8-28-85
Vol. 50 No. 167
Pages 34801-35078

federal register

Wednesday
August 28, 1985

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Accounting
Revenue Sharing Office

Air Pollution Control
Environmental Protection Agency

Chemicals
Environmental Protection Agency

Crop Insurance
Federal Crop Insurance Corporation

Fisheries
National Oceanic and Atmospheric Administration

Motor Vehicles
National Highway Traffic Safety Administration

Old-Age, Survivors and Disability Insurance
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Railroads
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Reporting and Recordkeeping Requirements
Comptroller of Currency
Environmental Protection Agency

Supplemental Security Income
Social Security Administration

Surface Mining
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Trade Practices
Federal Trade Commission

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

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

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Rules and Regulations

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

Special Salary Rate Schedules for Recruitment and Retention

Correction

In FR Doc. 85–19504, beginning on page 32839, in the issue of Thursday, August 15, 1985, make the following corrections:

On page 32842:

1. In the second column, in § 530.306(a)(1), seventh line, "fix this" should read "fix the".

2. In the third column:

a. In § 530.306(a)(3), the first line should read: "(3) When a special salary rate schedule";

b. In § 530.306(b)(1)(ii), the sixth line should read: "employee's rate of basic pay at the higher of the two".

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 404, 408, 409, 411, 413, and 439

[Docket No. 2645S]

Crop Insurance Regulations; Various Crops

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Eastern and Western U.S. Apple, Arizona-California Citrus, Almond, Grape, and Texas Citrus Crop Insurance Regulations, effective for the 1985 crop year only, by changing the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the Actuarial Tables for such crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES:

Effective date: August 28, 1985.

Comment date: Written comments, data, and opinions on this interim rule must be submitted not later than October 28, 1985, to be sure of consideration.

ADDRESS: Written comment on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 16 of the policy for each of the crops affected provides that any changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. Due to the volume of work involved in making changes on the Actuarial Table for each crop insured in each county where such insurance is offered requries that in the counties where changes in the contract must be on file by August 31, 1985, the date must be extended to September 30, 1985, effective for the 1985 crop year only (1986 year for Texas Citrus).

FCIC is currently reviewing all the actuarial tables for the regulations referenced herein to determine whether the premium rates or the price elections offered under each crop insurance policy are consistent with sound actuarial principles and if not to make adjustments where necessary. This is an annual review conducted on all crops. The amount of work involved appears to be such that completion of these reviews will not be made prior to the date for filing such actuarial data in the service offices for the crops and counties involved unless the filing date is extended.

The crop insurance regulations affected by this rule are:

Citation	Crop
7 CFR Part 404	Western U.S. Apple.
7 CFR Part 408	Eastern U.S. Apple.
7 CFR Part 409	Arizona-California Citrus.
7 CFR Part 411	Grape.
7 CFR Part 413	Texas Citrus.
7 CFR Part 439	Almond.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. A

large number of changes in the Actuarial Tables for the crop insurance policies affected by this rule for the 1986 crop year in the case of apples, Arizona-California Citrus, grapes, and almonds, and for the 1987 crop year for Texas citrus. Without these changes, the statutory mandate that the program be actuarially sound could not be met. The workload involved in these actuarial changes will not permit filing of these actuarial tables in the counties by the present contract date of August 31. There is not sufficient time to provide for public comment and implement these changes prior to August 31. It has been determined that the date by which such changes are required to be placed on file in the service office shall be extended from August 31, 1985 until September 30, 1985, and made effective for the 1985 crop year only (1986 crop year for Texas Citrus).

The changes in the actuarial tables for the crops affected by this rule may be beneficial in some instances and detrimental in others. All policyholders should be aware of the changes in the actuarial table affecting their individual crop insurance contract, and of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register.** This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible.

Any comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Parts 404, 408, 409, 411, 413, and 439

Crop insurance, Western U.S. Apple, Eastern U.S. Apple, Arizona-California Citrus, Grape, Texas Citrus, Almond.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Western U.S. Apple, Eastern U.S. Apple, Arizona-California Citrus, Grape, Texas Citrus, and Almond Crop Insurance Regulations (7 CFR Parts 404, 408, 409, 411, 413, and 439 respectively), effective for the 1985 crop year (1986 crop year for Texas Citrus) only, in the following instances:

1. The Authority Citation for 7 CFR Parts, 404, 408, 409, 411, 413, and 439 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

PART 404—[AMENDED]

2. 7 CFR 404.7(d)16, 408.7(d)16, 409.7(d)16, and 439.7(d)16 are revised to read as follows:

* * * * *

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date except that, for the 1985 crop year only, all contract changes will be available at your service office by September 30. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

PART 411—[AMENDED]

3. 7 CFR 411.7(d)16 is revised to read as follows:

§ 411.7 [Amended]

* * * * *

(d) * * *

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date for counties with a November 20 or December 10 cancellation date except that, for the 1985 crop year only, all contract changes will be available at your service office by September 30, 1985, and by October 31 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PART 413—[AMENDED]

4. 7 CFR 413.7(d)16 is revised to read as follows:

§ 413.7 [Amended]

* * * * *

(d) * * *

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date except that, for the 1986 crop year only, all contract changes will be available at your service office by September 30. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

Done in Washington, D.C., on August 1, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–20595, Filed 8–27–85; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y. Docket No. R-0549]

Bank Holding Companies and Change in Bank Control; Application Required for Relocation of Subsidiary Bank to Another State

Correction

In FR Doc. 85–20030 beginning on page 33913 in the issue of Thursday, August 22, 1985, make the following corrections:

§225.144 [Corrected]

1. On page 33913, third column, the footnote to §225.144(a) was omitted and should be added as follows at the bottom of the column:

[1] A bank holding company's home state under the BHC Act is that state in which the total deposits of its banking subsidiaries were largest on the day the company became a bank holding company or on July 1, 1966, whichever date is later. 12 U.S.C. 1842(d).

2. On the same page, same column, in §225.144(b), first time, "BCH" should read "BHC".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9134]

Southwest Sunsites, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires Porter Realty, Inc. and Irvin Porter, among other things, to cease, in connection with the advertising, sale of land or inducement of payments for land, representing that the purchase of any land is a sound

financial investment; involves little monetary risk; is a way to achieve financial security; and will result in economic benefit to the purchaser stemming from an increase in the value of the land as a result of mineral rights, exploration, profitable resale or as a hedge against inflation. Respondents are prohibited from representing that any land is currently usable as a homesite, farm or ranch, unless that land is immediately usable for the cited purpose without any substantial improvement or development by the purchasers; and from misrepresenting in any manner the cost of obtaining or availability of electric power, telephone service, potable water, sewage disposal, or any utility; and any interest in land by respondents or others. Respondents are further required to prepare a "Fact Sheet" containing specified information and to distribute a copy to all purchasers in a prescribed manner. Advertisements, promotional materials and sale presentations must include statements warning that investment is risky and that prospective buyers should consult a qualified professional before purchasing; and that substantial expenditures may be necessary to make lots suitable for use. Contracts must contain a seven-day right-to-cancel provision and a disclosure that refunds will be made within 30 days after the seller receives a cancellation notice. Additionally, respondents are required to provide consumers with cancellation forms; honor all valid cancellation requests; and make refunds in a timely manner. The order further requires that sales representatives receive a copy of the order; that respondents institute a surveillance program designed to reveal those who fail to comply with the provisions of the order and discontinue dealing with any person who engages in any prohibited act or practice more than once.

DATE: Complaint issued April 29, 1980. Order issued Aug. 9, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Gary D. Kennedy, Dallas Regional Office, Federal Trade Commission, 8303 Elmbrook Dr., Dallas, TX 75247. (214) 729-7053.

SUPPLEMENTARY INFORMATION: On Thursday, May 16, 1985, there was published in the **Federal Register**, 50 FR 20432, a proposed consent agreement with analysis In the Matter of Southwest Sunsites, Inc., Green Valley Acres, Inc., Green Valley Acres, Inc. II, corporations, and Sydney Gross and Edwin Kritzler, individually and as officers or former officers of said corporations, Porter Realty, Inc., a corporation, and Irvin Porter, individually and as an officer or former officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.35 Condition of goods; § 13.55 Demand, business or opportunity; § 13.60 Earnings and profits; § 13.90 History of product or offering; § 13.143 Opportunities; § 13.155 Prices; § 13.160 Promotional sales plans; § 13.195 Safety; 13.195-30 Investment; § 13.205 Scientific or other relevant facts; § 13.285 Value. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-45 Maintain records; 13.533-55 Refunds, rebates, and/or credit; 13.533-65 Renegotiation and/or amendment of contracts. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1595 Condition of goods; § 13.1610 Demand for or business opportunities; § 13.1615 Earnings and profits; § 13.1650 History of product; § 13.1697 Opportunities in product or service; § 13.1715 Quality; § 13.1725 Refunds; § 13.1740 Scientific or other relevant facts; § 13.1775 Value.—Prices: § 13.1778 Additional costs unmentioned. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1854 History of product; § 13.1863 Limitations or product; § 13.1882 Prices; 13.1882-10 Additional prices unmentioned; § 13.1886 Quality, grade or type; § 13.1889 Risk of loss; § 13.1892 Sales contract, right-to-cancel provisions; § 13.1895 Scientific or other relevant facts. Subpart—Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.1935 Earnings and profits; § 13.2015 Opportunities in product or service; § 13.2063 Scientific or other relevant facts.

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Land sales, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-20516 Filed 8-27-85; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

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16 CFR Part 13

[Docket No. C-3160]

Wein Products, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires four California firms and two individuals engaged in the advertising, sale and distribution of "DECIMATE", an ultrasonic pest control product, among other things, to cease representing that DECIMATE or any other ultrasonic pest control product will eliminate cockroaches, rats, mice, or other such pests from a home or place of business; will eliminate them within a specified period of time; will protect a home or place of business from rodent and insect infestations or cause any area to be free of such pests; and will serve as an effective alternative to the use of conventional pest control products. The firms are also barred from making any performance or effectiveness claims for ultrasonic pest control devices unless they possess and rely upon proper substantiating evidence when making those claims.

DATE: Complaint and order issued Aug. 13, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Harrison J. Sheppard, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, CA 94102. (415) 556-1270.

SUPPLEMENTARY INFORMATION: On Monday, June 3, 1985, there was published in the **Federal Register**, 50 FR 23313, *correction*, 50 FR 24206, a proposed consent agreement with analysis In the Matter of Wein Products, Inc., a corporation; El Mar Trading Corporation, a corporation; El Mar Corporation, a corporation; Stanley Weinberg, and Allen Schor, individually and as officers and directors of the corporation(s), for the purpose of soliciting public comment. Interested

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.20 Comparative data or merits; § 13.170 Qualities or properties of product or service; 13.170–46 Insecticidal or repellant; 13.170–80 Rodenticidal; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Ultrasonic pest control devices, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–20500 Filed 8–27–85; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-012; A-4-FRL-2888-2]

Alabama; Approval and Promulgation of Implementation Plans; Approval of Air Permit Requirements Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Alabama Department of Environmental Management (ADEM) submitted revisions to its air permit requirements to EPA, Region IV, on March 28, 1985. These revisions replace the present permits with one air permit, clarify the conditions which subject the air permit to revocation, and allow the Director of ADEM to delegate to the local air pollution control agencies the authority to issue air permits. EPA is today approving these revisions.

EFFECTIVE DATE: This action will be effective on October 28, 1985, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kelly McCarty of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109.

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Library, Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20005

FOR FURTHER INFORMATION CONTACT: Ms. Kelly McCarty, Air Management Branch, EPA Region IV, at the above address, and phone 404/881–3286, or FTS 257–3286.

SUPPLEMENTARY INFORMATION: On February 19, 1985, the ADEM submitted revisions to its State Implementation Plan (SIP) for air permit requirements. These revisions to Chapter 16 of the Air Division Regulations accomplished the following: (1) Replaced the present permits to construct, temporary permits, and permits to operate with one air permit, and, (2) clarified the conditions which subject the air permit to revocation.

All the various air permits have been consolidated into one air permit issued prior to construction. Authorization from the Director must be obtained in order to begin operation. The air permit authorizing construction is good for two years, at which time, if construction has not begun, the air permit and application will be cancelled.

Prior to this revision, there was no section in Alabama's Air Division Regulations which delineated the conditions under which a permit is subject to revocation. A new section 16.2.4, "Revocation of Air Permits", has now been added. These conditions include:

- Failure to comply with any conditions of the permit;
- Failure to notify the Director prior to operation;
- Failure to establish and maintain required records;
- Failure to allow employees of the Department access;
- Failure to comply with any provisions of any applicable Department Administrative order;
- Failure to comply with the rules and regulations of the Department; or
- For any other cause that a hearing establishes that continuation of the permit is inconsistent with the purpose of the Alabama Air Pollution Control Act or regulations under it.

On March 28, 1985, the ADEM submitted an additional revision to its (SIP) for air permit requirements. This revision allowed the Director of ADEM to delegate authority to the local air pollution control agencies to issue air permits. Delegation of this authority is subject to several requirements. These are:

- The local agency must adopt regulations to ensure that the permit applicant is subject to all the requirements contained in ADEM's regulations.
- The local agency must adopt regulations to allow the Director of ADEM the opportunity to review the permit application, the analysis of the permit, and proposed permit conditions at least 10 days prior to permit issuance.
- The local agency must demonstrate that it has the necessary manpower and technical expertise to implement the requirements of the regulations.
- The local agency must adopt regulations which require them to provide the Director of ADEM a copy of preliminary determinations and public comment notices for all permits issued at the same time the notice is forwarded for publication.

These revisions also allow the Director of ADEM to revoke this delegation, in whole or part, if he determines that the local agency is ineffectively implementing the requirements, or if the local agency's procedures for implementing the requirements are inadequate. The Director of ADEM still has the authority to revoke any permit he deems to be inadequate. All permits issued by local agency are enforceable by the ADEM.

Previously, the permit application was submitted to the local agency, reviewed, and the analysis sent to ADEM for final

approval for both minor and major sources. Signatures from both the local agency and ADEM had to be on the permit for it to be considered enforceable.

Final Action

EPA has reviewed these revisions to the Alabama SIP and is approving them as submitted. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn, and two subsequent notices will be published before the effective date. One notice will withdraw the final action, and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 1985. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2).)

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (see 46 FR 8709.)

Incorporation by reference of the Alabama State Implementation Plan was approved by the Director of the **Federal Register** on July 1, 1982.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Dated: August 20, 1985.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart B—Alabama

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 5250 is amended by adding paragraph (c)(39) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(39) Changes to air permit requirements, submitted on February 19, 1985, and on March 28, 1985, by the Alabama Department of Environmental Management (ADEM).

(i) Incorporation by reference.

(A) Amendment to ADEM Air Rules & Regulations Chapter 16.1, submitted on March 28, 1985, and State-adopted on March 13, 1985. Allows delegation of permitting authority to locals.

(B) Amendment to ADEM Air Rules & Regulations Chapter 16.1, 16.2, 16.3, and 16.4, submitted on February 19, 1985, and State-adopted on February 13, 1985. Consolidates Permit to Construct, Operate and Temporary Permit, into one Air Permit.

(ii) Additional Information.

(A) None.

[FR Doc. 85-20478 Filed 8-27-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 712

[OPTS-82004S; FRL 2881-8(a)]

Chemical Information Rules; Additional Automatic Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the Toxic Substances Control Act section 8(a) Preliminary Assessment Information rule (40 CFR Part 712). The rule formerly provided that only those chemical substances, mixtures and categories of chemicals designated by the Interagency Testing Committee (ITC) for testing consideration by the EPA within 12 months would be added to § 712.30 without separate proposal and comment. The designated substances were listed by the Agency at the same time the ITC report was published. This amendment extends the automatic reporting provision to include those chemical substances, mixtures and categories of chemicals recommended by the ITC but not designated for action by the Agency within 12 months.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this regulation shall be promulgated for purposes of judicial review at 1 p.m. Eastern daylight time on September 11, 1985. This regulation shall become effective on October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0054.

I. Introduction

The Preliminary Assessment Information rule, issued by EPA and published in the **Federal Register** of June 22, 1982 (47 FR 26992), requires chemical manufacturers and importers to complete EPA Form No. 7710-35 on selected chemicals, mixtures and categories of chemicals and to submit the reports to the Agency. The rule is contained in 40 CFR Part 712. Form No. 7710-35 requires that manufacturers and importers report general production, use, and exposure information on chemicals listed in 40 CFR 712.30. The Agency amended this rule, as published in the **Federal Register** of May 11, 1983 (48 FR 21294), to provide for the addition to the rule's reporting requirements, without additional proposal and comment, of those chemical substances, mixtures and categories of chemicals designated for 12-month Agency response by the Interagency Testing Committee. Upon receipt of each ITC report, the Agency issues a regulation adding the substances to 40 CFR 712.30 and requiring the submission of EPA Form No. 7710-35 on the designated substances. Manufacturers and importers must report within 90 days of the publication of each regulation.

This rule provides that chemical substances, mixtures and categories of chemicals recommended by the ITC but not designated for 12-month response are also subject to the Preliminary Assessment Information rule without individual proposal and comment. It was proposed in the **Federal Register** of November 19, 1984 (49 FR 45598).

Comments which were received on the proposed rule are discussed in Unit IV of this final rule. These comments also apply to the automatic reporting requirements for non-designated ITC recommendations which are being promulgated by the Agency elsewhere in today's **Federal Register**, under the TSCA section 8(d) Health and Safety Data Reporting rule. Under that rule, persons are required to submit unpublished health and safety studies

on chemical substances and mixtures which are listed in 40 CFR 716.17.

II. Need For Automatic Reporting

Within 1 year after the ITC designates a chemical substance, mixture or category of chemicals for testing consideration, EPA must initiate rulemaking to require testing under section 4 of TSCA or state in the **Federal Register** its reasons for not initiating rulemaking. The Agency needs preliminary assessment information to supplement available data for evaluating the need and basis for requiring additional testing. Further, this information is needed by the Agency in evaluating existing or future test data on the chemical. It provides a preliminary basis for evaluating the likelihood that human or environmental exposures may achieve levels found to cause adverse effects in tests.

The Agency needs the preliminary assessment information quickly for designated substances in order to meet the statutorily mandated 12-month decision point. For this reason, the Agency issued the amendment, which was published in the **Federal Register** of May 11, 1983 (48 FR 21294), providing for addition to the rule without individual proposal and comment of all chemical substances, mixtures and categories of chemicals designated by the ITC for 12-month response by the Agency.

During the later stages of development of that amendment, the ITC in its Eleventh Report added to its priority list six substances but did not designate them for EPA response within 1 year. This was the first time the ITC had recommended substances without designating them for a 12-month response period. The previously proposed amendment for automatic reporting on designated substances did discuss the possibility of automatic reporting for substances recommended but not designated for 12-month response. EPA is now promulgating an amendment to the rule which would require automatic reporting on recommended (nondesignated) substances.

The Agency believes that automatic addition of ITC chemical substances, mixtures and categories of chemicals that are recommended but not designated by the ITC to the Preliminary Assessment Information rule will benefit both industry and EPA and will provide valuable information to the Agency in a timely manner.

III. Rationale for Automatic Reporting

A. Efficiency

In the past, the ITC has issued its reports containing designated substances on a regular and predictable time schedule which allows companies to plan their reporting activities for certain times of the year. Similarly, EPA can plan resource allocations for the processing and analysis of these reports when they are received.

When non-designated chemicals were included in ITC reports along with designated chemicals, reporting by companies to the Agency may not have occurred at the same time, if EPA decided to propose reporting requirements for these substances, receive comment, and then promulgate a separate rule amendment. That is, at the time the ITC issued a report, the Agency would simultaneously add the designated chemicals to the final 8(a) rule, but only propose the non-designated chemicals for reporting. Thus, for one ITC report which contained both designated and non-designated chemicals, industry reported at two different times, coincident with the ITC report publication for the designated chemicals and later for the non-designated chemicals. Since the Preliminary Assessment Information rule asks for the most current data when reporting, if a manufacturer decided to collect data for both the designated and non-designated chemicals at the same time, there was a possibility that the information on non-designated chemicals could be outdated by the time reporting was required for those chemicals. Assuming that the ITC continued to recommend designated and non-designated chemicals twice a year, industry would have to plan for four data collection and reporting periods per year.

Reporting on designated and non-designated chemicals at the same time may save companies some start-up costs. Fixed costs are estimated to account for approximately half of the reporting cost for companies submitting Preliminary Assessment Information Reports (EPA Form No. 7710-35). (See preamble to the Preliminary Assessment Information rule, 47 FR 26992). One part of these fixed costs is associated with the time a company must allot for determining whether it produces a listed chemical and at which site. Some large companies which produce many products have indicated to the Agency that this search for production records accounted for a large part of their costs in reporting. Those companies, and others like them, will save money by collecting and reporting information to the Agency on both designated and non-designated chemicals at the same time.

Another part of this fixed cost is the time and effort needed for companies to familiarize those personnel who will complete the form with the requirements of the rule. If companies reported at different times for designated and non-designated chemicals, they might have been unable to assign the same person to reporting activities for each amendment. Thus, the cost for instructing a new person might have been incurred for companies which had to report twice, rather than once, for a given ITC report.

The ITC's Tenth and Eleventh Reports (47 FR 22585 and 47 FR 54626) have already produced a situation of separate reporting on both nondesignated and designated substances from the same category. While not a case of simultaneous listing by the ITC of related designated and non-designated chemicals, this example is illustrative of the potential impacts of separate reporting schedules for two related chemicals or groups of chemicals. In its Tenth Report, the ITC designated, 1,2,4-trimethylbenzene, while in its Eleventh Report the ITC recommended but did not designate mixed trimethylbenzenes, 1,2,3-trimethylbenzene, and 1,3,5-trimethylbenzene. Of the three domestic manufacturers of these substances (as determined from the TSCA Inventory), one manufacturer produced three of the substances (one designated and two non-designated), the second company manufactured two of the substances (one designated and one non-designated), and the remaining manufacturer produced only the designated member. Thus, for the first two companies, reporting at different times of the year eliminated the efficiencies of reporting on the designated and non-designated substances at the same time, which will be facilitated by this rule.

The requirement for automatic reporting on both designated and non-designated ITC substances will also be a more efficient use of Agency resources. With automatic reporting on non-designated substances, the Agency is relieved of the additional cost associated with four additional rulemakings per year (two for proposals and two for final amendments adding these chemicals to the Preliminary Assessment Information rule). The savings to the Agency is estimated to be about $40,000.

B. Concurrent Analysis

In some cases, the Agency will be considering designated and non-

designated members of a category concurrently. When the Agency is evaluating data on these related substances, it will need information on all of the substances, whether or not they have been designated by the ITC. The Agency believes that it would be inefficient to conduct separate testing needs, evaluations and rulemakings on different chemically related substances that in all likelihood pose similar testing issues. Therefore, to make the best use of its resources, EPA prefers to consider designated and non-designated substances together. Simultaneous reporting on designated and non-designated substances recommended in the same ITC Report will facilitate this.

C. Opportunity for Withdrawing Chemicals

Although this regulation does not provide for notice and comment on the addition of ITC-recommended chemicals to the rule, the regulation does amend the rule to allow persons to submit requests for the removal of specific chemicals. A person choosing to submit a request for the removal of a chemical added through the automatic mechanism should promptly submit to the Agency his or her reasons for that removal. The chemical may then be withdrawn from the rule at the Agency's discretion, for good cause. The Agency will issue a rule amendment for publication in the **Federal Register** when withdrawing a chemical from the rule. This amendment will remove the chemical from the reporting requirements of 40 CFR 712.30 and provide the reasons for that removal. Such a provision is in effect currently for ITC-designated chemicals added to the rule using the automatic mechanism; this amendment extends that procedure to ITC-recommended chemicals.

Further, EPA's experience with both the section 8(a) and 8(d) rules has shown that, despite adding many chemicals to the rules in the past (section 8(a) 47 FR 27013, section 8(d) 47 FR 38780), very few of the comments received by the Agency directly questioned the appropriateness of a particular substance being added to the rule. None of these comments subsequently led to the exclusion of an ITC chemical from the rule.

Finally, because of the ITC's chemical selection process, there is little likelihood that a substance will be recommended for testing that is no longer manufactured or imported, or has not been for many years, or is manufactured solely for use as a pesticide, food, or drug. Thus, the necessity of removing chemicals from the rule for any of the above reasons will be remote.

