O. Box 300, Tulsa, Oklahoma 74102, filed an application pursuant to § 157.23(b) for Certificate of Public Convenience and Necessity to render service previously authorized by the Commission under certain Certificates of Public Convenience and Necessity heretofore issued to Coltexo Corporation and for substitution of Cities Service Oil and Gas Corporation for Coltexo Corporation in any other related proceedings presently pending before the Commission. Cities Service Oil and Gas Corporation also requests for Redesignation of certain Coltexo Corporation Rate Schedules all as more fully shown on the attached Exhibit "A".

Effective October 1, 1985, Coltexo Corporation assigned certain oil and gas leases to Cities Service Oil and Gas Corporation.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 12, 1985, 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.

Exhibit "A"

R.S. No.	Purchaser	Certificate docket
2	Panhandle Eastern Pipe Line Co.	G-4315 ¹
6	Columbia Gas Transmission Corp.	G-19806
7	Northern Natural Gas Company	CR2-252 ²

¹ Request is made for this sale to be consolidated with and superseded by Cities Service Oil and Gas Corporation Rate Schedule No. 229 and Certificate Docket No. G-4310.

² Request is made for this sale to be consolidated with and superseded by Cities Service Oil and Gas Corporation Rate Schedule No. 501 and Certificate Docket No. CR2-302-000.

[FR Doc. 85-26297 Filed 11-1-85; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 2251-000]

New England Fish Co.; Proposed Acceptance of Surrender of License

October 29, 1985.

On May 8, 1959, a major license was issued to the San Juan Fishing and Packing Company, predecessor to the New England Fish Company (NEFCO),¹ for the San Juan Lake and Creek Project No. 2251.² The 100 kW project is located on Evans Island in Prince William Sound near Cordova, Alaska. The license expired on October 7, 1977, and since then annual licenses, containing the same terms and conditions as the original license, have been issued automatically.³ The project power was

¹ San Juan Fishing and Packing Company, a wholly owned subsidiary of NEFCO, merged with NEFCO in March 1986.

² 21 F.P.C. 649 (1959).

³ 59 F.P.C. 2374 (1977).

used in a cannery operation at the project site and was not interconnected to other electric systems. The project is located partially on lands of the United States in the Chugach National Forest.

The project works were severely damaged during an earthquake in 1964, and shortly thereafter NEFCO abandoned the project. In 1976, NEFCO leased the project works to the Prince William Sound Aquaculture Corporation (PWSAC),⁴ without prior Commission approval. In May 1980, NEFCO declared bankruptcy and ceased business operations.

NEFCO did not file an application for surrender of its license for Project No. 2251. We believe, however, that the facts in this case indicate an implied agreement to surrender the license pursuant to Section 6 of the Federal Power Act (Act), 16 U.S.C. 799 (1982).⁵ NEFCO abandoned good faith operation of the project more than twenty years ago; it never filed an application for relicensing when the term of the first license expired in 1977; it failed to comply with the terms of its license;⁶ and it has declared bankruptcy and ceased corporate operations. Accordingly, the Commission gives notice that it proposes to find that these facts constitute and surrender of the license for Project No. 2251, and proposes to accept such surrender.

Any person may submit comments, a protest or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211 or 385.214 (1984). In determining what action is appropriate, the Commission will consider all timely filed comments,

protests, and motions to intervene, but only those who file a motion to intervene may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before November 29, 1985, by the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. All filings should reference Project No. 2251.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26298 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-738-000]

Pacific Gas & Electric Co.; Order Accepting Rates for Filing Subject to Refund, Granting Intervention, Denying Motion to Reject, Denying Waiver, Ordering Summary Disposition, and Establishing Hearing Procedures

Issued October 30, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

On September 3, 1985, Pacific Gas and Electric Company (PG&E) tendered for filing under § 35.12 of the Commission's regulations, rate schedule provisions and charges applicable to the City of Oakland, California, acting by and through its Board of Port Commissioners (the Port) for resale service at the Metropolitan Oakland International Airport (Oakland Airport).¹ PG&E requests waiver of the notice requirements to permit the rate schedule to become effective as of October 1, 1985. PG&E characterizes its filing as an initial rate, and avers that it is made in compliance with the Commission's order of June 18, 1985, in Docket No. EL82-3-002 (31 FERC ¶ 61,319).

Notice of PG&E's filing was published in the *Federal Register*,² with responses due on or before September 23, 1985. A timely motion to intervene was filed by the Port. An untimely notice of intervention was filed by the Public Utilities Commission of the State of California (CPUC).

The Port requests that the proposed rate schedule be rejected in its entirety and, further, that PG&E be directed to file as its rate schedule the contract between the Port and PG&E dated March 5, 1963, as supplemented by any of PG&E's general or specific tariff provisions applicable to the original

contract on the date it was signed, and as further supplemented by contract dated August 20, 1984. In the alternative, the Port requests that if the Commission accepts for filing the proposed rate schedule submitted on September 3, 1985, the filing be treated as a rate change and suspended for five months. The Port cites a number of provisions in the proposed rate as imposing unjust burdens. Such provisions include: (1) A requirement that the Port consolidate its two delivery points into a single delivery point within one year; (2) a provision which states that sales to the Port are subject to the jurisdiction of both the CPUC and this Commission; (3) a requirement that the Port upgrade its facilities to a higher voltage at some future time; (4) non-conjunctive billing at the two delivery points; (5) PG&E's alleged refusal to provide transmission service for the Port; and (6) a requirement for the customer to maintain a power factor near 100%. The Port also questions increases in cost items in PG&E's cost of service and the return on equity.

Background

The Port owns and maintains an electric distribution system which supplies its own requirements and those of the tenants at Oakland Airport. PG&E has provided the full requirements of the Oakland Airport since approximately 1936. In recent years, service was provided under a 1963 contract, as modified by a 1984 amendment, at rates filed with the CPUC.

On December 4, 1981, the Port filed in Docket No. EL82-3-000 a complaint asking the Commission to determine that PG&E's sales to the Port at the Oakland Airport are subject to our exclusive jurisdiction. By order of July 8, 1983, the Commission denied the Port's request and found such sales to be non-jurisdictional.³ The Commission's decision was remanded by the United States Court of Appeals for the Ninth Circuit, which held that the sale of electricity by PG&E to the Port constituted a sale for resale in interstate commerce under the Federal Power Act. *City of Oakland v. FERC*, 754 F. 2d 1378 (1985). On June 18, 1985, the Commission issued an order in Docket No. EL82-3-002, which required PG&E to file an appropriate rate schedule for the service it provides to the Port at the Oakland Airport. On July 18, 1985, the Port filed a request for rehearing of the Commission's order. The Commission denied rehearing by order issued September 17, 1985. 32 FERC ¶ 61,371. In

⁴ PWSAC now owns the project property and equipment. Although PWSAC renovated the project and had it back in operation by 1979, it ceased operation of the project in approximately 1982. At present, PWSAC uses the project waters for a fish hatchery and obtains all power necessary for the fish hatchery by diesel generation.

⁵ Section 6 provides that licenses may be surrendered only upon mutual agreement between the licensee and the Commission after thirty days' public notice. A licensee's agreement to surrender its license may be reasonably implied in situations, such as the present one, where the licensee has abandoned the project, removed or destroyed project property, failed to comply with the terms of its license, is bankrupt and has ceased business operations. The concept of implied surrender has been included in the Commission's regulations for minor licenses since 1947 at 18 CFR 6.4 (1984). In 1975, this concept was expanded to apply to all licenses and was made a standard license article. See 54 F.P.C. 1792, 1857 (1975).

⁶ Article 21 states that no lease of the project shall be made granting exclusive occupancy, possession, or use of project works without prior Commission approval. Article 22 states that the licensee shall retain possession of all project property and not voluntarily sell, transfer, abandon, or otherwise dispose of such property without prior Commission approval.

¹ See Attachment for rate schedule designations.

² 50 FR 38025 (1985).

³ 24 FERC ¶ 61,010.

that order, the Commission conditioned its excusing PG&E's filing of past rate schedules on PG&E's agreement, to make refunds with interest calculated pursuant to § 35.19a of the Commission's regulations (18 CFR § 35.19a) of any portions of its newly filed wholesale rate to the Port which might be found to be unjust and unreasonable. The order required PG&E to inform the Commission within fifteen days whether it would accept such conditions. On October 2, 1985, PG&E filed a response, accepting the refund condition.

Discussion

Pursuant to Rule 214(c) of our Rules of Practice and Procedure (18 CFR 385.214(c)(1)), the timely intervention of the Port serves to make it a party to this proceeding. Further, given its interest in this case, the early stage of the proceeding, and the absence of undue delay or prejudice, we find that good cause exists to permit the CPUC to intervene out of time.

In support of its argument that PG&E's filing represents a changed rate rather than an initial rate, the Port avers that it is inconsistent with the still-effective March 5, 1963 contract between the parties. The Port argues that the 1963 contract, as supplemented on August 20, 1984, can be the only contract to constitute a rate schedule. However, the Port further argues that the proposed rates, as submitted, are invalid as a rate change, because PG&E's transmittal omits most of the material required by § 35.13 of the Commission's regulations, which applies to the filing of rate schedule changes.

As we said in our order denying rehearing:

... in any event it will be difficult to conduct a traditional initial rate/change rate analysis because of the unusual circumstances presented.⁴

Instead, we excused PG&E's past failure to file on the condition that PG&E agree to collect the proposed rates subject to refund. PG&E has so agreed. Therefore, we shall deny the Port's motion to reject.

In that order of September 17, 1985, we excused PG&E from having to file prior agreements insofar as they represented rate schedules applicable to the past 20 years of service. We did not, however, intend to excuse PG&E from filing its currently effective agreement with the Port inasmuch as it, as a private contract, establishes certain terms and conditions that bind the parties and thus affect the validity of any currently proposed rate schedule. Because the

1963 contract remains in effect, PG&E will be required to file such contract, as amended, with the Commission.

PG&E's proposed filing attempts to segregate the Port's service into power that is resold, which it contends is covered by the proposed rate schedule, and power that is used by the Port at the Oakland Airport, which the company claims is still subject to CPUC retail rate regulation. Since PG&E has no means of segregating the sales, it utilized a fixed percentage of 66%, which reflects an estimate of the breakdown provided by the Port in a retail rate proceeding in 1983. In a similar case, *California Electric Power Company v. FPC*, 199 F. 2d 206 (1952), cert. denied, 345 U.S. 934 (1953), the United States Court of Appeals for the Ninth Circuit affirmed a Commission order asserting jurisdiction over the total sale to a wholesale customer whose resales were estimated to amount to only about 19% of the total wholesale transaction. The court relied on *Pennsylvania Water & Power Company v. FPC*, 343 U.S. 414, 418, 72 S. Ct. 843 (1952), where the Commission was found to have complete authority to regulate all commingled power flow. The court found that the allegedly non-jurisdictional energy was indistinguishable at the point of sale from the remainder. Moreover, the amount resold was not constant, but fluctuating. The court noted that, in virtually all sales of power to a public body, such as a municipality, some part of the energy is resold to the consuming public, while the rest is used by the purchaser for its own purposes. According to the court, it would create untold difficulty and confusion if the severability argument for rate regulation purposes were adopted. Here also, the energy is indistinguishable at the point of sale and the amount of resale is not constant. Accordingly, we summarily reject PG&E's attempt to segregate wholesale and retail aspects of the Port's service, and we shall require the company to refile its rates schedule and cost support to reflect total service to the Port.

Our review of PG&E's filing and the pleadings indicates that the rates have not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. The Port opposes the proposed waiver of notice, and PG&E has not shown good cause for its request.⁵ Accordingly,

⁴ While PG&E alleges that the proposed rate results in a slight decrease, its billing data lack the detail necessary to confirm this allegation and the affected customer objects to implementation of the rate as early as PG&E suggests.

consistent with PG&E's acceptance of a refund obligation, we shall deny the request for waiver and accept the rate for filing, to become effective, as modified herein, as of November 3, 1985, subject to refund.

PG&E's abbreviated filing does not provide the detailed testimony or cost support that will be a required to further evaluate the rate at hearing. Therefore, PG&E will be required to file a case-in-chief consisting of complete cost of service statements AA through BL, as specified in § 35.13 of our regulations, together with testimony and complete workpapers to support its test year projections.

The Commission Orders

(A) The untimely intervention of the CPUC is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The motion to reject PG&E's filing is hereby denied.

(C) PG&E's request for waiver of the notice requirements is hereby denied.

(D) Summary disposition is hereby ordered, as noted in the body of this order, with respect to PG&E's segregation of the Port's service between wholesale and retail components; within thirty (30) days of the date of this order, PG&E shall file its 1963 contract (as currently in effect through modifications), and shall refile its rate schedule and cost support to reflect the total service to the Port.

(E) PG&E's submittal is hereby accepted for filing, as modified by summary disposition, to become effective, subject to refund, on November 3, 1985.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of PG&E's rates.

(G) Within thirty (30) days of the date of this order, PG&E shall file its case-in-chief, consisting of complete cost of service statements AA through BL, as specified in section 35.13 of the regulations, together with testimony and complete work papers supporting its test year projections.

(H) The Commission staff shall serve top sheets in this proceeding within

⁵ 32 FERC ¶ 61,371 at XX

thirty (30) days after PG&E's case-in-chief is filed.

(I) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately ten (10) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(J) Subdocket-000 in Docket No. ER85-738-000 is hereby terminated and Docket No. ER85-738-001 is assigned to the evidentiary hearing ordered herein.

(K) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,
Secretary.

Pacific Gas & Electric Company Docket No. ER85-738-000

Rate Schedule Designations

Designation	Description
(1) Rate Schedule FERC No. 95.	Electric Capacity and Energy Sales Agreement.
(2) Supplement No. 1 to Rate Schedule FERC No. 95.	Appendix C-1—Rates.
(3) Supplement No. 2 to Rate Schedule FERC No. 95.	Appendix C-2—Fuel Cost Adjustment.
(4) Supplement No. 3 to Rate Schedule FERC No. 95.	Appendix D—Load Shedding.

[FR Doc. 85-26299 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C184-466-001]

Plains Petroleum Corp.; Petition For Redesignation Reflecting Name Change

October 30, 1985.

Take notice that on October 21, 1985, Plains Petroleum Company, a Delaware corporation (Plains), P.O. Box 15278, Lakewood, Colorado 80215, filed in Docket No. C184-466-001 a Petition pursuant to section 18 of the Natural Gas Act to substitute the name of Plains Petroleum Company for Plains Production Company in all proceedings before the Commission, as more fully set forth in the Petition to Redesignate which is on file with the Commission and open to public inspection. Plains states that at a special meeting of the

stockholders of Plains Production Company held on December 11, 1984 an Amendment of the Articles of Incorporation was adopted which provided for change in the corporate name from Plains Production Company to "Plains Petroleum Company." A Certificate of Amendment was filed with the Secretary of State for the State of Delaware on December 26, 1984 to change the corporate name to Plains Petroleum Company. It is asserted that no order or authorization or other action by the Secretary of State is necessary for the corporate name change to become effective, nor were any of the corporation's rights or obligations affected by the name change. Petitioner therefore proposes that such name change be made in all proceedings before the Commission.

Any person desiring to be heard or to make any protest with reference to said Petition to amend should on or before November 13, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a Petition to Intervene or a Protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a Petition to Intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-26300 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C177-329]

Texaco Inc.; Request for Waiver

October 30, 1985.

Take Notice That on September 12, 1985, Texaco Inc. filed a Request for Waiver of a condition which was included in the Commission's 1977 orders in *Texaco Inc.*, Docket No. C177-329 *et al.* As part of a settlement, Texaco offered a self-imposed limitation on the future use of natural gas under its converted steam boilers at Port Arthur. In the past eight years during which Texaco has operated the Port Arthur

Refineries pursuant to the terms of the settlement there have been major changes in the Nation's energy markets and fuel consumption, including significant changes in the supply and demand for natural gas. Texaco states that its refineries are undergoing changes which are required to meet the competition from newer refineries and as a result of the decline in the demand for petroleum products. Texaco states that the Port Arthur Refineries can remain viable in today's circumstances only if they can upgrade and increase efficiencies, including adoption of a least cost fuel strategy.

In view of a change in the Commission's policies to encourage the use and transportation of natural gas, Texaco requests a waiver of the restrictions on the use of natural gas in the steam generation boilers at the Port Arthur Refineries.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 12, 1985, 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.

[FR Doc. 85-26301 Filed 11-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-3711-007, *et al.*]

Union Exploration Partners Ltd., *et al.*; Application for Certificates of Public Convenience and Necessity To Render Service Previously Authorized

October 30, 1985.

Take notice that on October 4, 1985, Union Exploration Partners, Ltd. (Applicant) of P.O. Box 7000, Los Angeles, California 90051, filed a petition pursuant to section 7 of the Natural Gas Act and § 157.23, *et seq.*, of the Commission's Regulations for Certificates of Public Convenience and

Necessity to render service previously authorized by the Commission in certain Certificates of Public Convenience and Necessity heretofore issued to Union Oil Company of California, Breton Resources Company and Eugene Shoal Oil Company.

By Assignment, Bill of Sale and Conveyance dated effective as of August 1, 1985, Union Oil Company of California (Union Oil), Breton Resources Company and Eugene Shoal Oil Company conveyed to Union Exploration Partners, Ltd., Limited Partnership, a Texas limited partnership, Union Oil's interest in all properties located in Union Oil's Oil and Gas Division's Gulf Region, Breton Resources' properties located in the State of Louisiana and Offshore from the State of Louisiana and Eugene Shoal's properties located Offshore from the States of Louisiana and Texas, subject to the exceptions, reservations, terms and conditions contained in said Assignment.

The properties included in the Assignment which are subject to Certificates of Public Convenience and Necessity issued in the Dockets identified on the attached Exhibit "A" are located in the Gulf of Mexico and in Louisiana, Mississippi and Texas.