In conclusion, EPA believes that amending the Preliminary Assessment Information rule to provide for automatic reporting on chemicals recommended but not designated by the ITC:

1. Will lead to an improved system of gathering information needed to evaluate such recommendations and the risks posed by those chemicals.
2. Will reduce reporting costs for industry and processing costs for the Agency.
3. Will still permit subject companies the opportunity to convince the Agency that reporting on particular chemicals may not be necessary.

IV. Comments on Proposed Rule

During the 60-day comment period following publication of the proposed rule in the **Federal Register** of November 19, 1984, (49 FR 45598), EPA received comments from a total of four companies and industry groups. All those who commented expressed support for the basic concept of the rule but recommended changes in procedures.

Comment 1. Extend to 30 days the 14-day time period for companies to submit information showing why a given substance should not be added to the reporting rule. This was requested by three of the four who commented.

Response. EPA disagrees with this comment. The 14-day period was chosen so that EPA would have sufficient time to review a request and, if necessary, issue a **Federal Register** notice removing the chemical from the rule before the rule became effective on the 30th day. Also, as a result of the ITC screening process, industry is aware of the chemicals being considered by the ITC for potential inclusion in their listings at least 1 year before the final list is published and thus has ample time to compile relevant information on a chemical which they feel should not require reporting.

Comment 2. Consider modifications to the ITC process for listing recommended and designated chemicals.

Response. EPA does not have the authority to make changes in the procedures followed by the ITC for listing chemicals. All suggested changes would have to be considered and acted upon by the ITC.

Comment 3. Modify the final section 8(a) rule to clarify that the 50-chemical limit includes both designated and recommended substances.

Response. EPA agrees with this comment and has changed the wording of the 8(a) rule to be consistent with that of the 8(d) rule. However, it should be noted that this limit can be exceeded to add designated chemicals, mixtures, and categories of chemicals, but not recommended substances. Also, the 50-chemical limit in 1 year pertains only to new ITC designations or recommendations. The cumulative list may be much longer than 50 chemicals.

Comment 4. Identify each member within a category as a distinct chemical and thus subject to the 50-chemical limit.

Response. EPA disagrees and will continue to count a chemical category as one distinct chemical entry for purposes of responding to ITC recommendations. Section 4(e)(1)(A) of TSCA provides the ITC with the option of setting forth their list ". . . either by individual substance or mixture or by groups of substances or mixtures . . . ."

As discussed in Unit V of this preamble, OMB, during its review of the proposed additional automatic reporting, suggested a numerical limit on the number of recommended chemicals, mixtures and categories of chemicals on which automatic reporting would be required under sections 8(a) and 8(d) in any 1 year. OMB agreed to counting each category as one entry against the 50-chemical limit because this method of counting has been utilized previously, both by the ITC and by EPA.

EPA has established, in this rule, a process by which persons may submit requests for the removal of specific chemicals within 14 days after the date of publication of the notice adding the chemical to the section 8(a) Preliminary Assessment Information Rule. In cases where the ITC has designated or recommended an overly broad or ill-defined category, this appeal process could be utilized.

All the above comments and responses apply also to the amendment to the Health and Safety Data Reporting rule, published elsewhere in today's **Federal Register.**

V. Chemical Limit

The Office of Management and Budget (OMB), during its review of the proposed rule under Executive Order 12291 and the Paperwork Reduction Act, suggested that the Agency put a numerical limit on the number of recommended substances, mixtures, and categories of chemicals on which automatic reporting would be required under sections 8(a) and 8(d) in any 1 year. EPA agreed to propose for public comment such a numerical limit since EPA's capacity for evaluating candidates for the initiation of test rules is limited. If that limit is exceeded, the

Agency will be unable to proceed with its evaluation of testing candidates in a timely manner. Further, with such a backlog, information collected by EPA under sections 8(a) and 8(b) on those additional chemicals may go unused. This would result in an unnecessary reporting burden for the public and would be "of no practical utility" to the Agency, thus violating the Paperwork Reduction Act's standards for information collection.

Section 4(e)(1)(A) of TSCA permits the ITC to designate for EPA's response within 1 year no more than 50 of its recommendations at any one time. This limit was set by Congress in recognition of the excessive burden that adding too many chemicals would place on both EPA and the public. Thus, a limit of 50 ITC-recommended substances, mixtures or categories per year for automatic reporting under sections 8(a) and 8(d) appears to be reasonable and consistent with the statutory intent. This limit could be exceeded if necessary to obtain automatic reporting on all designated chemicals, but automatic reporting will be required on recommended chemicals only to the extent that the total number of designated and non-designated ITC recommendations does not exceed 50 in any year.

In the event that the total number of ITC-designated and non-designated recommendations exceeds 50 in a given year, EPA could still require reporting on all of them. All of the designated chemicals could be listed for automatic reporting. The Agency could require automatic reporting on the recommended chemicals until the overall limit of 50 was reached; it could require reporting on the remainder by notice and comment rulemaking if it believes it can effectively and promptly evaluate the reported data.

EPA has included language in § 712.1 of this rule limiting automatic reporting to 50 substances, mixtures, or categories per year.

VI. Who Must Report

Persons subject to the Preliminary Assessment Information rule are specified in 40 CFR 712.20 and 712.25. Additional descriptions were published in the **Federal Register** of June 22, 1982 (47 FR 26992).

Generally, a manufacturer (or an importer) must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710-35) for each listed substance he/she manufactures. If he/she manufactures a chemical at more than one site, he/she would submit a form for each site.

A manufacturer or importer is exempt from reporting if he/she qualifies as a small business by meeting the following two criteria during the reporting period: Total annual parent company sales below $40 million, and total production below 45,400 kilograms of the listed chemical at this site. Also, companies with total annual sales below $4 million are exempt from reporting regardless of how much of the chemical is manufactured, as published in the **Federal Register** of November 16, 1984 (49 FR 45425). The Agency will periodically change the dollar values in this generic standard, if necessary, to reflect inflation.

VII. Release of Aggregate Data

For this amendment, the Agency will follow the procedures for release of aggregate data and exemption requests from release of aggregate statistics described in the Rule Related Notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). As described in that notice, the Agency must receive a request for an exemption from release of aggregate data no later than the end of the reporting period.

VIII. Economic Impact

The economic analysis of this rule is based largely on methods and data developed for the original section 8(a) Preliminary Assessment Information rule.

Firms will incur fixed and variable costs to comply with this proposed amendment. Fixed costs (costs of becoming familiar with the regulation and identifying which chemicals to report) are estimated at $617 per plant site. Variable costs (costs of completing the form, certification requirements, etc.) are estimated at $739 per report. These estimates are higher than the original costs developed for the Final Preliminary Assessment Information Rule. This increase reflects price inflation (27 percent) as measured by the GNP Deflator from 1980 to the fourth quarter of 1984.

The reporting burden expressed in hours is estimated to be 18 hours per site (fixed) and 16 hours per report (variable).

The total cost will be determined by the number of companies and plant sites involved. It is assumed that only one report will be filled per site.

While this amendment may cause certain companies to incur additional costs, it may also reduce the costs to others. For example, firms may have to incur the fixed costs ($617) only once instead of twice (once for the designated chemicals and once for the recommended ones). Of course, they will incur additional costs if they have to report on the recommended chemicals.

Small manufacturers (those with parent company sales of $4 million or less, or production/importation of a listed chemical of 100,000 pounds or less at a plant site and parent company sales of $40 million or less) are exempt from the reporting requirements.

IX. Public Record

The public record for this rulemaking is a continuation of the record (OPTS-82004) for the Preliminary Assessment Information rule published in the June 22, 1982, issue of the **Federal Register** (47 FR 26992). All documents, including the index to this public record, are available for inspection in the OPTS Reading Room from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays, in Rm. E-107, 401 M St. SW., Washington, DC 20460. This record includes basic information considered by the Agency in developing this rule.

1. All comments on the proposed amendment.
2. All relevant support documents and studies.
3. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)
4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.
5. Any factual information considered by the Agency in developing the rule.
6. Reports Impact Analysis for 40 CFR Part 712 and this rulemaking.
7. Tenth through Fifteenth Reports of the Interagency Testing Committee (ITC); Tenth Report (47 FR 22585), Eleventh Report (47 FR 54626), Twelfth Report (48 FR 24443), Thirteenth Report (48 FR 55674), Fourteenth Report (49 FR 22389) and Fifteenth Report (49 FR 46931).

EPA requests that, between the date of this notice and the effective date of this rule, persons identify and report any perceived errors or omissions in the record.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it does not have an effect of $100 million or more on the economy.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This amendment will not have a significant economic impact on small entities. Consistent with the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, small manufacturers have been defined and excluded from manufacturer reporting requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB Control Number 2070-0054.

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, and Reporting and recordkeeping requirements.

Dated: August 20, 1985.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Part 712 is amended as follows:

PART 712—[AMENDED]

1. The authority citation for Part 712 continues to read as follows:

Authority: 15 U.S.C. 2607.

2. In § 712.1 by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 712.1 Scope and compliance.

* * * * *

(b) Chemical substances, mixtures, and categories of substances or mixtures which have been recommended by the Interagency Testing Committee for testing consideration by the Agency but not designated for Agency response within 12 months, will be added to § 712.30 using the procedure specified in § 712.30(c) only to the extent that the total number of designated and recommended chemicals has not exceeded 50 in any 1 year. Additional recommended but not designated chemicals may be added after proposal, and consideration of public comment.

3. In § 712.30 by revising paragraph (c) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(c) Chemical substances, mixtures, and categories of substances or mixtures that have been added by the Interagency Testing Committee, established under section 4(e) of TSCA, to the section 4(e) Priority List, for testing consideration by the Agency, will be added to this section 30 days after EPA issues for publication in the **Federal Register** a rule amendment listing these chemical substances, mixtures and categories. A Preliminary Assessment Information—Manufacturer's Report must be submitted for each chemical substance and mixture within 60 days after the effective date of the listing. At the discretion of the Assistant Administrator for Pesticides and Toxic Substances, a listed substance, mixture or category may be withdrawn, for good cause, from the rule's reporting requirements prior to the effective date. Any information submitted showing why a substance, mixture or category should be removed from the rule must be received by EPA within 14 days after the date of publication of the notice under this paragraph. If a substance, mixture or category is removed, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment. Any information submitted must be addressed to: Document Control Officer, Office of Pesticides and Toxic Substances, (TS-793), Environmental Protection Agency, 401 M Street, SW., Washington D.C. 20460, ATTN: 8(a) Auto-ITC.

* * * * *

[FR Doc. 85-20549 Filed 8-27-85; 8:45 am]

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40 CFR Part 716

[OPTS-84010A; FRL 2881-8(b)]

Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the automatic reporting provision of the Health and Safety Data Reporting rule under section 8(d) of the Toxic Substances Control Act (TSCA). The amendment changes 40 CFR 716.18(b) to require, without separate proposal and comment, reporting of unpublished health and safety studies on chemicals recommended for testing consideration by the Interagency Testing Committee (ITC) but not designated for action by EPA within 12 months. Two other amendments are also included. One allows for the removal of ITC-recommended chemicals by the Assistant Administrator for Pesticides and Toxic Substances before the effective date of an amendment adding ITC-recommended chemcials to the section 8(d) rule. The other amendment modifies the procedures for requesting reporting deadline extensions.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this regulation shall be promulgated for purposes of judicial review at 1 p.m. Eastern daylight time on September 11, 1985. This regulation shall become effective on October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA issued a rule under section 8(d) of TSCA (40 CFR Part 716, Subpart A), published in the **Federal Register** of September 2, 1982 (47 FR 38780), which requires persons to submit unpublished health and safety studies on chemicals listed in § 716.17. The Agency will use the studies to support its investigations of the risks posed by chemicals, and, in particular, to support its decisions whether to require industry to test chemicals under section 4 of TSCA.

Persons who have manufactured, imported or processed; are manufacturing, importing or processing; have proposed to manufacture, import or process; or will propose to manufacture, import or process the listed chemicals may be subject to the reporting requirements of the Health and Safety Data Reporting Rule. EPA advises these persons to refer to 40 CFR Part 716 for complete information on required submissions.

The September 2, 1982 rule required reporting on chemicals recommended for testing by the Interagency Testing Committee in its First through Fifth Reports, and on a few other chemicals which were being reviewed by EPA. The Agency also included in that rule a provision for automatically adding to the rule chemcials recommended for testing by the ITC and designated for 12-month Agency response. Thus, very time the ITC designates a substance in one of its reports, the Agency will automatically add the substances to § 716.17(b) of the rule and require reporting within 90 days. Non-ITC

chemicals are added to the rule after a notice of proposed amendment of § 716.17 is published in the **Federal Register.** There will be a 30-day public comment period on the notice; after consideration of the comments, a final amendment will identify the substances and mixtures added.

EPA also proposed to amend § 716.17 by adding the chemicals designated for priority testing by the ITC in its Sixth through Tenth Reports (47 FR 38780). On March 30, 1983 (48 FR 13178) the final amendment adding these chemicals to the rule was published in the **Federal Register.**

Subsequent to publication of the original 8(d) rule, the Agency has used the automatic reporting provision described above to add chemicals designated by the ITC in its Eleventh, Twelfth, Thirteenth, Fourteenth, and Fifteenth Reports (47 FR 54626, 48 FR 24443, 48 FR 55674, 49 FR 22389, 49 FR 46931).

In addition to the chemicals designated by the ITC in its Eleventh Report, the ITC also added to its priority list six substances which it did not designate for EPA response within 1 year. This was the first time the ITC had recommended substances without designating them for a 12-month response period. Subsequently, one chemical recommended but not designated for a 12-month response was included in the Fourteenth Report of the ITC. Although the language in § 716.18(b) does not specifically limit the Agency to including only designated substances, EPA proposed for public comment an amendment requiring the automatic reporting on recommended (non-designated) substances, as published in the **Federal Register** of November 19, 1984 (49 FR 45602). The comments received on that proposed rule are addressed in the document cited in Unit III of this final rule.

The Agency believes that the automatic addition to the section 8(d) rule of chemical substances and mixtures that are recommended but not designated by the ITC will benefit both industry and EPA and will provide valuable information to the Agency in a more timely manner.

Elsewhere in today's **Federal Register,** the Agency is also promulgating similar automatic reporting requirements for non-designated ITC recommendations under the TSCA section 8(a) Preliminary Assessment Information rule. Under that rule, persons are required to report general production, use, and exposure information to the Agency on chemicals listed in § 712.30.

This rule was proposed in the **Federal Register** of November 19, 1984, (49 FR 45598).

II. Rationale for Automatic Reporting

A. Efficiency

In the past, the ITC has issued its reports containing designated substances on a regular and predictable time schedule which allowed companies to plan their reporting activities for certain times of the year. Similarly, EPA plans resource allocations for the processing and analysis of these reports when they are received.

When non-designated chemicals are included in ITC reports along with designated chemicals, reporting by companies to the Agency will not occur at the same time if EPA proposes reporting requirements for the non-designated substances, receives comment, and then promulgates a separate rule amendment adding these chemicals. That is, at the time the ITC issued a report, the Agency would simultaneously add the designated chemicals to the final 8(d) rule, but only propose the non-designated chemicals for reporting. Thus, for one ITC report which contained both designated and non-designated chemicals, industry has been required to report at two different times, coincident with the ITC report publication for the designated chemicals and later for the non-designated chemicals. Some companies may not have searched for studies on non-designated chemicals at the time the ITC recommended them because there was a chance that the Agency might never require reporting on them. Assuming that the ITC continued to recommend designated and non-designated chemicals twice a year, industry would have to plan for four file searches and reporting periods per year.

The ITC's Tenth and Eleventh Reports (47 FR 22585 and 47 FR 54626) have already produced a situation of separate reporting on both non-designated and designated substances from the same category. While not a case of simultaneous listing by the ITC of related designated and non-designated chemicals, this example is illustrative of the potential impacts of separate reporting schedules for two related chemicals or groups of chemicals. In its Tenth Report, the ITC designated 1,2,4-trimethylbenzene, while in its Eleventh Report the ITC recommended but did not designate mixed trimethyl-benzenes, 1,2,3-trimethylbenzene, and 1,3,5-trimethylbenzene. The section 8(d) reporting requirement for 1,2,4-trimethylbenzene became effective on March 30, 1983 (48 FR 13178) while that for the other non-designated trimethylbenzene became effective on January 13, 1984 (49 FR 1696). Of the three domestic manufacturers of these substances (as determined from the TSCA Inventory), one manufacturer produced three of the substances (one designated and two non-designated), the second company manufactured two of the substances (one designated and one non-designated), and the remaining manufacturer produced only the designated member. Thus, for the first two companies, reporting at different times of the year eliminated the efficiencies of reporting on the designated and non-designated substances at the same time, as will be facilitated by this rule.

Furthermore, the Agency believes that requiring automatic reporting on ITC non-designated chemicals is justified from an efficiency (resource) standpoint for both Government and industry. Respondents to the section 8(d) rule generally consist of a core group of companies that are large and are actively engaged in testing the chemicals they manufacture or process. Also, many of these companies have established procedures for responding to future additions of chemicals to the rule which usually occurs twice per year, approximately May and November. EPA believes that it would be less efficient for such companies to conduct four file searches per year instead of the two under the automatic provision. As will be discussed below, EPA would prefer not to promulgate each section 8(d) amendment for non-designated chemicals long after receipt of the ITC report because of the long delay in receiving studies essential to its assessment process.

B. Concurrent Analysis

In some cases, the Agency will be considering designated and non-designated members of a category concurrently. When the Agency is evaluating data on these related substances it will need information on all of the substances, whether or not they have been designated by the ITC. The Agency believes that it would be inefficient to conduct separate testing needs, evaluations and rulemakings on different chemically related substances that in all likelihood pose similar testing issues. Therefore, to make the best use of its resources, EPA prefers to consider designated and non-designated substances together. Simultaneous reporting on designated and non-designated chemicals recommended in the same ITC Report will facilitate this.

C. Opportunity for Withdrawing Chemicals

Although this regulation does not provide for notice and comment on the addition of ITC-recommended chemicals to the rule, it will amend the rule to allow persons to submit requests for the removal of specific chemicals. A person choosing to submit a request for the removal of a chemical added through the automatic mechanism should promptly submit to the Agency his or her reasons for that removal. The chemical may then be withdrawn from the rule at the Agency's discretion, for good cause. The Agency will issue a rule amendment for publication in the **Federal Register** when withdrawing a chemical from the rule. This amendment will remove the chemical from the reporting requirements of the rule and provide the reasons for that removal.

Some possible reasons for removal could include: (1) The chemical is no longer manufactured and has not been for the last 5 years; (2) it is used entirely as a food, drug, or pesticide; or (3) some other factor exists that would clearly warrant the removal of the chemical from the rule. Any information submitted must be received by EPA within 14 days after the date of publication in the **Federal Register** of the amendment adding the chemical to the 8(d) rule. Based on the submitted information, the Assistant Administrator for Pesticides and Toxic Substances cold revoke the reporting requirement for that chemical at his or her discretion. If a chemical is removed, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment. This notice will explain why the chemical was removed.

Further, because of the ITC's chemical selection process, there is little likelihood that a chemical will be recommended for testing that is no longer manufactured or imported, or has not been for many years, or is manufactured solely for use as a pesticide, food or drug. Thus, the necessity of removing chemicals from the rule for any of the above reasons will be extremely remote.

In conclusion, EPA believes that amending the section 8(d) rule to provide for automatic reporting on chemicals recommended but not designated by the ITC:

1. Will lead to an improved system of gathering information needed to evaluate such recommendations and the risks posed by those chemicals.
2. Will reduce reporting costs for industry and processing costs for the Agency.
3. Will still permit subject companies the opportunity to convince the Agency that reporting on particular chemicals may not be necessary.

III. Public Comment

The comments received on the amendment to the TSCA section 8(a) Preliminary Assessment Information Rule (PAIR) to require automatic reporting on chemicals recommended by the ITC, but not designated for action by EPA within 12 months, apply also to this rule and are discussed in the notice to amend the PAIR rule, found elsewhere in today's **Federal Register.**

IV. Chemical Limit

The Office of Management and Budget (OMB) during its review of the proposed rule under Executive Order 12291 and the Paperwork Reduction Act, suggested that the Agency put a numerical limit on the number of recommended substances, mixtures and categories of chemicals that would be subject to automatic reporting under sections 8(a) and 8(d) in any one year. EPA agreed to propose for public comment such a numerical limit since EPA's capacity for evaluating candidates for the initiation of test rules is limited. If that limit is exceeded, the Agency will be unable to proceed with its evaluation of testing candidates in a timely manner. Further, with such a backlog, information collected by EPA under sections 8(a) and 8(d) on those additional chemicals may go unused. This would result in an unnecessary reporting burden for the public and would be "of no practical utility" to the Agency, thus violating the Paperwork Reduction Act's standards for information collection.

Section 4(e)(1)(A) of TSCA permits the ITC to designate for EPA's response within 1 year no more than 50 of its recommendations at any one time. This limit was set by Congress in recognition of the excessive burden that adding too many chemicals would place on both EPA and the public. Thus, a limit of 50 ITC-recommended substances, mixtures or categories per year for automatic reporting under sections 8(a) and 8(d) appears to be reasonable and consistent with the statutory intent. This limit could be exceeded if necessary to obtain automatic reporting on all designated chemicals, but automatic reporting will be required on recommended chemicals only to the extent that the total number of designated and non-designated ITC recommendations does not exceed 50 in any year.

In the event that the total number of ITC-designated and non-designated recommendations exceeds 50 in a given year, EPA could still require reporting on all of them. All of the designated chemicals could be listed for automatic reporting. The Agency could require automatic reporting on the recommended chemicals until the overall limit of 50 was reached; it could require reporting on the remainder by notice and comment rulemaking if it believes it can effectively and promptly evaluate the reported data.

EPA has included language in § 716.1 of this rule limiting the number of chemicals subject to automatic reporting.

V. Additional Amendment

The Agency is also amending the section 8(d) rule by modifying § 716.14(c). This section provides for extensions to reporting deadlines. The section has been changed to require that extension requests must be postmarked on or before 40 days after the effective date of the listing of a chemical in § 716.17. EPA believes that this change is needed so that EPA will have adequate time to process the requests and notify the requester of the Agency's decision. Also, the extension requests must be addressed to the Office Director, Office of Toxic Substances, who will grant or deny the requests.

VI. Who Must Report

Persons subject to the section 8(d) Health and Safety Data Reporting rule are specified in 40 CFR 716.4(b). Additional descriptions were published in the **Federal Register** of September 2, 1982 (47 FR 38780).

Generally, a person who manufactures or processes a chemical or designated mixture listed in § 716.17 at the time it is listed, or who has done so during the previous 10 years, must comply with this rule.

VII. Confidentiality

Health and safety information about a chemical that has been offered for commercial distribution or is subject to testing under section 4 or notice under section 5 can be withheld from disclosure only if certain criteria are met. EPA advises persons wishing to assert a business confidentiality claim on any part of the submitted material to refer to 40 CFR Part 716.

VIII. Economic Impact

Companies that may be subject to this rule must perform a number of functions to determine whether in fact they are in possession of studies and to provide them to EPA. Once the firm determines whether it is subject to the rule, it must conduct a file search to determine what, if any, studies are in its possession.

When studies are located, costs will be incurred to copy the studies, make lists of studies in progress or known to but not in the possession of the respondent, and to review the studies for confidential information.

The basic methodology used in this analysis is the same as that used in the "Reports Impact Analysis for the Health and Safety Data Reporting Rule, Office of Toxic Substances, EPA, September 1982." Assumptions regarding the number and length of reports submitted per 8(d) reporting rule are based on data from previous 8(d) rule submissions. Hourly wage rates used to develop the cost estimates were updated to fourth quarter 1984 levels based on an adjustment using the GNP price deflator.

The exact cost for each amendment (adding chemicals to the list of those which require reporting) will depend on the number of chemicals being added, and the number of manufacturers and plant sites involved. The steps performed by each company (to comply with the rule) and their unit costs per firm are estimated to be:

Initial corporate review	$152
File search	669
Title listing	19
Photocopying	113
Managerial review	836
Ongoing reporting	304
Total	2,093

While this proposed amendment to the rule may impose additional reporting costs on companies, it may also reduce the total cost to some others. For example, a firm could do a file search at the same time for both the designated and the recommended chemicals at the same cost as for a search done for the designated chemicals only. Of course the company will incur additional reporting costs if they have data on the recommended chemicals.

EPA does not expect that the proposed amendment will result in a significant impact on a substantial number of small businesses. In a study of submitters reporting under the model 8(d) rule, it was found that only one of over 30 reporting companies was below $100 million in sales. It is expected that the proposed amendment will not affect this distribution.

IX. Public Record

EPA has established a public record (docket number OPTS-84010) for this rulemaking document which, along with a complete index, is available for inspection in Rm. E-107, 401 M Street SW., Washington, D.C., 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this rule. The record includes the following categories of information.

1. Health and Safety Study Reporting Regulations (40 CFR Part 716), Public Record, Docket No. 084003.

2. Reports Impact Analysis for 40 CFR Part 716 and this rulemaking.

3. Tenth through Fifteenth Reports of the Intergency Testing Committee (ITC); Tenth Report (47 FR 22585), Eleventh Report (47 FR 54626), Twelfth Report (48 FR 24443), Thirteenth Report (48 FR 55674), Fourteenth Report (49 FR 22389), and Fifteenth Report (49 FR 46931).

EPA requests that, between the date of this notice and the effective date of this rule, persons identify and report any perceived errors or omissions in the record.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a Regulatory Impact Analysis. EPA has determined that these amendments are not major because they do not have an effect of $100 million or more on the economy. They are expected to decrease the annual cost of compliance. They do not have a significant effect on competition, cost, or prices.

These amendments were submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

These amendments will not have a significant economic impact on a substantial number of small entities. They do not affect the size of the potential universe of respondents. The effects on small entities of reporting under the section 8(d) rule were discussed in the preamble to the September 2, 1982 rule.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0004.

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements.

Dated: August 20, 1985.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Part 716 is amended as follows:

PART 716—[AMENDED]

1. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607.

2. In § 716.1 by redesignating existing paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 716.1 Scope and compliance.

* * * * *

(b) Chemical substances, mixtures, and categories of chemicals, which have been recommended by the Interagency Testing Committee for testing consideration by the Agency but not designated for Agency response within 12 months, will be added to § 716.17 as specified in § 716.18(b) only to the extent that the total number of designated and recommended substances, mixtures and categories of chemicals has not exceeded 50 in any 1 year. Additional recommended but not designated chemicals may be added after proposal, and consideration of public comment.

* * * * *

3. In § 716.14, by revising paragraph (c) to read as follows:

§ 716.14 Reporting schedule.

* * * * *

(c) Respondents who cannot meet a deadline under this section may apply for a reasonable extension of time. Requests for extensions must be addressed to: Director, Office of Toxic Substances (TS-792), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Attn: Section 8(d) extension. Extension requests must be postmarked on or before 40 days after the effective date of the listing of a substance or mixture in § 716.17. The Office Director will grant or deny extension requests.

4. In § 716.18, by revising paragraph (b), and adding paragraph (c) to read as follows:

§ 716.18 Additions to lists of chemicals and mixtures to which this subpart applies.

* * * * *

(b) Except as provided in paragraph (c) of this section, chemical substances, mixtures and categories of chemicals that have been added to the TSCA section 4(e) Priority List by the Interagency Testing Committee, established under section 4 of TSCA,

will be added to § 716.17 30 days after publication of a notice to that effect in the **Federal Register.**

(c) Prior to the effective date of an amendment under paragraph (b) of this section, the Assistant Administrator for Pesticides and Toxic Substances may for good cause withdraw a chemical substance, mixture or category of chemicals from § 716.17. Any information submitted showing why a chemical should be withdrawn from § 716.17 must be received by EPA within 14 days after the date of publication of the notice under paragraph (b) of this section. If a chemical substance, mixture or category of chemicals is withdrawn, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment under paragraph (b) of this section. Any information submitted must be addressed to: Document Control Officer, Office of Pesticides and Toxic Substances, (TS-793), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, ATTN: 8(d) Auto-ITC.

[FR Doc. 85-20548 Filed 8-27-85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 79-184; FCC 85-456]

Authorization of CC Facilities To Meet North Atlantic Telecommunications Needs During the 1985-1995 Period

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: This report and order sets forth the Commission's policy for the distribution of circuits among available North Atlantic facilities during the 1986-1991 period. The policy adopted by the Commission specifies that no distribution guidelines are imposed on circuits used for the provision of record services, circuits used by new entrants for the provision of any service and circuits used to provide international message telephone service by any carriers other than AT&T. AT&T is permitted, but not required, during the 1986-1988 period to increase, without de-loading either transmission medium, the number of its message telephone and 800 Service-Overseas circuits it places on either cable or satellite facilities by 2 percent per year up to a limit of placing 60 percent of such circuits on either transmission medium. The Commission will review, prior to year-end 1988, the loading guidelines for AT&T to determine what, if any, methodology should be utilized after 1988.

EFFECTIVE DATE: August 28, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Gosse, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION: The second notice of proposed rulemaking in this proceeding was published on May 6, 1985. (50 FR 19050). The third notice of inquiry was published in August 9, 1984 (49 FR 31926).

Second Report and Order

In the matter of inquiry into the policies to be followed in the authorization of Common Carrier Facilities to meet North Atlantic telecommunications needs during the 1985-1995 period, CC Docket No. 79-184.

Adopted: August 7, 1985. Released: August 22, 1985.

By the Commission.

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I. Introduction

1. On April 22, 1985, we released a Second Notice of Proposed Rulemaking (NPRM) in this proceeding setting forth our tentative conclusions regarding the loading of satellite and submarine cable facilities used for the provision of international services in the North Atlantic region during the 1986-1991 period.[1] In response to our NPRM, we have received comments from the American Telephone and Telegraph Company (AT&T), the Communications Satellite Corporation (Comsat), GTE Sprint Communications Corporation (GTE Sprint), Hawaiian Telephone Company (Hawaiian), ITT World Communications Inc. (ITTWC), MCI International, Inc. (MCII), RCA Global Communications, Inc. (RCAGC), Satellite Business Systems (SBS), The Western Union Telegraph Company (WUT), Fedex International Transmission Corporation (Fedex), the National Telecommunications and formation Administration (NTIA) and Aeronautical Radio, Inc. (ARINC).[2] Reply comments were filed by AT&T, Comsat, GTE Sprint and NTIA.

2. In this Report and Order we affirm, in part, the tentative conclusions presented in the NPRM regarding the loading of facilities used for the provision of international services in the North Atlantic region for the 1986-1991 period between the United States and the CEPT entities.[3] Specifically, we conclude that circuits used for the provision of international record services, circuits used by new entrants,and circuits used to provide message telephone service by all international carriers other than AT&T should not be subjected to circuit distribution guidelines or loading requirements. We further conclude that AT&T should be permitted, but not required, to increase the number of message telephone circuits it places on either cable or satellite facilities by 2 percent per year for three years (1986-1988). Prior to the end of this three year period we will review the loading question to determine what, if any,

[1] Inquiry into the Policies to be followed in the Authorization of Common Carrier Facilities to Meet North Atlantic Telecommunication Needs During the 1985-1995 Period, FCC 85-176, ——FCC ——(1985). We had previously adopted a Notice of Inquiry on this matter as well. FCC 84-351, released August 3, 1984.

[2] ARINC is a joint venture of the U.S. air transport industry organized for the purpose of providing the communications requirements of its member airlines on a not-for-profit basis.

[3] CEPT is the Conference Europeenne des Administrations des Postes et des Telecommunications, an organization of the postal and telecommunications entities of 26 European nations. Because the provision of international services is a joint undertaking between sovereign states or their carriers, the development of loading guidelines for the 1986-1991 period has been the subject of much discussion in recent meetings of the North Atlantic Consultative Process. The reports of the Working Group (January, 1985) and Senior Level (May, 1985) meetings have been included in the docket, and the views and requirements of our foreign partners have been considered throughout this proceeding.

methodology should be utilized after 1988 in the North Atlantic region for circuits used by AT&T to provide IMTS. Below we: (a) Summarize the Third Notice of Inquiry and the filings submitted therein; (b) describe the Second Notice of Proposed Rulemaking; (c) outline the comments and reply comments filed in response to the Second Notice of Proposed Rulemaking; and (d) present the views of the CEPT entities. We thereafter analyze the record and reach the conclusions indicated above.

A. Third Notice of Inquiry

3. We initiated this proceeding on August 3, 1984 with the release of our Third Notice of Inquiry (NOI). We there noted that the circuit distribution guidelines currently in force for the North Atlantic region were developed in Docket No. 18875.[4] Under these guidelines, AT&T is generally required to distribute circuits used for the provision of U.S.-CEPT message telephone service in accordance with the balanced loading methodology.[5] Circuits used for the provision of U.S.-CEPT record services (*e.g.* leased-channel, telex, public message, Datel, etc.) are not subject to any distribution guidelines. Because the current guidelines extend only until the end of 1985, we indicated in the NOI that there was a need to develop circuit distribution guidelines for the post-1985 period at this time.

4. In our NOI we identified essentially three policy options we could follow in fashioning circuit distribution guidelines for the 1986–1991 period and requested interested persons to comment on these options. The first such option was to continue to use the balanced loading methodology as the basis for circuit distribution guidelines. The second option identified was to remove ourselves immediately from circuit distribution decisions, leaving the matter entirely to the discretion of the U.S. carriers and their CEPT correspondents. The third option we identified was to develop new circuit distribution guidelines based on a methodology which would increase carrier flexibility and discretion and reduce Commission involvement in loading decisions, but which would allow us to retain sufficient authority to assure that user interests were protected.

5. In response to the NOI pleadings were submitted by AT&T, Comsat, GTE Service Corporation (on behalf of Hawaiian), GTE Sprint, ITTWC, RCAGC, TRT Telecommunications Corporation, NTIA, ARINC and SBS. These parties generally favored continuing the exemption from loading guidelines for suppliers of record services, new entrants and suppliers of international message toll service other than AT&T. As to a methodology for AT&T's international message telephone service (IMTS), Comsat argued in favor of continuing a balanced loading approach, AT&T argued in favor of a more flexible approach which would permit it to place approximately 85 percent of all traffic growth on cable, and most other carriers advocated a middle course: moving away from balanced loading and permitting AT&T some additional flexibility.[6]

B. Second Notice of Proposed Rulemaking

6. In the NPRM we stated that it is our goal to rely on market forces to establish the optimal mix of services, rates and facilities. We also stated that market forces could be employed to encourage the efficient use of existing facilities and the development and deployment of the most efficient facilities in the future. We recognized, however, that the market is not now sufficiently competitive and that certain facility biases presently exist. We therefore tentatively concluded that it would not serve the public interest to remove ourselves immediately from circuit distribution decisions with respect to all circuits.

7. In the NPRM we indicated that the three loading methodologies identified in the Notice of Inquiry—balanced loading, immediate removal and increased flexibility—could be considered for the four types of circuit use—record services, record or voice services provided by new entrants, voice services provided by all carriers other than AT&T and IMTS provided by AT&T. In considering these methodologies for these circuit uses we indicated that where a market mechanism existed or where the relative number of circuits involved was not great our inclination would be to give carriers absolute flexibility and not to impose any loading requirements. Of course, where market forces would not act to produce the most efficient mix and use of facilities, we would prescribe guidelines. We indicated our particular concern that AT&T's preference for cables, as a cable equipment manufacturer and rate base regulated carrier, could lead that carrier to employ cable facilities even if satellite facilities were more cost effective. We also estimated the impact on Comsat and INTELSAT of each loading proposal (employing an IMTS traffic forecast supplied by AT&T),[7] analyzed the market and reached certain tentative conclusions.

8. *Record Services.* With respect to circuits used for the provision of U.S.-CEPT record services, we tentatively concluded in our NPRM that such circuits should continue to be exempted from the imposition of any circuit distribution guidelines.[8] First, we noted that the number of circuits used for record services on North Atlantic routes

[4] *See* Future Licensing of Overseas Communications Facilities, 73 FCC 2d 326 (1979). *See also* Overseas Communications 71 FCC 2d 71 (1979).

[5] The balanced routing (or balanced loading) methodology distributes circuits among facilities with unused capacity in a manner which, to the extent possible, seeks to place equal numbers of circuits on all transmission systems between the United States and a given country. When one cable or satellite transmission system reaches the limit of its capacity, it falls out of the loading pattern and subsequent growth traffic is equally distributed among the remaining facilities with unused capacity. When a new satellite or cable facility is introduced into service, all additional growth circuits are placed on that facility until it carries as many circuits as the other balanced systems.

[6] AT&T's approach would permit it to load traffic growth on cable in a manner to increase total traffic carried on cable facilities by three percent per year for four years. At the end of the four year period, Commission involvement in loading decisions would terminate. In comparison to AT&T's approach, the other proposals, except for Comsat's request to retain balanced loading and NTIA's proposal to implement a cost based methodology derived from comparing cable and satellite revenue requirements, generally called for a lower percentage of total traffic being routed over cable facilities and a longer period of Commission oversight. The basis for these phase-in proposals by the other interested parties is their concern over the availability of cable circuits for their use and the level of satellite usage charges if AT&T could freely load its traffic on cable facilities.

In a joint submission to the January 8–11, 1985 meeting of the North Atlantic Consultative Working Group, AT&T and Comsat proposed a more broadly stated version of the AT&T circuit distribution proposal. They proposed that AT&T be permitted, but not required, to increase the number of U.S.-CEPT message telephone circuits it places on either cable or satellite facilities by an agreed-to percent per year up to placing a maximum of 60 percent of such circuits on either transmission medium. Neither the annual percentage increase which should be allowed nor the period of years over which such guidelines should extend were addressed in the joint submission.

[7] We compared in our NPRM the revenues which Comsat and INTELSAT would receive under the various proposed guidelines. We calculated revenues for the six year planning period employing balanced loading as well as guidelines permitting annual increases of 2, 2.5 and 3 percent in the number of circuits AT&T could place on cable circuits with a maximum limit of placing 60 percent of such circuits on cable facilities. We also calculated revenues employing AT&T's proposal.

[8] In 1979 we found in Docket 18875 that circuits used for the provision of U.S.-CEPT record services should be exempted from circuit distribution guidelines. *See* Policies for Overseas Communications Facilities, 73 FCC 2d 326 (1979) and Overseas Communications, 71 FCC 2d 71 (1979).

was relatively small [9] and, thus, could have little effect on the overall use of cable and satellite facilities. Second, we indicated that approximately 87 percent of the circuits used for record services are used to provide leased channel service and that leased channel customers often have a specific need for and the ability to designate either a cable or satellite circuit. Third, we noted that leased channels and switched record services are offered by multiple record carriers, none of which appeared to have a dominant market share. We therefore tentatively concluded that there continued to be a viable marketplace mechanism for the distribution of circuits used for leased channels and switched record services between cable and satellite facilities. We also observed that this marketplace mechanism would be strengthened by recent events such as the advent of INTELSAT Business Services and our recent decisions permitting competitive earth station services and allowing Comsat to provide INTELSAT space segment capacity directly to users.

9. We specifically stated that our tentative conclusion to continue to exempt circuits used to provide U.S.-CEPT record services from circuit distribution guidelines was intended to apply to all such circuits, including those used by AT&T for such services. We stated that leased channels provided by AT&T are subject to the same marketplace distribution mechanism as those of the other carriers providing that service. In addition, we noted that at year end 1984, AT&T provided only 90 (6.2 percent) of the approximately 1442 voice grade leased channels in service between the U.S. and CEPT countries. In view of these factors, we found no reason for imposing greater restrictions upon AT&T's distribution of circuits used to provide leased channels than upon such circuits of the other carriers.

10. *New Entrants.* We also tentatively concluded that the exemption from distribution guidelines should be extended to circuits used by new entrants for the provision of any service and to circuits used for the provision of IMTS by all carriers other than AT&T. We noted with respect to circuits used for record services by new entrants that such circuits would be subject to the same marketplace distribution mechanism as the circuits used by existing carriers for the provision of those services. Further, new entrants would, at least initially, account for a relatively small portion of the total number of circuits used for the provision of record services and, consequently, would have little effect on the overall use of cable and satellite transmission mediums.

11. We indicated that although new entrants into the IMTS market such as MCII and GTE Sprint could be expected to use more circuits than new entrants which provide only record services, new entrants into the IMTS market are likely to use a considerably smaller number of circuits for the provision of that service than AT&T. We also noted that competitors to AT&T would have a substantial incentive to efficiently route their traffic and that loading flexibility could assist their ability to acquire operating agreements. Thus, we tentatively concluded that exempting circuits used by new entrants providing U.S.-CEPT message telephone service would have a relatively small effect on the overall use of cable and satellite transmission facilities. Similarly, we tentatively concluded that the comparatively few circuits used by existing providers of U.S.-CEPT message telephone service other than AT&T, such as entities with regional monopolies like the Hawaiian Telephone Company, make it unlikely that exempting those circuits from distribution guidelines would have a significant effect on the distribution of circuits between the cable and satellite transmission mediums.

12. *AT&T's IMTS Circuits.* As to AT&T's loading of IMTS circuits, we noted AT&T's position in the market, the large number of circuits used for that service, the entry only recently of competitive carriers into this market, AT&T's preference for cable facilities and the short period of time that Comsat has been free to enter this market, and tentatively concluded that this market is not yet sufficiently competitive to permit us to withdraw immediately from decisions pertaining to the distribution of AT&T's U.S.-CEPT message telephone service circuits. We observed that, as of year-end 1984, 12,965 or 88.7 percent of the 14,617 circuits in use for U.S.-CEPT services were used for the provision of message telephone service. Of these 12,965 circuits used to provide message telephone service, 12,944 or 99.8 percent were used by AT&T. We noted that since users of message telephone service do not have the ability to select whether their calls will be routed by cable or satellite, AT&T's distribution of its message telephone circuits in large measure determines the relative use of cable and satellite circuit facilities.

13. In addressing the guidelines which should be applied to AT&T's U.S.-CEPT message telephone circuits for the 1986–1991 period, we considered several options: (a) Continuing balanced loading; (b) adopting a revenue requirement comparison methodology proposed by NTIA; (c) adopting a multi-tier scheme which would permit AT&T greater flexibility as its competitors acquired IMTS operating agreements; and (d) adopting guidelines which would permit AT&T an annual increase in loading flexibility. We tentatively concluded that the balanced loading methodology should not continue to be used as the basis for such guidelines. We recognized that the balanced loading methodology continued to offer service reliability advantages. However, we felt that use of that methodology would not provide appropriate incentives to stimulate increased competition in the provision of U.S.-CEPT message telephone service and for AT&T, Comsat and INTELSAT to build and operate efficient, low-cost facilities.

14. We also tentatively concluded that a proposal submitted by NTIA to distribute AT&T's message telephone circuits in inverse proportion to the annual revenue requirements for the cable and satellite transmission mediums was not sufficiently well defined to permit its adoption as the basis for 1986–1991 guidelines at this time. We requested further definition of and comments on the NTIA proposal and indicated that we were not precluding its eventual adoption.

15. We also considered, but did not propose to adopt, a multi-tiered circuit distribution methodology which would more directly relate relaxation of facilities loading guidelines to the entry of multiple providers of message telephone service into the market on a country-by-country basis. While not desiring to impose unilaterally a loading approach, we recognized that such a methodology would provide a clear incentive for foreign administrations to enter into operating agreements with additional IMTS providers. We also recognized that the acquisition of operating agreements and the development of competition was an important long term objective of the Commission. In order to stimulate comments and facilitate analysis, we requested interested parties to comment on a two-tiered methodology under which AT&T would be permitted to increase its loading flexibility on either cable or satellite facilities by 1 percent per year to all CEPT countries. This would constitute the first tier. In the second tier, AT&T would be permitted

[9] At year-end 1984, of the approximately 14,617 voice circuits used to provide U.S.-CEPT communications services, only approximately 1,652 circuits were used for the provision of record services.

to increase its loading flexibility on either cable or satellite facilities by 3 percent per year to countries where multiple providers of message telephone service had obtained operating agreements and competition in the provision of that service was developing. Under this scenario, no upper limit would be imposed on the flexibility which could be attained in the second tier.

16. We tentatively concluded that AT&T's proposed guidelines which contemplated our removal from circuit distribution decisions at the end of 1989 would not provide a transitional period of sufficient length to offset existing biases or to permit the development of a marketplace mechanism for the cost-effective distribution of its U.S.-CEPT message telephone circuits. We also expressed our concern that the fact that only 15 percent of the expected growth circuits would be placed on satellite facilities during the 1986–1991 period under AT&T's proposed guidelines could place undue upward pressure on Comsat's and INTELSAT's rates which could inhibit the development of intermodal competition between the cable and satellite transmission mediums.[10]

17. We noted the lead times required for major facility procurements and indicated that satellite transmission facilities which will be used for North Atlantic services during the 1986–1991 period are already in service or have been procured under binding contracts. Consequently, INTELSAT's capital costs for these facilities are relatively fixed and its ability to plan future facility capacity to respond to AT&T's loading proposal was limited. We also noted that the carriers had reduced their forecast of the circuits required in 1990 by approximately 26 percent from the level they forecast in 1980 (the forecast on which we relied in developing our guidelines for the TAT–8 cable and the INTELSAT VI satellites) and that recent technological developments may significantly increase the capacity of both the TAT–8 cable and the INTELSAT satellites. As a result of these factors, we felt that AT&T's proposed guidelines, by placing only 15 percent of growth circuits on satellite facilities, would place a disproportionate share of the burden of excess capacity on INTELSAT and inhibit the development of intermodal competition.

18. After reviewing various phase-in proposals which would give AT&T additional flexibility, and balancing a desire to spur intermodal competition, to promote the efficient use of facilities and to respond to the preferences of our foreign counterparts with the realities of the marketplace and our obligations to INTELSAT, we tentatively concluded that during the 1986–1991 period AT&T should be permitted an annual 2 percent increase in the number of U.S.-CEPT message telephone circuits it can place on either cable or satellite facilities up to placing a maximum of 60 percent of such circuits on either transmission medium. We calculated, using the most recent traffic forecast and existing rates, that this approach would allow AT&T to place approximately 67.2 percent of its growth circuits on cable facilities during the 1986–1991 period and would reduce Comsat's and INTELSAT's revenues by approximately $90.1 million and $66.3 million, respectively, from the level which could be expected if we continue to use the balanced loading methodology as the basis for circuit distribution guidelines. We tentatively concluded that this reduction in revenues would not place undue upward pressure on Comsat and INTELSAT rates but would provide a strong incentive for Comsat to enter the U.S.-CEPT message telephone market, to compete vigorously for IMTS traffic and to spur INTELSAT to greater construction and operational efficiencies. We also felt that these guidelines should permit AT&T sufficient flexibility and substantially respond to the desires of the CEPT administrations.

C. Comments and Reply Comments

19. *Guidelines for Record Circuits, Circuits Used by New Entrants for All U.S.-CEPT Services, and Circuits Used for U.S.-CEPT Message Telephone Service by All Carriers Other Than AT&T.* With the exception of ITTWC and WUT, all of those filing comments support our tentative conclusion not to apply loading restrictions to circuits used to provide U.S.-CEPT record services. No one opposes extending that policy to circuits used by new entrants for either record services or message telephone service and to all existing providers of U.S.-CEPT message telephone service other than AT&T. The commenting parties generally agree with our analysis that providers of record services, new entrants and IMTS providers other than AT&T employ relatively few circuits and, thus, will not significantly affect overall use of cable and satellite facilities. A number of the parties also note the competitiveness of the record services market and indicate that many leased channel customers request specifically either cable or satellite circuits and have the ability to chose between the two transmission mediums to satisfy their particular leased channel needs.

20. ITTWC and WUT disagree with our tentative conclusion not to prescribe a distribution methodology for record circuits only to the extent that we would extend the exemption to AT&T's record circuits. These two carriers argue that although AT&T now has a small share of the record services market, it has the power to increase that share through offering service at significantly lower rates than other providers, subsidized by its message telephone service revenues. WUT notes that AT&T has substantial idle cable capacity and will have more once TAT–8 is introduced, thus giving AT&T the incentive to increase its record services market share through unfair pricing actions as a way to use cable circuits. WUT is also concerned that AT&T could use up its remaining TAT–7 circuits, thus depriving others, including its competitors, of access to cable circuits until TAT–8 is introduced.