Wherefore, Applicant respectfully requests that Certificates of Public Convenience and Necessity be issued effective August 1, 1985 authorizing it to render the service previously authorized in the Certificates of Public Convenience and Necessity issued to Union Oil Company of California, Breton Resources Company and Eugene Shoal Oil Company as listed in the attached Exhibit "A". Applicant also requests that the related rate schedules be redesignated as the rate schedules of Union Exploration Partners, Ltd.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 13, 1985, 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.

Exhibit "A"

Formerly: Union Oil Co. FERC gas rate schedule No.	Now: Union Exploration Partners, Ltd. FERC gas rate schedule No.	Purchaser	Certificate docket
3	3	Transcontinental Gas Pipe Line Corp.	G-3711
4	4	do	G-3711
5	5	do	G-3711
6	6	do	G-3711
12	12	Columbia Gas Transmission Corp.	G-10537
13	13	Texas Gas Transmission Corp.	G-8811
17	17	Transcontinental Gas Pipe Line Corp.	G-12695
26	26	do	G-14203
31	31	Trunkline Gas Co.	G-17263
35	35	Texas Gas Transmission Corp.	G-17010
38	38	do	G-17457
40	40	Trunkline Gas Co.	G-15487
44	44	Tennessee Gas Pipeline Co.	G-19882
49	49	United Gas Pipe Line Co.	G-3711
52	52	Transcontinental Gas Pipe Line Corp.	C61-331
59	59	Texas Gas Transmission Corp.	C61-105
60	60	do	C61-166
62	62	Transcontinental Gas Pipe Line Corp.	C62-822
63	63	do	C62-1120
85	85	Trunkline Gas Co.	C64-868 G-15486 C62-806 G-7193
99	99	Texas Gas Transmission Corp.	G-7193
101	101	United Gas Pipe Line Co.	G-7193
103	103	do	G-7193
104	104	Mobil Oil Corp.	G-7193
113	113	Transcontinental Gas Pipe Line Corp.	G-11159
126	126	United Gas Pipe Line Co.	G-3840
127	127	do	G-3841
133	133	Texas Gas Transmission Corp.	C61-245
134	134	do	C61-265
136	136	Arkansas-Louisiana Gas Co.	C61-1070
139	139	Texas Eastern Transmission Corp.	C61-1791
142	142	Natural Gas Pipeline Co. of America.	C62-834
144	144	Tennessee Gas Pipeline Co.	C62-1224
158	158	Trunkline Gas Co.	C66-252
161	161	Arkansas-Louisiana Gas Co.	C66-728
163	163	ANR Pipeline Co.	C68-435
165	165	Transcontinental Gas Pipe Line Corp.	C69-482
166	166	Texas Gas Transmission Corp.	C6-1016
167	167	do	C65-1351
168	168	Columbia Gas Transmission Corp.	C67-92
186	186	ANR Pipeline Co.	C68-1071
191	191	United Gas Pipe Line Co.	C69-568
192	192	Transcontinental Gas Pipe Line Corp.	C69-563
193	193	United Gas Pipe Line Co.	C69-582
196	196	Texas Gas Transmission Corp.	C9-819
201	201	do	C69-708

Exhibit "A"—Continued

Formerly: Union Oil Co. FERC gas rate schedule No.	Now: Union Exploration Partners, Ltd. FERC gas rate schedule No.	Purchaser	Certificate docket
204	204	Texas Gas Transmission Corp.	C178-174
205	205	Transcontinental Gas Pipe Line Corp.	C171-473
207	207	United Gas Pipe Line Co.	C171-896
208	208	Texas Gas Transmission Corp.	C172-160
210	210	Southern Natural Gas Co.	C172-544
212	212	Florida Gas Transmission Co.	C173-325
218	218	Texas Gas Transmission Corp.	C175-468
219	219	do	C175-469
220	220	do	C175-474
221	221	do	C175-477
222	222	Trunkline Gas Co.	C176-82
223	223	Natural Gas Pipeline Co. of America.	C176-736
224	224	Transcontinental Gas Pipe Line Corp.	C176-558
232	232	do	C177-444
234	234	Columbia Gas Transmission Corp.	C177-490
235	235	Texas Eastern Transmission Corp.	C177-492
236	236	United Gas Pipe Line Co.	C177-597
237	237	Texas Gas Transmission Corp.	C177-826
238	238	Northern Natural Gas Co.	C177-567
242	242	Texas Eastern Transmission Corp.	C177-534
244	244	Southern Natural Gas Co.	C178-662
245	245	Texas Gas Transmission Corp.	C178-809
247	247	Texas Eastern Transmission Corp.	C178-1133
248	248	Southern Natural Gas Co.	C178-824
249	249	United Gas Pipe Line Co.	C178-844
250	250	Texas Gas Transmission Corp.	C179-86
252	252	Texas Eastern Transmission Corp.	C179-660
254	254	Sea Robin Pipeline Co.	C179-611
256	256	Trunkline Gas Co.	C180-238
257	257	Tennessee Gas Pipeline Co.	C180-292
258	258	Columbia Gas Transmission Corp.	C180-297
262	262	United Gas Pipe Line Co.	C181-12-000
263	263	do	C181-16-000
264	264	ANR Pipeline Co.	C181-25-000
265	265	Texas Eastern Transmission Corp.	C181-93-000
266	266	do	C181-291-000
269	269	Transcontinental Gas Pipe Line Corp.	C181-482-000
271	271	Texas Gas Transmission Corp.	C182-163-000
273	273	United Gas Pipe Line Co.	C182-355-000
277	277	Texas Gas Transmission Corp.	C185-224-000
278	278	ANR Pipeline Co.	C185-182-000
851	851	Transcontinental Gas Pipe Line Corp.	C168-1027-001
852	852	do	C160-327-000
853	853	Texas Gas Transmission Corp.	C179-540-001
854	854	Southern Natural Gas Co.	C180-203-001
855	855	Texas Gas Transmission Corp.	C183-19-000
856	856	United Gas Pipe Line Co.	C183-20-000

Exhibit "A"—Continued

Formerly, Union Oil Co. FERC gas rate schedule No.	Now, Union Exploration Partners, Ltd. FERC gas rate schedule No.	Purchaser	Certificate docket
857	857	Transcontinental Gas Pipe Line Corp.	C183-146-000
858	858	Tennessee Gas Pipeline Co.	C183-204-000
859	859	Texas Gas Transmission Corp.	C183-294-000
901	901	Transcontinental Gas Pipe Line Corp.	G-3711-000, G-13371-000
902	902	Tennessee Gas Pipeline Co.	G-12583-000
903	903	Texas Eastern Transmission Corp.	C188-611-001
904	904	do	C189-446-001
905	905	Texas Gas Transmission Corp.	C189-795-001

[FR Doc. 85-26302 Filed 11-1-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-1-57-000, 001]

Western Transmission Corp.; Proposed Changes

October 30, 1985.

Taken notice that Western Transmission Corporation (Western), on October 24, 1985, tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1, the following sheet:

Twenty Fifth Revised Sheet
No. 3-A., superseding Twenty
Fourth Revised Sheet No. 3-A.

The proposed changes would increase the monthly charges for purchased gas to Colorado Interstate Gas Company, Western's sole jurisdictional customer, pursuant to the provisions of Section 18 of Western's FPC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is December 1, 1985.

Copies of this filing have been served upon Colorado Interstate Gas Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 7, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-26304 Filed 11-1-85; 8:45 am]
BILLING CODE 8717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-6-FRL-2918-3]

Final Agency Action on a Determination of Noncompliance for American Cyanamid Co.

Notice is hereby given that on September 27, 1985, pursuant to 40 CFR 66.95, the Administrator of the Environmental Protection Agency, dismissed the appeal from the initial decision of the Presiding Officer in Re: American Cyanamid Company, Clean Air Act Docket No. 84-120-101, Region VI. On July 19, 1985, an initial decision was rendered finding that American Cyanamid Company was not in compliance with the requirements of section 22.3 of the Louisiana Air Quality Regulations, as incorporated into the State Implementation Plan for the State of Louisiana, on September 28, 1984, as charged in the Notice on Noncompliance issued to the Company.

On September 28, 1984, a Notice of Noncompliance was issued to American Cyanamid Company, under section 120 of the Clean Air Act, 42 U.S.C. 7420, and the regulations promulgated thereunder, 40 CFR Part 66, charging that the company was not in compliance with the emission limitation under the Louisiana State Implementation Plan (SIP) governing storage of hydrocarbons in large stationary tanks with respect to thirteen (13) acrylonitrile storage tanks and one (1) methanol storage tank. American Cyanamid Company submitted a Petition for Reconsideration, alleging that it was not in violation of the applicable legal requirements of the Louisiana SIP. A hearing was held on April 25, 1985, before an administrative law judge on the issue of whether the company was not in compliance with the requirements of the SIP. The initial decision of the administrative law judge, issued on July 19, 1985, was appealed to the Administrator on August 8, 1985.

Under 40 CFR 66.81(a), a notice of determination that a source is in violation of applicable legal requirements is a final agency action appealable to the courts provided all administrative remedies have been exhausted. Appeal by American Cyanamid Company of the initial

decision of the administrative law judge, and dismissal of the appeal by the Administrator exhaust all administrative remedies available to the company.

Under section 307(b)(1) of the Clean Air Act, judicial review of the decision by the administrative law judge is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit by January 3, 1986. For Further Information Contact: Jack Divita at (214) 767-2746.

Copies of all materials related to the determination of noncompliance for American Cyanamid Company are available at the following locations: Environmental Protection Agency, Region 6, Air, Pesticides and Toxics Division, InterFirst Two Building, 1201 Elm Street, Dallas, Texas 75270.

Dated: October 16, 1985.

Frances E. Phillips,

Regional Administrator, Region 6.

[FR Doc. 85-26263 Filed 11-1-85; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Advisory Committee of the Export- Import Bank of the United States; Open Meeting

By notice in the Federal Register published Tuesday, October 29, 1985, 50 FR 43776, Eximbank announced a Notice of Open Meeting of the Advisory Committee. The date of the meeting was stated as "Friday, November 13, 1985". Due to a typographical error the notice should read "Wednesday, November 13, 1985".

Hart Fessenden,

General Counsel.

[FR Doc. 85-26285 Filed 11-1-85; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From October 31 Open Meeting

October 29, 1985.

The following item has been deleted at the request of the Office of the Chairman from the list of agenda items scheduled for consideration at the October 31, 1985, Open Meeting and previously listed in the Commission's Notice of October 24, 1985.

Agenda	Item No.	Subject
Mass Media	6	<p>TITLE: (1) Applications to assign the licenses of television stations WNEW-TV and W64AA (translator), New York, New York; KTTV, Los Angeles, California; KRLD-TV, Dallas, Texas; KRIV-TV, Houston, Texas; and WTTG, Washington, DC, from Metromedia Radio & Television, Inc. to News America Incorporated (BALCT-850624KL-KP and BALCT-850624KR); (2) application to assign the license of station WFLD-TV, Chicago, Illinois, from WFLD Television, Inc. to News America Television Incorporated (BALCT-850624 KO); and (3) an application to assign the license of station WCVB-TV, Boston, Massachusetts, from Metromedia Radio & Television, Inc. to The Hearst Corporation (BALCT-85624KK).</p> <p>SUMMARY: The Commission will consider News America Television Incorporated's (K. Rupert Murdoch) and The Hearst Corporation's applications to acquire television stations WNEW-TV, KTTV, KRLD-TV, KRIV-TV, WTTG and WCVB-TV. K. Rupert Murdoch presently controls <i>The New York Post</i>, published in New York, New York, and <i>The Chicago Sun-Times</i>, published in Chicago, Illinois. Since § 73.3555(c)(3) of the Commission's Rules prohibits common ownership of a daily newspaper and a television station, Murdoch has requested a two-year period within which to divest of the newspapers. The Commission will also consider petitions to deny filed by Sue Gottfried, the California Association of the Physically Handicapped, Inc., the National Coalition on Television Violence, the Media Access Project, the Washington Association for Television and Children, Metro-west Corporation, licensee of WPWR-TV, Aurora, Illinois, and Anthony R. Martin-Trigona.</p>

Federal Communications Commission.
Issued: October 29, 1985.

William J. Tricarico,
Secretary.

[FR Doc. 85-26260 Filed 11-1-85; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal

Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 204-010066-009.

Title: United States Atlantic and Pacific/Columbia Equal Access Agreement.

Parties:

Flota Mercante Grancolombiana, S.A.
United States Lines (S.A.) Inc.
Coordinated Caribbean Transport, Inc.
CTMT, Inc.

Synopsis: The proposed amendment would modify the agreement to add CTMT, Inc. as a party to the agreement.

Agreement No.: 224-010798-001.

Title: Port of Galveston Terminal Agreement.

Parties:

The Board of Trustees of the Galveston Wharves (Galveston Wharves)
Container Terminal of Galveston, Inc. (Container Terminal)

Synopsis: The agreement amends the basic agreement by providing for an extension of its term for sixty-days. The Galveston Wharves East End Terminal will continue to be operated by Container Terminal. Parties have requested a shortened review period for the agreement.

Dated: October 30, 1985.

By Order of the Federal Maritime Commission.

Mary F. Whitmore,
Assistant to the Secretary.

[FR Doc. 85-26268 Filed 11-1-85; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

Correction

In FR Doc. 85-24838, beginning on page 43606 in the issue of Monday, October 28, 1985, make the following correction:

On page 43606, third column, the agreement number for the Carol Lines Joint Service Agreement should have read "Agreement No.: 207-010168-006."

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

Farmers & Merchants Walterboro Bancshares Corp. et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comments 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 November 22, 1985.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond Virginia 23261:

1. *Farmers & Merchants Walterboro Bancshares Corporation*, Walterboro, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers & Merchants Bank, Walterboro, South Carolina.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *General Bancshares, Inc.*, South Pittsburg, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, South Pittsburg, Tennessee.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Keyes Bancshares, Inc.*, Keyes, Oklahoma; to acquire 24 percent of the voting shares of Thomas Bancshares, Inc., Thomas, Oklahoma, thereby

indirectly acquiring The Bank of Thomas, Thomas, Oklahoma.

D. Federal Reserve Bank of Dallas
(Anthony J. Montelaro, Vice President)
400 Sojth Akard Street, Dallas, Texas
75222:

1. *Ameritex Bancshares Corporation*, Dallas, Texas; to acquiring 100 percent of the voting shares of Riverbend National Bank, Fort Worth, Texas, a *de novo* bank.

2. *National Bancshares of Texas*, San Antonio, Texas; to acquiring 100 percent of the voting shares of First Bancshares, Inc., Seguin, Texas, thereby indirectly acquiring First National Bank of Seguin, Seguin, Texas.

3. *Rising Star Bancshares, Inc.*, rising Star, Texas; to become a bank holding company by acquiring 85.24 percent of the voting shares of First State Bank of Rising Star, Rising Star, Texas, Texas.

4. *Wichita Falls Bancshares, Inc.*, Wichita Falls, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank, Wichita Falls, Texas, a *de novo* bank. Comments on this application must be received not later than November 20, 1985.

Board of Governors of the Federal Reserve System, October 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26273 Filed 11-1-85; 8:45 am]

BILLING CODE 6210-01-M

First Commerce 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 (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected

to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1985.

A. Federal Reserve Bank of Atlanta
(Robert E. Heck, Vice President) 104
Marietta Street, NW., Atlanta, Georgia
30303:

1. *First Commerce Corporation*, New Orleans, Louisiana; to engage *de novo* through its subsidiary, First Commerce Investment Securities, Inc., New Orleans, Louisiana, in securities brokerage activities pursuant to § 225.25(b)(15) of Regulation Y.

2. *Louisiana Bancshares, Inc.*, Baton Rouge, Louisiana; to engage *de novo* through its subsidiary, Louisiana Bancshares Asset Management Company, New Orleans, Louisiana, in investment of financial advisory activities pursuant to § 225.25(b)(4) of Regulation Y.

B. Federal Reserve Bank of San Francisco
(Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Rainier Bancorporation*, Seattle, Washington; to engage *de novo* through its subsidiary, Rainier Brokerage Services, Inc., Seattle, Washington, in securities brokerage activities including certain securities credit and incidental activities pursuant to § 225.25(b)(15) of Regulation Y.

2. *The Sumitomo Bank, Limited*, Osaka, Japan; to engage *de novo* through its subsidiary, Sumitomo Bank of New York Trust Company, New York, New York, in trust company and financial advisory activities, including acting as issuing, fiscal and/or paying agent; trustee or depository; financial advisor; escrow agent and custodian. These activities will be conducted pursuant to §§ 225.25(b) (3) and (4) of Regulation Y and other applicable federal and New York State law.

Board of Governors of the Federal Reserve System, October 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26274 Filed 11-1-85; 8:45 am]

BILLING CODE 6210-01-M

Metro Bancorp, Inc. et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 22, 1985.

A. Federal Reserve Bank of San Francisco
(Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Metro Bancorp, Incorporated*, Phoenix, Arizona; to acquire MB Mortgage Company, Phoenix, Arizona,

and thereby engage in brokering, servicing, originating and selling loans pursuant to § 225.25(b)(1) of Regulation Y. These activities would be conducted from premises in Phoenix, Arizona.

Board of Governors of the Federal Reserve System, October 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26275 Filed 11-1-85; 8:45 am]

BILLING CODE 6210-01-M

Potomac Bancorp, Inc. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question 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 November 20, 1985.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President)

701 East Byrd Street, Richmond, Virginia 23261:

1. *Potomac Bancorp, Inc.*, Keyser, West Virginia; to engage *de novo* through its subsidiary, Eastern Servicecenter, Inc., Keyser, West Virginia, in calculating gross payroll, all acceptable withholdings, prepare checks and furnish customer with cumulative quarterly and annual totals and prepare annual W-2 forms for employees of the customers, from data furnished by the customer, pursuant to § 225.25(b)(7) of Regulation Y. These activities would be performed in the States of Maryland and West Virginia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan; to engage *de novo* through its subsidiary, Comerica Brokers, Inc., Detroit, Michigan, in providing securities brokerage services pursuant to § 225.25(b)(15) of Regulation Y. Comments on this application must be received no later than November 18, 1985.