21. ITTWC expresses its concern that AT&T will base its rates for competitive, leased chanel service only on new cable facilities which have lower per circuit costs while allocating older cable facilities with higher per circuits cost to non-competitive message telephone service. ITTWC indicates that such a manipulation of costs would permit AT&T to unfairly price its leased channel service below that of its competitors who are employing circuits from all cables and do not have the ability to place competitive services on new (cheaper) facilities and a monopoly service (IMTS) on older (more expensive) facilities. ITTWC asserts that AT&T has already followed such a pattern for U.S. Mainland-Hawaii and U.S.-CEPT leased channel circuits. ITTWC therefore suggests that the Commission require AT&T to segregate its facilities and costs on a country and facility basis into two discrete categories (message telephone service and non-message telephone service), which contain an appropriate mix of new and old capacity. In response, AT&T stated that circuits would be made available to other carriers and

[10] Assuming constant Comsat and INTELSAT rates, our analysis indicated that adoption of the AT&T proposed guidelines would result in Comsat and INTELSAT receiving approximately $218.2 million and $160.6 million less revenue, respectively, during the 1986–1991 period than they would receive if the balanced loading methodology was continued as the basis for circuit distribution guidelines during that period. Our analysis also disclosed that adoption of AT&T's proposed guidelines would result in 21,113 or 85.0 percent of the 24,853 growth circuits projected to be required during the 1986–1991 period being placed on cable facilities.

indicated that the remaining points were tariff rather than loading issues.

22. *AT&T U.S.-CEPT Message Telephone Circuits.* None of the comments to our NPRM, like those to the NOI, advocated that we should remove ourselves immediately from decisions affecting the distribution of AT&T's U.S.-CEPT IMTS circuits. However, there is a wide range of views as to the methodology which should be used for those circuits for the 1986–1991 period. MCII, SBS, WUT and ARINC support our tentative conclusion to permit AT&T to increase the number of circuits it places on either cable or satellite facilities by 2 per cent per year for six years up to a limit of placing 60 per cent of its U.S.-CEPT message telephone circuits on either transmission medium.[11] NTIA supports use of this methodology for only two years as a transition mechanism to its methodology which would distribute such circuits in inverse proportion to the annual per circuit revenue requirements for cable and satellite facilities.[12] RCAGC requests us to employ an equitable loading methodology for AT&T during the 1986–1991 period because of AT&T's dominance in the message telephone service market. While not proposing a specific guideline, we note that in response to the NOI RCAGC indicated that equitable loading was not necessarily the same as balanced loading.

23. Comsat, GTE Sprint, ARINC, ITTWC, MCII, RCAGC, SBS and WUT all note AT&T's dominance of the U.S.-CEPT message telephone market and AT&T's position as user of approximately 90% of all North Atlantic circuitry. In the face of such dominance, these entities argue that one cannot now reasonably characterize the U.S.-CEPT message telephone market as competitive.[13] They also state that permitting AT&T total loading flexibility would adversely affect the supply of cable circuits and lead to unreasonable increases in satellite rates.

24. Comsat argues that the current balanced loading methodology remains the best loading criterion, giving service reliability benefits and apportioning the risk of excess capacity evenly, and asks that we reverse our tentative conclusion not to rely upon it. Failing that, however, Comsat states that the proposed 2 per cent guideline represent a "judicious compromise" which will apportion the risk of excess capacity more evenly among Comsat/INTELSAT and AT&T, while assuring that Comsat and INTELSAT are not severely adversely affected.

25. Comsat also reminds us that our calculation under the two percent guideline which indicated that Comsat would receive at least 33% of the growth traffic is valid only if AT&T's U.S.-CEPT message telephone circuits grow at the 17.3 per cent annual rate forecasted by AT&T. Comsat states that during the 1980–1984 period, AT&T's actual North Atlantic circuit growth rate achieved 17.3 per cent only in 1981. Growth rates for 1982, 1983 and 1984 were 8.9, 8.3 and 16.4 per cent, respectively. Should AT&T achieve only a 10 per cent growth of U.S.-CEPT message telephone circuits during the 1986–1991 period, Comsat calculates that the 2 per cent circuit distribution guidelines would result in 75 per cent of those circuits being placed on cable facilities (and the three per cent guidelines would place 91 per cent of these circuits on cable facilities). Comsat asserts that these results may not be reasonable.

26. AT&T supports adoption of its proposal to phase-in increased flexibility at a rate of 3 per cent per year over four years (1986–1989) with total deregulation of loading thereafter. AT&T opposes the two per cent methodology because it believes that methodology does not give it enough flexibility and, by continuing to promise Comsat a substantial share of traffic, does not give Comsat the proper incentive to compete for IMTS traffic.

27. AT&T also asserts that the U.S.-CEPT message telephone market is already significantly competitive, noting that MCI operates or has operating agreements with a number of European countries, which account for more than 50 per cent of U.S.-CEPT message telephone market. AT&T also notes that MCI has recently filed an application requesting authority to lease by 1987 more than 2000 satellite circuits and states that MCI has repeatedly predicted that it will serve more than 80 per cent of the international direct dial market by the end of this year. AT&T further states that GTE Sprint is providing message telephone service to the United Kingdom and has announced it will provide such service with France and Spain. Given these factors, AT&T asserts that there is no need to deny the flexibility it seeks through adoption of its proposed 3 per cent guidelines.

28. AT&T also contends that the analysis used in our NPRM signficantly overstates the effect of AT&T 's proposal on Comsat's revenues. AT&T asserts that its proposal will not reduce the existing revenues of either Comsat or INTELSAT. To the contrary, according to AT&T, their revenues will be increased as AT&T proposes to increase its satellite circuit use throughout the 1986–1991 period.[14] AT&T argues that a four year, 3 per cent transition plan with a 60 per cent cap is a moderate, manageable adjustment in facilities utilization. AT&T states that its proposed guidelines are more likely to provide increased competition between cable and satellite facilities ". . . thereby for the first time introducing a measure of marketplace discipline on INTELSAT's construction and use of satellite facilities which is long overdue."

29. Finally, AT&T states that we should not prescribe any circuit distribution guidelines which extend beyond 1989. AT&T believes that the entire international marketplace will be transformed by that time by the introduction of the TAT–8 optical fiber cable system, an increasing number of new digital services, the possible introduction of non-carrier facilities by Tel-Optik Limited, Orion Satellite Corporation and other entities, and by increased competition in the provision of U.S.-CEPT message telephone service.

[11] MCII states that the 2 percent methodology provides AT&T with a considerable measure of increased flexibility and strikes a "reasoned and pragmatic balance." SBS finds the 2 percent methodology to be a "fair compromise." WUT views our proposal as a "appropriate balance" between permitting greater flexibility and protecting other carriers. ARINC characterizes the 2 percent proposal as an excellent first step.

[12] NTIA asserts that the two percent guidelines for which we have expressed a tentative preference do not provide sufficient competitive incentives for the long term. It argues that unless a circuit distribution method is implemented which ensures that additional traffic is directed to the more cost effective facility, the party providing the lowest cost circuits will not necessarily be the one to gain market share. NTIA contends that, under the two percent guideline, a party with high cost circuits is still guaranteed 40 percent of the market and, therefore, may have little incentive to lower costs or rates. Moreover, if the market should not be sufficiently competitive by year-end 1991 to permit our withdrawal from circuit distribution decisions, in NTIA's view, adoption of our tentatively preferred guidelines would simply exchange one arbitrary methodology for an equally arbitrary 60/40 allocation.

[13] Comsat emphasizes that it is now preparing to enter the U.S.-CEPT message telephone market and asserts that it intends to become an important competitor. However, it argues that because it has no operating agreements and must start with a customer base of zero, it is unlikely to attract a large enough market share in the next few years to replace the circuits AT&T would divert to cable under its proposed 3 percent methodology. Comsat also urges that we bear in mind that our *Authorized User III* decision, which permits Comsat's entry into the message telephone service market, remains under the cloud of pending court proceedings.

[14] While AT&T does state that total satellite circuits used would increase and that total revenues flowing to INTELSAT and Comsat would increase, it does not express a view on the impact of its proposal on either entity's rates or revenue requirement per circuit used.

These factors, together with the growing competition in the U.S. domestic telecommunications market, suggest to AT&T an environment which is far too volatile and unpredictable for the Commission to undertake the prescription of long range circuit distribution guidelines. Thus, while AT&T continues to believe the international marketplace will justify the removal of all loading restrictions at year-end 1989 and urges adoption of its 3 per cent proposal, it suggests adoption of any methodology only through 1989. AT&T states that if at the end of 1989 we are not satisfied that marketplace conditions then warrant our complete forbearance from circuit distribution decisions, we could adopt further transitional steps such as maintaining a 60 per cent limitation on the loading of either cable or satellite facilities for 1990 and 1991.

30. *The NTIA Proposal.* NTIA advocates, as it did in response to the NOI, the adoption of a loading methodology which would distribute AT&T's U.S.-CEPT message telephone circuits between the cable and satellite transmission mediums in inverse proportion to the annual per circuit revenue requirements for each of these transmission mediums. NTIA states that its proposal will promote intermodal (cable/satellite) competition by allocating to the more efficent medium a greater traffic share. By rewarding efficiency (or a willingness by AT&T or Comsat to accept a lower revenue requirement) NTIA anticipates lower rates for users, the introduction of new services and technologies, the retirement of inefficient facilities and lower operational costs. NTIA recognizes, however, that a number of aspects of its proposal have yet to be defined and developed. While it believes that its proposal can be successfully developed, it recognizes that this process will be difficult and require time. Therefore, as indicated above, NTIA suggests that we adopt our tentatively preferred 2 per cent guidelines for a two year transitional period during which work on the NTIA proposal can be completed, thus allowing it to be used as the basis for circuit distribution guidelines after 1987.

31. In response to concerns raised relating to acceptance of its proposal by foreign administrations, NTIA states that the circuit distribution preferences of the carriers' foreign correspondents must be accommodated to a reasonable degree. It believes that its proposed methodology can be constructed to take into account the operational (*i.e.*, diversity, redundancy, service quality and restoration) concerns of the foreign administrations.

32. Most of the parties, including AT&T and Comsat, oppose the NTIA proposal. They argue that it is likely to be controversial and operationally unsound, require unending Commission regulatory oversight, delay development of a marketplace mechanism, and complicate the facilities planning process. These respondents also note that the development of the regional cable and satellite revenue requirements on which the NTIA proposal depends will be difficult and the results uncertain.[15]

33. *The Multi-Tiered Circuit Distribution Proposal.* Of the parties commenting on the two-tiered circuit distribution methodology on which we requested comments, only GTE Sprint and ITTWC viewed that methodology favorably. GTE Sprint believes that adoption of a multi-tiered circuit distribution methodology would further our goal of increasing competition in the provision of international message telephone service by giving foreign telecommunications entities an incentive to enter into operating agreements with GTE Sprint and other U.S. voice carriers.

34. GTE Sprint proposed that we adopt a multi-tiered methodology which would permit AT&T to increase the number of circuits it places on either cable or satellite facilities by 2 per cent per year, with an upper limit of 60 per cent, to those countries which enter into additional operating agreements with AT&T's major competitors for IMTS.[16] For circuits AT&T uses to provide message telephone service to countries which do not enter into operating agreements with AT&T's major IMTS competitors, AT&T would be permitted to increase the number of such circuits it places on either cable or satellite facilities by 1 per cent per year. GTE Sprint further asserts that circuits used by AT&T for the provision of 800 Service-Overseas should be subjected to the circuit distribution guidelines adopted for IMTS. GTE Sprint states that demand for this AT&T service is growing and it expects it to become an important segment of AT&T's switched voice service.

35. ITTWC states it believes the multi-tiered circuit distribution methodology may have merit for IMTS circuits. It states that the flexibility (upper limit) allowed for message telephone circuits to countries with small traffic volumes should not exceed 3 per cent per year while the flexibility (upper limit) for such circuits used to countries with large traffic volumes should not exceed 2 per cent per year. ITTWC advocates that the degree of market penetration by new entrants be used as the trigger mechanism for permitting AT&T the greater degree of flexibility in its distribution of message telephone circuits.

36. AT&T characterizes the two-tier methodology as "unworkable" and likely to lead to unfair consequences, particularly to countries whose traffic volumes are small and which have less incentive to deal with multiple U.S. carriers. AT&T further argues that this methodology would be inconsistent with the spirit of cooperation and comity which now marks international communications and the facilities planning process. AT&T further states that this proposal could be counterproductive by hardening opposition to competition within CEPT.

37. Comsat also opposes adoption of the two-tier methodology because, in its view, Comsat would bear the total burden of new entrants obtaining operating agreements. In short, the new entrants would not be subject to loading requirements and AT&T would be permitted to increase the number of its message telephone circuits to those countries it places on cable. Comsat also argues that the two-tier methodology suffers from severe definitional problems such as determining how many agreements or the degree of competition which would trigger greater flexibility for AT&T. Comsat states that resolving these questions is likely to be controversial and require significant Commission regulatory oversight. Comsat also argues that the objective of having multiple providers of message telephone service obtain operating agreements raises foreign policy issues which should not be mixed with circuit distribution issues.

38. MCII, as well as Comsat, stresses that the existence of multiple suppliers in a particular market does not necessarily equate to effective competition and that it is the latter result which is important. MCII does not believe that adoption of a multi-tier circuit distribution proposal will hasten competitive entity, an objective it believes should be resolved by negotiation between the involved U.S.

[15] Comsat in particular opposes NTIA's methodology which it views as deficient for not taking into account excess satellite capacity employed by all carriers for restoration purposes, for ignoring significant transiting costs incurred by users of cable circuits, and for requiring the disclosure of Comsat's prices but not those of its competitors.

[16] GTE Sprint asserts that, currently, itself and MCI must be considered as such major competitors. It notes that we could also adopt standards for designating other carriers as major competitors.

carrier and its potential overseas correspondent.

D. The CEPT View

39. We indicated in the NPRM the view of the CEPT entities expressed at the January 8–11, 1985 meeting of the North Atlantic Consultative Working Group that circuit distribution decisions should be left solely to the telecommunications entities which have invested in the cable and satellite facilities used to provide service. The CEPT entities indicated they oppose the use of any rigid distribution formulas and support a flexible circuit distribution methodology based entirely upon bilateral discussions between correspondent pairs.

40. The Summary Report of the Senior Level meeting of the North Atlantic Consultative Process held on May 21–22, 1985 indicates that CEPT is not satisfied with the tentative conclusions set forth in our NPRM. However, the CEPT representatives did emphasize that a move away from balanced loading was a step in the right direction. In CEPT's view, a better compromise could be to increase the 2 per cent annual increase in AT&T's flexibility to distribute its U.S.-CEPT message telephone circuits and to shorten the period of application of our tentatively preferred guidelines. The CEPT entities stated that they have an interest in both the cable and satellite transmission mediums but that for heavy traffic routes it may become more economic to use optical fiber submarine cables rather than satellites.

II. Discussion

41. Upon review of the record in this proceeding, we conclude that the guidelines for U.S. carrier distribution of circuits among available North Atlantic facilities during the 1986–1991 period should be as follows:

a. No circuit distribution guidelines are imposed on circuits used for the provision of U.S.-CEPT record services by any U.S. carrier, including AT&T;

b. No circuit distribution guidelines are imposed on circuits used to provide any U.S.-CEPT service, including message telephone service, by any new entrant;

c. No circuit distribution guidelines are imposed on circuits used for the provision of U.S.-CEPT message telephone service by any U.S. carrier, other than AT&T;

d. Using the cable/satellite distribution of AT&T's U.S.-CEPT message telephone circuits existing at year-end 1985 as a base, AT&T shall be permitted, but not required, during the 1986–1988 period to increase, without de-loading either transmission medium, the number of its U.S.-CEPT message telephone and 800 service-overseas circuits it places on either cable or satellite facilities by 2 per cent per year;

e. AT&T shall observe the 2 per cent annual cumulative limitation for the CEPT countries as a whole and need not observe this limitation on a country-by-country basis;

f. The Commission will review, prior to year-end 1988, the loading guidelines prescribed here for circuits used by AT&T to provide IMTS to determine what, if any, methodology should be utilized after 1988; and

g. The Commission retains jurisdiction to re-evaluate these guidelines, either on its own motion or on the request of an interested party, at any time during the 1986–1991 period should changes in marketplace conditions or other factors warrant such re-examination.

A. Circuits Used for U.S.-CEPT Record Services

42. We here affirm the tentative conclusion we reached in our NPRM that circuits used for the provision of U.S-CEPT record services should continue to be exempted from the imposition of circuit distribution guidelines. As set forth in our description of responses to the NPRM, none of the responding parties objected to this tentative conclusion, except for its application to AT&T. As we noted in our NPRM, voice circuits used for the provision of U.S.-CEPT record services comprise less than 12 percent of the total number of voice circuits used for the provision of U.S.-CEPT telecommunications services at the end of 1984. Thus, the distribution of U.S.-CEPT record circuits can have little effect on the overall use of North Atlantic cable and satellite facilities.

43. In addition, approximately 87 percent of the voice circuits used to provide U.S.-CEPT record service are used to provide leased channels. Customers for leased channels often specify use of either a cable or satellite circuit to best satisfy their specific leased channel requirement. Those customers have the ability to select from among multiple carriers and to select between transmission mediums to satisfy their needs. Customers utilizing switched record services also have the ability to select from among multiple suppliers those services. Thus, for both switched record services and leased channels, there continues to be a viable marketplace mechanism for the distribution of record circuits between the cable and satellite transmission mediums.[17]

44. We also adopt our tentative conclusion that circuits used by AT&T for the provision of U.S.-CEPT record services should be exempted from circuit distribution guidelines. Neither WUT nor ITTWC—the parties who questioned this tentative conclusion due to circuit availability and predatory pricing concerns—takes issue with our NPRM findings that AT&T has only a small percent of the leased channel market and that AT&T's provision of leased channels is subject to the same marketplace distribution mechanisms as that of other carriers. Further, with respect to the potential that AT&T will use the exemption of its record circuits from loading restrictions as a means to exhaust its spare TAT-7 capacity and deny circuits in that cable to other carriers, we note that in our decision authorizing the U.S. carriers to participate in the construction and operation of the TAT-7 cable we retained jurisdiction to reallocate circuits in that cable as the public interest may require.[18] We also find that WUT's and ITTWC's concerns over the potential for AT&T to engage in improper pricing of record services are more appropriately raised in the relevant tariff proceedings and in our recently initiated International

[17] As we noted in our NPRM, this marketplace circuit distribution mechanism will be further enhanced by several recent events. These include the introduction of INTELSAT Business Service (IBS) which will provide users with an additional choice of service and may increase competition in the international leased channel market. In addition, because we have authorized a number of entities to provide IBS and many of these entities have no ownership interest in cable facilities, IBS may introduce additional price competition between cable and satellite facilities. Price competition should also be stimulated by our decision in *Earth Station Ownership* to allow competitive earth station services and our decision in *Authorized User II* to allow Comsat to provide space segment directly to users and to enter the end-to-end market through a separate subsidiary.

[18] *See AT&T Co., 73 FCC 2d 248, 268 (1979). We also specifically conditioned this authorization to require AT&T to:*

(1) . . . make available at the request of the Commission, interests in TAT-7 circuits to present and future carriers who secure operating agreements with foreign telecommunications entitiles which call for the use of such facilities; and

(2) . . . make available at the request of the Commission, half interests in circuits to non-CEPT points to the U.S. international record carriers should they require such circuits to fulfill requests for all cable routing to such points.

We believe these provisions are adequate to assure the availability of TAT-7 circuits to other U.S. carriers and need not be supplemented by placing restrictions on the distribution of AT&T's circuits used for the provision of U.S.-CEPT record services.

Competitive Carrier docket.[19] Imposition of restrictions on the distribution of AT&T's record circuits would be neither a fully effective method for preventing possible AT&T tariff abuses nor provide a useful mechanism for correcting any such abuse which might occur.

B. Circuits Used by New Entrants To Provide all U.S.-CEPT Services, Including Message Telephone Service

45. We find that we should adopt, as a part of our North Atlantic Region circuit distribution guidelines for the 1986–1991 period, our tentative conclusion that circuits used by new entrants for the provision of all U.S.-CEPT services, including message telephone service, should be exempted from circuit distribution guidelines. As we noted in our NPRM, customers for some record services have the ability to choose either satellite or cable facilities and circuits used by new entrants to provide record services will be subject to the same marketplace distribution mechanism as the record services of the existing carriers. Moreover, since the distribution of the relatively small number of circuits currently used to provide record services has little effect on overall cable/satellite use, the few circuits new providers of those services are likely to use initially will have an even smaller effect on such overall use.

46. New entrants providing U.S.-CEPT message telephone service can be expected to use more circuits than new providers of record services. Neverthless, it is likely that the new IMTS providers will initially use few circuits compared to the number used by AT&T for that service. Thus, these new entrants are also likely to have little effect on the overall use of cable and satellite facilities in the North Atlantic Region. We also noted in our NPRM that the initial use of relatively few circuits by new message telephone service providers may require that they have greater flexibility in choosing their transmission facilities in order to permit them to handle technical considerations such as avoiding double satellite hops. We believe that this exemption may facilitate, within limits, the acquisition of operating agreements (if foreign correspondents have facility preferences) and promote the development of competition in the provision of IMTS. In view of the foregoing, and noting that none of the parties responding to our NPRM espoused a contrary view, we find that no circuit distribution guidelines should be imposed on circuits used by new entrants for any U.S.-CEPT service, including message telephone service.

C. Circuits Used for the Provision of U.S.-CEPT Message Telephone Service by All Carriers Other than AT&T

47. None of the respondents to our NPRM advocated that U.S.-CEPT message telephone circuits of carriers other than AT&T be subjected to loading restrictions. As of year-end 1984, only a small number of circuits were used to provide that service by any carrier other than AT&T. Consequently, the distribution of these other carriers' U.S.-CEPT message telephone circuits will not have a significant effect on the overall use of North Atlantic cable and satellite facilities. Therefore, we adopt our tentative conclusion that such circuits should be exempted from ciricuit distribution restrictions.

D. AT&T's U.S.-CEPT Message Telephone Circuits

48. Need for and Period of Guidelines. As was the case with the responses to our Third Notice of Inquiry, none of the respondents to our NPRM took the position that the U.S.-CEPT message telephone service market is now sufficiently competitive to warrant our total removal from circuit distribution decisions at the end of 1985. That is, the market is not now sufficiently competitive to assure that loading decisions are based on the price and availability of a particular facility rather than on some other, non-marketplace factors. All of the NPRM respondents recognize that AT&T is the major provider of U.S.-CEPT message telephone service. Our analysis indicates that as of year-end 1984, AT&T employed approximately 89 percent of all circuits in service between the U.S. and CEPT and 99.8 percent of all circuits used for IMTS between the U.S. and CEPT. In addition to its market position, AT&T can be expected to prefer cable use as a cable manufacturer and as a rate base regulated carrier. Quite clearly, it is the distribution of AT&T's U.S.-CEPT message telephone circuits which, in large measure, determines the overall use and availability of the cable and satellite facilities used to provide U.S.-CEPT services, the levels of revenues of both Comsat and INTELSAT, and the rates charged by these entities. This is particularly true when substantial excess capacity exists.

49. The recent entry of additional providers of U.S.-CEPT message telephone service, such as GTE Sprint and MCI, and the proposed entry of additional entities such as Comsat, can be expected to effect a change in the U.S.-CEPT message telephone market. AT&T's share of this market may decline and a viable marketplace mechanism for the cost-effective distribution of circuits used for IMTS may develop. However, it is clear that these changes will not progress sufficiently by year-end 1985 to warrant our removal from decisions concerning the distribution of AT&T's U.S.-CEPT message telephone circuits immediately at that time. Indeed, even AT&T does not advocate that we remove ourselves from those decisions until year-end 1989. Consequently, we affirm our tentative finding that the U.S.-CEPT message telephone service market is not yet sufficiently competitive to permit us to withdraw from decisions concerning the distribution of AT&T circuits used to provide that service.

50. AT&T suggests that we not specify any circuit distribution guideline which extends beyond 1989. Most other parties suggest guidelines which would extend beyond that date. We believe that establishing a fixed date for the termination of loading guidelines which does not take into account the development of competition in the provision of IMTS is not in the public interest. We cannot now be certain that by year-end 1989 competition in the provision of U.S.-CEPT message telephone service will have increased enough to provide an effective marketplace mechanism for the cost-efficient distribution of circuits used for that service and to offset existing biases. While we do recognize that other carriers are entering the U.S.-CEPT message telephone service market, we also recognize that the pace of competitive marketplace development is not fully predictable. The international telecommunications market is entering a transition period in which we should retain the ability to quickly modify either the methodology or period as circumstances warrant. It is not impossible that service and facility competition in the North Atlantic Region could develop more rapidly than we previously anticipated and that such developments could quicken the establishment of a marketplace mechanism for the distribution of circuits. We therefore will not adopt our tentative conclusion to utilize a methodology for six years. We view that period as simply being too long. Instead, we will prescribe a methodology's use for three years (1986–1988). Prior to year-end 1988 we shall review the development of competition in the provision of U.S.-CEPT IMTS and prescribe appropriate loading

[19] International Competitive Carrier Policies, CC Docket No. 85–107, Notice of Proposed Rulemaking, FCC 85–177 (released April 19, 1985).

guidelines, if any, for the post-1988 period. We shall also specifically retain jurisdiction to review at any time during the 1986–1991 period, either on our own motion or on the request of an interested party, the circuit distirbution guidelines we here adopt for all circuits and to alter those guidelines as the then existing marketplace conditions warrant.[20] These conditions would include the development of competition as well as the effects of regulating loading on the price of satellite circuits and on the level and mix of investment in international facilities.

51. *The Balanced Loading Methodology.* As argued by Comsat and noted by us in our NPRM, adoption of balanced loading as the basis for circuit distribution guidelines would continue to provide service reliability benefits such as reducing to a minimum the number of circuits interrupted upon failure of a major transmission facility. It also provides a predictable and automatic technique by which to handle deviations of actual demand from forecasted traffic levels. Under AT&T's most recent forecast of U.S.-CEPT message telephone circuits requirements for the 1986–1991 period, continued use of the balanced loading methodology as the basis for circuit distribution guidelines would result in approximately 48.2 percent of all the additional circuits AT&T requires during that period being placed on satellite facilities. For the 1986–1988 period, the balanced loading methodology would result in a smaller percent of growth traffic being placed on satellite facilities, depending on the exact ready for service date of TAT–8. We are not persuaded that guidelines which guarantee Comsat and INTELSAT approximately one-half of AT&T's growth circuits provide a strong enough incentive for Comsat vigorously to pursue entry into the U.S.-CEPT message telephone market or to compete for the placement on satellite facilities of the circuits used by providers of that service. We also believe that the guaranteed placement on satellite facilities of such a large percentage of AT&T's U.S.-CEPT message telephone circuits would not provide a sufficiently strong incentive to INTELSAT to operate and price its capacity competitively. We also are concerned that the nearly equal distribution of these circuits over the 1986–1991 period would not provide strong incentives for Comsat, INTELSAT or AT&T to plan, build and operate efficient, cost effective facilities for the post-1991 period. These factors continue to convince us that continued use of the balanced loading methodology will not foster the transition of the U.S.-CEPT message telephone market from a regulated environment to one subject to marketplace forces. Therefore, we affirm our tentative conclusion that the balanced loading methodology should not be adopted as the basis for 1986–1988 circuit distribution guidelines.

52. *The NTIA Cost-Based Circuit Distribution Method.* While NTIA continues to advocate the use of its cost-based circuit distribution methodology, it, like the other parties commenting on that proposal, now recognizes that the current state of development of its proposal does not permit us to adopt it at this time. Thus, NTIA now proposes that we adopt the 2 percent guidelines we tentatively prefer for two years as a mechanism to permit development of and transition to the NTIA proposal at the end of 1987.

53. As we indicated in our NPRM, we believe that the NTIA proposal could provide a number of advantages such as encouraging the development of an unbiased market for cable and satellite circuits and resulting in the least-cost combination of cable and satellite facilities capable of satisfying demand for service at adequate levels of service quality. However, we also retain our concern that the NTIA proposal is not fully defined, that it could require a substantial and continued level of regulatory intervention in circuit distribution decisions, and that the annual recalculation of per circuit revenue requirements and circuit distributions called for by this approach could complicate facilities planning by the carriers, their correspondents, Comsat and INTELSAT. We also noted the lack of support that this proposal received from our foreign counterparts.

54. Under these circumstances, we cannot conclude that NTIA's still not fully defined proposal should be adopted at either year-end 1985 or year-end 1987 as the basis for circuit distributions. The NTIA proposal (or any other circuit distribution proposal) could not be adopted until it is fully defined and evaluated. Since we have indicated our intention to review the circuit distribution guidelines for the post-1988 period, NTIA may have a further opportunity to develop its methodology.

55. *The Multi-Tier Circuit Distribution Proposal.* We also conclude that we should not now adopt a multi-tiered circuit distribution methodology. While this methodology does emphasize the importance we place on the acquisition of operating agreements by additional U.S. carriers for IMTS, a multi-tier approach is more complex and would require more regulatory intervention than would the 2 percent methodology for which we expressed a tentative preference. As we suggested in our NPRM, and as is recognized by a number of the commentors, the multi-tier proposal also requires further consideration of questions such as those concerning the treatment to be accorded message telephone circuits used to countries with small traffic volumes which might find interconnection with multiple U.S. IMTS providers uneconomical and the definition of circumstances under which the provision of message telephone service to a given country should be deemed sufficiently competitive to warrant permitting the higher degree of loading flexibility for AT&T message telephone circuits.[21] We also note that this proposal received limited support from U.S. carriers and was opposed by our carriers' foreign correspondents.

56. While we do not believe that implementation of a two-tier methodology would be unduly difficult, we conclude that a multi-tier methodology is currently not the best approach for loading AT&T's U.S.-CEPT IMTS circuits. We particularly note that U.S. IMTS providers other than AT&T have successfully negotiated operating agreements to provide service to the largest market (the U.K.) and have obtained operating agreements or are negotiating agreements with other administrations (Belgium, Sweden,

[20] As we indicated in our NPRM, we shall also soon begin to examine the facilities requirements and options available during the 1992–1995 portion of the current planning period and examine the effect of various potential circuit distributions for that period. While we gather the information for that process, we will monitor the development of competition in the provision of U.S.-CEPT message telephone service and the development of a marketplace mechanism for the cost-effective distribution of circuits. A variety of factors, including the extent to which effective competition develops will determine how much we need to involve ourselves in developing formal guidelines for the construction of facilities and the distribution of circuits for the remaining portion of the planning period. We also recongize that there may be a parallel between the development of competition so as to establish an effective marketplace mechanism for the distribution of circuits and the development of competition which we are analyzing in our International Competitive Carrier proceeding.

[21] As to countries with small IMTS traffic volumes, at least two options exist. One solution would be simply to exempt those countries from any methodology or to move them into the higher tier. The other solution would be to apply the methodology with no exceptions. The trigger mechanism could be any one of several: acquisition of a certain number of operating agreements; the acquisition of operating agreements by certain competitors to AT&T; the operation of a certain number of percentage of circuits by AT&T's competitors; or a finding of nondominance for AT&T in our International Competitive Carrier proceeding.

Denmark, France, Italy, Spain and Portugal). Nevertheless, since we will review our circuit distribution guidelines before the end 1988, the multi-tiered circuit distribution proposal may be studied further.

57. *The Phase-In Proposals.* We analyzed in the NPRM the traffic and revenue impact on both Comsat and INTELSAT of the various phase-in methodologies. We made calculations for the 1986–1991 period employing AT&T's proposal as well as 2, 2.5 and 3 percent annual increases (with a 60 per cent cap) in flexibility for AT&T and compared them with calculations employing balanced loading. Based on an August 31, 1984 forecast submitted by AT&T, we calculated that AT&T's proposal would permit it to route approximately 85 per cent of all traffic growth over cable and that the other approaches (*i.e.* 2.0, 2.5 and 3.0 per cent annual increases with a 60 per cent cap for the 1986–1991 period) would permit AT&T to route approximately 67 per cent of all traffic growth over cable.[22] If demand fell short of the forecast, then the percentage of growth traffic which AT&T could route over cable under any of these phase-in guidelines would increase. If demand exceeded the forecast, then additional growth traffic would be routed over satellite and cable facilities. We calculated, making certain assumptions as to long term rates and activation dates, the financial impact of these proposals on both Comsat and INTELSAT. As compared to balanced loading, we indicated that Comsat would receive $90.12 million, $117.99 million, $134.22 million and $218.19 million less revenues under the 2 per cent, 2.5 per cent, 3.0 per cent and AT&T proposals, respectively. As compared to balanced loading, INTELSAT would receive $66.32 million, $86.82 million, $98.77 million and $160.55 million less under these same four approaches.[23]

58. We also evaluated in the NPRM the competitiveness of the international IMTS market and the existence of certain biases. As indicated above, we tentatively concluded that the provision of IMTS was not subject to significant competitive forces and that a marketplace mechanism for the distribution of circuits did not now exist. We therefore tentatively concluded in the NPRM that AT&T's proposal would be too severe and that permitting AT&T two per cent annual flexibility for six years might better balance the various financial and competitive factors.

59. AT&T criticizes our analysis in two respects. First, AT&T asserts that the method we used to calculate revenue loss or shortfall assumes all satellite circuits added in a given year are activated on the first day of the year. AT&T argues that this methodology inflates the effect of the various phase-in guideline on Comsat's revenues because the activation of satellite circuits historically is distributed throughout the year. AT&T suggests that we should utilize a methodology which more closely reflects the usual pattern of satellite circuit activations.

60. AT&T also argues that the assumption used in our analysis that Comsat's tariff rate for satellite voice circuits will remain at the current level throughout the 1986–1991 period is unrealistic. AT&T asserts that rate reductions by Comsat and INTELSAT have been the historic pattern and are made more likely ". . . in the face of the increasing competition—both from possible 'private' and common carrier cable systems and from competing satellite systems." Therefore, AT&T concludes that the assumption that Comsat rates will remain at current levels throughout the 1986–1991 inflates our calculation of the effect on Comsat's revenues of the various flexibility phase-in circuit distribution methodologies.

61. While AT&T has employed the identical methodology it now criticizes for calculating revenues, we agree that a methodology which averages circuit activations over the course of a year would result in more accurate revenue calculations.[24] However, we cannot accept the suggestion that we assume lower space segment charges for calculating a revenue differential. First, AT&T has provided no forecast, loading, or revenue requirement data supporting the use of a lower space segment charge. Further, while technology may indeed drive down construction costs on a per circuit basis, the revenue requirement for each circuit used may actually increase as the expensive INTELSAT VI series of satellites is procured and the degree of loading flexibility given to AT&T increases.[25]

62. We have redone the calculations we performed in our NPRM using the satellite circuit activation method suggested by AT&T for calculating revenues but retaining the assumption that Comsat's tariff rate and INTELSAT's unit charges for satellite voice circuits would remain the same throughout the 1986–1991 period.[26] (Because of inflation that will occur over this period, holding rates constant does result in a price reduction in 1985 dollars.) Using the same traffic forecast employed in the NPRM, our calculations indicate that during the 1986–1991 period Comsat and INTELSAT, respectively, would receive approximately $167.19 million and $123.3 million less if the AT&T 3 percent proposal is adopted than they would if the balanced loading methodology was continued. The equivalent revenue amounts for Comsat and INTELSAT calculated in our NPRM were $218.18 million and $160.55 million, respectively. Performing the same calculation for the 2 percent guidelines for which we have expressed our tentative preference, we find that Comsat and INTELSAT, respectively, would receive approximately $67.37 million and $49.58 million less revenues if the 2 percent guidelines are adopted compared to the revenues they would receive if the balanced loading guidelines were continued. The equivalent revenue figures as calculated in our NPRM were approximately $90.12 million and $66.32 million for Comsat and INTELSAT, respectively.

63. Using the most recent forecast, which reflects a lower traffic growth rate, the difference in terms of revenue between balanced loading and the various phase-in proposals would

[22] While a cap would equalize the total number of circuits placed over cable, the different rates at which the cap was reached would impact satellite revenues in distinct fashions.

[23] Of course, to the extent that Comsat and INTELSAT have fixed revenue requirements, a revenue shortfall could be partially or fully offset by rate increases. To the extent that these figures represent revenue differences rather than actual revenue requirement shortfalls, the impact may be to slow the rate of rate decreases. Depending on world-wide traffic growth and loading, INTELSAT Signatory ownership shares, revenue requirements, capital costs and expenses, the rate impact on either Comsat or INTELSAT could be substantial.

[24] In its attachment 2 of its November 2, 1984 Final Comments in this docket, AT&T sets forth for the 1986–1989 period its calculation of Comsat's global satellite voice circuit revenues assuming continuation of the balanced loading circuit distribution for the U.S.-CEPT message telephone circuits, Comsat's global revenues for satellite voice circuits assuming adoption of AT&T's proposed three percent guidelines for U.S.-CEPT message telephone circuits and the yearly difference between these two revenue calculations. AT&T's calculations in this case assumed that all satellite circuits added during a given year are activated on January 1st.

[25] Even if AT&T's methodology would route enough traffic over satellite to permit a lowering of Comsat's per circuit space segment rate, we note that an even greater percentage of traffic routed over satellite would ordinarily lead to even lower satellite rates. That is, as a rate base regulated entity with a certain revenue requirement, Comsat's per circuit space segment rate would generally increase if fewer satellite circuits are leased and generally decrease if most satellite circuits are leased.

[26] Although we have prescribed a methodology for only three years (1986–1988), for ease of comparison with the NPRM and the filings of the parties our calculations cover both the six years (1986–1991) of the planning period and the three years (1986–1988) that the prescribed methodology will be utilized.

decrease. Our calculations disclose that during the 1986–1991 period Comsat and INTELSAT, respectively, would receive approximately $135.71 million and $99.86 million less revenues if the AT&T proposed 3 percent guidelines were adopted than they would receive if the use of the balanced loading methodology was continued. We calculate the reduction in revenues from balanced loading levels which would occur if the 2 percent guidelines were adopted as approximately $59.73 million and $43.95 million for Comsat and INTELSAT respectively. The details of these calculations and the distributions on which they are based, are set forth in Appendix 1 attached to this Report and Order.[27] These calculations in short form, are as follows:

REVENUE REDUCTION TABLE

[Dollars in millions]

	Comsat	Intelsat	Comsat	Intelsat
Assumptions.	AT&T 3 percent plan.	AT&T 3 percent plan.	2 percent plan.	2 percent plan
NPRM	$218	$161	$90	$66
NPRM but averaged activations.	$167	$123	$67	$50
NPRM but averaged activations and new forecast.	$136	$100	$60	$44

64. While these modifications to our calculations indicate less of a difference between the balanced loading and various phase-in approaches, they are still substantial. For the 1986–1988 period for which we are adopting guidelines, we now calculate that adoption of AT&T's 3 percent proposal would result in approximately $25 million and $18 million less revenues for Comsat and INTELSAT, respectively, than these entities would receive if the balanced loading methodology continued to be used. Adoption of the 2 percent guidelines for this three year period would result in approximately $14 million and $10 million less revenue for Comsat and INTELSAT, respectively than they would receive under balanced loading guidelines.[28] Most importantly, the above calculations do not alter the characteristics of the present market. AT&T continues to be the major user of all circuits, the major user of circuits for IMTS and an entity with a clear and understandable preference for cable facilities. Competition in the provision of IMTS is only now developing and a marketplace mechanism for the efficient use of circuitry does not now exist. Further, Comsat and INTELSAT continue to rely on AT&T for a significant portion of their traffic and revenues, and have relatively fixed investments and revenue requirements for the 1986–1991 period. The $135.71 million and $99.86 million reduction in the revenues Comsat and INTELSAT would receive under AT&T's proposed 3 percent guidelines, as compared to their revenues from a balanced loading distribution, is less than the differential we calculated in our NPRM using AT&T's earlier, higher forecast and a different methodology for calculating satellite activations. Nevertheless, these figures would be a significant reduction in the revenues of these entities and represent reductions greater than those we found "acceptable" in the NPRM. Moreover, as Comsat states, the fact that the lower traffic forecast reduces the revenue differential between the balanced loading methodology and AT&T's proposed 3 percent guidelines benefits neither Comsat nor INTELSAT. To the contrary, the revenues these entities will now receive under any particular loading methodology will be less because they will be handling less traffic. We find that AT&T's proposed guidelines for the 1986–1991 period, which would place approximately 82 percent of the additional U.S.-CEPT message telephone circuits on cable facilities while placing only 18 percent of such circuits on satellite facilities, would apportion too great a percentage of growth traffic to one medium under the present market conditions.[29]

We reach the same conclusion for the use of AT&T's proposed guidelines for the 1986–1988 period as this proposal would place over seventy percent of growth traffic on cable facilities.

65. We further conclude that the approximately $14 million and $10 million reduction in the revenues Comsat and INTELSAT, respectively, will receive in the 1986–1988 period under the 2 percent guidelines compared to the revenues they would receive under balanced loading guidelines, coupled with the adverse revenue effects of a lower traffic forecast, will provide a strong incentive for Comsat to enter the U.S.-CEPT message telephone market and for INTELSAT and Comsat to work toward developing a more cost effective satellite system. However, we do not believe these revenue reductions will place undue pressure on Comsat or INTELSAT rates. Since the 2 percent guidelines permit AT&T to place up to 63.31 percent of the additional circuits it projects it will require during the 1986–1988 period on either cable or satellite facilities; we believe that these guidelines provide AT&T with sufficient flexibility.

66. The calculations in paragraphs 62–65 assumed a constant INTELSAT

[27] As we recognized in footnote 34 of our NPRM, a number of factors could alter the results of our revenue analysis. These include changes in AT&T's traffic forecast, changes in Comsat's or INTELSAT's rates, and the degree to which TDMA/DSI equipment is used in the provision of AT&T's U.S.-CEPT message telephone service since the tariff and INTELSAT unit charge is lower for derived circuits than for FDMA circuits.

[28] The reduction in Comsat and INTELSAT revenues under the AT&T 3 percent guidelines and the 2 percent guidelines compared to the revenues these entities would receive under balanced loading are less for the three year 1986–1988 period than for the entire six year 1986–1991 period. The range of percentage increase in Comsat's per circuit space segment revenue requirements is likewise smaller for the three year 1986–1988 period than for the full six year 1986–1991 period. This is, of course, to be expected for a number of reasons. The first, and most obvious, reason is that where, as here, we have three circuit distribution methodologies which result in satellite facilities loading which diverges each year, the effect on satellite circuit providers' revenues and on the per circuit revenue requirements for space segment will be less for a three year period than for the full six year period. Moreover, since the three year period with which we are here concerned is the initial period of implementation for new circuit guidelines, it is also the period during which the AT&T 3 percent guidelines and the 2 percent guidelines diverge the least. Consequently, the difference in the effects of these two methodologies on satellite circuit revenues and per circuit space segment revenue requirements compared to balanced loading will be the least during this period.

In addition, the fact that the balanced loading methodology permits all traffic to be loaded on the TAT-8 cable entering service in 1988 until that transmission path is carrying the same number of circuits as existing transmission paths with available capacity significantly reduces the difference in the effect of the AT&T 3 percent guidelines and the 2 percent guideline on satellite circuit revenues and per circuit revenue requirements for space segment when compared with balanced loading. As may be noted from the table set forth as Appendix 1, the balanced loading guidelines would permit more circuits to be placed on cable facilities during 1988 than either the 2 percent guidelines or AT&T's proposed 3 percent guidelines. Indeed, at year-end 1988, balanced loading guidelines would result in the activation of approximately 56 more cable circuits than could be activated under the 2 percent guidelines. However, this does not mean that adoption of the 2 percent guidelines will result in less cable use and more satellite use over the 1986–1988 period. To the contrary, during this three year period the balanced loading methodology would result in 27,965.5 circuit years of satellite use while the 2 percent guidelines and AT&T's 3 percent guidelines would result in 26,897 and 26,043 circuits years of satellite use, respectively.

[29] The circuit distribution based on AT&T's proposed 3 percent guidelines and its earlier, higher traffic forecast would have placed 85 percent of all growth circuits on cable facilities. In its current distribution based on a smaller traffic forecast, AT&T projects activating 274 and 458 satellite circuits in 1990 and 1991, respectively, as compared to 12 and 15 satellite circuits for these two years under its previous distribution based on a large traffic forecast. This modification results in the 18 percent figure.

utilization charge of $390 per circuit per month and a constant bundled Comsat rate of $1060 per circuit per month. The focus was on quatifying the impact of various loading methodologies on INTELSAT and Comsat. By holding rates to carriers and users constant, there was, in a sense, no impact on these entities. However, as a rate base regulated entity with a relatively fixed investment for the 1986–1991 period, it may not be appropriate to assume that Comsat's rates to carriers and users will not change depending on the loading methodology employed. Similarly, INTELSAT has a relatively fixed investment for the 1986–1991 period and pays its signatories, pursuant to Articles 4 and 8 of the INTELSAT Operating Agreement, a return on their investments (currently 14 percent). Thus it also may be inappropriate to assume that INTELSAT's utilization charge will remain constant under all loading methodologies. We now therefore consider the impact of the various loading methodologies on Comsat's rates and specifically on Comsat's unbundled space segment charge.[30] While AT&T's total revenue requirement and rates may not be measurably affected by changes in Comsat's rates, users and other carriers will be more demonstrably impacted and the development of intermodal competition could be adversely affected.

67. We conclude from our analysis that the reduction in the number of leased satellite circuits resulting from AT&T's proposal would place a degree of upward pressure on space segment rates which is inconsistent with the public interest.[31] We also conclude that, on balance, a 2 percent per year approach would not place undue pressure on Comsat's space segment rates. In estimating what Comsat's space segment rates would be under the 2 percent, AT&T 3 percent and balanced loading methodologies proposed in this docket for the 1986–1991 period we have employed AT&T's traffic forecast and assumed various revenue requirement levels. Because additional cable systems and loading proposals are being considered in the Pacific and Caribbean planning dockets our analysis has isolated the space segment capacity used to provide U.S.-CEPT IMTS and the revenue requirement which corresponds to this capacity. While we recognize that any analysis which employs what might be an overly optimistic traffic forecast, which makes assumptions as to Comsat's future space segment revenue requirements, and which attempts to estimate a regional rather than a global space segment rate can be criticized, we believe that the trends developed by such an analysis are valid and useful. We have charted the three loading methodologies for the 1986–1991 period with space segment revenue requirements ranging from $165 million to $265 million.[32] We have calculated that 83.47 percent of Comsat's total space segment revenue requirement is allocated to voice circuit leases (the remaining 16.53 percent of Comsat's space segment revenue requirement is allocated to transponder leases and other services) and that 42.44 percent of all IMTS voice circuits leased by Comsat are to AT&T for U.S.-CEPT IMTS. Using these two percentages, AT&T's forecast and the various revenue requirements we can derive Comsat's U.S.-CEPT IMTS circuit rates for the 1986–1991 period for any loading methodology.[33] It is self evident that Comsat's space segment rates will decline the most (or increase the least) the lower the revenue requirement and the higher the satellite usage. Similarly, Comsat's space segment rates will decline the least (or increase the most) the greater the revenue requirement and the lower the satellite usage.

68. As shown in Table 2 of Appendix 2, our analysis indicates that, as compared to balanced loading, AT&T's proposed 3 percent guidelines would result in per circuit space segment rates which range for the 1986–1988 period which range from *6.76* percent to *7.11* percent higher. (For the entire 1986–1991 period this range would be from 13.90 to 15.69 percent higher). As compared to balanced loading, our tentatively preferred 2 percent guidelines would result in per circuit space segment rates for the 1986–1988 period from *3.72* percent to *3.86* percent higher. (For the entire 1986–1991 period this range would be from 5.61 to 6.06 percent higher). Our analysis also indicates that the balanced loading and 2 percent circuit distribution methodologies produce space segment per circuit rates which are lower than the existing space segment charge under all revenue requirement assumptions. On the other hand, if the revenue requirement increases by $20 million per year then AT&T's proposal would result in space segment rate increases each year within the planning period. Of course, the rate decrease will be the greatest under balanced loading and the least under AT&T's 3 percent guidelines.