Board of Governors of the Federal Reserve System, October 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26276 Filed 11-1-85; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp.; Norfolk, Va.; Proposal To Offer Through the Same Subsidiary Securities Brokerage and Investment Advice Concerning Government Obligations and Money Market Instruments

Sovran Financial Corporation ("Sovran"), Norfolk, Virginia, has applied under section 4(c)(8) of the Bank Holding Company Act ("Act"), 12 U.S.C. 1843(c)(8), for permission to expand the activities of its wholly-owned subsidiary, Sovran Investment Corporation ("SIC"), Richmond, Virginia, to include: (1) Buying and selling, as agent, on behalf of non-affiliated persons, options on securities issued or guaranteed by the U.S. Government and its agencies and options on U.S. and foreign money market instruments; ¹ (2) the purchase

¹The Board has previously determined that acting as a broker with respect to options on securities issued or guaranteed by the U.S. Government and its agencies and options on U.S. and foreign money market instruments is closely related to banking. *Security Pacific Corporation*, 70 Federal Reserve Bulletin 238 (1938).

and sale of gold and silver bullion and gold coins for the account of customers; ² and (3) securities brokerage services that are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing or investment advice or research services, pursuant to § 225.25(b)(15) of Regulation Y, 12 CFR 225.25(b)(15). Sovran has previously received approval for SIC to engage *de novo* in (1) underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of Regulation Y, 12 CFR 225.25(b)(16); (2) providing investment or financial advice relating solely to government obligations and money market instruments pursuant to § 225.25(b)(4) of Regulation Y, 12 CFR 225.25(b)(4); and (3) certain services of a fiduciary nature, including securities safekeeping, custodial services, paying agent, and dividend disbursement agent.

The Board has previously approved the offering of investment advice, as well as the provision separately of securities brokerage services solely as agent for the account of customers and not including securities underwriting, dealing, investment advisory or research services. 12 CFR 225.25(b)(4), (b)(15). This application raises the question whether a bank holding company may through the same subsidiary provide securities brokerage services permissible under § 225.25(b)(15) of Regulation Y, underwrite and deal in government obligations and money market instruments under § 225.25(b)(16) of Regulation Y, and provide investment advice under § 225.25(b)(4) of Regulation Y solely with respect to government obligations and money market instruments, ³ where the securities brokerage activities and underwriting of government obligations and money market instruments and related advice would be carried on by separate personnel and where there would be no cross-selling of products.

Section 4(c)(8) of the Act provides that a bank holding company may, with Board approval, engage in any activity

²The Board has previously determined that the purchase and sale of gold and silver bullion and gold coins for the account of customers is closely related to banking. *First Interstate Bancorp*, 71 Federal Reserve Bulletin 467 (1985). SIC will not engage in the sale of platinum and palladium or deal in gold or silver for its own account. The present application does not include buying and selling options on gold and silver bullion. Moreover, SIC will not extend credit in connection with the proposed precious metal services.

³SIC will not provide any advice concerning gold and silver bullion or advice concerning options on government obligations and money market instruments.

"which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "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." *Id.*

In this regard, comment is requested concerning whether the provision through the same subsidiary of securities brokerage services and investment advice solely with respect to government obligations and money market instruments is closely related to banking on the basis that: (1) Banks have generally in fact provided the proposed services; (2) banks generally provide services that are so similar to the proposed services as to equip them particularly well to provide the proposed services; or (3) banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. These guidelines for determining whether an activity is closely related to banking are set out in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 813 (1984).

Comment also is requested on whether the proposal would be a proper incident to banking, that is, whether the performance of the activity may reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

Comment also is requested on whether conditions should be established to ameliorate any possible adverse effects, in addition to, or as modifications of, the commitment already offered by Applicant. Applicant has committed that the securities brokerage activities to be provided by SIC will be provided in exactly the same manner as currently provided by the Financial Services Division of Sovran Bank, N.A. ("Bank"), a wholly-owned subsidiary of Sovran. The Financial Services Division has an Investor

Services unit whose principal activities include: (1) Securities brokerage services; (2) fixed-income transactions; and (3) precious metals services.

The services provided by the securities brokerage section include the purchase and sale, as agent, of corporate stocks and bonds and other corporate securities on an explicit fee basis. The securities brokerage activities of the Bank consist solely of the taking of orders, and do not include the execution of any trades. The personnel of the securities brokerage section are trained not to provide, and do not provide, investment advice.⁴

The services presently provided by the fixed-income section of the Bank's Financial Services Division will be transferred to SIC. The fixed-income section handles the purchase and sale of U.S. government securities and agency securities, municipal bonds, and unit investment trust shares. The personnel of the fixed-income section do not provide investment advice on an explicit fee basis. They answer questions and provide customers with information on current market yields, existing and proposed offerings, determinations by rating agencies, and similar data. Advice or recommendations as to specific fixed-income securities is not provided.

The Bank's securities brokerage and fixed-income activities are conducted by separate personnel. The personnel of each section are located in a distinct and separately identifiable portion of the premises of the Financial Services Division, and do not have access to information concerning the products of the other section.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 1, 1985. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure, 12 CFR 262.3(e), be accompanied by a statement of why a written statement 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.

⁴ The Bank's securities brokerage customers can purchase for a separate fee certain types of advisory services from the registered broker-dealer that acts as the clearing agent for all of the Bank's securities brokerage trades. The Bank does not, however, receive any portion of this fee.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, October 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26270 Filed 11-1-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80N-0012; DESI 10826]

Drugs for Human Use; Drug Efficacy Study Implementation; Certain Topical Anti-Infective Drug Product; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of pertinent parts of the new drug application (NDA) for Cortisporin Cream. There is a lack of substantial evidence that the product is effective in the treatment of the various dermatologic disorders for which it is labeled. A reformulation of the product has been approved as safe and effective.

EFFECTIVE DATE: December 4, 1985.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the DESI number 10826 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Judy O'Neal, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the *Federal Register* of September 25, 1981 (46 FR 47408), the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) proposed to withdraw approval of NDA's for certain topical anti-infective drug products. The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.126, previously 314.111(a)(5). In response to the notice, Burroughs

Wellcome Co., Inc., filed a hearing request for the following product:

NDA 50-218; Cortisporin Cream containing neomycin sulfate EQ 3.5 milligrams (mg) base/gram, polymyxin B sulfate 10,000 units, gramicidin .25 mg, and hydrocortisone, 0.5 percent; Burroughs Wellcome Co., Inc., 3030 Cornwallis Rd., Research Triangle Park, NC 27749.

In a notice published in the *Federal Register* of April 17, 1985 (50 FR 15228), FDA announced conditions for approval and marketing of a reformulation of the product that omits gramicidin. FDA subsequently approved a supplemental NDA providing for the reformulated product.

Burroughs Wellcome has since withdrawn its hearing request for the gramicidin-containing formulation. Accordingly, FDA is now withdrawing approval of those parts of NDA 50-218 pertaining to Cortisporin Cream containing gramicidin, described above.

Any drug product that is identical, related, or similar to this product and is not the subject of an approval NDA is covered by NDA 50-218 and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82) finds that, on the basis of new information before him with respect to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or subjected in its labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 50-218 that provide for Cortisporin Cream containing gramicidin and all the amendments and supplements for that product is withdrawn effective December 4, 1985. Shipment in interstate commerce of the product above or any identical, related, or similar product that is not the subject of an approved new drug application will then be lawful.

Dated: October 28, 1985.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 85-26207 Filed 11-1-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0484]

**Moore and Munger Marketing, Inc.;
Filing of Food Additive Petition**

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Moore and Munger Marketing, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of synthetic paraffin components for food-contact use.

FOR FURTHER INFORMATION CONTACT:

Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3891) has been filed by Moore and Munger Marketing, Inc., 140 Sherman St., Fairfield, CT 06430, proposing that § 175.250 *Paraffin (synthetic)* (21 CFR 175.250) be amended to provide for the safe use of synthetic paraffin components for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c), as published in the *Federal Register* of April 26, 1985 (50 FR 16636).

Dated: October 28, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-26205 Filed 11-1-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85D-0291]

**Guidance for the Emergency Use of
Unapproved Medical Devices;
Availability**

Correction

In FR Doc. 85-25063, beginning on page 42866 in the issue of Tuesday, October 22, 1985, on page 42866, second column, sixteenth line of the second

complete paragraph, "approved" should have read "unapproved".

BILLING CODE 1505-01-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 November, 1985:

Name: Task Force on Organ Transplantation.

Date and Time: November 18-19, 1985 9:00 a.m.

Place: Crown Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

The entire meeting is open to the public.

Purpose: The Task Force on Organ Transplantation is required to conduct comprehensive examinations of the medical, legal, ethical economic, and social issues presented by human organ procurement and transplantation; including an assessment of immunosuppressive medications used to prevent organ rejection in transplant patients. Reports on these issues are required to be submitted to the Department of Health and Human Services and the Congress later this year.

Agenda: Status report on progress regarding factors involved in reimbursement and designation of transplant programs. Discussions of (1) the Task Force statement on the commercialization of organs for transplantation; (2) organ procurement systems in the U.S.; (3) implementation of a grant program for organ procurement organizations; and (4) the feasibility of establishing a national registry of living organ donors.

Public comment will begin at 4:00 p.m. on November 18. Anyone wishing to make a statement, please notify Linda D. Sheaffer, Executive Director, so that these may be scheduled.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Ms. Linda D. Sheaffer, Executive Director, Office of Organ Procurement and Transplantation, Office of the Administrator, Health Resources and Services Administration, Room 17-60, Parklawn Building, 5000 Fishers Lane, Rockville, MD 20857, telephone (301) 443-5911.

Agenda items are subject to change as priorities dictate.

Dated: October 30, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-26251 Filed 11-1-85; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[Groups 837; 818; and 857 California]

Filing of Plat of Survey; California

October 24, 1985.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, San Diego County; Mount Diablo Meridian, Inyo County; Humboldt Meridian, Del Norte County; (See legal description below).

2. These plats representing:

a. The dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 34, Township 19 South, Range 37 East, and the dependent resurvey of a portion of the subdivisional lines, Township 20 South, Range 37 East, Mount Diablo Meridian, under Group No. 837, California, were accepted September 20, 1985.

b. The dependent resurvey of the east and north boundaries and a portion of the subdivisional lines, Township 12 North, Range 3 East, Humboldt Meridian, under group No. 818, California was accepted September 25, 1985.

c. The dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 14, Township 10 South, Range 1 East, San Bernardino Meridian, under Group 857, California, was accepted September 25, 1985.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-26216 Filed 11-1-85; 8:45 am]

BILLING CODE 4310-40-M

[Groups 870, 896, 867]

California; Filing of Plat of Survey

October 24, 1985.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Inyo County
Mount Diablo Meridian, Lassen County
San Bernardino Meridian, San Bernardino County

(See legal description below)

2. These plats, representing:

a. The metes-and-bounds survey of Tracts 37, 38, and 39, in unsurveyed Township 15 North, Range 6 East, Humboldt Meridian, under Group No. 870, California, was accepted September 26, 1985. This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs and the Bureau of Land Management.

b. The dependent resurvey of a portion of the subdivisional lines, a portion of Mineral Survey No. 5827, and the retracement of a portion of Mineral Survey No. 6844, and the survey of the subdivision of section 20, and the metes-and-bounds survey of a portion of Buckhorn Ridge Road, Township 7 North, Range 13 East, Mount Diablo Meridian, under Group No. 896, California, was accepted October 2, 1985, plat in two (2) sheets.

c. The corrective dependent resurvey of a portion of the subdivisional lines, and the dependent resurvey of a portion of the subdivisional lines, and the metes-and-bounds survey of Tracts 37A and 43, Township 33 North, Range 12 East, and the corrective dependent resurvey of the south boundary, a dependent resurvey of the west boundary, a portion of the east and north boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of certain sections, Township 34 North, Range 12 East, Mount Diablo Meridian, under Group No. 736, California, were accepted October 2, 1985.

d. The dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 10, Township 1 South, Range 3 West, San Bernardino Meridian, under Group No. 867, California, was accepted October 3, 1985.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management and the Bureau of Indian Affairs.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85-26218 Filed 11-1-85; 8:45 am]

BILLING CODE 4310-40-M

Shoshone District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM); Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets for the schedule and proposed agenda for a meeting of the Shoshone District Advisory Council.

DATE: Thursday, December 5, 1985, at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, ADM for Resources, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886-2206 or FTS 554-6576.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following item: Review of Box Canyon ACEC Management Plan and any related project proposals.

The Shoshone District Advisory Council is established under Section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 43 U.S.C. 1701 et seq.) as amended. Operation and administration of the Council will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement before the Council between 9:00 and 10:00 a.m. or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Manager by December 4, 1985. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Charles J. Haszler,

District Manager.

[FR Doc. 85-26215 Filed 11-1-85; 8:45 am]

BILLING CODE 4310-GG-M

Ukiah District Office; Geothermal Resource Area; Geysers-Calistoga, California; Deletion of Lands; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Deletion of lands from the Geysers-Calistoga Known Geothermal Resources Area; Correction.

SUMMARY: This document corrects the legal description and acreage of lands deleted from the Geysers-Calistoga KGRA, as described on page 31253, columns 1 and 2, **Federal Register of Thursday, August 1, 1985 [50 FR 31253].**

Page 31253, column 2, FR Document 85-18227 is corrected as follows:

1. Delete line 2, which reads "Sec. 8."
2. On line 3, change "Secs. 16-36" to read "Secs. 16, 17, 20-36."
3. Delete line 7, which reads "Secs. 13-17."
4. On line 8, change "Secs. 21-27" to read "Secs. 25-27."
5. On line 20, change "90,368.84 acres" to read "88,331.28 acres."
6. Below line 37, which reads "Mount Diablo Meridian, California", insert "T. 8 N., R. 6 W., Sec. 6."
7. Below line 39, which reads "Secs. 30, 31," insert "T. 8 N., R. 7 W., Sec. 1."
8. On line 46, change "northwesterly" to read "northeasterly."
9. On line 49, change "9,034.24 acres" to read "9,055.17."

FOR FURTHER INFORMATION CONTACT:
Doug Koza, Division of Mineral Resources, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4737.

Dated: October 21, 1985.

Van Manning,

District Manager, Ukiah.

[FR Doc. 85-26291 Filed 11-1-85; 8:45 am]

BILLING CODE 4310-40-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30728]

The Denver and Rio Grande Western Railroad Co.; Trackage Rights Exemption; Union Pacific Railroad; Exemption

The Denver and Rio Grande Western Railroad Company (DRGW) and Union Pacific Railroad Company (UP) have entered into a joint trackage rights agreement as follows: (1) For DRGW to operate trains in bridge service over UP trackage between the stations in Salt Lake City known as Grant Tower, milepost 782.7, and North Salt Lake, milepost 787.5, and Ogden, milepost 817.59, and (2) for UP to operate trains in bridge service over DRGW trackage between Provo, milepost 700.82, and Geneva, milepost 707.04, and the stations in Salt Lake City known as Grant Tower, milepost 745.5, and North Salt Lake, milepost 750.3. A total distance in (1) and (2) above of approximately 84.37 miles, in Utah. This trackage rights agreement became effective October 22, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: October 29, 1985.

By the Commission, Herbert P. Hardy,
Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-26241 Filed 11-1-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-63 (Sub-No. 7)]

Maine Central Railroad Co.; Abandonment in Penobscot, Hancock, and Washington Counties, ME; Findings

The Commission has issued a certificate authorizing Maine Central Railroad Company to abandon its 126.92-mile rail line between Brewer (milepost 139.99) and St. Croix Junction, at Calais (milepost 266.91) in Penobscot, Hancock, and Washington Counties, ME. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

James H. Bayne,

Secretary.

[FR Doc. 85-26370 Filed 11/1/85; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

[License No. 37-23370-01 EA 85-01]

North American Inspection, Inc.; Order

North American Inspection, Inc., P.O. Box 88, Laurys Station, Pennsylvania 18059, (the Licensee) of Laurys Station, Pennsylvania, is the holder of NRC License No. 37-23370-01 which

authorizes the Licensee to possess and use radioactive materials in accordance with specified conditions.

On February 6, 1985, the Regional Administrator, Region I, pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282), and 10 CFR 2.205 of the Commission's regulations, served upon the Licensee a Notice of Violation and Proposed Imposition of Civil Penalties (Notice). The Notice alleged that violations of Commission requirements had occurred and set forth cumulative civil penalties to be assessed equally among the violations. The violations were identified as a result of two inspections of the Licensee's activities conducted on October 18-19, 1984 and January 10 and 16, 1985, at the Licensee's facility located in Laurys Station, Pennsylvania, and at field sites located in Bethlehem, Pennsylvania, and Lebanon, New Jersey.

The Licensee responded to the Notice by letters dated February 21 and 26, 1985, and April 10, 1985. After consideration of the Licensee's response, the Director, Office of Inspection and Enforcement, issued an Order Imposing Civil Monetary Penalties on August 7, 1985 [50 FR 33130, August 16, 1985], in the total amount of \$5,000.00. By letter dated August 16, 1985, the Licensee requested a hearing.

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 2, notice is hereby given that a hearing will be held before and at a time to be set by the Honorable Ivan W. Smith, Administrative Law Judge, who has been appointed by the Chairman of the Atomic Safety and Licensing Board Panel to preside over the hearing.

The issues before the Administrative Law Judge to be considered and decided shall be:

(a) Whether the Licensee violated the Commission's requirements as set forth in the February 6, 1985, Notice of Violation and Proposed Imposition of Civil Penalty; and

(b) Whether the August 7, 1985, Order Imposing Civil Monetary Penalties should be sustained.

Pursuant to 10 CFR 2.705, an answer to this Notice may be filed by the Licensee not later than 20 days from the date of publication of this Notice in the Federal Register.