69. This analysis tends to confirm the conclusions drawn from our other analysis that adoption of AT&T's proposed 3 percent guidelines could place undue upward pressure on the rates for satellite circuits. The approximately 7 percent higher per circuit revenue requirements produced by the AT&T proposal, when compared to the balanced loading methodology, and the potential that the AT&T proposed guidelines could actually lead to higher space segment rates if Comsat's actual total space segment revenue requirements increase to a level near our upper limit assumption leads us to conclude that the AT&T proposal may hinder rather than foster the development of intermodal competition.

70. In view of the foregoing, we conclude that AT&T's proposed 3 percent guidelines are too severe and that the 2 percent guidelines we tentatively prefer will better balance the various financial and competitive factors. Nothing presented in the comments filed in response to our NPRM persuades us that the 2 percent guidelines are not the most appropriate of the transitional mechanisms which we have examined. Therefore, we conclude that we should affirm our tentative conclusions that, using the cable-satellite distribution of AT&T's U.S.-CEPT message telephone circuits existing at the end of 1985 as a base, AT&T should be permitted, but not required, to increase the number of its U.S.-CEPT message telephone circuits it places on either cable or satellite facilities by 2 percent per year. Because we have analyzed the traffic, revenue and rate implications of the various proposals over a three year period, we shall permit AT&T to carry-over, but not borrow, unused flexibility. Thus, the two

[30] We do not attempt here to calculate future INTELSAT utilization charges.

[31] Because INTELSAT will be using either existing satellites or satellites which are already being procured pursuant to binding contracts to provide service during the 1986–1991 period, its facilities costs are basically fixed for that period. INTELSAT can only recover its revenue requirements for its fixed investment from revenues generated by circuits used to provide service. Consequently, the lower forecast, by reducing the number of circuits AT&T and other carriers will employ, will place upward pressure on INTELSAT's rates. Comsat may experience the same upward pressure on its rates to satisfy its revenue requirements. If Comsat's rates increase, than AT&T's expenses (specifically satellite lease charges paid to Comsat) may also increase, exerting an upward pressure on AT&T's rates to users.

[32] The $165 million space segment revenue requirement figure is found in Comsat's June 5, 1985 tariff transmittal No. 565. The upper limit and numbers in between were derived simply by adding to Comsat's space segment revenue requirement $10 million, $15 million or $20 million per year for the 1986–1991 period. Past investment patterns and our general knowledge of INTELSAT's future procurement plans would indicate that it is likely that Comsat's investments and expenses will generate an annual revenue requirement within this range.

[33] The full results of these calculations as well as the methodology used are found in Appendix 2.

percent per year guidelines shall be cumulative.[34]

71. *Treatment of AT&T Circuits Used For Its 800 Service-Overseas.* We agree with GTE Sprint's contention that circuits used by AT&T for the provision of its 800 Service-Overseas should be subjected to the circuit distribution guidelines we are here adopting. The circuits used to provide 800 Service-Overseas are part of the switched voice network used by AT&T to provide U.S.-CEPT message telephone service. Consequently, the same considerations should apply to circuits used for both of these services. Therefore, we conclude that the circuits used by AT&T to provide its 800 Service-Overseas should be subjected to the same circuit distribution guidelines as its circuits used for the provision of U.S.-CEPT message telephone service. Circuits used by AT&T to provide 800 Service-Overseas shall therefore be aggregated with IMTS circuits for loading purposes.

E. ARINC Whole Circuit Proposal

72. We need to address one final issue. In response to the NOI, ARINC proposed that we explore the possibility of restructuring the ownership arrangements for international submarine cables. (U.S. entities and foreign correspondents own undivided half interests in circuits.) ARINC requested us to change cable ownership to an arrangement where U.S. entities and their correspondents would each separately purchase their own whole circuits (the whole-circuit policy). We note that ARINC first raised its whole circuit-ownership argument in connection with our consideration of the U.S. carriers' application for authorization to construct the TAT-8 cable. File No. I-T-C-84-072. ARINC requested us to condition our grant of authority upon the carriers' agreeing to modify the TAT-8 agreement to require whole-circuit ownership. We denied ARINC's request as having been presented too late in the TAT-8 proceeding and suggested that it might better pursue the question in the facilities planning process, particularly the North Atlantic Consultative Process. *See* FCC 84-240 para. 51, note 21.

73. In the NPRM, we tentatively concluded that ARINC's proposal that we require ownership in TAT-8 and future cables to be on a whole-circuit basis should not be considered in this phase of this docket. We stated that ARINC's proposal was not germane to the question of the circuit-distribution guidelines which should be adopted for use in the post-1985 period and that those guidelines would not affect ARINC's proposal. We indicated that ARINC's proposal, if adopted, would effect major changes in the present structure of international facilities ownership and in the established operating relationships between the U.S. carriers and their overseas correspondents. We also noted that ARINC raised its request at a meeting of the North Atlantic Consultative Process and that is the proper forum in which to address ARINC's proposal.[35]

74. In response to the NPRM, ARINC reiterated its whole circuit ownership proposal and argued that this issue should be resolved in a policy proceeding rather than in the consultative process. We affirm our tentative conclusion that the issue is not germane to the limited question of circuit distributions. We will consider this issue in the subsequent phase of this docket. See paragraph 50, n. 20.[36]

III. Ordering Clauses

75. Accordingly, it is ordered, pursuant to section 4(i), 4(j), 201-205, 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201-205, 214, 403 (1976) that the circuit distribution guidelines for the 1986-1991 period set forth above ARE ADOPTED.

76. Pursuant to Section 605(b) of the Regulatory Flexibility Act 5 U.S.C. 605, it is certified, that sections 603 and 604 of the Act do not apply because the circuit distribution policies adopted herein is a rule of particular applicability to the American Telephone and Telegraph Company and is, hence, not subject to the Regulatory Flexibility Act.

77. It is further ordered, that AT&T shall file by September 20, 1985, a regional circuit distribution plan for the 1986-1988 period for its U.S.-CEPT message telephone circuits based upon its most recent traffic forecast which complies with the circuit distribution guidelines set forth herein. The U.S. TAT-8 co-owners shall also file, consistent with paragraph 87 of our TAT-8 order, country-by-country loading plans for the TAT-8 facility for 1988.[37] Each carrier shall further retain comprehensive information demonstrating the implementation of its circuit distribution plan on a country-by-country basis.[38]

78. It is further ordered, that this rulemaking phase of CC Docket No. 79-184 is terminated.

79. It is further ordered that the Secretary of the Commission shall cause this Second Report and Order to be published in the Federal Register and shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,

Secretary.

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[34] Because we are adopting a two percent methodology for only three years, we need not address the issue of a 60/40 cap. That is, there will be no cap.

[35] The CEPT entities did not support this proposal, expressing satisfaction with existing ownership arrangements.

[36] We also note that non-carrier ownership of submarine cable circuits is tentatively proposed in our Notice of Proposed Rulemaking in International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grant of IRUs in International Facilities and Assignment of Data Network Identification Codes, CC Docket No. 83-1230, Notice of Proposed Rulemaking, FCC 85-369 (released August —, 1985).

[37] *See* AT&T *et al.*, FCC 84-240 (released June 8, 1984). This filing will obviate the need for separate Section 214 applications for circuit activations consistent with the carriers' loading plans. Activations not consistent with the submitted plans would require separate authorization.

[38] Such data may be requested by the Commission during its consideration of future loading policies.

APPENDIX 1

COMPARISON OF THE APPLICATION OF CIRCUIT DISTRIBUTION GUIDELINES TO AT&T'S U.S.-CEPT MTS TRAFFIC

YEAR	1986		1987		1988		1989		1990		1991		
AT&T FORECAST/Nov. 84	17010		19540		22933		26785		31295		36583		
BALANCED LOADING													
	C	S	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	48.8	51.2	47.3	52.7	54.5	45.5	54.7	45.3	52.9	47.1	50.8	49.2	
No. of Cable/Sat. Cir.	8303	8707	9252	10288	12491	10442	14647	12138	16566	14729	18587	17996	
No. of Cable/Sat. Cir. Added	1004	1208	949	1581	3239	154	2156	1696	1919	2591	2021	3267	
AT&T PROPOSAL													
	C	S	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	51.0	49.0	53.9	46.1	57.0	43.0	60.0	40.0	64.9	35.1	68.7	31.3	
No. of Cable/Sat. Cir.	8671	8339	10529	9011	13069	9864	16078	10707	20314	10981	25144	11439	
No. of Cable/Sat. Cir. Added	1372	817	1858	672	2540	853	3009	843	4236	274	4830	458	
Sat. Cir. Year Difference Compared to Balanced Loading		-172.5		-822.5		-927.5		-1004.5		-2589.5		-5152.5	TOTAL -10669
Revenue Difference Compared to Balanced Loading COMSAT		-$2.19M		-$10.46M		-11.8M		-$12.78M		-$32.94M		-$65.54M	-$135.71M
INTELSAT		-$1.61M		-$7.70M		-8.68M		-$9.40M		-$24.24M		-$48.23M	-$99.86M
2 PERCENT INCREASED FLEXIBILITY PER YEAR -- 60 PERCENT MAXIMUM													
	C	S	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	50.0	50.0	52.0	48.0	54.2	45.8	56.1	43.9	58.0	42.0	60.0	40.0	
No. of Cable/Sat. Cir.	8504	8506	10159	9381	12435	10498	15025	11760	18163	13132	21948	14635	
No. of Cable/Sat. Cir. Added	1205	984	1655	875	2276	1117	2590	1262	3138	1372	3785	1503	
Sat. Cir. Year Difference Compared to Balanced Loading		-89		-554		-425.5		-161		-987.5		-2479	TOTAL -4696
Revenue Difference Compared to Balanced Loading COMSAT		-$1.13M		-$7.05M		-$5.41M		-$2.05M		-$12.56M		-$31.53M	-$59.73M
INTELSAT		-$0.83M		-$5.19M		-$3.98M		-$1.51M		-9.24M		-$23.20M	-$43.95M

(2)

COMPARISON OF THE APPLICATION OF CIRCUIT DISTRIBUTION GUIDELINES TO AT&T'S U.S.-CEPT MTS TRAFFIC

YEAR	1986	1987	1988	1989	1990	1991
AT&T FORECAST/Nov. 84	17010	19540	22933	26785	31295	36583

2.5 PERCENT INCREASED FLEXIBILITY PER YEAR -- 60 PERCENT MAXIMUM

	C	S	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	50.5	49.5	53.0	47.0	55.5	44.5	58.0	42.0	60.0	40.0	60.0	40.0	
No. of Cable/Sat. Cir.	8590	8420	10356	9184	12728	10205	15535	11250	18784	12511	21948	14635	
No. of Cable/Sat. Cir. Added	1291	898	1766	764	2372	1021	2807	1045	3249	1261	3164	2124	
Sat. Cir. Year Difference Compared to Balanced Loading		-132		-695.5		-670.5		-562.5		-1553		-2789.5	TOTAL -6403
Revenue Difference Compared to Balanced Loading COMSAT		-$1.68M		-$8.85M		-$8.53M		-$7.16M		-$19.75M		-$35.48M	-$81.45M
INTELSAT		-$1.24M		-$6.51M		-$6.28M		-$5.27M		-$14.54M		-$26.11M	-$59.95M

3 PERCENT INCREASED FLEXIBILITY PER YEAR -- 60 PERCENT MAXIMUM

	C	S	C	S	C	S	C	S	C	S	C	S	
Percent Cable/Sat.	51.0	49.0	53.9	46.1	57.0	43.0	60.0	40.0	60.0	40.0	60.0	40.0	
No. of Cable/Sat. Cir.	8671	8339	10529	9011	13069	9864	16078	10707	18784	12511	21948	14635	
No. of Cable/Sat. Cir. Added	1372	817	1858	672	2540	853	3009	843	2706	1804	3164	2124	
Sat. Cir. Year Difference Compared to Balanced Loading		-172.5		-822.5		-927.5		-1004.5		-1824.5		-2789.5	TOTAL -7541
Revenue Difference Compared to Balanced Loading COMSAT		-$2.19M		-$10.46M		-$11.8M		-$12.78M		-$23.21M		-$35.48M	$95.92M
INTELSAT		-$1.61M		-$7.70M		-$8.68M		-9.40M		-$17.08M		-$26.11M	-$70.58M

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Appendix 2—Analysis of Effect of Loading Methodologies on Requirements for Satellite Circuits

Our analysis takes as a starting point the approximately $165 million Comsat projects as its total revenue requirements for INTELSAT space segment capacity during the mid-1985 to mid-1986 period in its Tariff Transmittal No. 656 filed on June 5, 1985.[39] We first determined the percentage of the $165 million total space segment revenue requirements which should be attributed to the space segment used to provide international satellite voice circuits to be 83.47 percent.[40] We then isolated the portion of Comsat's total space segment revenue requirements attributable to satellite circuits leased by AT&T to provide U.S.-CEPT message telephone service. We found that approximately 42.44 percent of all IMTS voice circuits leased by Comsat are to AT&T for U.S.-CEPT IMOTS. Multiplying these two percentages together we calculated that 35.42 percent of the $165 million total space segment revenue requirements (or $58,443,000) should be attributed to satellite circuits used by AT&T to provide U.S.-CEPT message telephone services.[41]

In order to determine the effect of the three loading methodologies on Comsat's monthly per circuit space segment rate throughout the 1986–1991 period, we multiplied Comsat's total space segment revenue requirements for each year by 35.42 percent and divided the result by the number of satellite circuits years, AT&T would use under each methodology and then divided that annual figure by 12. Because we do not have detailed projections of Comsat's total space segment revenue requirements for any year other than mid-1985 through mid-1986, we performed this calculation using a range of assumed total revenue requirements. As a lower limit, we assumed that Comsat's total space segment revenue requirements would remain fixed at the $165 million level set forth in Tariff Transmittal 565 throughout the 1986–1991 period. As an upper limit, we assumed that Comsat's total space segment revenue requirements would increase at a rate of $20 million per year from the 1986 level of $165 million. We also performed the analysis for assumptions of $10 million and $15 million annual increase in Comsat's total space segment revenue requirements. Table 1 displays the total space segment revenue requirements investigated for each year during the 1986–1991 period, the satellite circuit-years used in our calculations for each of the loading methodologies, and the resulting Comsat monthly per circuit revenue requirements derived. Table 2 displays the Comsat monthly per circuit space segment rates for each of the three loading methodologies resulting from each Comsat total space segment revenue requirement assumption as well as the average monthly per circuit revenue requirement over the six year period for each of the loading methodologies.[42]

Comsat provided to all areas of the world at the end of 1986. This calculation indicated that 42.44 percent of all satellite voice circuits used by U.S. carriers at year-end 1984 were used by AT&T for the provision of U.S.-CEPT message telephone service. Thus, we determined that percent of Comsat's total space segment revenue requirements attributable to AT&T's use of satellite circuits to provide U.S.-CEPT message telephone service to be:

$$X=(17{,}523\times\$655\times12/165{,}000{,}000)\times.4244$$
$$X=.8347\times.4244$$
$$X=.3542$$

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[39] Our use of information from this tariff filing should not be construed as a decision on the merits of that filing.

[40] We derived this percentage by multiplying the 17,523 voice circuits Comsat projects in Tariff Transmittal No. 565 it will have in service at year-end 1985 by Comsat's current annual charge for the space segment of a satellite voice circuit ($655 × 12) and dividing the result by the $165 million total revenue space segment revenue requirement. This results in 83.47 percent of Comsat's $165 million total space segment revenue requirement being attributed to the provision of satellite voice circuits.

[41] In order to isolate the percentage of Comsat's total space segment revenue requirements attributable to AT&T's use of satellite voice circuits for the provision of U.S.-CEPT message telephone service, we divided the number of satellite voice circuits so used by AT&T at the end of 1984 by the total number of satellite voice circuits Comsat provided to all areas of the world at the end of 1986. This calculation indicated that 42.44 percent of all satellite voice circuits used by U.S. carriers at year-end 1984 were used by AT&T for the provision of U.S.-CEPT message telephone service. Thus, we determined that percent of Comsat's total space segment revenue requirements attributable to AT&T's use of satellite circuits to provide U.S.-CEPT message telephone service to be:

$$X=(17{,}523\times\$655\times12/165{,}000{,}000)\times.4244$$
$$X=.8347\times.4244$$
$$X=.3542$$

[42] We wish to emphasize that, while we believe that this analysis is a valuable indicator of the trends in per circuit revenue requirements adoption of each of these circuit distribution methodologies would produce, the analysis should not be taken as an accurate predictor of specific per circuit revenue requirements for satellite circuits in a given year. The lack of specific information on Comsat's total space segment revenue requirements for the 1987–1991 period required us to examine a range of assumptions concerning Comsat's total space segment revenue requirements. While we believe it is reasonable to assume that Comsat's actual total space segment revenue requirements are likely to fall within this range, given factors such as the timetables for procurement of satellites and the launch of satellites during this period, it is not likely that Comsat's total space segment revenue requirements will vary as linearly as they do under our assumptions. It must also be noted that our analysis isolates the Comsat's per circuit revenue requirements for U.S.-CEPT message telephone service. This was done in recognition of the potential that the ongoing planning proceedings for Pacific and Caribbean/South America facilities could result in circuit distribution guidelines which differ from those adopted for the North Atlantic region. Thus, actual per circuit revenue requirements in a given year could vary from those projected by our analysis.

TABLE 1

Calculation of Comsat Monthly Per Circuit Revenue Requirements

Year	Total Space Segment Revenue Requirement	Balance Loading		2 Percent		AT&T 3 Percent	
		Circuit Years	Per-Circuit Revenue Requirement	Circuit Years	Per-Circuit Revenue Requirement	Circuit Years	Per-Circuit Revenue Requirement
1986		8103		8014		7930.5	
	165M		601		608		614
1987		9497.5		8943.5		8675	
	165M		513		545		561
	175		544		578		596
	180		559		594		613
	185		575		611		630
1988		10365		9939.5		9437.5	
	165		470		490		516
	185		527		549		579
	195		555		579		610
	205		584		609		641
1989		11290		11129		10285.5	
	165		431		438		474
	195		510		517		560
	210		549		557		603
	225		588		597		646
1990		13433.5		12 446		10844	
	165		363		391		449
	205		451		486		558
	225		494		534		613
	245		538		581		667
1991		16362.5		13883.5		11210	
	165		298		351		435
	215		388		457		566
	240		433		510		632
	265		478		563		698

TABLE 2

Comsat Monthly Circuit Revenue Requirements Comparison

	Annual Revenue Requirements Increase From $165M in 1986											
	$165M + 0/Year			$165M + $10M/Year			$165M + $15M/Year			$165M + $20M/Year		
	BL	2%	AT&T	BL	2%	AT&T	BL	2%	AT&T	BL	2%	AT&T
1986	601	608	614	601	608	614	601	608	614	601	608	614
87	513	545	561	544	578	596	559	594	613	575	611	630
88	470	490	516	527	549	579	555	579	610	584	609	641
89	431	438	474	510	517	560	549	557	603	588	597	646
90	363	391	449	451	486	558	494	534	613	538	581	667
91	298	351	435	388	457	566	433	510	632	478	563	698
Total	2676	2823	3049	3021	3195	3473	3191	3382	3685	3364	3569	3896
Average Monthly Revenue Require. Per Ckt.	446	471	508	504	533	579	532	564	614	561	595	649
% Diff. Compared to Balanced Loading	-	+5.61	+13.90	-	+5.75	+14.88	-	+6.02	+15.41	-	+6.06	+15.69
1986-88 Sub Total	1584	1643	1691	1672	1735	1789	1715	1781	1837	1760	1828	1885
Average Montly Revenue Require. Per Ckt.	528	548	564	557	578	596	572	594	612	587	609	628
% Diff. Compared to Balanced Loading	-	+3.72	+6.76	-	+3.76	+6.99	-	+3.84	+7.11	-	+3.86	+7.10

[FR Doc. 85-20449 Filed 8-27-85; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 542

[Docket No. T85-01; Notice 2]

Procedures for Selection of Covered Vehicles; Motor Vehicle Theft Law Enforcement Act of 1984

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule is issued under Title VI of the Motor Vehicle Information and Cost Savings Act. It sets forth the procedures to be followed when determining which passenger motor vehicle lines introduced on or after January 1, 1983, are to be covered under the proposed vehicle theft prevention standard. That standard would require the marking of major component parts on all cars in lines subject to its requirements. Under these procedures, the manufacturer will apply the relevant criteria in preparing its views as to which of its lines should be selected as high theft lines for purposes of the theft prevention standard. The manufacturer would submit its views to the agency, together with the facts it considered and the supporting rationales for those views. NHTSA will consider these submissions and inform the manufacturer of its agreement with the manufacturer's views or of its preliminary determination that different lines should be selected. If the manufacturer does not request reconsideration of the preliminary determination, it automatically becomes the final determination. If the manufacturer does request reconsideration, it must provide the facts and arguments underlying its objections. NHTSA considers the request for reconsideration and promptly issues its final determination.

DATE: This rule is effective on and after November 1, 1985.

Note.—This rule refers to the appendices to Part 541, which is the proposed vehicle theft prevention standard. The notice of proposed rulemaking to establish Part 541 was published at 50 FR 19728, May 10, 1985. NHTSA anticipates a final rule for Part 541 will be published before this rule becomes effective. If that final rule has not been published by the date this rule is scheduled to become effective, the agency will publish a notice delaying the effective date for this rule.

ADDRESS: Any petitions for reconsideration of this rule must be received by NHTSA no later than September 27, 1985, and should be addressed to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Title VI requires NHTSA, by delegation from the Secretary of Transportation, to promulgate a vehicle theft prevention standard mandating a marking system for the major component parts of high theft lines. To implement the mandate of the Theft Act, NHTSA must divide each manufacturer's fleet of passenger motor vehicles into different "lines". A "line" is a group of vehicles sold with the same nameplate, such as Mustang, Camaro, or Aries. The agency must then select those lines which are "high theft lines" and, therefore, subject to the marking requirements of the theft prevention standard.

Section 603(a)(1) of the Cost Savings Act (15 U.S.C. 2023(a)(1)) specifies three different groups of lines that are designated as high theft lines for purposes of the theft prevention standard. The groupings are as follows:

(1) Existing lines that are determined on the basis of actual theft data to have a theft rate exceeding the median theft rate for all new passenger motor vehicles in 1983 and 1984 are high theft lines under the provisions of section 603(a)(1)(A). "Existing lines" are those lines introduced before January 1, 1983. (This date is predicated on promulgation of the final rule establishing the theft prevention standard in 1985.)

(2) Lines introduced on or after January 1, 1983, that are likely to have a theft rate exceeding the median theft rate are high theft lines under the provisions of section 603(a)(1)(B).

(3) Lines whose theft rate is or is likely to be below the median theft rate, but whose major component parts are interchangeable with a majority of the major component parts of a line that is subject to the theft prevention standard under section 603(a)(1) (A) or (B), are high theft lines under the provisions of section 603(a)(1)(C). However, car lines whose theft rate is or is likely to be below the median theft rate will not be treated as high theft lines pursuant to this third grouping if such low theft or likely low theft lines account for greater than 90 percent of total production of all lines containing such interchangeable parts, section 603(a)(1)(C) (i) and (ii).

Section 603(a)(3) of the Cost Savings Act specifies that not more than a total of 14 of a manufacturer's lines introduced before the effective date of the standard can be selected under the first two groups listed above. The 14 line total does not include any of those lines selected as high theft lines under the third group listed above; i.e., car lines which have interchangeable parts with high theft lines.

Section 603(a)(2) of the Cost Savings Act states that the selection of lines as high theft lines subject to the requirements of the theft prevention standard should be accomplished by agreement between the manufacturer and NHTSA, if possible. However, that section also states that the agency must unilaterally select the subject lines if no agreement is reached. In the event that no agreement is reached between the agency and the manufacturer, this section requires NHTS to make the selections on a preliminary basis and give the manufacturer an opportunity to comment on those selections.

The Notice of Proposed Rulemaking

To carry out these statutory mandates, NHTSA published a notice of proposed rulemaking (NPRM) at 50 FR 25603, June 20, 1985. That notice proposed the procedures which the manufacturers and this agency would follow in attempting to agree on the lines to be selected for coverage by the theft prevention standard for all lines introduced after January 1, 1983. The NPRM stated that the selection of lines introduced before January 1, 1983, that have a theft rate exceeding the median theft rate for all new passenger motor vehicles in 1983 and 1984 was being handled in a separate action. A notice setting forth data on passenger motor vehicle thefts in 1983 and 1984 for review and comment was published at 50 FR 18708, May 2, 1985. The agency will soon publish a notice setting forth its final version of the 1983 and 1984 theft data. That notice will provide the basis for selecting high theft lines from lines introduced before January 1, 1983. However, the procedures set forth in this rule will be followed by NHTSA and the manufacturers in making all other selections of high theft lines under the provisions of the Theft Act.

The NPRM also proposed the procedures that would be followed in

applying the 14 line limitation set forth in section 603(a)(3) of the Cost Savings Act. Finally, the NPRM set forth the rights manufacturers would have if they disagreed with the agency's preliminary determination that a specific line should be selected as a high theft line.

It was emphasized that this rulemaking action was simply a procedural adjunct to the theft prevention standard. This rule does not set forth any substantive requirements or restrictions, nor does it actually select any car lines as high theft lines. It merely sets forth the procedures to be followed in determining which of a vehicle manufacturer's lines will be subject to the marking requirements of the theft prevention standard.

The NPRM proposed two sets of procedures for the selection of high theft lines. The first set, contained in §§ 542.1, 542.2, and 542.3, would be used to select the high theft lines from existing lines and new lines introduced on or after January 1, 1983, but before the effective date of the theft prevention standard. The second set, contained in §§ 542.4 and 542.5, would be used to select the high theft lines from all new lines introduced after the effective date of the standard.

Under each of the proposed procedures, the manufacturer would apply the relevant criteria to its currently produced or planned vehicle lines, and submit its views and supporting analysis to NHTSA as to which of its lines should be selected as high theft lines, together with the factual information considered by the manufacturer in reaching its conclusions. The agency would then promptly review the manufacturer's submissions, determine whether it agreed or disagreed with the manufacturer's proposed classification of its lines, and notify the manufacturer in writing of the agency's preliminary determination as to which of its vehicle lines should be selected as high theft lines. The manufacturer would have the right to request agency reconsideration of any preliminary determination to which the manufacturer objected. If the manufacturer did not request reconsideration of a preliminary determination, it would automatically become the agency's final determination. If the manufacturer did request a reconsideration of a preliminary determination, it would have to include all the facts and arguments underlying its objection to the agency's preliminary determination. NHTSA would promptly consider the facts and arguments and notify the manufacturer of its final determination. Should the manufacturer disagree with the final agency determination, regardless of whether the manufacturer has sought reconsideration, it has the right to seek judicial review of the agency determination, as specified in section 610 of the Cost Savings Act (15 U.S.C. 2030).

NHTSA believes that the proposed procedures were simple, straightforward, and compatible with both the timing allowed by the Theft Act for completing the selection of high theft lines and the Theft Act's directive that this selection should be accomplished by agreement between the manufacturer and NHTSA if possible. The NPRM was consciously structured so that the manufacturers and agency would have every opportunity to understand the other's position and agree on the proper selections.

The NPRM noted that section 603(c) of the Cost Savings Act (15 U.S.C. 2023(c)) directs NHTSA to, by rule, require each manufacturer to provide information necessary to select the high theft lines and major parts to be covered by the theft prevention standard. This rule does not *require* the manufacturers to provide any information; it merely sets forth the procedures to be followed by those manufacturers which choose to provide the information and to participate in the selection process. There are no penalties imposed for the failure of a manufacturer to provide the information. This approach was chosen because NHTSA then and now anticipates that the manufacturers will be forthcoming and cooperative in providing the agency with the views and supporting analyses specified in this rule. If, of course, the agency does not receive or otherwise obtain the necessary information on which to base its selections, the agency will propose changes to this rule to specifically require such information.

The Comments and Changes to the Proposed Procedures

Five comments on the NPRM had been received by the agency as of the comment closing date and were considered in developing this final rule. The commenters were all automobile manufacturers, and were generally supportive of the proposed procedures. However, the comments did raise some further issues and request some changes to the proposed procedures. The most significant issues raised in the comments are discussed below.

A. General Comments

1. *Timing.* All of the commenters noted the tight time frames in the propose schedules for both the manufacturers and the agency to complete necessary steps in the selection process. The commenters acknowledged, however, that the tight time frames were imposed by the Theft Act and that they would probably be able to comply with the various dates, assuming that NHTSA is able to meet the statutory deadline for publishing the final rule establishing the theft prevention standard and that there are no serious disagreements as to the lines selected for coverage under that standard.

The agency agrees that the time frames are very tight, but it cannot expand them. The agency intends to meet all the statutory deadlines imposed by the Theft Act and believes that the procedures set forth in this rule will enable the agency, and those manufacturers which submit the necessary information, to agree in most cases on those lines which should be selected for coverage under the theft prevention standard.

Volkswagen (VW) stated that the vehicle manufacturers could not make their submissions under these procedures until the final theft data notice had been published. VW stated that the agency had not yet indicated which source of theft data was going to be used, and repeated its comment to the theft data notice that there were errors in some of the figures and that corrections of those errors would result in a reshuffling of the order of the vehicle theft rates. In conclusion, VW stated that its views as to whether a line introduced after January 1, 1983, should be selected as a high theft line "would likely be influenced by the placement of its predecessor in the earlier list."

NHTSA agrees that the classification of the predecessor line as either a high or low theft line is an important criterion in determining whether a new line should be selected as a likely high theft line. That is why this fact was one of the six criteria proposed in Appendix C of Part 541 for determining whether a new line should be selected as a high theft line. However, it is only one of the six criteria. VW can prepare its views applying the other five criteria, and prepare alternative views on this criterion. This will ensure that NHTSA has received VW's views and that those views reflect VW's belief as to whether the new line should be selected as a likely high theft line, regardless of how the predecessor line is classified in the final theft data notice.

VW further stated that it could not make its submission under this procedural rule until it could obtain vehicle recovery information. The vehicle recovery rate was only proposed

as a criterion for determining whether new lines should be selected as high theft lines in § 542.2. That section will be used to limit, to a total of 14, the number of lines introduced by an individual manufacturer before the effective date of the theft prevention standard that will be selected for coverage by the theft prevention standard. VW does not have more than 14 lines, so this section does not apply to it. All of the other sections of this proposed rule will apply to VW, but none of those sections proposed using vehicle recovery rate as a criterion for the selection of a new line as a high theft line. Accordingly, the agency does not believe that VW needs vehicle recovery data to prepare its submission under this procedural rule.

2. *Definition of "Line".* Several of the commenters disagreed with the agency's proposal to use the same definition of line which was set forth in the proposed vehicle theft standard. General Motors (GM), Chrysler, and BMW all urged the agency to define "line" identically to the way in which that term is defined in 49 CFR Part 565, for the purposes of the vehicle identification number (VIN). The proposed definition of "line" set forth for these procedures and the theft prevention standard incorporates the definition of that term in the Theft Act, supplemented by interpretive examples so that the application of the term "line" under the Theft Act will be as close as possible to the application of the term "line" set forth by the Environmental Protection Agency (EPA) under Title V of the Cost Savings Act. This approach was taken because section 603(b)(1) requires that the theft rate for various lines be calculated using "the production volume of all passenger motor vehicles of that line (*as reported to the EPA under Title V of this Act*) . . ." (emphasis added). In order to use the EPA production data, NHTSA must apply the term "line" in a manner as similar as is possible to that used by the EPA under Title V. Hence, the agency is constrained by Title VI of the Cost Savings Act from simply applying the term "line" in precisely the same way as it has for the purposes of the National Traffic and Motor Vehicle Safety Act (the Safety Act), under 49 CFR 565.

However, NHTSA would like to note that the slightly differing language in the definitions of "line" for purposes of the Theft Act and the Safety Act has not resulted in any manufacturer's fleet of vehicles being grouped into different sets of "lines" for purposes of the different Acts. That is, the agency's grouping of a manufacturer's vehicles into lines thus far for the purposes of the Theft Act has been identical to what that grouping would have been if it were made for purposes of the Safety Act. None of the commenters that urged the agency to adopt identical definitions explained any practical difference which has resulted from the slightly differing wording in the two definitions. Further, the agency does not believe that a situation will arise where a manufacturer's vehicles would be grouped into two different sets of lines for purposes of the Theft Act and the Safety Act.

3. *Definition of "Interchangeable Part".* The NPRM proposed that these procedures would use the same definition for "interchangeable part" as was proposed for the theft prevention standard. To wit, an interchangeable part is "a passenger motor vehicle major part that is sufficiently similar in size and shape to a major part of another car line so that it would be used to replace the major part on a vehicle in that other car line, with no modification to the vehicle other than to the interior or exterior trim."

GM argued that the proposed definition was overly inclusive, and stated that there is no evidence to suggest that thieves would spend the time and money to replace all of the interior trim on a door, for instance, so that it could be used as a replacement part for a different car line. Based on this assertion, GM suggested that the definition of interchangeable part be modified to include only those parts that could be used to replace a major part in another car line with no modifications other than to medallions, molding, or paint.

This final rule does not adopt GM's suggested change. While conceding that there is no evidence to establish conclusively that thieves will make these modifications, the agency concludes that the available evidence strongly suggests that chop shops would make the modifications. The agency must, of course, exercise its judgment based on the available evidence. Police agency comments have consistently referred to the growing sophistication and skill of chop shop operators, which would certainly indicate that the ability exists to change the interior trim of a major part. A chop shop which spent the time and money to change the interior trim of a Chevrolet door, for example, so that it would appear to be an Oldsmobile door could still make a substantial profit on that stolen door, particularly considering the relative price of a new door compared with the interior trim for that door. This would give chop shop operators a motive for changing the interior trim package.

Congress stated that the Theft Act was intended to "decrease the ease with which certain stolen vehicles and their major parts can be fenced", H. Rept. 98-1087, 98th Cong., 2d Sess., at 2 (1984; hereinafter "H. Rept.") and "to make theft more risky" especially for chop shops, H. Rept. at 5. NHTSA must determine which approach better effectuates that intent. The approach suggested by GM simply assumes that thieves would not make this effort, and does nothing to make it more risky or decrease the ease with which that part could be fenced. The proposed definition would require the marking of parts which, with relatively simple and inexpensive modifications, can be fitted onto vehicles in high theft lines. Marking such parts would decrease the ease with which they could be fenced and make thefts of those parts more risky. Given the proliferation of chop shop operations and the large profits which can be made in such illegal operations, both of which were noted in the legislative history of the Theft Act, the agency has determined that it would be inappropriate to adopt the more restrictive definition of "interchangeable part" suggested by GM.

4. *Annual Updates of the Listing of Selected Lines.* The NPRM indicated that the list of those lines which have been selected as high theft lines would be updated annually. The listing of those lines will appear in Appendix A of Part 541, the vehicle theft prevention standard. Chrysler supported the proposal, but Ford suggested that the updating be done every six months, so that law enforcement agencies would be up to date on those vehicles which should be marked. Under the proposed procedures for selecting high theft lines, the final selection for new lines introduced in the 1988 and subsequent model years will be completed no later than 13 months before the new lines are introduced. Thus, no matter when a new line will be introduced, there will be at least one annual update published between the final selection of a new line as a likely high theft line, and its introduction. The only time when there could be a gap would be in the 1987 model year, the first model year in which vehicles in high theft lines would be required to be marked. If there is a time when a line selected as a high theft line would not be listed as such, the agency can, of course, publish a special update to the list. Hence, it does not appear necessary to make a regular updating of this list more frequently than annually.

Both Ford and GM asked that new lines not be listed in Appendix A immediately upon their selection as high theft lines. Ford asked that the listing be postponed until the manufacturer has actually started production of vehicles in that new line, while GM asked that the listing be postponed until the manufacturer has made the vehicle's nameplate public. NHTSA agrees with the implicit point made by GM that there is no reason for the agency to announce a new line's nameplate before the manufacturer does so. However, the Ford suggestion would in almost every instance mean that NHTSA would be withholding information long after the manufacturer itself had made the information public, and there would no longer be a reason for withholding such information. Therefore, the agency will not publicly disclose the name of new lines before the manufacturer itself announces that name. If the manufacturer chooses to delay that announcement until the actual start of production, the agency will not disclose the nameplate prior to that announcement. If that line is selected as a likely high theft line and if vehicles in that line will be introduced before the next regularly scheduled annual update of the listing of new lines selected as high theft lines will be published, NHTSA will make a special update to the listing after the manufacturer's announcement of the nameplate for the line.

5. *Adequacy of Confidentiality Procedures.* The NPRM specifically sought comments on the sufficiency of NHTSA's current procedures for handling confidential information (49 CFR Part 512) to protect the confidential information it may receive from the manufacturers in connection with the selection process. Chrysler specifically stated that the procedures in Part 512 are adequate, and GM did likewise, but with the caveat that no outside contractors employed by NHTSA should be given access to information provided to the agency by manufacturers during the selection process. The agency will not use outside contractors for the selection process, nor does it anticipate that it will make available to outside contractors any information obtained during the selection process. However, NHTSA cannot state that it will never make any information obtained during the selection process available to outside contractors. If such a disclosure must be made, NHTSA will follow appropriate procedures to ensure that the contractor does not disclose the information to other parties.

B. Comments on Specific Sections of the Proposed Rule

1. *Section 542.1: Procedures for selecting pre-standard new lines that are likely to have high theft rates.*

The NPRM proposed that the manufacturers would apply the criteria set forth in Appendix C of Part 541 (the proposed vehicle theft prevention standard) to each line introduced between January 1, 1983, and the effective date. Briefly, the criteria of Appendix C are:

(a) Price;

(b) Vehicle image;

(c) Lines with which the line in question is intended to be competitive;

(d) Line or lines that the new line replaces;

(e) Presence or absence of any new theft prevention devices;

(f) Any available theft data for lines already introduced.

GM commented that the agency should adopt some weighting of each of these criteria, so that the process of selecting a line as a high theft line would be more objectively defined. GM did not suggest how this might be done with the currently available data. NHTSA agrees that ideally there would be sufficient data available so that each of these criteria could be assigned a certain number of points and specify that any line which earned x or more points would be selected as a high theft line. Unfortunately, such a system is simply not possible with the current data.

As noted in the NPRM, these judgments of likely high theft lines are partially subjective judgments. NHTSA concurs with GM's statement that neither price nor vehicle image alone can be strictly correlated to vehicle theft rates. However, NHTSA believe that the six criteria set forth in Appendix C considered together do form an objective basis for predicting if a new line is likely to be a high theft line. If manufacturers in their submissions explain their positions in detail and provide data for each of these criteria, NHTSA anticipates that the question of whether a vehicle should or should not be selected as a high theft line will be fairly simple to answer in most cases. The agency intends to give a full explanation of the bases for its conclusions to the manufacturer in the preliminary and final determinations. If a manufacturer believes that the agency has acted arbitrarily or purely subjectively, the manufacturer has a right to seek judicial review of the selection.

2. *Section 542.2: Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.*

Section 603(a)(3) of the Cost Savings Act establishes a limit of 14 on the combined total of lines introduced before the effective date of the theft prevention standard that may be selected for coverage under that standard because of actual or likely high theft rates. This proposed section provided procedures for implementing that limit.

Under the proposed procedures, each manufacturer producing a total of more than 14 lines that either exceed the median theft rate or are likely to be high theft lines would evaluate and rank those lines in accordance with the extent to which they satisfy the criteria set forth in Appendix B of Part 541, the proposed vehicle theft prevention standard. Those criteria are:

(a) The closeness of the line's theft rate to the median theft rate;

(b) The approximate production volume of vehicles in the line during the next model year;

(c) The likelihood of significant design changes to the line;

(d) The rate at which stolen vehicles in the line are recovered with all parts intact;

(e) The plans for installation of an original equipment anti-theft device in the line, which satisfies the requirements of section 605 of the Cost Savings Act; and

(f) The number of other lines having parts interchangeable with those of that line and the production volumes of those lines.

The manufacturer would then submit its rankings and evaluations to NHTSA, together with the factual information it considered in reaching its rankings.

Again in commenting on this proposed procedure, GM stated that the criteria should be weighted, and again did not suggest how this might be done. The agency's response is the same as that made when GM raised this point in commenting on § 542.1.

GM went on to object strongly to the agency's proposed inclusion of a manufacturer's plans for installing a satisfactory original equipment anti-theft device as one of the criteria for determining which of its lines should be marked. GM stated that this objection would particularly apply if such plans would reduce the chances that that line would be among those selected as one of the 14 to be marked. To explain this objection, GM stated that it believed that "the statutory option of using an approved theft deterrent system was intended to exempt lines which were

otherwise identified as having to meet the standard."

The agency proposed this criterion in Appendix B of Part 541 because of its belief that Congress intended lines with actual or likely high theft rates to either be marked, in accordance with the requirements of the theft prevention standard, or to be equipped with anti-theft devices. However, further examination of this issue has convinced the agency that its proposed course of action should not be adopted in a final rule.

Under the proposed criterion, a manufacturer's plans to install an original equipment anti-theft device in a line could have resulted in that line being excluded from the list of 14 lines to be marked. Thus, the manufacturer would have lost the opportunity under the exemption provision to be permitted to install such devices instead of marking the parts of that line. Congress clearly indicated that it was willing to give these devices the opportunity to be proven as effective as parts marking in deterring vehicles thefts (H. Rept. at 17). The agency has re-examined the proposed criterion and determined that it would have the inadvertent effect of denying manufacturers the opportunity Congress intended. We believe that GM's reading of the statute better effectuates congressional intent and is therefore adopted. Thus, in order to provide this opportunity, NHTSA must permit manufacturers to install such devices on vehicles in lines which would otherwise be required to have their major parts marked.

Accordingly, NHTSA will not consider plans to install an original equipment anti-theft device as a factor militating against the inclusion of that line in the 14 lines chosen for coverage by the theft prevention standard. Further, the final rule setting forth the theft prevention standard will not list this criterion in Appendix B.

3. *Section 542.3: Procedures for selection of pre-standard low theft lines with a majority of major parts interchangeable with those of a high theft line.*

The NPRM proposed that manufacturers would submit their views on whether their lines with theft rates likely to be below the median theft rate had a majority of major parts interchangeable with those of any of the manufacturer's high theft lines, together with the supporting rationales for those views. NHTSA stated in the NPRM that it anticipated that the statement of views and supporting rationales would take the following form. The manufacturers would submit a listing of the number and identity of the major parts which are incorporated in each line believed by the manufacturer to have an actual or likely low theft rate, and which are interchangeable with the major parts of those of its lines believed by the manufacturer to have an actual or likely high theft rate. The manufacturer would then calculate whether low theft lines with a majority of major parts interchangeable with those of a high theft line accounted for more than 90 percent of the total production of the lines with interchangeable parts.

Ford commented that manufacturers should not be expected to list each of its car lines with actual or likely low theft rates and show how many and which of its major parts are interchangeable with those on its likely or actual high theft lines. Instead Ford suggested that the manufacturers should simply be expected to list each of the low theft lines with fewer than eight interchangeable major parts, identify those low theft lines with eight or more interchangeable major parts, and state whether those latter low theft lines constituted more or less than 90 percent of the total production of all lines containing such interchangeable parts.

NHTSA gave serious thought to proposing a procedure similar to that suggested by Ford in its comments. However, the agency ultimately decided to propose the more detailed procedures set forth in the NPRM. The reasoning was as follows: the manufacturers would have to make the detailed analysis set forth in the proposed procedures to be able to make the simple statements suggested by Ford. Hence, the only additional task associated with the more detailed procedures would be that of transcribing the analysis onto paper. This is a minimal task compared with generating the analysis. Further, the detailed listing proposed in the NPRM would help to facilitate agreements between the agency and the individual manufacturer. Both parties would have clearer understanding of the identity of the major parts which the other party believed should or should not be treated as interchangeable. The manufacturer would provide its version of this listing in its submission and the agency would provide its version in its preliminary determination. Any disagreement would therefore be clearly and quickly focused on particular parts, thereby facilitating reaching agreement as to whether the parts really were interchangeable. Since these more detailed explanations would facilitate an expeditious reaching of agreements while imposing only a very minor burden on the manfacturer, the agency decided that the more detailed explanations should be specified in these procedures.

Ford went on to comment that, if the agency decided to adopt the proposed procedures, it should limit the issue of interchangeability to "covered major parts", which term is defined in section 601(6) of the Cost Savings Act as "any major part selected . . . for coverage by the vehicle theft prevention standard issued under section 602." Ford noted that the term "major part" as defined in section 601(7) of the Cost Savings Act includes both covered major parts (those which are required to be marked on high theft lines by the theft prevention standard) and other major parts, which will not be required to be marked by the theft prevention standard.

NHTSA agrees with Ford's comment, and did not intend to suggest that manufacturers should provide interchangeability information on major parts which are not covered major parts. To clarify this intent, this final rule has been changed from the proposed language to refer to covered major parts in both this section and § 542.5.

VW stated that it was not clear if only the interchangeable parts on low theft lines had to be marked or all covered parts, including those which were not interchangeable with any on the high theft line had to be marked. VW further asked if, assuming that all covered parts had to be marked on certain low theft lines, the replacement parts for the non-interchangeable parts had to be marked.

To answer VW's questions, both the original equipment and replacement covered major parts must be marked on those low theft lines that have a majority of covered major parts interchangeable with those of a high theft line, without regard to whether the particular covered major part is itself interchangeable. Congress determined that, although certain vehicles are not themselves from a high theft line, the high degree of interchangeability of their parts with those of a high theft line would make these otherwise low theft vehicles likely targets for car thieves. As likely targets for car thieves, Congress determined that *all* covered major parts on these vehicles should be marked, not just those which were interchangeable with the covered major parts of the high theft line. This will serve as an additional deterrent to the theft of these vehicles. To express these determinations, Congress specified that vehicles in low theft rate lines with a majority of covered major parts interchangeable with those of an actual or likely high theft line are considered high theft lines; section 603(a)(1)(C) of the Cost Savings Act. Section 602(a)

specifies that the theft prevention standard shall require marking of covered major parts that are installed by manufacturers in high theft lines and marking of the major replacement parts for the covered major parts. These provisions make clear that *all* covered major parts on lines selected as high theft lines under section 603 must be marked. Similarly, *all* major replacement parts for the covered major parts of high theft lines selected under section 603 must be marked.

VW also commented on the agency's example showing that a manufacturer's "b" line, a low theft line, had a majority of covered major parts interchangeable with both the "x" and "y" lines, which are both high theft lines. NHTSA stated in the NPRM preamble that the manufacturer would have to determine if total production of the b line accounted for more than 90 percent of the b, x, and y lines combined. VW stated its understanding that the manufacturer would have to make two determinations. First, the manufacturer would determine if b line production accounted for more than 90 percent of the total production of the b and x lines, and then it would determine if b line production accounted for more than 90 percent of the total production of the b and y lines. VW's understanding is correct. The use of the singular "line" in section 603(a)(1)(C)(ii), when referring to high theft lines with covered major parts interchangeable with low theft lines, is in contrast to the use of the plural "lines", when referring to low theft lines with those interchangeable parts throughout the rest of section 603(a)(1)(C). This shows an intent to make the determinations in the manner stated by VW.

Chrysler responded to the agency's proposed means of determining if engines and transmissions should be considered interchangeable between lines. The NPRM proposed that, if an engine or transmission is offered as standard or optional equipment on two or more lines, the engine or transmission should be considered interchangeable among those lines. Chrysler argued that this position was "an arbitrary declaration of complete interchangeability'[which] overlooks the above described relatively complex modifications and/or related component installations that would be required to make these assemblies operable." NHTSA agrees that modifications to such parts as fuel lines, wiring harnesses, throttle linkages, electronic engine controls, and emissions controls might well be necessary to substitute a different engine or transmission, and that these modifications are relatively complex. However, all available evidence (specifically the transcript of the public meeting on December 6 and 7, 1984 and agency meetings with police and insurance organizations) indicates that chop shops are relatively sophisticated operations capable of making these modifications. In this case, a few hundred dollars worth of work would allow these shops to install a stolen component worth several thousand dollars. Given this potentially large profit after performing this work and the expressed intent of the Theft Act to impede the operations of chop shops, NHTSA is adopting its proposed interchangeability criteria for engines and transmissions as best effectuating the purposes of the Theft Act.