A prehearing conference will be held by the Administrative Law Judge at a date and place to be set by the Administrative Law Judge to consider pertinent matters in accordance with the Commission's Rules of Practice. The date and place of hearing will be set at

or after the prehearing conference and noticed in the **Federal Register**.

Required papers shall be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Docketing and Service Branch, or by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Pending further order of the Administrative Law Judge, parties are required to file, pursuant to the provisions of 10 CFR 2.708, an original and two (2) copies of each document with the Commission. Pursuant to 10 CFR 2.785, the Commission authorizes an Atomic Safety and Licensing Appeal Board to exercise the authority and perform the review functions which would otherwise be exercised and performed by the Commission. The Appeal Board will be designated pursuant to 10 CFR 2.787, and notice as to membership will be published in the **Federal Register**.

It is so ordered.

Dated in Washington, D.C. this 30th day of October, 1985.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-26287 Filed 11-1-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co.; Availability of Safety Evaluation Report for Millstone Nuclear Power Station, Unit No. 1 Full-Term Operating License

Notice is hereby given that the Nuclear Regulatory Commission's Office of Nuclear Reactor Regulation has published its Safety Evaluation Report on the proposed conversion of Provisional Operating License No. DPR-21 to a Full-Term Operating License for Millstone Nuclear Power Station, Unit No. 1 located in New London County, Waterford, Connecticut. Notice of Consideration of Issuance of Full-Term Operating License was published in the **Federal Register** on November 28, 1972 (37 FR 25187).

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the Local Public Document Room, Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385, for inspection and copying. The report (NUREG-1143) can

also be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013-7982 or by calling (202) 275-2060 or (202) 275-2171.

Dated at Bethesda, Maryland, this 25th day of October 1985.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 85-26289 Filed 11-1-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-336]

Northeast Nuclear Energy Co. et al.; 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-65, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit 2, located in New London County, Connecticut.

The amendment would authorize the licensee to increase the spent fuel pool storage capacity from 667 to 1112 storage locations. The proposed expansion is to be achieved by reracking the spent fuel pool with a combination of poison racks and non-poison racks in a two-region arrangement.

Region I consists of two 8x9 modules and three 8x10 modules and would store high-enrichment, core off-load assemblies. The region consists of poisoned spent fuel racks with a nominal center-to-center cell spacing of 9.8 inches. Fuel assemblies would be stored in every location. The five modules of Region I total 384 storage locations and are designed to accommodate 1.7 reactor cores of high enrichment nuclear spent fuel.

The spent fuel rack design for Region I is based upon the commonly accepted physics principle of a "neutron flux trap" with the use of neutron absorber materials. The racks are designed to store Millstone 14x14 fuel with an initial enrichment of 4.5 weight percent U-235. The poison material to be used is Boraflex.

Region II consists of 14 modules of non-poisoned spent fuel racks with

nominal center-to-center cell spacing of 9.0 inches. The modules consist of 962 cells with useable capacity of 728 storage locations.

Region II is reserved for fuel that has sustained at least 85% of its design burn-up. The spent fuel rack design is based on criticality acceptance criteria specified in Revision 2 of Regulatory Guide 1.13 which allows credit for reactivity depletion in spent fuel. (Previously, the physics criteria for fuel stored in the spent fuel pool were defined by the maximum unirradiated initial enrichment of the fuel). Fuel assemblies are stored in a three-out-of-four logic pattern. The fourth location of the storage configuration remains empty to provide the flux trap to maintain the required reactivity control. Blocking devices will be used to prevent inadvertent placing of a fuel assembly in the fourth location.

The spent fuel racks in both regions are fabricated from 304 stainless steel which is 0.135 inches thick. Each cell is formed by welding along the intersecting seams. This enables each spent fuel rack module to become a free-standing module that meets the seismic design requirements without mechanical dependence on neighboring modules or fuel pool walls for support. The rack modules are classified ANS Safety Class III and Seismic Category I.

Both regions of the spent fuel pool have been designed to store fuel assemblies in a safe, coolable, subcritical configuration with K_{eff} less than or equal to 0.95.

The racks have been designed and will be provided by Combustion Engineering, Inc. (CE). CE racks of this type have been most recently licensed by the NRC for use at Florida Power and Light Company's St. Lucie Plant and at Arizona Public Services Company's Palo Verde nuclear plants. This amendment was requested in the licensee's application for amendment dated July 24, 1985.

The additional assemblies that can be stored will have a lower heat generation rate and radioactivity content than the assemblies currently allowed to be stored. However, the increase in the total number of assemblies that can be stored will increase the total fuel pool heat load and radioactivity content but only by a small amount. The replacement spent fuel storage rack modules are freestanding without depending on neighboring modules or the fuel pool walls for support. Racks of similar design have been licensed at other nuclear facilities. The use of two diverse regions is not unique and two

region spent fuel pools have been previously approved by the Commission.

The technical evaluation of whether or not an increased spent fuel pool storage capacity involves significant hazards consideration is centered on three standards:

A. First Standard

Involve a significant increase in the probability or consequences of an accident previously evaluated.

The licensee's safety analysis of the proposed reracking has been accomplished using current NRC Staff accepted Codes and Standards. The results of the safety analysis demonstrate that the proposal meets the specified acceptance criteria set forth in these standards. In addition, the licensee has reviewed NRC Staff SE for prior spent fuel pool rerackings involving spent fuel pool rack replacements to ensure that there are no identified concerns not fully addressed. The licensee has identified no such concerns.

The licensee has identified the following potential accident scenarios: (1) Spent fuel cask drop; (2) loss of spent fuel pool forced cooling; (3) seismic event; (4) spent fuel assembly drop; (5) criticality accidents; and (6) Load Handling Accident. The probability of the occurrence of any of the first four listed accidents is not affected by the racks themselves; thus, reracking cannot increase the probability of these accidents.

All potential events which could involve accidental criticality have been examined in the licensee's safety analysis. It was concluded that the bounding accident was dropping an unirradiated fuel assembly into a blocked fourth location in Region II. The probability of dropping a fuel assembly during fuel movement operations is not affected by the fuel storage racks.

The proposed Millstone Unit 2 spent fuel pool reracking will not involve an increase in probability of any previously evaluated load handling accident as accepted standards and procedures will be utilized as described in the licensee's safety analysis.

The consequences of the spent fuel cask drop accident have been evaluated as described in sections 5.4 and 9.8 of the Millstone Unit 2 Final Safety Analysis Report (FSAR). By controlling the decay time for fuel stored within a specified distance from the cask set-down area to not less than 120 days prior to cask movement together with an administrative control specifying a minimum required boron concentration in the water of the spent fuel pool, the

consequences of this accident type will remain well within 10 CFR Part 100 guidelines.

There is, however, an increase in the value of the 2-hour whole body dose at the site exclusion boundary for a postulated cask drop accident. The new racks increase the storage density of spent fuel within the distance L of the cask set-down area. This results in a calculated increase of the 2-hour whole body dose from 140 millirem to 240 millirem, an increase of 100 millirem. In review of this submittal, the licensee has recognized this increase and has designated it an unreviewed safety question. The calculated dose is well within the guidelines specified by 10 CFR Part 100 and, as such, the consequences of this type of accident will not be significantly increased from previously evaluated events.

The consequences of the loss of spent fuel pool forced cooling accident have been evaluated and are described in the licensee's safety analysis. There is ample time to effect repairs of the cooling system or to establish makeup flow to the spent fuel pool. The consequences of this type accident will not be significantly increased from previously evaluated accidents by this proposed reracking.

The consequences of a seismic event have been evaluated against the appropriate NRC standards. The results of the seismic and structural analysis show that the proposed racks meet all of the NRC structural acceptance criteria and are consistent with results found acceptable by the NRC Staff in previous position rerack SEs. Thus, the consequences of seismic event will not significantly increase from previously evaluated seismic events.

The consequences of a spent fuel assembly drop accident are described in section 14.19 of the Millstone Unit 2 FSAR. A complete list of assumptions is provided in FSAR Table 14.19-1. Results of the analysis are well below the limits of 10 CFR Part 100 and are presented in Section 14.19.3. The consequences of this type accident will not be significantly increased from previously evaluated accidents by this proposed reracking.

The consequences of a criticality accident have been evaluated for all potential events which could involve accidental criticality. The bounding criticality accident was found to be the dropping of a fresh fuel assembly into a blocked fourth location in Region II. Administrative controls in the form of a Technical Specification of minimum boron concentration for the water of the spent fuel pool will preclude the bounding criticality accident; therefore,

the consequences of this type accident will not be significantly increased from previous accident evaluations by this proposed reracking.

The consequences of a load handling accident have been evaluated. The work to be done in the spent fuel pool will be performed in accordance with accepted construction practices, standards, and procedures. The consequences of this type accident will not be significantly increased from previous accident evaluations by this proposed reracking. Therefore, it is shown that the proposed Millstone Unit 2 spent fuel rack replacement will not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Second Standard

Created the possibility of a new or different kind of accident from any accident previously evaluated.

The licensee has evaluated the proposed rack replacement in accordance with the "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," appropriate NRC Regulatory Guides, appropriate NRC Standard Review Plan sections, and appropriate industry Codes and Standards. In addition, the licensee has reviewed the NRC SE for the previous Millstone Unit 2 spent fuel rack replacement application and for other prior spent fuel pool rerackings.

The change to a two-region spent fuel pool creates the requirement to perform additional evaluations to ensure the critically requirement is maintained. These include the evaluation of the limiting condition (dropping a fresh fuel assembly into a blocked fourth location in Region II). This evaluation shows that, when the boron concentration requirement is met per the proposed Technical Specifications, the criticality criterion is satisfied. Although this change does create the requirement to address additional aspects of a previously analyzed accident, it does not create the possibility of a previously unanalyzed accident.

C. Third Standard

Involve a significant reduction in a margin of safety.

The issue of "margin of safety," when applied to a spent fuel rack replacement, includes the following considerations:

- a. Nuclear criticality considerations.
- b. Thermal hydraulic considerations.
- c. Mechanical, material, and structural considerations.

The margin of safety that has been established for nuclear criticality is that the neutron multiplication factor (K_{eff}) in

the spent fuel pool is to be less than or equal to 0.95, including all uncertainties, under all conditions. For the proposed modification, the criticality analysis is described in the licensee's safety analysis. The methods utilized in the analysis conform with ANSI N210-1976, "Design Objectives for LWR Spent Fuel Storage Facilities at Nuclear Power Stations"; ANSI N16.9-1975, "Validation of Computational Methods for Nuclear Criticality Safety"; the NRC guidance, "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Applications" (April 1978), as modified (January 1976); and Regulatory Guide 1.13, "Spent Fuel Facility Design Basis," proposed Revision 2. The computer programs, data libraries, and benchmarking data used in the evaluation have been used in previous spent fuel rack replacement applications by other NRC licensees and have been reviewed and approved by NRC. The results of the licensee's analysis indicate that K_{eff} is less than or equal to 0.95 under all postulated conditions, including uncertainties, at a 95/95 probability/confidence level. Thus, meeting the acceptance criteria for criticality, the proposed reracking does not involve a significant reduction in the margin of safety for nuclear criticality.

For thermal hydraulics, the relevant considerations for evaluating if there is a significant reduction in margin of safety are: (1) Maximum fuel temperature, and (2) the increase in temperature of the water in the pool. The licensee's thermal hydraulic evaluation shows that fuel cladding temperatures under abnormal conditions are sufficiently low to preclude structural failure and that boiling does not occur in the water channels between the fuel assemblies nor within the storage cells. However, the proposed rack replacement will result in an increase in the maximum heat load in the Millstone Unit 2 spent fuel pool. The licensee's safety analysis shows that the maximum temperature will not exceed the current margin of safety (150 °F). For the maximum normal heat load case (full-core discharge at 150 hr after shutdown, which fills the spent fuel pool to its capacity), the pool temperature will not exceed 150 °F. Thus, there is no significant reduction in the margin of safety from a thermal hydraulic standpoint or from a spent fuel pool cooling standpoint.

The mechanical, material, and structural considerations of the proposed rack replacement are also analyzed in the licensee's safety analysis. The racks are designed in accordance with the applicable NRC Regulatory Guides,

Standard Review Plan sections, and position papers, and appropriate industry Codes and Standards, as well as to Seismic Category I requirements. The materials utilized are compatible with the spent fuel pool and the spent fuel assemblies. The conclusion of the analysis is that the margin of safety is not significantly reduced by the proposed reracking.

In summation, it has been shown that Northeast Nuclear Energy Company's proposed spent fuel storage facility modifications and proposed technical specifications do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

Because the licensee's submittal and the above discussion by the licensee appear to demonstrate that the standards specified in 10 CFR 50.92 are met, and because reracking technology has been well developed and demonstrated, the Commission proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

By December 4, 1985, 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 aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner is required to 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, pursuant to 10 CFR 2.714(b). 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.

The Commission hereby provides notice that this proceeding is on an application for a license amendment falling within the scope of Section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any petitioner or party to the proceeding, is required to employ hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." Section 134 procedures provide for oral argument on those issues "determined to be in

controversy", preceded by discovery under the Rules of Practice, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law to be resolved at an adjudicatory hearing. Actual adjudicatory hearings are to be held only on those issues found to meet the criteria of Section 134 and set for hearing after oral argument on the proposed issues. However, if no petitioner or party requests the use of the hybrid hearing procedures, then the usual 10 CFR Part 2 procedures apply.

(At this time, the Commission does not have effective regulations implementing section 134 of the NWPA although it has published rules which became effective November 14, 1985. See Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors, 50 FR 41662 (October 15, 1985).

Subject to the above requirements and any limitations in the order granting leave to intervene, those permitted to intervene become parties to the proceeding 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 hazard 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 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) 325-600 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Edward J. Butcher: 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 the Gerald Garfield, Esq., Day Berry and Howard, 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 presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)(v) and 2.714(d).

For further details with respect to this action, see the application for amendment that is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06103.

Dated at Bethesda, Maryland, this 29 day of October, 1985.

For the Nuclear Regulatory Commission,

Edward J. Butcher,
Acting Chief, Operating Reactors Branch #3,
Division of Licensing.

[FR Doc. 85-26288 Filed 11-1-85; 8:45 am]

BILLING CODE 7590-01-M

[License No. SNM-1954; Docket No. 70-3008]

Finding of No Significant Impact Issuance of Special Nuclear Materials; Duquesne Light Co. et al; Beaver County, PA

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Materials License No. SNM-1954 to Duquesne Light Company, Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company (the applicants) for the Beaver Valley Power Station (BVPS), Unit 2, located in Beaver County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would authorize the applicants to receive, possess, inspect, and store special nuclear materials in the form of unirradiated fuel assemblies. In addition, the license would also authorize the applicants to receive, possess, inspect, and use various detectors, neutron startup sources, and calibration and check sources. Because the detectors, neutron sources, and calibration and check sources contain only small amounts (gram quantities) of nuclear material, storage and use of these materials will pose no threat to the environment. Therefore, the discussion below will be limited to assessing the potential environmental impacts resulting from the handling and storage of new fuel at BVPS, Unit 2.

The Need for the Proposed Action

The proposed license will allow the applicants to receive and store fresh fuel prior to issuance of the Part 50 operating license in order to inspect the fuel and to finalize fuel preparation needed to load the fuel into the reactor vessel. Actual core loading, however, will not be authorized by the proposed license.

Environmental Impacts of the Proposed Action

A. Nuclear Criticality and Radiation Safety

Once at BVPS, Unit 2, the new fuel may be temporarily stored in their shipping containers prior to placement in the designated storage locations: the new fuel storage racks and spent fuel storage racks. The shipping container array to be used at BVPS, Unit 2, has been previously analyzed for all degrees of water moderation and/or reflection and found to be critically safe.

Upon removal of the fuel assemblies from the shipping containers, they are inspected and surveyed for external contamination. Assuming no contamination is found, the assemblies are transferred to their storage locations. Criticality safety in the storage locations is maintained by limiting interaction between adjacent fuel assemblies. This is accomplished in the new fuel storage racks such that the design of the racks preclude the inadvertent placement of a fuel assembly no closer than the required minimum edge-to-edge distance between fuel assemblies. Subcriticality in the spent fuel storage racks is maintained by sheets of neutron poison securely fastened to all four sides of each storage location.

Since the fresh fuel assemblies are sealed sources, the principal exposure pathway to an individual is via external radiation. For low-enriched uranium fuel (< 4% U-235 enrichment), the exposure level to an individual standing 1 foot from the surface of the fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR Part 20. In addition, the applicants are committed to establishing a program for maintaining general public exposure as low as reasonably achievable. Therefore, the staff has concluded that the applicants' requested operations can be carried out with adequate radiation protection of the public and environment.

Only a small amount, if any, of radioactive waste (e.g., smear papers and/or contaminated package material) is expected to be generated as a result of fuel handling and storage operations. Any waste that is produced will be properly stored onsite until it can be shipped to a licensed disposal facility.

B. Transportation

In the event the applicants must return the fuel to the fuel fabricator, all packaging and transport of fuel will be in accordance with 10 CFR 71. No significant external radiation hazards are associated with the unirradiated fuel because the radiation level from the clad fuel pellets is low and because the shipping packages must meet the external radiation standards in 10 CFR Part 71. Therefore, shipment of unirradiated fuel by the applicants is expected to have an insignificant impact upon the environment.

C. Accident Analysis

In the unlikely event that an assembly (either within or outside its shipping container) is dropped during transfer, the fuel cladding is not expected to rupture. Even if the fuel rod cladding

were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of a ceramic UO_2 that has been pelletized and sintered to a very high density. In this form, release of UO_2 aerosol is unlikely except under conditions of deliberate grinding. Additionally, UO_2 is soluble only in acid solution so dissolution and release to the environment are extremely unlikely.

D. Conclusion

The environmental impacts associated with the handling and storage of new fuel at BVPS, Unit 2, are expected to be insignificant. Essentially, no effluents, liquid or airborne, will be released and acceptable controls will be implemented to prevent a radiological accident. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternatives to the Proposed Action

The principal alternative would be to deny the requested license. Assuming the operating license will eventually be issued, denial of the storage only license would merely postpone new fuel receipt at BVPS, Unit 2. Although denial of the Special Nuclear Materials License for BVPS, Unit 2, is an alternative available to the Commission, it would only be considered if significant issues of public health and safety could not be resolved to the satisfaction of the regulatory authorities involved.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement (NUREG-1094) dated September 1985 related to this facility.

Agencies and Persons Consulted

The Commission's staff reviewed the applicants' request of September 28, 1984, its revision dated September 13, 1985, and its supplement dated October 9, 1985, and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the issuance of Special Nuclear Materials License No. SNM-1954. On the basis of this assessment, the Commission has concluded that the environmental impacts created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland this 28th day of October 1985.

For the Nuclear Regulatory Commission,

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch,
Division of Fuel Cycle and Material Safety,
NRC.

[FR Doc. 85-26290 Filed 11-1-85; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 642; Docket No. A86-2

Centerfield, UT 84622 (Blanch Christensen et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued October 28, 1985.

Before Commissioners: Janet D Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket No. A86-2.

Named of affected Post Office:
Centerfield, Utah 84622.

Name(s) of petitioner(s): Blanch Christensen; Mr. and Mrs. Max Sorenson.

Type of determination: Closing.

Date of filing of initial appeal papers:
October 15, 1985.

Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may

incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp,

Secretary.

October 15, 1985, Filing of First Petition;

October 23, 1985, Filing of Record;

October 28, 1985, Notice and Order of Filing of Appeal;

November 12, 1985, Last day for filing petitions to intervene [see 39 CFR 3001.111(b)];

November 22, 1985, Petitioners' Participant Statement or Initial Brief [see 39 CFR 3001.115(a) and (b)];

December 4, 1985, Postal Service Answering Brief [See 39 CFR 3001.115(c)];

December 19, 1985, (1) Petitioners' Reply Brief should petitioners choose to file one [see 39 CFR 3001.115(d)];

December 26, 1985, (2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116];

February 12, 1985, Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 85-26212 Filed 11-1-85; 8:45 am]

BILLING CODE 7715-01-M

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974; Proposed Addition of New Routine Uses

AGENCY: Small Business Administration (SBA).

ACTION: Notice of establishment of new routine uses applicable to each existing system.

SUMMARY: In accordance with the requirements of the Privacy Act, 5 U.S.C. 552a(e)(11), the SBA is publishing notice of a proposal to establish two new routine uses which will apply to each existing system. The new routine uses were recommended in recent guidance provided by the Office of Management and Budget. Improved support of disclosures of Privacy Act records during litigation will result from the establishment of these routine uses.

(1) *A New Routine Use for Disclosure to the Department of Justice for Use in Litigation:*

"It shall be a routine use of the records in this system of records to

disclose them to the Department of Justice when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected."

(2) *A New Routine Use for Agency Disclosure in Litigation:*

"It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected."

DATES: Comments on the proposed routine uses must be received on or before December 4, 1985. The proposed routine uses will become effective on or before December 4, 1985, unless SBA receives comments which would result in contrary determination.

FOR FURTHER INFORMATION CONTACT: Nicholas Kalcounos, Director, Freedom of Information/Privacy Acts Appellate

Office, SBA, 1441 L Street, NW., Washington, DC 20416, (202) 653-8460.

James C. Sanders,
Administrator.

[FR Doc. 85-26091 Filed 11-1-85; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective November 1, 1985, and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 10.405% per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: October 29, 1985.

John L. Werner,

Director, Office of Investment.

[FR Doc. 85-26247 Filed 11-1-85; 8:45 am]

BILLING CODE 8025-01-M

Senior Executive Service Performance Review Board; List of Members

AGENCY: Small Business Administration.

ACTION: Listing of Personnel Serving as Members of this Agency's Senior Executive Service Performance Review Board.

SUMMARY: Pub. L. 95-454 dated October 13, 1978, (Civil Service Reform Act of 1978) requires that Federal Agencies publish notification of the appointment of individuals who serve as members of that agency's Performance Review Board (PRB). The following is a listing of

those individuals currently serving as members of this Agency's PRB:

1. Johnnie L. Albertson, Deputy Associate Administrator for Management Assistance (SBDC's)
2. Earl L. Chambers, Director of Portfolio Management
3. Richard D. Durkin, Regional Administrator, Chicago
4. Wiley S. Messick, Deputy Regional Administrator, Atlanta
5. Richard L. Osbourn, Director of Personnel (Non-voting Technical Advisor)
6. George H. Robinson, Director of Equal Employment Opportunity and Compliance (Non-voting Equal Employment Advisor)
7. Ruben Ernest Weatherholtz, III, Associate Administrator for Procurement Assistance
8. Harry S. Carver, Comptroller
9. Charles Hertzberg, Deputy Associate Administrator for Financial Assistance
10. Robert T. Lhulier, Regional Administrator, Philadelphia
11. Carlos Suarez, Regional Administrator, Denver
12. Robert B. Webber, General Counsel
13. Bobby B. Oakley, Assistant Inspector General for Auditing, Veterans Administration
14. Steven A. Switzer, Assistant Inspector General for Audits,

Department of Housing and Urban Development

Robert A. Turnbull,
Acting Administrator.

[FR Doc. 85-26248 Filed 11-1-85; 8:45 am]

BILLING CODE 9025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-52]

Initiation of Investigation Under Section 302; Adequacy of Korean Laws for the Protection of Intellectual Property Rights

Pursuant to his authority under section 302(c) of the Trade Act of 1974, as amended, (19 U.S.C. 2412(c)), the United States Trade Representative is initiating an investigation, effective on the date of publication of this notice, into the adequacy of the laws of the Republic of Korea governing the protection of intellectual property rights. The investigation will enable the USTR to advise the President on the exercise of his authority under section 301 of the Trade Act of 1974.

Korea's laws appear to deny effective protection for U.S. intellectual property. For example, Korea's patent law does not cover certain types of products. In other cases, protection is limited to processes only. Copyright protection is virtually non-existent for works of U.S. authors. U.S. industry has expressed concern that these practices have inhibited U.S. sales and investment in

Korea. USTR is therefore initiating an investigation concerning the adequacy of Korea's law and their effect on U.S. trade.

Interested parties are invited to submit written comments with respect to issues arising from the investigation, including the appropriate scope of the investigation. Interested parties should indicate whether they support or oppose the initiation of the investigation and the basis for their position. Where possible, interested parties who support the investigation should provide detailed factual information describing the problems created by the Korean laws and their effect on trade. Comments should be filed in accordance with the procedures set forth in 15 CFR 2006.8 and should be submitted to the Chairman, section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, NW., Washington, DC 20506, no later than December 2, 1985. Rebuttal briefs must be submitted no later than December 9, 1985.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

[FR Doc. 85-26305 Filed 11-1-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Agreements Filed Under Sections 408, 409, 412 and 414 During the Week Ending October 25, 1985

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
October 24, 1985	43521	Members of International Air Transport Association	Specific commodity rates Manila and Guam	October 16, 1985.
Do.	43522	Members of International Air Transport Association	Cargo rates within Africa	October 10, 1985.
Do.	43518	Piedmont Aviation, Inc., c/o Robert M. Lichtman, Wald, Harkrader & Ross, 1300 Nineteenth Street, NW, Washington, DC, 20036. Empire Airlines, Inc., c/o Michael F. Goldman, Steele, Simmons & Fornaciari, 2020 K Street, NW., Suite 850, Washington, DC, 20006. Joint Application of Piedmont Aviation, Inc. and Empire Airlines, Inc. pursuant to Section 408 of the Act, requests approval of Piedmont's acquisition of control of Empire pursuant to the Merger Agreement, and reissue in Piedmont's name, pursuant to section 418(b) of the Act, Empire's Syracuse-Montreal/Ottawa/Toronto exemption authority, effective upon consummation of the merger.		

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-26294 Filed 11-1-85; 8:45 am]

BILLING CODE 4910-82-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q (See 14 CFR 302.1701 et seq.); Week Ended October 25, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope

are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Oct. 21, 1985	43504	Eastern Air Lines, Inc., c/o Robert N. Duggan, 1030—15th Street, NW., Washington, DC 20005. Application of Eastern Air Lines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 267 which authorized Eastern to engage in air transportation as follows: Between the coterminal points Atlanta, Ga. and New Orleans, La., and the coterminal points Loreto, La Paz, San Jose del Cabo, Mazatlan, Puerto Vallarta, and Guadalupe, Mexico.
Do	43507	Conforming Applications, Motions to Modify Scope and Answers may be filed by November 18, 1985. Delta Air Lines, Inc., c/o Don M. Adams, Hartsfield Atlanta Int'l. Airport, Atlanta, Georgia 30320. Application of Delta Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide air transportation services between Atlanta, Georgia and Munich, Germany via London, England (Gatwick).
Do	43510	Conforming Applications, Motions to Modify Scope and Answers may be filed by November 18, 1985. Continental Air Lines Inc., c/o Emory N. Ellis, Fulbright & Jaworski, 1150 Connecticut Avenue, NW., Washington, D.C. 20006. Application of Continental Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to enable it to provide nonstop air transportation of persons, property and mail between Denver Colorado and London, England, United Kingdom.
Oct. 22, 1985	43514	Conforming Applications, Motions to Modify Scope and Answers may be filed by November 18, 1985. Continental Air Lines, Inc. and Texas International Airlines, Inc., c/o Emory N. Ellis, Fulbright & Jaworski, 1150 Connecticut Avenue, NW., Washington, DC 20006. Joint Application of Continental Air Lines, Inc. and Texas International Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for renewal of their certificates of public convenience and necessity for service between Houston, Texas and points in Western Mexico (Loreto, La Paz, San Jose del Cabo, Mazatlan, Puerto Vallarta, Manzanillo, Zihuatanejo and Acapulco), included on segment 13 of Continental's certificate for Route 23-F and TI's certificate for Route 295.
Oct. 23, 1985	43517	Conforming Applications, Motions to Modify Scope and Answers may be filed by November 18, 1985. American Airlines, Inc., c/o Alfred V.J. Prather, Prather Saeger Doolittle & Farmer, 1600 M Street, NW, 7th Floor, Washington, DC 20005. Conforming Application of American Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to serve between Chicago and London. Answers may be filed by November 6, 1985.
Oct. 25, 1985	43525	LessExpress Air, Inc., c/o Joseph R. Haley, 116 West Grand Avenue, El Segundo, California 90245. Application of LessExpress Air, Inc., pursuant to Section 401 (b)(3) of the Act and Subpart Q of the Regulations requests permanent authority to engage in foreign charter air transportation of passengers, freight, property and mail: Between any point in any state in the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and, on the other: (a) Any point in Canada; (b) Any point in Mexico; (c) Any point in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Trinidad, Aruba, the Leeward and Windward Islands, and any other foreign place located in the Gulf of Mexico or Caribbean Sea; (d) Any point in Central or South America; (e) Any point in Australia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing; and (f) Any point in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India.
Do	43527	Pan American World Airways, Inc., c/o David M. O'Connor, Suite 901, 1660 L Street, NW., Washington, DC 20006. Application of Pan American World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 267 (Miami and Tampa, Florida-Mexico City, Mexico). Conforming Applications, Motions to Modify Scope and Answers may be filed by November 22, 1985.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 85-26295 Filed 11-1-85; 8:45 am]
BILLING CODE 4910-62-M

[Docket No. 43513]

Premiere, Inc., Davis Airlines, Inc., and Richard J. Davis, Jr., Enforcement Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg., 409 7th Street, SW., Washington, DC 20590, telephone (202) 426-5560.

Dated Washington, DC, October 30, 1985.

Elias C. Rodriguez,
Chief Administrative Law Judge.

[FR Doc. 85-26293 Filed 11-1-85; 8:45 am]
BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP65-15; Notice 1]

Vintage Reproductions, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Vintage Reproductions, Inc. of North Miami, Florida, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.208, Motor Vehicle Safety Standard No. 208, *Occupant Restraint Systems*. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Vintage is the manufacturer of a replicar known as the Gazelle, which it also supplies in kit form. In 1982, it was granted NHTSA Exemption 81-1 from compliance with paragraph S7.1 of Motor Vehicle Safety Standard No. 208,

which requires passenger restraint systems to be equipped with automatic seat belt retractors. The exemption was for a period of one year, and expired on October 1, 1982. Vintage did not petition for a renewal of the exemption, and in February 1985, during a visit to Vintage's production facilities, NHTSA inspectors discovered that the company had continued to produce Gazelles without automatic seat belt retractors after the expiration of its exemption, in apparent violation of the National Traffic and Motor Vehicle Safety Act (Agency File CIR 2399). Alleging that in spite of its continued efforts it has been unable to find a retractor of a size suitable for the configuration of the Gazelle, Vintage petitioned for a 3-year exemption from paragraph S7.1 on grounds that compliance would cause it substantial economic hardship. Notice appeared in the *Federal Register* on October 21, 1985 (50 FR 42634), with a due date for comments of November 20, 1985. Subsequently, Vintage filed the petition for inconsequentiality under consideration in this notice.

In support of its claim that the noncompliance is inconsequential as it relates to motor vehicle safety, Vintage says that were automatic seat belt retractors required to be installed in the

front seat "the goal of increased safety would be defeated, since the passenger would, in that case, be required to pull the seat belt around him or her before closing the door." Given the current production level of 4 vehicles per month, Vintage argues that the noncompliance will have no significant effect on vehicle-related deaths and injuries. The petitioner also believes that its vehicles are driven, on an average, only 2,000 miles per year, and thus are less likely to be involved in accidents. It is not aware of any "report instance of a factory-completed Gazelle causing injury or fatality." Further, because the belt must lie upon the seat and cannot be tucked away, the passenger is encouraged to use it. The noncompliance covers 265 vehicles.

Interested persons are invited to submit written data, views, and arguments on the petition of Vintage Reproductions, Inc. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the *Federal Register* pursuant to the authority indicated below.

Comment closing date: December 4, 1985.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); (delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: October 29, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-26237 Filed 11-1-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on December 2 & 3, 1985. The meeting will be held in Room 3313 of the Internal

Revenue Service Building. The building is located at 1111 Constitution Ave., NW., Washington, DC. The meeting will begin at 9:00 A.M. on Monday, December 2 and 9:00 A.M. on Tuesday, December 3. The agenda will include the following topics:

Monday, December 2, 1985, Industry Specialization, Published Rulings Program, 1986 Filing Season; Tuesday, December 3, 1985, Information Returns Program, 1985 Tax Proposals and Tax, Administrative Consequences.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people. If you would like to have the Committee consider a written statement, please call or write to John Burke, Assistant to the Deputy Commissioner, 1111 Constitution Ave., NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: John Burke, Assistant to the Deputy Commissioner, (202) 566-4143 (Not toll-free).

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 85-26209 Filed 11-1-85; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Blood of Kings: A New Interpretation of Maya Art" (included in the list¹ filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between the Kimbell Art Museum and various foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, beginning on or about May 16, 1986, to on or about August 24, 1986; and the Cleveland Museum of Art,

¹An itemized list of objects included in the exhibit is filed as part of the original document.

Cleveland, Ohio, beginning on or about October 8, 1986, to on or about December 14, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the *Federal Register*.

Dated: October 24, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85-26217 Filed 11-1-85; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF JUSTICE

Attorney General

Voting Rights Act; Certification of the Attorney General; Bronx County, NY

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in Bronx County, New York. This county was included within the scope of the determination of the Attorney General and the Director of the Census made on March 15, 1971, under section 4(b) of the Voting Rights Act of 1965 and published in the *Federal Register* on March 27, 1971 (36 FR 5809). Bronx County was also included within the scope of the determinations of the Attorney General and the Director of the Census made on September 18, 1975 under sections 4(b) and 4(f)(3) of the Voting Rights Act of 1965, as amended in 1975, and published in the *Federal Register* on September 23, 1975 (40 FR 43746).

Dated: November 1, 1985.

Edwin Meese III,

Attorney General of the United States.

[FR Doc. 85-26457 Filed 11-1-85; 1:10 pm]

BILLING CODE 4410-01-M

Voting Rights Act; Certification of the Attorney General; Kings County, NY

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in Kings County, New York. This county was included within the scope of the determination of the Attorney General and the Director of the Census made on March 15, 1971, under section 4(b) of the

Voting Rights Act of 1965 and published in the Federal Register on March 27, 1971 (36 FR 5809). Kings County was also included within the scope of the determinations of the Attorney General and the Director of the Census made on September 18, 1975 under sections 4(b) and 4(f)(3) of the Voting Rights Act of 1965, as amended in 1975, and published in the Federal Register on September 23, 1975 (40 FR 43746).

Dated: November 1, 1985.

Edwin Meese III,

Attorney General of the United States.

[FR Doc. 85-26456 Filed 11-1-85; 1:10 pm]

BILLING CODE 4410-01-M

Voting Rights Act; Certification of the Attorney General; New York County, NY

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in New York County, New York. This county was included within the scope of the determination of the Attorney General and the Director of the Census made on March 15, 1971, under section 4(b) of the Voting Rights Act of 1965 and published in the Federal Register on March 27, 1971 (36 FR 5809).

Dated: November 1, 1985.

Edwin Meese III,

Attorney General of the United States.

[FR Doc. 85-26456 Filed 11-1-85; 1:10 pm]

BILLING CODE 4410-01-M

Sunshine Act Meetings

Federal Register

Vol. 50, No. 213

Monday, November 4, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUS ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, November 5, 1985.

CHANGES IN THE MEETING: The following item has been postponed and is expected to be rescheduled for the November 18, 1985 Commission meeting.

"A Report on General Counsel Operations"

CONTACT PERSON FOR MORE

INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: October 30, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85-26286 Filed 10-30-85; 4:17 pm]

BILLING CODE 6750-06-M

2

FEDERAL ENERGY REGULATORY COMMISSION

October 30, 1985.

TIME AND DATE: 10:00 a.m., November 6, 1985.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda;

however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 823rd Meeting—November 6, 1985, Regular Meeting (10:00 a.m.)

- CAP-1.
Project No. 2866-005, Metropolitan Sanitary District of Greater Chicago
- CAP-2.
Project No. 8864-002, Weyerhaeuser Company
- CAP-3.
Project No. 4114-004, Long Lake Energy Corporation
- CAP-4.
Project No. 516-027, South Carolina Electric and Gas Company
- CAP-5.
Project No. 6537-001, town of Skykomish, Washington
- CAP-6.
Project No. 3195-011, Joseph M. Keating
- CAP-7.
Project No. 7105-002, Davenport-Rock Island Associates
- CAP-8.
Project No. 3286-008, Puget Sound Power and Light Company
- CAP-9.
Project Nos. 7804-002 and 7805-002, Gerald and Glenda Ohs
- CAP-10.
Project No. 5091-003, Trans Mountain Construction Company
- CAP-11.
Project No. 5466-003, the city of New York, Department of Environmental Protection
- CAP-12.
Project No. 5989-002, the city of Jersey City, New Jersey
- CAP-13.
Project No. 7492-001, Michiana Hydro-Electric Power Corporation
- CAP-14.
(A) Project No. 8194-007, James W. Caples;
Project No. 6702-005, Superior Oil Company
(B) Project Nos. 6810-006 and 6811-006, Douglas Mendenhall
- CAP-15.
Project No. 2890-011, Kings River Conservation District
- CAP-16.
Omitted
- CAP-17.
Project No. 4167-003, Energenics Systems, Inc.
- Project No. 6730-000, Northern Colorado Water Conservancy District
- CAP-18.
Project No. 2374-000, Watervliet Paper Company
- CAP-19.
Docket Nos. ER85-585-001, ER85-656-001, ER85-857-001 and ER85-679-001, Vermont Electric Power Company
- CAP-20.

Docket No. ER84-579-005, AEP Generating Company

CAP-21.

Docket Nos. ER84-348-007 and 008, American Electric Power Service Corporation

CAP-22.

Docket No. ER83-138-008 (phase II), the Cleveland Electric Illuminating Company

CAP-23.

Docket Nos. ER85-763-000 and ER85-598-001, et al., Consolidated Edison Company of New York, Inc.

CAP-24.

Docket No. ER85-775-000, Central Vermont Public Service Corporation

CAP-25.

Docket No. ER85-780-000, Pacific Gas and Electric Company

CAP-26.

Docket Nos. ER79-182-008, ER80-106-005, ER82-146-000, 009, EL82-16-000, 001, EL82-27-000 and 001, Commonwealth Edison Company

CAP-27.

Docket No. ER84-576-000, Wisconsin Power and Light Company

CAP-28.

Docket No. ER84-694-000, Michigan Power Company

CAP-29.

(A) Docket No. RE81-16-000, Public Utility District No. 1 of Douglas County
(B) Docket No. RE81-4-000, Withlacoochee River Electric Cooperative, Inc.

Consent Miscellaneous Agenda

CAM-1.

Docket No. RM86-1-000, Revisions to Rules of Practice and Procedure and Delegation to the Chief Administrative Law Judge

CAM-2.

Docket No. RM83-53-002, Obligations of sellers and purchasers of first-sale natural gas for refunds owed for collections in excess of maximum lawful prices under the Natural Gas Policy Act of 1978

CAM-3.

Docket No. GP85-20-001, Colorado Interstate Gas Company

CAM-4.

Docket No. GP85-2-000, State of New Mexico, NCPA Section 108, Mesa Petroleum Company, State Com AJ #34 well, FERC No. JD84-50602

CAM-5.

Docket No. RO85-17-000, Glen A. Martin

CAM-6.

Docket No. RM85-13-000, revisions to FPC Form No. 8, "Underground Gas Storage Report" and FERC Form No. 16, "Report of Gas Supply and Requirements"

Consent Gas Agenda

CAG-1.

Docket No. TA85-5-5-005, Midwestern Gas Transmission Company

CAG-2.

- Docket No. RP83-35-041, Texas Eastern Transmission Corporation
- CAG-3.
Docket No. TA85-2-16-004, National Fuel Gas Supply Corporation
- CAG-4.
Docket Nos. RP85-165-000 through 004, CP85-487-000, CP85-488-000 and CP85-672-000, Distrigas of Massachusetts Corporation
- CAG-5.
Docket Nos. RP85-178-001, 002 and 004, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
- CAG-6.
Docket Nos. TA85-3-29-003 through 006 and RP85-148-001 through 004, Transcontinental Gas Pipe Line Corporation
- CAG-7.
Docket No. RP85-201-000, South Georgia Natural Gas Company
- CAG-8.
(A) Docket No. RP85-202-000, Trunkline Gas Company
(B) Docket No. RP85-203-000, Panhandle Eastern Pipe Line Company
- CAG-9.
Docket No. RP82-19-012, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
- CAG-10.
Docket No. TA85-2-9-006, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
- CAG-11.
Docket No. RP85-204-000, Kentucky West Virginia Gas Company
- CAG-12.
Docket No. ST85-1106-000, THC Pipeline Company
- CAG-13.
Docket Nos. CI83-337-003 and CI83-350-003, Exxon Corporation
- CAG-14.
Docket Nos. RI74-188-068 and RI75-21-063, Independent Oil & Gas Association of West Virginia
- CAG-15.
Docket Nos. RI74-188-069 and RI75-21-064, Independent Oil & Gas Association of West Virginia
- CAG-16.
Docket Nos. CI83-269-041 and 042, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., Tinco, Ltd. and Tenneco West, Inc.
Docket Nos. RP83-11-042, 043, RP83-30-040 and 041, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83-279-032 and 033, producer-suppliers of Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83-340-031 and 032, producer-suppliers of Transco Gas Supply Company
Docket Nos. CP83-428-040 and 041, producer-suppliers of Transco Supply Company and Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83-452-028, 030 and 032, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
- Docket Nos. CP83-502-024 and 025, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
- Docket Nos. CP83-333-031 and 033, Panmark Gas Company, et al.
Docket Nos. CP84-244-011 and 012, Texas Eastern Transmission Corporation and producer-suppliers of Texas Eastern Transmission Corporation
Docket Nos. CI84-332-016 and CI84-332-017, Cities Service Oil and Gas Corporation, Cities Offshore Production Company and OXY Petroleum, Inc.
Docket Nos. CI84-374-015 and 016, TXP Operating Company
Docket No. CI84-485-019, Amoco Production Company
Docket No. CP84-539-015, El Paso Natural Gas Company
Docket No. CI84-510-006, Sun Exploration and Production Company
Docket Nos. CI85-36-003 and 004, Texas Gas Exploration Company
Docket Nos. CI85-51-001, 003 and 004, Exxon Corporation
Docket No. CI85-27-004, Mesa Petroleum
Docket No. CI84-571-004, Champlin Petroleum
Docket No. CI84-557-006, Arco Oil & Gas Company, a division of Atlantic Richfield Company
Docket Nos. CI85-41-004 and 005, American Petrofina Company of Texas and Petrofina Delaware, Inc.
Docket No. CI85-50-004, Diamond Shamrock Exploration Company
Docket Nos. CI85-89-003 and 004, Union Texas Petroleum Company
Docket Nos. CI85-156-003 and 004, Conoco, Inc.
Docket Nos. CI84-565-003 and 004, Yankee Resources, Inc.
Docket No. CI85-167-003, Chevron USA, Inc.
Docket No. CI85-173-003, Marathon Oil Company
Docket No. CI85-176-003, Kerr McGee Corporation
Docket No. CI85-239-003, Samson Resources Company
Docket No. CI85-244-002, Arkoma Production Company
- CAG-17.
Docket Nos. RP83-137-019 through 022, Transcontinental Gas Pipe Line Corporation
Docket Nos. RP83-11-037 through 039 and RP83-30-035 through 037, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83-279-027 through 029, Producer-Suppliers of Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83-340-027 through 029, Producer-Suppliers of Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83-428-035 through 037, Producer-Suppliers of Transco Gas Supply Company and Transcontinental Gas Pipe Line Corporation
- CAG-18.
Docket Nos. CP78-338-005 and CP78-340-007, Trunkline Gas Company
- CAG-19.
Docket No. CP85-685-000, Northern Natural Gas Company, Division of Internorth, Inc.
- CAG-20.
Docket No. CP85-730-000, Northern Natural Gas Company, division of Internorth, Inc.
- CAG-21.
Docket No. CP85-327-000, Equitable Gas Company
- CAG-22.
Docket No. CP84-441-008, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
- CAG-23.
Omitted
- CAG-24.
Docket No. CP85-373-000, Williston Basin Interstate Pipeline Company
- I. Licensed Project Matters**
- P-1.
Project No. 4632-000, Clifton Power Corporation
- P-2.
Docket No. E-6454-000, City of Centralia, Washington
- II. Electric Rate Matters**
- ER-1.
Docket No. EL85-6-000, Public Utilities Commission of the State of California, et al. v. United States Department of Energy—Bonneville Power Administration
- Miscellaneous Agenda*
- M-1.
Reserved
- M-2.
Reserved
- M-3.
Omitted
- I. Pipeline Rate Matters**
- RP-1.
Reserved
- II. Producer Matters**
- CI-1.
Reserved
- III. Pipeline Certificate Matters**
- CP-1.
Docket No. CP85-555-000, and Pipeline Company
- CP-2.
Docket No. CP85-535-000, Arkansas Oklahoma Gas Corporation
- CP-3.
Docket No. CP84-744-000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. CP84-746-000, Granite State Gas Transmission, Inc.
- CP-4.
Docket Nos. CP80-581-000 and 001, Pataya Storage Company
Docket No. CP81-308-000, El Paso Natural Gas Company
Docket No. CP83-468-000, Mohave Gas Trust
Docket No. CP83-504-000, Southwest Gas Corporation
- CP-5.
Docket No. CP85-57-000, Natural Gas Pipeline Company of America
- CP-6.

Docket No. TC85-15-000, Texas Eastern
Transmission
Kenneth F. Plumb,
Secretary.
[FR Doc. 85-26338 Filed 10-31-85; 11:55 am]
BILLING CODE 6717-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Thursday, November 7, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2nd Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26336 Filed 10-31-85; 11:55 am]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, November 7, 1985. (Please call 452-3206 on Wednesday, November 6 for possible change in meeting time.)

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:*Summary Agenda*

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment on two proposals concerning the elimination or recovery of float attributable to nonstandard holidays.

Discussion Agenda

2. Proposed revision of regulation B (Equal Credit Opportunity). (Proposed earlier for public comment; Docket No. R-0541)

3. Proposed adoption of revisions to reporting requirements for domestic bank holding companies (FR Y-6, FR Y-9, and FR 2352). (Proposed earlier for public comment; Docket No. R-0548)

4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26337 Filed 10-31-85; 11:55 am]

BILLING CODE 6210-01-M

5

NATIONAL MEDIATION BOARD

REVISED TIME AND DATE: 2:00 p.m., Wednesday, November 13, 1985.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of October, 1985.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Director, Tel: (202) 523-5920.

Date of notice: October 29, 1985.

Mr. Rowland K. Quinn, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 85-26335 Filed 10-31-85; 11:55 am]

BILLING CODE 7550-01-M

6

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1359]

TIME AND DATE: 2:00 p.m. (CST), Wednesday, November 6, 1985.

PLACE: Joe Wheeler State Part Resort Lodge, River Room, Rogersville, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meetings held on October 16, 18, and 22, 1985.

Discussion Item

1. Progress report on a cooperative project with the Agricultural Stabilization and Conservation Service and the Soil Conservation Service to demonstrate the use of animal waste management systems to improve water quality.

Action Items*Old Business Items*

1. TVA policy code relating to minority economic and community development.

*New Business Items***B—Purchase Awards**

B1. Negotiation JJ-452227—Low-pressure turbine rotor rebuild for Sequoyah Nuclear Plant.

B2. Amendment to Contract 71C82-54114-1 with Westinghouse Electric Corporation covering the nuclear steam supply systems for Watts Bar Nuclear Plant, units 1 and 2.

D—Personnel Items

D1. Personal services contract with Consultants & Designers, Inc., New York, New York, for provision of engineering and related services, requested by Power and Engineering (Nuclear).

D2. Personal services contract with CDI Corporation, Philadelphia, Pennsylvania, for provision of engineering and related services, requested by Power and Engineering (Nuclear).

D3. Personal services contract with AiDE Management Resources Corporation, Richmond, Virginia, for provision of engineering and related services, requested by Power and Engineering (Nuclear).

*D4. Relocation incentive for Charles C. Mason.

E—Real Property Transactions

E1. Reconveyance to TVA by the city of Guntersville, Alabama, of certain landrights—Tract Nos. XGR-592SP and -594SP; and grant of a permanent easement by TVA to city of Guntersville, Alabama, for public recreation purposes affecting 5.94 acres of Guntersville Reservoir land located in Marshall County, Alabama—Tract Nos. XTGR-147RE and -148RE.

*E2. Delegation of authority to the Manager of Power and Engineering (Supply and Use) or his designee to approve and execute an agreement or agreements among TVA, Muhlenberg County, Kentucky, and Green River Coal Company providing for the relocation of an existing county road in order to facilitate coal deliveries by rail at the Paradise Fossil Plant and for transfer to Muhlenberg County of an easement for a road right of way for the relocated section of road.

F—Unclassified

*F1. Interagency Agreement No. TV-68155A between U.S. Environmental Protection Agency and TVA for research to determine the contribution of acidic deposition to contaminants in cistern water supply.

*F2. Interagency Agreement No. TV-68154A between U.S. Environmental Protection Agency and TVA for research on the effects of pH and aluminum on life stages of smallmouth bass and rainbow trout.

F3. Agreement No. TV-67796A between the University of Maine at Orono and TVA covering arrangements for TVA to conduct research on aluminum biogeochemistry in forested watersheds.

F4. Supplement to Agreement No. TV-64685A with Oak Ridge Operations, U.S. Department of Energy covering arrangements for TVA to analyze macrobenthos samples

from Bear Creek, East Fork Poplar Creek, White Oak Creek, and several control streams near Oak Ridge, Tennessee.

F5. Interagency Agreement No. TV-68161A between the Department of Energy, Western Area Power Administration and TVA covering arrangements for TVA to provide shop detail and erection drawings and modification steel for modifying a double-circuit 230-kV transmission line tower to operate as a single-circuit 500-kV tower.

F6. Cooperative Agreement No. TV-65181A between The American Welding Institute (AWI) and TVA covering arrangements for TVA to provide AWI with certain welding and testing equipment, workspace, office space, secretarial services, and office equipment and supplies for a two-year period in exchange for a 15-year membership.

F7. Contract No. TV-64000A between Bear Creek Development Authority and TVA

covering arrangements for the continuation of a cooperative effort for the development and management of the Bear Creek Project.

*Items approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: October 29, 1985.

W.F. Willis,
General Manager.

[FR Doc. 85-26309 Filed 10-31-85 10:22 am]

BILLING CODE 8120-01-M

federal register

Monday
November 4, 1985

Part II

Environmental Protection Agency

40 CFR Part 35

Grants for Construction of Treatment
Works; Interim Final Rule

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 35
[OW-FRL-2879-9]
**Grants for Construction of Treatment
Works**
AGENCY: Environmental Protection
Agency.

ACTION: Interim final rule.

SUMMARY: This rule amends the construction grant regulation, 40 CFR Part 35, Subpart I, published as a final rule on February 17, 1984 (49 FR 6224), and the construction grants program State delegation regulation, 40 CFR Part 35, Subpart J, published as a final rule on August 19, 1983 (48 FR 37814). These revisions clarify provisions in the regulation, provide consistency within the regulations, correct grammatical and spelling errors, and provide information that was unavailable at the time of publication. EPA is making these revisions in response to comments and questions.

DATES: This regulation is effective December 4, 1985. Comments must be received on or before January 3, 1986.

ADDRESS: Comments should be addressed to: Central Docket Section (LE-131), Attention: Docket No. G-85-01, Environmental Protection Agency, Washington, D.C. 20460.

The public may inspect the comments received on this rule between 8 a.m. and 4 p.m. on business days at: Central Docket Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Patricia A. Power, Office of Municipal Pollution Control (WH-546), Environmental Protection Agency, Washington, D.C. 20460, 202-382-2287.

SUPPLEMENTARY INFORMATION: On February 17, 1984, the Environmental Protection Agency (EPA) published final and interim final regulations governing grants for construction of treatment works authorized under Title II of the Clean Water Act, as amended. The main body of the construction grants regulation (§ 35.2000 et seq.), and Appendix B (Allowance for Facilities Planning and Design), were published as a final rule while Appendix A (Determinations of Allowable Costs) was published as a revised interim final rule.

The following amendments are revisions in response to various questions and comments on the regulation and Appendix A. These

amendments clarify EPA policy and intent, clarify ambiguities in the language, and correct typographical errors. The following paragraphs discuss EPA's responses to those comments received.

In addition, a review of the regional disputes resolution procedure prompted the revision of Subpart J of Part 35. The amendment to § 35.3030 provides clarification to the procedure and consistency within the assistance disputes provisions in the general grant regulation, 40 CFR Part 30, Subpart L.

**Alternative Technologies for Small
Communities**

Several commentors have asked whether it is proper to include alternative conveyance systems and onsite systems under the unrestricted definition of alternative technology (§ 35.2005(b)(4)). We did not intend to make alternative sewers and onsite systems eligible as alternative technology for any size community. Alternative sewers and onsite systems are eligible as alternative technology for small communities only.

Therefore, in order to clarify the definitions, the last phrase of § 35.2005(b)(4), the definition of alternative technology, concerning onsite and alternative collector sewers, has been moved to § 35.2005(b)(5), the definition of alternative to conventional treatment works for a small community. The amendment also is consistent with § 35.2005(b)(10)(iii), the definition of collector sewer, regarding the eligibility of alternative conveyance systems as alternative technology for small communities only.

In addition, we are adding a new sentence to § 35.2005(b)(5). This sentence also appears in § 35.2005(b)(18), the definition of individual systems. This change will clarify that "small diameter gravity sewers carrying raw wastewater to cluster systems" are eligible as alternative technology for publicly owned systems as well as privately owned systems.

Finally, we are correcting a typographical error in § 35.2005(b)(40) by changing "large" to "larger." This will clarify that the highly dispersed sections of a municipality larger than 3,500 in population may be deemed a "small community."

Reallotment

Section 35.2010 provides the rules for allotment and reallotment of construction grant funds. Paragraph (b) provides that funds allotted to a State are available for obligation to a specific project for the balance of the fiscal year

of the appropriation and the following fiscal year, after which the funds are reallotted if not obligated. The amendment to paragraph (b) clarifies the method of determining reallotment ratios by stressing that a State that failed to obligate its allotment is not considered in the determination of the ratio used to reallot unobligated funds.

Combined Sewer Overflow

We have identified two Marine CSO issues since the publication of the final regulation in February 1984. Both issues concern the Federal share applied to Marine CSO Fund projects under section 201(n)(2) of the Act and § 35.2024(a) of the regulations. The first issue is how to determine the prevailing Federal share applied to Marine CSO Fund projects. Under § 35.2152(a), the Federal share that applies to Marine CSO Fund projects is the program-wide Federal share prevailing at the time of the grant award. The regulations are clear on this point and, therefore, will not be amended.

However, an amendment is required to clarify the second issue, which is whether a State's uniform lower Federal share applies to a Marine CSO Fund project. The amendment to § 35.2152(c) provides that the State's uniform lower Federal share does not apply to a Marine CSO Fund project in that State, because the funds appropriated under section 201(n)(2) of the Act are not part of the State's allotment and the Marine CSO Fund projects are not processed through the State priority system.

Phased or Segmented Treatment Works

It is EPA policy that when a municipality simultaneously files an application for a grant to construct treatment works necessary to achieve secondary treatment and an application for a section 301(h) waiver, a grant may be awarded for a phase or segment providing less than secondary treatment. A subsequent segment, which will be required if the waiver is denied, would provide the required secondary treatment whether or not Federally funded. To make this policy clear, we are amending § 35.2108(b) by adding a new paragraph (b)(4).

Revised Water Quality Standards

We received several requests to clarify § 35.2111, the provision which prohibits award of a grant pursuant to section 24 of the 1981 Amendments to the Act. The sanction is imposed if a State fails to review and revise, as appropriate, its water quality standards pursuant to section 303(c) of the Act.

The first issue raised was when and how often the sanction applies. If the State has not, since December 29, 1981, reviewed and revised, as appropriate, the water quality standards for the stream into which the wastewater treatment works applying for a construction grant will discharge, the sanction applies. The sanction is effective for construction grants awarded after December 29, 1984. Section 303(c) of the Act requires that at least once every three years the State review its water quality standards and, if appropriate, revise the standards. The requirements of section 303(c) of the Act are continuous; however, the sanction imposed by section 24 of the 1981 Amendments is not. That is, the section 24 sanction will not apply to every section 303(c) water quality standards review violation. Section 24 of the Amendments was not intended to be a surrogate for section 303(c) of the Act. Section 35.2111 has been amended accordingly. Although the section 24 sanction applies only once, this does not affect the State's responsibility under section 303(c) to ensure that adequate review and revision of water quality standards are completed in the future.

The second issue raised was whether the section 24 grant sanction applies to all grants awarded under Title II of the Act or only to grants for the construction of treatment works. The grants subject to this sanction are construction grants. Funding for State programs authorized by sections 205(g) and 205(j) of the Act and for non-discharging land treatment and containment ponds are not affected. Therefore, § 35.2111 is amended by adding new paragraphs (b) and (c).

Infiltration/Inflow (I/I)

Section 35.2120(b) requires a grantee to perform a study of its sewer system and to propose a rehabilitation program if rainfall-induced peak flows result in chronic operational problems related to hydraulic overloading during storms. Based on a study which was to identify a more quantitative criterion, and that was underway at the time the current regulation was published, we have determined that flow rates less than 275 gallons per capita per day (gpcd) during storms generally indicate that inflow is not excessive. The study evaluated the results of sewer system evaluation surveys in numerous communities in seven EPA Regions to determine: (1) Below what flow further I/I correction was unlikely to be cost-effective compared to providing increased hydraulic capacity at the plant and (2) the units of measure in which to describe the flow. The study found a significant statistical correlation

between population size and nonexcessive inflow (gallons per capita) and a maximum average peak flow of 275 gallons per capita per day in the studied systems. This figure provides a simplified and straightforward standard for determining whether maximum flow rates from an existing system are excessive and further I/I study and analysis are necessary.

Therefore, we are revising § 35.2120(b) to require a study if during rain events (which are deemed by the State to be locally representative and significant, for example in terms of storm frequency and intensity) inflow results in chronic operational problems related to hydraulic overloading or the total daily flow rate exceeds 275 gpcd. We are making a corresponding change to the definition of nonexcessive inflow, § 35.2005(b)(29).

Determination of Allowable Costs

Several provisions of Appendix A are amended to provide clarity and consistency. First, a new paragraph is added to Appendix A(b)A.1. to clarify that specific and unique costs associated with an onsite or off-site Innovative or Alternative (I/A) field test are allowable. Congress intended to encourage I/A field testing of innovative or alternative technologies by making the field tests grant eligible. Included in this eligibility is construction of the field test treatment works as well as the costs of conducting the study and reporting the results. The amendment will allow the costs specific and unique to the field test aspects of the project. However, we stress that normal operation and maintenance costs as defined in § 35.2005(b)(30) are not allowable as construction costs of a field test.

Second, Appendix A(b)A.2.a. is clarified to reflect the Congressional intent behind section 202(a)(3) of the Act which states that the Administrator is authorized to make a grant to fund all the costs of the modification or replacement of an I/A technology project that received an increased Federal share grant and that failed to meet its design performance specifications. The amendment clarifies that the actual planning and design costs of an I/A modification or replacement project are allowable costs.

Third, Appendix A(b)A.2.e. is revised for consistency with § 35.2212(b). The amendment clarifies that incremental costs due to the award of a subagreement for building significant elements of the project more than 12 months after Step 3 grant award or Step 2+3 final approvals are unallowable unless specified in the project schedule

approved by the Regional Administrator at the time of grant award.

Fourth, a new paragraph is added to Appendix A(b)B.2., a section that addresses the unallowable costs related to mitigation of environmental impacts. The new paragraph, b., makes clear that the cost of land acquired to mitigate adverse environmental effects as identified pursuant to an environmental review under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, is an unallowable cost. This amendment responds to a recent EPA Board of Assistance Appeals (BAA) decision, *City of Merced, California* (EPA Docket No. 82-74), which took a position, contrary to the long-standing Agency policy, that the cost of land to mitigate adverse environmental effects identified under NEPA is allowable. The Agency policy is based on section 212(2) of the Act which provides for only two categories and land in the definition of treatment works: Land that will be used as an integral part of the treatment process and land that will be used for the ultimate disposal of residues resulting from such treatment. Because land acquired to mitigate adverse environmental effects is not included in the definition of treatment works and because NEPA does not provide independent funding authority, the cost of that land purchase is not allowable. The amendment to Appendix A explicitly states that it is an unallowable cost. However, providing that the cost of land purchased to mitigate adverse environmental impacts is unallowable does not affect the requirement to mitigate. 40 CFR Part 6 requires that effective mitigation measures be developed and implemented. Also, the applicant must provide in the facilities plan a cost-effectiveness analysis of the feasible alternatives, including an analysis of the ineligible land purchase.

Fifth, on March 1, 1985, the BAA issued a decision in the case of *County of Ventura, California* (EPA Docket No. 83-121). The BAA determined that for this particular publicly-owned small alternative system, the cost of sewer pipe installed between the foundations of homes and the septic tanks (house laterals) was eligible for Federal funding. Agency policy is that for small systems, as for conventional treatment works, the cost of house laterals is not eligible. As indicated by the legislative history underlying section 211 of the Clean Water Act, this policy is consistent with the intent of Congress: "Sewer lines financed under this authority [Title II] are to be limited to the main lines constructed by the public

agency and does not include the connection to such lines by households and others." H.R. Report No. 92-911, 92nd Cong. 2nd Sess. (1972). House laterals were explicitly excluded from the applicable definition of a sewage collection system in previous regulations, 40 CFR 354.905. House laterals are likewise explicitly excluded from the present definition of collector sewer, 40 CFR 35.2005(10)(iii), and are specifically made ineligible for funding under small system projects pursuant to Appendix A(b)C.2.b.

To some it was unclear whether the costs of conveyance pipes from a user's house to the property line were allowable if the treatment unit was not located on that user's property. Therefore, Appendix A(b)C.2.b. has been modified to make it clear that this cost is unallowable.

Finally, Appendix A(b)D. is amended to clarify the Agency's longstanding policy that the grantee must satisfy the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) in acquiring land, easements, and rights-of-way for sewer lines which are necessary for a Federally funded project even though Federal funds are not used to buy the land. *Columbia, South Carolina* sued the EPA over this issue. The Fourth Circuit in *City of Columbia v. Costle*, 710 F.2d 1009 (4th Cir. 1983), upheld EPA's determination that if real property must be acquired for a Federally assisted project the acquisition must be in accordance with the URA regardless of whether the Federal funds contribute to the cost of the real property.

Regional Disputes Resolution

The amendment to § 35.3030 revises the procedures for conducting Regional review of delegated State decisions pursuant to 40 CFR Part 30, Subpart L, which governs disputes arising under EPA assistance programs.

To be consistent with EPA guidance, the amendment provides that a request for review of a State decision should be submitted to the Region, rather than the Regional Administrator (RA), for a decision under Subpart L. The Region should determine whether the State's review is comparable to a dispute decision official's (DDO) review under Subpart L. If the State's review is comparable, the only Regional review will be conducted by the RA. If the State's review is not comparable, the DDO will review the State's decisions and issued written decisions. Review of either RA or DDO decisions may be requested pursuant to Subpart L.

The amendment also revises the description of the documents that must be submitted with a request for review of a State decision and the requirements for filing a request for review. These revisions also are intended to make § 35.3030 consistent with Subpart L.

Minor Clarifications and Corrections

The balance of the amendments clarify regulatory language and correct typographical errors.

Regulation Development Process

Executive Order 12291

These rules have been reviewed under Executive Order (E.O.) 12291 and do not meet the criteria for a major regulation. This regulation will not result in: An annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or U.S. enterprises operating domestic or foreign markets. Since this regulation is not a major rule, a Regulatory Impact Analysis is not required.

Paperwork Reduction Act

The information collection requirements contained in the regulation that these rules revise are being reviewed by OMB under previously assigned control numbers 2040-0027 and 2040-0095. The amendments to information collection provisions §§ 35.2040 and 35.3030 do not impose any additional information requirement but simply further describe an existing requirement. Therefore, the amendments to §§ 35.2040 and 35.3030 contained in this interim final rule will not have any impact on the paperwork burden already imposed by the cleared regulation. This rule will also carry the control numbers 2040-0027 and 2040-0095.

List of Subjects in 40 CFR Part 35

Air pollution control, Grant programs—environmental protection, Indians, Pesticides and pests, Reporting and recordkeeping, Waste treatment and disposal, Water pollution control.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Lee M. Thomas,

Administrator.

October 10, 1985.

Accordingly, EPA is amending 40 CFR Part 35, Subparts I and J as follows:

PART 35—[AMENDED]

1. The authority citation for Part 35 continues to read as follows:

Authority: Secs. 101(e), 109(b), 201 through 205, 207, 208(d), 210 through 212, 215 through 217, 304(d)(3), 313, 501, 511, and 516(d) of the Clean Water Act, as amended, 33 U.S.C. 1201, et seq.

2. In § 35.2005, paragraphs (b) (4), (5), (22), (29), and (40) are revised to read as follows:

§ 35.2005 Definitions.

* * * * *

(b) * * *

(4) *Alternative technology.* Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed land; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; and methane recovery.

(5) *Alternative to conventional treatment works for a small community.* For purposes of §§ 35.2020 and 35.2032, alternative technology used by treatment works in small communities include alternative technologies defined in paragraph (b)(4), as well as, individual and onsite systems; small diameter gravity, pressure or vacuum sewers conveying treated or partially treated wastewater. These systems can also include small diameter gravity sewers carrying raw wastewater to cluster systems.

* * * * *

(22) *Initiation of operation.* The date specified by the grantee on which use of the project begins for the purpose for which it was planned, designed, and built.

* * * * *

(29) *Nonexcessive inflow.* The maximum total flow rate during storm events which does not result in chronic operational problems related to hydraulic overloading of the treatment works or which does not result in a total flow of more than 275 gallons per capita per day (domestic base flow plus infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows. (See §§ 35.2005(b)(16) and 35.2120).

* * * * *

(40) *Small Community*. For purposes of §§ 35.2020(b) and 35.2032, any municipality with a population of 3,500 or less or highly dispersed sections of larger municipalities, as determined by the Regional Administrator.

3. In § 35.2010, paragraph (b) is amended by adding the phrase, ", adjusted for the States which failed to obligate any of the fiscal year funds being reallocated," following the words "then-current fiscal year" in the second sentence. As revised, paragraph (b) reads as follows:

§ 35.2010 Allotment; reallocation.

(b) Unless otherwise provided by Congress, all sums allotted to a State under section 205 of the Act shall remain available for obligation until the end of the one year after the close of the fiscal year for which the sums were appropriated. Except as provided in § 35.2020(a), sums not obligated at the end of that period shall be subject to reallocation on the basis of the same ratio as applicable to the then-current fiscal year, adjusted for the States which failed to obligate any of the fiscal year funds being reallocated, but none of the funds reallocated shall be made available to any State which failed to obligate any of the fiscal year funds being reallocated. Any sum made available to a State by reallocation under this section shall be in addition to any funds otherwise allotted to such State for grants under this subpart during any fiscal year and the reallocated funds shall remain available for obligation until the last day of the fiscal year following the fiscal year in which the reallocated funds are issued by the Comptroller to the Regional Administrator.

4. Section 35.2020(a) and (c) are amended by revising the reference to "Subpart F" to "Subpart A" in the first sentence of (a); adding the word "not" between "are" and "obligated" in the third sentence of (a); and italicizing the heading of (c). As revised, paragraphs (a) and the heading of (c) read as follows:

§ 35.2020 Reserves.

(a) *Reserve for State management assistance grants*. Each State may request that the Regional Administrator reserve, from the State's annual allotment, up to 4 percent of the State's allotment based on the amount authorized to be appropriated, or \$400,000, whichever is greater, for State management assistance grants under Subpart A of this part. Grants may be

made from these funds to cover the costs of administering activities delegated or scheduled to be delegated to a State. Funds reserved for this purpose that are not obligated by the end of the allotment period will be added to the amounts last allotted to a State. These funds shall be immediately available for obligation to projects in the same manner and to the same extent as the last allotment.

(c) *Reserve for innovative and alternative technologies*.

5. In § 35.2021, paragraphs (a) and (c) are revised to read as follows:

§ 35.2021 Reallocation of reserves.

(a) Mandatory portions of reserves under § 35.2020(b) through (e) shall be reallocated if not obligated during the allotment period (§ 35.2010(b) and (d)). Such reallocated sums are not subject to reserves. The State management assistance reserve under § 35.2020(a) is not subject to reallocation.

(c) Sums deobligated from the mandatory portion of reserves under paragraphs (b) through (e) of § 35.2020 which are reissued by the Comptroller to the Regional Administrator before the initial reallocation date for those funds shall be returned to the same reserve. (See § 35.2010(c)).

6. Section 35.2040 is amended by revising paragraphs (a)(3) and (4), adding paragraph (a)(5), and revising the heading of paragraph (f) to read as follows:

§ 35.2040 Grant application.

- (a) * * *
- (3) Notification of any advance received under § 35.2025(b);
- (4) Evidence of compliance with all application limitations on award (§ 35.2100 through § 35.2127); and
- (5) The project schedule.

(f) *Marine CSO Fund Project*.

7. Section 35.2108 is amended by revising paragraphs (a) and (b)(2) and (3), and adding paragraph (b)(4) to read as follows:

§ 35.2108 Phased or segmented treatment works.

(a) The grant agreement requires the recipient to make the treatment works of which the phase or segment is a part operational and comply with the enforceable requirements of the Act according to a schedule specified in the

grant agreement regardless of whether grant funding is available for the remaining phases and segments; and

(b) * * *

(2) The period to complete the building of the treatment works will cover three years or more;

(3) The treatment works must be phased or segmented to meet the requirements of a Federal or State court order; or

(4) The treatment works is being phased or segmented to build only the less-than-secondary facility pending a final decision on the applicant's request for a secondary treatment requirement waiver under section 301(h) of the Act.

8. Section 35.2111 is revised to read as follows:

§ 35.2111 Revised water quality standards.

After December 29, 1984, no grant can be awarded for projects that discharge into stream segments which have not, at least once since December 29, 1981, had their water quality standards reviewed and revised or new standards adopted, as appropriate, under section 303(c) of the Act, unless:

(a) The State has in good faith submitted such water quality standards and the Regional Administrator has failed to act on them within 120 days of receipt;

(b) The grant assistance is for the construction of non-discharging land treatment or containment ponds; or

(c) The grant assistance is a State program grant awarded under section 205(g) or 205(j) of the Act.

9. Section 35.2120(b) is amended by adding the phrase ", or the rainfall induced total flow rate exceeds 275 gpcd during storm events," to the first sentence of the paragraph. As revised, paragraph (b) reads as follows:

§ 35.2120 Infiltration/Inflow.

(b) *Inflow*. If the rainfall induced peak inflow rate results or will result in chronic operational problems during storm events, or the rainfall-induced total flow rate exceeds 275 gpcd during storm events, the applicant shall perform a study of the sewer system to determine the quantity of excessive inflow and to propose a rehabilitation program to eliminate the excessive inflow. All cases in which facilities are planned for the specific storage and/or treatment of inflow shall be subject to a cost-effectiveness analysis.

10. Section § 35.2152 is amended by adding paragraph (c)(3) to read as follows:

§ 35.2152 Federal share.

(c) * * *
(3) The uniform lower Federal share established by the Governor does not apply to projects funded under § 35.2024(b).

11. Appendix A of Subpart I is amended by adding paragraph k. to (b)A.1 to read as follows:

Appendix A—Determination of Allowable Costs

(b) * * *
A. Costs Related to Subagreements

1. Allowable costs related to subagreements include:
k. The specific and unique costs of field testing an innovative or alternative process or technique, which may include equipment leasing costs, personnel costs, and utility costs necessary for constructing, conducting, and reporting the results of the field test.

12. Appendix A of Subpart I is amended by revising paragraph (b) A.2.a. to read as follows:

Appendix A—Determination of Allowable Costs

(b) * * *
A. Costs Related to Subagreements

2. Unallowable costs related to subagreements include:
a. The costs of architectural or engineering services incurred in preparing a facilities plan and the design drawings and specifications for a project. This provision does not apply to planning and design costs incurred in the modification or replacement of an innovative or alternative project funded under § 35.2032(c).

13. Appendix A of Subpart I is amended by revising paragraph (b)A.2.e. to read as follows:

Appendix A—Determination of Allowable Costs

(b) * * *
A. Costs Related to Subagreements

2. Unallowable costs related to subagreements include:
(e) All incremental costs due to the award of any subagreements for building significant elements of the project more than 12 months after the Step 3 grant award or final Step 2+3 approvals unless specified in the project schedule approved by the Regional Administrator at the time of grant award.

14. Appendix A of Subpart I is

amended by adding paragraph (b)B.2.b. to read as follows:

Appendix A—Determination of Allowable Costs

(b) * * *
B. Mitigation

2. Unallowable costs include:
b. The cost of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under NEPA.

15. Appendix A of Subpart I is amended by revising paragraph (b)C.2.b. to read as follows:

Appendix A—Determination of Allowable Costs

(b) * * *
C. Privately or Publicly Owned Small and Onsite Systems

2. Unallowable costs for small and onsite systems include:
b. Conveyance pipes from the house to the treatment unit located on user's property or from the house to the property line if the treatment unit is not located on that user's property.

16. Appendix A of Subpart I is amended by revising paragraphs (b)D. 1.b. and 2.a. to read as follows:

Appendix A—Determination of Allowable Costs

(b) * * *
D. Real Property

1. Allowable costs for land and rights-of-way include:
b. The cost of complying with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621 et seq., 4651 et seq.), under Part 4 of this chapter for land necessary for the building of treatment works.

2. Unallowable costs for land and rights-of-way include:
a. The costs of acquisition (including associated legal, administrative and engineering etc.) of sewer rights-of-way, waste treatment plant sites (including small system sites), sanitary landfill sites and sludge disposal areas except as provided in paragraphs 1. a. and b. of this section.

17. Paragraphs (b)E.1.f.(3) of Appendix A of Subpart I is amended by revising the words "septic tanks" to "septage tankers" in the first sentence.

18. Paragraphs (b) F.1. and F.2.

introductory text of Appendix A of Subpart I are amended by adding the words "treatment works serving" before "industrial and Federal facilities" in the first sentences.

19. Section 35.3030 is revised to read as follows:

§ 35.3030 Right of review of State decision.

(a) Any construction grant application or grantee who has been adversely affected by a State's action or omission may request Regional review of such action or omission, but must first submit a petition for review to the State agency that made the initial decision. The State agency will make a final decision in accordance with procedures set forth in the delegation agreement. The State must provide, in writing, normally within 45 days of the date it receives the petition, the basis for its decision regarding the disputed action or omission. The final State decision must be labeled as such and, if adverse to the applicant or grantee, must include notice of the right to request Regional review of the State decision under this section. A State's failure to address the disputed action or omission in a timely fashion, or in writing, will not preclude Regional review.

(b) Requests for Regional review must include:

- (1) a copy of any written State decision.
(2) a statement of the amount in dispute,
(3) a description of the issues involved, and
(4) a concise statement of the objections to the State decision.

The request must be filed by registered mail, return receipt requested, within thirty days of the date of the State decision or within a reasonable time if the State fails to respond in writing to the request for review.

(c) The Region shall determine whether the State's review is comparable to a dispute decision official's (DDO) review pursuant to 40 CFR Part 30, Subpart L. If the State's review is comparable, Regional review of the State's decision will be conducted by the Regional Administrator. If the State's review is not comparable, the DDO will review the State's decision and issue a written decision. Review of either a Regional Administrator or DDO decision may be requested pursuant to Subpart L.

(Approved by the Office of Management and Budget under control number 2040-0095)

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Federal Register

Monday
November 4, 1985

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 225
Summer Food Service Program;
Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Department proposes to amend the regulations governing the Summer Food Service Program (SFSP) by: (1) Revising the SFSP audit requirements to conform to the Single Audit Act of 1984, Office of Management and Budget Circular A-128, and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015); (2) limiting reimbursements to one meal per child for each meal service; and (3) making various technical and clarifying amendments. These actions are necessary to bring the SFSP's audit requirements into conformance with other Federal audit requirements, to improve program management, and to clarify various aspects of the SFSP regulations.

DATES: To be assured of consideration, comments must be postmarked on or before December 4, 1985.

ADDRESS: Comments should be addressed to Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or Mr. James C. O'Donnell at the above address or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION:**Classification**

This rulemaking has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of \$100 million; will not cause a major increase in costs or prices for Program participants, individual industries, Federal agencies, State or local government agencies or geographic regions; and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to the review, the Administrator of the Food and Nutrition

Service has certified that this final rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate, and any subsequent notices that may apply.)

Background

The SFSP is authorized by section 13 of the National School Lunch Act. Comprehensive program regulations were last issued on February 16, 1982 (47 FR 6790) and implemented a number of changes mandated by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Since that time, annual reissuances of the SFSP regulations have incorporated clarifying amendments and technical modifications to the program. This year's reissuance, which will be used in administering the program in Fiscal Year 1986, includes on changed resulting from new statutory requirements and four technical and clarifying amendments.

Statutory Changes

In Pub. L. 98-502, the Single Audit Act (SAA) of 1984, Congress enacted new audit requirements for State and local governmental grant recipients. In conformance with Pub. L. 98-502, the Office of Management and Budget (OMB) has issued a new circular (OMB Circular A-128) defining the responsibilities of State and local government grant recipients; the Department has followed suit and has amended 7 CFR Part 3015 (50 FR 28759; July 16, 1985) in order to implement the non-discretionary changes to grantee audit requirements.

OMB circulars have generally mandated organization-wide audits (OWAs) for all public and private nonprofit organizations participating in Federal programs. OMB previously granted an exemption to this requirement for all Child Nutrition Programs grant recipients which annually receive less than \$25,000 in

Federal funds. The SAA also exempts State and local governments which annually receive less than \$25,000 in Federal assistance from compliance with the SAA and other Federal audit requirements. Such organizations are to be governed by audit requirements prescribed by State or local law or regulation.

The Department also wishes to clarify several aspects of an OWA. First an OWA must cover the organization's entire operations. The purpose of an OWA is to test the overall integrity of an organization's accounting practices. Therefore, all sources of a sponsor's funding must be subject to audit so that the audit provides a valid examination of the organization's entire accounting system. Secondly, sponsors receiving Federal funds are subject to OWAs even if there is only one source of funding. The intent of OWAs is to provide information about the integrity of the organization's accounting system without the duplication and inefficiency resulting from separate, program-specific audits. If the total grant is provided by a single source (e.g., the SFSP), the sponsor is still responsible for arranging and paying for the audit. Finally, the failure of a sponsor to have an OWA may result in their termination from the SFSP. The State agency would need to consider the individual circumstances and determine appropriate action on a case-by-case basis.

Clarifying Amendments

The Department also wishes to revise or clarify four other areas of the current SFSP regulations.

I. Claims for Seconds and Disallowed Meals

The Department proposes to make two related changes to improve program management and the use of Federal resources. The first of these changes would end the practice of allowing sponsors to claim the cost of some disallowed meals as "operating costs." The second change would disallow sponsor claims for "seconds" served to participating children.

Currently, § 225.11(c)(4) gives States the discretion to allow sponsors to claim the costs of some disallowed meals as "operating costs." The rationale for this provision was to avoid penalizing efficient sponsors with a low level of meal disallowances. The preamble to the SFSP regulations published on January 31, 1981 (46 FR 6286) stated that "The Department recognizes that to a small extent disallowances may be unavoidable . . ." The number of

disallowed meals which could be reimbursed under this procedure was limited by a site's approved level of meal service, if one was required by § 225.7(j), and by § 225.13(e), which requires sponsors to plan meal service "with the objective of providing only one meal per child"

The Department feels that it is now appropriate to establish more rigorous requirements for meal reimbursements. Since the publication of the 1981 regulations, Congress enacted Pub. L. 97-35, the Omnibus Budget and Reconciliation Act (OBRA) of 1981. This law restricted SFSP sponsorship to school food authorities, governmental entities, and nonprofit private residential camps. These sponsors are capable of handling unexpected fluctuations in participation and providing only one meal per child at each meal service. In addition, § 225.8(a)(1) of the regulations requires that sponsors have the means to store and refrigerate leftover meals until the next day and to adjust the number of meals delivered to conform to daily attendance. It follows that sponsors meeting these requirements should be able to avoid meal disallowances due to excess meals. Finally, eligible sponsors should also be capable of avoiding disallowances for meal pattern violations by enforcing the terms of their food service management contracts as set forth in § 225.16(e)(4).

A similar logic argues for discontinuing sponsor claims for "seconds." Currently, seconds may be claimed for reimbursement if the sponsor has planned its meal service with the objective of providing only one meal per child at each meal service. Again, sponsors meeting the requirements for participation should be able to store leftover meals and serve them the following day or adjust their meal orders in time to avoid leftovers.

These limitations on meal claims will promote more accurate meal ordering by sponsors and improve sponsor and State review of participation records. The Department, therefore, proposes to revise §§ 225.11(c)(4) and 225.19(d) to eliminate the claiming of disallowed meals as operating costs and seconds.

II. Approved Level of Meal Service

Section 225.11(e) includes language which is inconsistent with § 225.7(j) and § 225.13(e)(3) in regard to approved levels of meal service. The Department proposes to revise § 225.11(e) to clarify that a State agency must limit a sponsor's payments to those warranted by each site's approved level of meal service.

III. "Scope Reports"

The Department proposes to delete § 225.10(b). The implementation of the 60/90 day reporting requirements means that States are now submitting the same data to the Department on the FNS-418. The Department now assembles these data and prepares the annual scope report.

IV. Sponsor Eligibility

Section 225.18(b) of the regulations states that, "[n]o applicant sponsor shall be eligible to participate in the program unless it . . . (8) [i]f a summer school is open to serve children in addition to those enrolled in the accredited school program" The intent of the regulation was to clarify when a summer school would be eligible to participate in the SFSP, as opposed to the National School Lunch Program (NSLP). A summer school which provided meals only to children enrolled in school would be eligible to participate in the NSLP, but not the SFSP; a summer school providing meals both to enrolled students and to other children could participate in the SFSP.

As written, § 225.18(b) of the regulation does not address the case of a School Food Authority (SFA) which sponsored the SFSP and made meals available in some, but not all, of its individual schools. In such a case, all of the sponsor's schools would not be "open to serve children in addition to those enrolled in the accredited school program" The intent of the regulation is to specify that, if one or more of the SFA's sites (schools) was closed or provided meals only to enrolled children, those sites would not be eligible for SFSP reimbursements. However, the SFA could sponsor the program at other schools that met the requirements of § 225.18(b)(8). The same approach would be taken when a unit of county government sponsored the SFSP at several parks and several schools. There is no requirement that all of the county's parks and/or schools be open during the summer months for the unit of government to sponsor the program.

To clarify this point, the Department is proposing to divide § 225.18(b) into two paragraphs and to revise the wording of § 225.18(b)(7)-(9), which now becomes § 225.18(c)(1)-(3).

List of Subjects in 7 CFR Part 225

Food assistance programs, Grant programs—Health Infants and children.

Accordingly, the Department is proposing to amend 7 CFR Part 225 as follows:

PART 225—[AMENDED]

1. The authority citation for Part 225 continues to read as follows:

Authority: Secs. 803, 807, 809, 816 and 817, Pub. L. 97-35, Secs. 203 and 206, Pub. L. 96-499, Secs. 5, 7, 10, Pub. L. 95-627, 95 Stat. 3603 [42 U.S.C. 1771]; Sec. 2, Pub. L. 95-166, 91 Stat. 1325 [42 U.S.C. 1761]; Sec. 7, Pub. L. 91-248, 84 Stat. 211 [42 U.S.C. 1859a], unless otherwise noted.

2. In § 225.7, the last sentence of paragraph (j)(5) is revised to read as follows:

§ 225.7 State agency responsibilities.

(j) * * *
(5) * * * The sponsor shall adjust meal orders to comply with Section 225.19(d), which requires that only one meal per child be claimed at each meal service.

§ 225.8 [Amended]

3. In § 225.8, paragraph (a)(8) is amended by changing the words "Section 225.18(b)(9)" to read "Section 225.18(c)(3)".

§ 225.10 [Amended]

4. In § 225.10, paragraph (b) is removed and paragraphs (c), (d), and (e) are redesignated as paragraphs (b), (c), and (d), respectively.

5. In § 225.11:

a. Paragraph (c)(4) is amended by changing the words "Section 225.10(c)" to read "Section 225.10(b)" and by removing the fourth and fifth sentences.

b. Paragraph (d) is removed.
c. Paragraph (e) is redesignated as paragraph (d) and is amended by revising the second sentence. The revision specified above reads as follows:

§ 225.11 Program Payments [Amended].

(d) * * * In reviewing a sponsor's claim, the State agency shall limit payments to the sponsor according to actual meals served, not to exceed each site's approved level of meal service.

6. In § 225.12, paragraph (a) is amended by removing the first sentence and replacing it with two new sentences to read as follows:

§ 225.12 Audit and management evaluation.

(a) *Audits.* State agencies shall arrange for audits of their own operations to be conducted in accordance with Office of Management and Budget Circular A-128 and the Department's Uniform Federal Assistance Regulations (7 CFR Part

3015). Unless otherwise exempt, sponsors shall arrange for audits to be conducted in accordance with Office of Management and Budget Circular A-120 or A-110, as applicable, and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015). * * *

7. In § 225.13:

a. Paragraph (c)(4)(iv) is amended by removing the word "simultaneous".

b. Paragraph (e)(1) is revised.

The revision specified above reads as follows:

§ 225.13 Corrective action procedures [Amended].

(e) *Meal disallowances.* (1) If the State agency determines that a sponsor has served more than one meal per child at each meal service, all meals in excess of this level shall be disallowed.

§ 225.16 [Amended]

8. In § 225.16, paragraph (c)(8) is amended by changing the words "Section 225.10(e)" to read "Section 225.10(d)".

9. In § 225.18:

a. Paragraphs (b)(7)-(9) are removed.

b. Paragraphs (c), (d), (e), (f), (g), (h), and (i) are redesignated (d), (e), (f), (g), (h), (i), and (j), respectively, and a new paragraph (c), "Special Circumstances", is added.

The addition specified above reads as follows:

§ 225.18 Requirements for Sponsor Participation.

(c) *Special Circumstances.* (1) If the sponsor is not a camp, it shall provide documentation that its food service will serve children from an area in which poor economic conditions exist, as defined in § 225.2. If the sponsor is a camp, it shall certify that it will collect information on participants' family size and income to support the sponsor's claim for reimbursement;

(2) If the sponsor administers the program at sites at which summer school is in session, the sponsor may offer the program only at sites which make meals available to children enrolled in summer school and all children in the area served by the site.

(3) Sponsors which are units of local, municipal, county or State governments shall be approved to administer the program only at sites over which the sponsor has direct operational control. Such operational control means that the sponsor shall be responsible for: (i) managing site staff, including such areas as hiring, terminating and determining conditions of employment for site staff; and (ii) exercising management control over program operations at sites throughout the period of program participation by performing the functions specified in § 225.19.

10. In § 225.19, paragraph (d) is amended by:

a. Revising the first five sentences.

b. Removing the sixth, seventh, and eighth sentences.

The revisions specified above read as follows:

§ 225.19 Operational responsibilities of sponsors.

(d) In order to receive Federal reimbursement for all meals served, sponsors shall plan for and prepare or order meals on the basis of participation trends, consistent with the requirement to provide only one meal per child at each meal service. The sponsor shall make any adjustments necessary to comply with this requirement by closely monitoring its sites' meal service. For sites which have approved levels of meal service established in accordance with § 225.7(j), the sponsor shall adjust the number of meals ordered or prepared to comply with this requirement whenever the number of children attending the site is below the approved level. In no case shall the sponsor receive Federal reimbursement for meals ordered or prepared in excess of the site's approved level. Records of participation and of preparation or ordering of meals shall be maintained to demonstrate compliance with this requirement.

Dated: October 31, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-26382 Filed 11-1-85; 6:58 am]

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H.J. Res. 308/Pub. L. 99-137

Designating the week beginning on October 20, 1985, as "Benign Essential Blepharospasm Awareness Week". (Oct. 30, 1985; 99 Stat. 560; 1 page) Price: \$1.00

H.J. Res. 322/Pub. L. 99-138

To provide for the designation of October 1985, as "National Sudden Infant Death Syndrome Awareness Month". (Oct. 30, 1985; 99 Stat. 561; 1 page) Price: \$1.00

S. 1726/Pub. L. 99-139

To amend section 51(b) of the Arms Export Control Act, relating to the funding of the Special Defense Acquisition Fund. (Oct. 30, 1985; 99 Stat. 562; 1 page) Price: \$1.00

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¹ No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

² No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

³ No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

⁴ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

⁵ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the six CFR volumes issued as of July 1, 1984 containing those chapters.