GM questioned the agency's stated intent to consult current auto parts data publications as an aid in determining interchangeability of parts. Examples of such publications are "The Hollander", Auto-Truck Interchange Edition, Hollander Publishing Co., Inc., Minnetonka, Minnesota, and "Mitchell's Manual", Cordura Publications, San Diego, California. GM stated that it knew of no basis on which to conclude that these publications would be an effective reference for use in determining interchangeability for purposes of the theft prevention standard. Further, GM stated that, since neither the government nor manufacturers control the content of these publications, GM was concerned that they might not be appropriate for use in connection with the theft prevention standard.

NHTSA did not state that these publications would be used as the final arbiter of whether or not parts are interchangeable; it stated only that it would consult these publications. These publications are used daily by repair shops to decide which parts can be used to replace damaged parts. The credibility of these publications depends on their designations of interchangeability being accurate. NHTSA believes that consulting these publications as the best available independent source of interchangeability is proper for the purposes of the theft prevention standard, and hereby announces its intention to do so.

4. *Section 542.4: Procedures for the Selection of New Lines Introduced On or After the Effective Date of the Standard That are Likely to Have High Theft Rates.*

The NPRM proposed that these procedures would be very similar to those proposed under § 542.1, except that the agency would have 90 days to issue its preliminary determination after the manufacturer submitted its views and that the manufacturer would have the right to request a meeting with the agency to further amplify its views during this 90 day period. A special schedule was set out for new lines to be introduced in the 1987 model year because of the time constraints. That special schedule would ensure that final determinations for all new lines to be introduced in the 1987 model year would be made by March 1, 1986.

Both VW and GM stated in their comments that this section would not give them enough leadtime although it would satisfy the statutorily mandated six months of leadtime. VW stated that the agency should allow itself only 30 days to consider the manufacturer's submission before issuing its preliminary determination. VW's argument was that if a 30 day period was sufficient for the purposes of §§ 542.1, 542.2, and 542.3, it should also be sufficient for this section and 542.5. GM stated that it was going to make its submission for its new line to be introduced in the 1987 model year concurrently with its submissions under § 542.1, 542.2, and 542.3 by July 24. GM expressed its hope that this would allow the agency to issue its preliminary determinations under this section concurrently with those under the previous sections, that is, by August 24, 1985.

The agency has carefully considered these comments in the context of both this section and § 542.5. The NPRM explained the agency's belief that the 90 day period between its receipt of the manufacturer's submission and its issuance of a preliminary determination would facilitate agreements on the appropriate selections. The increased opportunity for meetings and detailed analysis of the manufacturer's submission by the agency should ensure that both parties fully understand the other's position. That understanding should, in turn, lead to more agreements during the selections process.

However, for the 1987 model year, the agency believes that the need to ensure adequate leadtime to the manufacturers outweighs the interest in facilitating agreements. Therefore, NHTSA is amending the proposed procedures to specify that the agency will issue its preliminary determination to the manufacturer no later than 30 days after receiving the manufacturer's submission under this section and § 542.5. This change will ensure that manufacturers will have the same leadtime for their new 1987 lines as they will have for

their pre-1987 lines. NHTSA would like to note that it is not changing the date by which it will provide those manufacturers who do not make submissions under this section with the agency's unilateral preliminary determinations. The proposed December 31, 1985 date is adopted in this final rule for such manufacturers.

In the case of the 1988 and subsequent model years, NHTSA is adopting the proposed 90 day period for considering manufacturer's submissions before issuing its preliminary determinations, for the reasons set forth in the NPRM. There will be no leadtime concern in these model years because, even allowing the 90 day period, a final determination for each new line must be made 13 months before the new line is introduced. No manufacturer or any other commenter to Theft Act rulemakings has suggested that a 13 month leadtime is inadequate.

5. *Section 542.5: Procedures for selecting post-standard low theft new lines with a majority of major parts interchangeable with those of a high theft line.*

These proposed procedures were very similar to those set forth in § 542.3, but with a 90 day period for the agency to consider the manufacturer's submission before issuing a preliminary determination and with the manufacturers having the right to request a meeting during this 90 day period. The proposed 90 day period has been shortened to 30 days for the 1987 model year in this final rule for the reasons set forth above in the discussion of § 542.4, and appropriate reference to "covered major parts" have been added, per the explanation in the discussion of § 542.3 above. In all other respects, this rule is adopted as proposed.

GM commented that this section should be deleted from the procedures, because this section is "inappropriate at this time." GM argued that such provisions should only be added if and when a relationship is established between thefts or theft rates and interchangeability. This comment ignores the express language of the Theft Act. Section 603(a)(1)(C) explicitly designates as high theft lines subject to the theft prevention standard those lines introduced after the effective date of the theft prevention standard with likely low theft rates, but when have a majority of covered major parts interchangeable with those of a line with actual or likely high theft rates. Section 603(a)(2) specifies that the specific lines which are to be subject to the standard may be selected by agreement between the manufacturer and the agency. These provisions expressly require this agency to have § 542.5 in these procedures.

Regulatory Impacts

A. Costs and Benefits to Manufacturers and Consumers

Because this rulemaking is procedural, merely facilitating the implementation of the substantive provision of Part 541, the agency has determined that this rulemaking is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, this rule does not require manufacturers to participate in the selection process and specifies no penalties for not doing so. It merely sets forth the procedures which will be followed by the agency and may be followed by the manufacturers during the selection process. Accordingly, a full regulatory evaluation has not been prepared for Part 542. A full regulatory evaluation was prepared for the proposed theft prevention standard in Part 541. NHTSA believes that the rulemaking does not affect the impacts described in the Part 541 preliminary regulatory evaluation.

B. Small Business Impacts

The agency also has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Since the rule is procedural and does not impose any substantive requirements, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule and determined that this rule will not have a significant impact on the quality of the human environment.

D. Paperwork Reduction Act

The procedures in this rule for manufacturers to submit their views and data to NHTSA as a part of the selection process are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, this rule is being submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A notice will be published in the **Federal Register** when OMB makes its decision on this request.

List of Subjects in 49 CFR Part 542

Administrative practice and procedure, National Highway Traffic Safety Administration, Reporting requirements.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended by adding a new Part 542 to read as follows:

PART 542—PROCEDURES FOR SELECTING LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

Sec.

542.1 Procedures for selecting pre-standard new lines that are likely to have high theft rates.
542.2 Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.
542.3 Procedures for selecting pre-standard low theft lines with a majority of major parts that are interchangeable with those of a high theft line.
542.4 Procedures for selecting post-standard new lines that are likely to have high theft rates.
542.5 Procedures for selecting post-standard low theft new lines with a majority of major parts interchangeable with those of a high theft line.

Authority: 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

§ 542.1 Procedures for selecting pre-standard new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any pre-standard new lines are lines likely to have high theft rates.

(b) *Application.* These procedures apply to each manufacturer that has introduced or will introduce a new line into commerce in the United States after January 1, 1983, and before [the effective date of the standard, 49 CFR Part 541], and to each of those lines.

(c) *Procedures.* (1) Each manufacturer uses the criteria in Appendix C of Part 541 of this chapter to evaluate each new line and to identify those lines the manufacturer believes are likely to have a theft rate exceeding the median theft rate.

(2) The manufacturer submits its evaluations and identifications made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and identifications, to NHTSA by September 3, 1985.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or by August 24, 1985, whichever is sooner,

the agency considers that submission, if any, independently evaluates each new line using the criteria in Appendix C of Part 541 of this chapter, and, on a preliminary basis, determines whether those new lines should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) of this section become final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations by October 24, 1985, and informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.2 Procedures for limiting the selection of pre-standard lines having or likely to have high theft rates to 14 lines.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in implementing the 14 line limit applicable to certain groups of high theft lines in the initial year of the theft prevention standard.

(b) *Application.* These procedures apply to each manufacturer that produces more than 14 lines that have been or will be introduced into commerce in the United States before [the effective date of standard, 49 CFR Part 541] and that have been listed in Appendix A of Part 541 of this chapter or have been identified by the manufacturer or preliminarily determined by the agency to be high theft lines under § 542.1, and to each of those lines.

(c) *Procedures.* (1) Each manufacturer evaluates each of its lines in accordance with the criteria in Appendix B of Part 541 of this chapter and ranks the lines based on the extent to which they satisfy those criteria.

(2) Each manufacturer submits its evaluations and rankings made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and rankings, to NHTSA by September 3, 1985.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, independently evaluates each of the manufacturer's lines using the criteria in Appendix B of Part 541 and, on a preliminary basis, determines which 14 lines should be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and rankings, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider its preliminary ranking under paragraph (c)(3) of this section of any of the highest 14 ranked lines. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) of this section informing it of the agency's evaluations and preliminary rankings. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary rankings. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary rankings of the 14 highest ranked lines under paragraph (c)(3) becomes final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final rankings by October 24, 1985, and informs the manufacturer by letter of those rankings and its response to the request for reconsideration.

§ 542.3 Procedures for selecting pre-standard low theft lines with a majority of major parts that are interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in the determination of whether any pre-standard lines with low theft rates have major parts interchangeable with a majority of the covered major parts of a line with an actual or likely high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States before [the effective date of the standard, 49 CFR Part 541] and that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily determined by the agency to be a high theft line under § 542.1, and

(ii) At least one line that has been or will be introduced into commerce in the United States before that date and that is below the median theft rate; and

(2) Each of those sub-median rate lines.

(c) *Procedures.* (1) For each of its lines with a theft rate below the median rate, each manufacturer identifies how many and which of the major parts of that line are interchangeable with the covered major parts of any other of its lines that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily determined by the agency to be a high theft line under § 542.1.

(2) If the manufacturer concludes that one or more lines with a sub-median theft rate has major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer decides whether all the vehicles of those lines with sub-median theft rates and interchangeable parts account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its identifications and conclusions made under paragraphs (c) (1) and (2) of this section, together with the facts and data underlying those identifications and conclusions, to NHTSA by September 3, 1985.

(4) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, or by August 24, 1985, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with sub-median theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of those determinations, together with the bases for the determinations, including the factual information considered by the agency.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4)

informing it of the agency's preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations under paragraph (c)(4) becomes final on October 15, 1985, unless a request for reconsideration of it has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes it final determinations by October 24, 1985, and informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.4 Procedures for selecting post-standard new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any post-standard line is likely to have a theft rate above the median rate.

(b) *Application.* These procedures apply to each manufacturer which plans to introduce a new line into commerce in the United States on or after [the effective date of the standard, 49 CFR Part 541], and to each of those lines.

(c) *Procedures.* (1) Each manufacturer uses the criteria in Appendix C of Part 541 of this chapter to evaluate each new line and to conclude whether the manufacturer believes that new line is likely to have a theft rate exceeding the median theft rate.

(2) The manufacturer submits its evaluations and conclusions made under paragraph (c)(1) of this section, together with the factual information underlying those evaluations and conclusions, to the NHTSA not more than 24 months before the introduction of each new line and not less than 18 months before that date for new lines to be introduced in the 1988 or subsequent model years. For new lines to be introduced in the 1987 model year, the manufacturer makes this submission not later than October 1, 1985. The manufacturer may request a meeting with the agency during this period to further explain the bases for its evaluations and conclusions.

(3) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than December 31, 1985, in the case of new lines introduced in the 1987 model year, and within 90 days after its receipt of the manufacturer's submission under paragraph (a)(2) of this section, or not later than 15 months before the introduction of each new line, in the case of new lines to be introduced in the 1988 or subsequent model years, whichever is sooner, the agency considers that submission, if any, independently evaluates each new line using the criteria in Appendix C of Part 541 of this chapter and, on a preliminary basis, determines whether the new line should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3) informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) becomes final 45 days after the agency sends the letter specified in paragraph (c)(3) unless a request for reconsideration of it has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations within 30 days of its receipt of the request for the 1987 model year and within 60 days of its receipt of the request for the 1988 and subsequent model years. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

§ 542.5 Procedures for selecting post-standard, low theft, new lines with a majority of major parts interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and the NHTSA to follow in the determinations of whether any post-standard lines that will be likely to have a low theft rate have major parts interchangeable with a majority of the covered major parts of a line having or likely to have a high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States and that has been listed in Appendix A of Part 541 of this chapter or has been identified by the manufacturer or preliminarily or finally determined by NHTSA to be a high theft line under § 542.1 or § 542.4, and

(b) At least one line that will be introduced into commerce in the United States on or after the [effective date of the standard, 49 CFR Part 541] and that the manufacturer identifies as likely to have a theft rate below the median theft rate; and

(2) Each of those likely sub-median rate lines.

(c) *Procedures.* (1) For each new line that a manufacturer identifies under Appendix G as likely to have a theft rate below the median rate, the manufacturer identifies how many and which of the major parts of that line will be interchangeable with the covered major parts of any other of its lines that has been listed in Appendix A of Part 541 of this chapter or identified by the manufacturer or preliminarily or finally determined by the agency to be a high theft line under § 542.1 or § 542.4.

(2) If the manufacturer concludes that a new line with a likely sub-median theft rate will have major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer determines whether all the vehicles of those lines with likely sub-median theft rates and interchangeable parts will account for more than 90% of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) The manufacturer submits its evaluations and identifications made under paragraphs (c) (1) and (2) of this section, together with the factual information underlying those evaluations and identifications, to NHTSA not more than 24 months before introduction of the new line and not less than 18 months before that date for new lines to be introduced in the 1988 or subsequent model years. For new lines to be introduced in the 1987 model year, the manufacturer makes this submission not later than October 1, 1985. During this period, the manufacturer may request a meeting with the agency to

further explain the bases for its evaluations and conclusions.

(4) Within 30 days after its receipt of the manufacturer's submission under paragraph (c)(3) of this section, or not later than December 31, 1985, in the case of new lines to be introduced in the 1987 model year, and within 90 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than 15 months before the introduction of each new line, in the case of new lines to be introduced in the 1988 or subsequent model years, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with likely sub-median theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's preliminary determinations, together with the factual information considered by the agency in making them.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) informing it of the agency's preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30 day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations made under paragraph (c)(4) becomes final 45 days after the agency sends the letter specified in that paragraph unless a request for reconsideration of it has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes it final determinations within 30 days of its receipt of the request for the 1987 model year and within 60 days of its receipt of the request for the 1988 and subsequent model years. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

Issued on August 21, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-20445 Filed 8-23-85; 4:30 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 50587-5133]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

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

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement conservation and management measures as prescribed in Amendment I (amendment) to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This final rule provides for measures designed (1) to maintain more effectively the landings and productivity of each user group to the maximum extent possible; (2) to restore the overfished stock of Gulf king mackerel; and (3) to prevent overfishing of king and Spanish mackerel, and cobia. The intended effect is to rebuild and maintain all stocks at a maximum sustainable yield (MSY) level.

EFFECTIVE DATE: September 22, 1985.

ADDRESSES: Copies of the final supplemental regulatory impact review/regulatory flexibility analysis are available from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), approved the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) on April 1, 1982, and the Secretary of Commerce (Secretary) implemented final regulations on February 4, 1983 (48 FR 5272), under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). This final rule implements the amendment to the FMP which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). The FMP manages the coastal migratory pelagic fishery throughout the fishery conservation zone (FCZ) off the South Atlantic coastal states from the Virginia-North Carolina border south and through the Gulf of Mexico to the Texas-Mexico border. The rule applies only to this area. The management unit for the FMP consists of Spanish mackerel, king mackerel, and cobia. Dolphin, bluefish (Gulf of Mexico only), little tunny and cero mackerel are minor species in the fishery, and data collection requirements of the FMP apply only to these seven species. The preamble to the proposed rulemaking for the amendment contained a description of recent data and analyses which indicate there are two migratory groups of king mackerel and that these should be treated as separate stocks for management purposes. In addition, allocations by user groups, quotas, bag limits, statistical reporting, optimum yield, and a flexible management system were discussed in detail. These discussions are not repeated here.

Comments and Responses

Forty-five comments on the proposed rule were received from 18 commenters. Commenters included State marine resource agencies, commercial fishing organizations, the Gulf and South Atlantic Fishery Management Councils, a recreational fishing organization, and fishermen.

Inconsistency With National Standards

A recreational fishing organization stated that the objective of stabilizing yield at MSY inconsistent with national standard 1. NOAA does not agree. The long-term goal of optimum yield is to achieve MSY as is stated in the definition of the word "optimum" in the Magnuson Act (section 3(XVIII)(B)) and to prevent overfishing, which is the primary objective of national standard 1. Therefore, no change is made in the final rule.

The same recreational fishing organization stated that the rule is inconsistent with national standard 2 because the best scientific information available was not used. NOAA does not agree. All of the best scientific information available, including the catch records identified by the organization, was factored into the scientific assessments. Therefore, no change is made in the final rule.

This recreational fishing organization also stated that the rule is inconsistent with national standard 4 because of the differences in catch reduction among user groups. NOAA does not agree. The percentage reduction in the commercial catch is smaller than the recreational reduction because the Councils took into account the sale of king mackerel by recreational fishermen and thus transferred 2 percent of the recreational allocation to the commercial quota. Therefore, no change is made in the final rule.

The same recreational fishing organization stated that the rule deprives the Secretary of Commerce from approving or rejecting Council plans. NOAA does not agree. The Secretary has delegated authority to the Regional Director to serve as his designee therefore the Secretary is not denied access to the approval process. In addition, the Regional Director may not act arbitrarily if he should deem it appropriate to reject the Council's recommendations made under § 642.27. To reject a recommendation, the Regional Director must find that the recommendation is inconsistent with the objectives of the FMP, the Magnuson Act or other applicable law. Further, the rejection must be supported in writing. Paragraph § 642.27(d) has been modified to clarify this requirement.

Boundaries for King Mackerel Stocks

A commercial fishermen's non-profit corporation requested that the winter boundary between the Gulf and Atlantic king mackerel stocks be moved to the Volusia/Brevard County, Florida line and one individual recommended a move to Cape Canaveral. The Volusia/Flager County, Florida line was established based on the best tagging and stock assessment data available. NOAA is currently conducting additional tagging studies to better determine distribution of the two stocks of king mackerel. Therefore, NOAA is implementing the Volusia/Flager location for the line of separation in the final rule until new data indicate that the issue should be readdressed by the councils.

Quotas and Allocations

A recreational fishing organization stated that the number of fish killed and lost by purse seine operations should be counted against the commercial quota. NOAA points out that the amendment establishes a quota for purse seines for the purpose of studying the impacts. The study will be completed on April 30, 1986. Once the study results are available the Councils will readdress the purse seine issue.

A major fishery organization and a commercial non-profit corporation commented that the division of the commercial quota between Florida commercial fishermen and Louisiana commercial fishermen is unfair. A member of the Florida Marine Fisheries Commission expressed concern with the allocation between Louisiana and Florida fishermen but in general agreed with it. NOAA shares this concern and agrees that from a historical perspective Florida fishermen will suffer a greater percentage of the reduced catch. Nevertheless, NOAA believes it is the Council's prerogative to distribute the allocations so that one geographical area does not take a disproportionate share of the catch. It should also be noted that the western geographical area includes Alabama, Mississippi and Texas in addition to Louisiana. From the perspective that Florida will get 69 percent of the allocation and the western area 31 percent, the allocation does not appear to be unfair to Florida fishermen. Therefore, the measure is implemented in the final rule as proposed.

A non-profit commercial fishing corporation expressed concern over the ratio of recreational and commercial harvest of king mackeral and requested that this be monitored. They were primarily concerned with the sale of recreationally caught fish which are counted against the commercial quota. The harvest of both groups and other issues will be monitored by NMFS through the FMP's permit and statistics programs. Should the monitoring program indicate the need to readdress the allocations, they may be modified by FMP amendment. Therefore, NOAA has made no change in the final rule.

A recreational fishing organization stated the rule discriminates against consumers because the netters will take such large quantities in a short period of time that consumers use will be restricted to frozen products. NOAA does not agree. Netting occurs primarily in the winter months on the southeast coast of Florida. The amendment will not change this pattern. Best available data shows that netters take about 44 percent of the commercial catch, yet only 15 percent goes to the frozen market. No change is made in the final rule because there is no evidence that net catches will increase under this amendment, thus the amount going to the freezer should not increase.

The State of Florida commented that total allowable catch (TAC) for Spanish mackerel was too high and, along with a recreational fishing organization, commented that a recent assessment by Florida's Department of Natural Resources shows that the Spanish mackerel stock is declining. NOAA concludes that TAC was set based on the best scientific information available at the time the amendment was prepared. Any necessary changes in TAC based on more recent information can be made under provisions set forth in § 642.27 of the rule.

The State of Florida further commented that the TAC for king mackerel should be near 11 million pounds. NOAA does not agree. Although a TAC of 11 million pounds would rebuild the stock more quickly, the Councils chose the higher range based on lessening the socio-economic impacts while simultaneously protecting and rebuilding the stock. Therefore, TAC is set as proposed.

A recreational fishing organization stated that enforcement costs are too low. NOAA's reassessment of the costs showed they were too low. Revised estimates are $60,000 if the States adopt compatible regulations. Without compatible State regulations, the regulations would be extremely expensive to enforce.

Closing of Fishing

One individual recommended a two year moratorium on commercial and recreational fishing for king and Spanish mackerel. Another suggested a five year moratorium on net fishing. One sport fishing association and four individuals recommended eliminating fishing with gill nets and purse seines along with the use of spotter planes. The State of Florida and one commerical fishing organization sugested the prohibition of purse seines. The State of Florida also suggested banning the use of roller rigs and deep gill nets in the Spanish mackerel fishery. Two commenters suggested prohibiting all commerical fishing for king mackerel. While data indicate the need for management of the mackerel stocks, there is no justification for implementing such severe measures that would be economically devastating for the commerical fishing industry or that would deny recreational fishermen access to the resource.

Information is being gathered on purse seines through the use of observers authorized under the FMP. This study will terminate in the spring of 1986. When the study data as well as information from other studies become available necessary modification to the FMP will be considered. However, because of the lack of justification NOAA is not implementing the commenters' recommendations in the final rule.

Bag Limit

A suggestion was received from one individual recommending a change of the king mackerel bag limit of two fish per person per trip to two fish per person per day. This requirement was considered but abandoned since it is impossible to enforce bag limits on a daily basis because of the question of when a fishing day starts or ends. Therefore, NOAA has made no change in the "per trip" requirements.

One commenter expressed concern for king mackerel caught and released after a bag limit is taken. He was concerned with the possible damaging effects of some types of hooks and caught fish being susceptible to predators due to exhaustion. NOAA is aware of the potential for these problems, however, it is also the intent of the measure to discourage fishermen from continuing to fish in areas where mackerel are abundant and/or modify their gear after they have taken their limit. Therefore, NOAA has made no change in the final rule.

One commenter suggested a bag limit of 5 fish because fishermen were going to continue fishing after catching 2 fish and the caught fish would die anyway due to exhaustion and hook damage. NOAA does not agree with an increase in bag limits because the best scientific information available suggests a 2 fish bag limit is necessary to rebuild the stock. As previously mentioned the intent of this measure is to discourage fishing after the bag limit is reached so that fish are not unnecessarily killed. Therefore, the two fish per person per trip is implemented as proposed.

Equitable Treatment for Commercial and Recreational Fishermen

One individual questioned whether restrictions were being implemented for commercial fishing. The final rule contains the following measures which directly affect commercial fishing for king mackerel: (1) Requirement of a permit (Gulf only), (2) reporting requirements, (3) identification requirements for a vessel, (4) annual allocations (including a purse seine quota), and (5) size limits for Spanish mackerel and cobia. No changes have been made in these measures in the final rule as the result of this comment.

A major fishery organization commented that the variable allocation formula will guarantee that the recreational sector will get increasingly more of future allocations while the commercial sector will get less. Conversely, a recreational organization commented that the future allocation formula discriminated against recreational fishermen. NOAA agrees that the allocation formula does not provide fair and equitable treatment among user groups and is therefore inconsistent with national standard 4. The formula for modification of future allocations has been disapproved and the allocations are fixed in the final rule for both migratory groups at the ratios set forth in the amendment for the first year. Future changes in allocations may be made only by plan amendment.

A member of the Florida Marine Fisheries Commission agreed with the charterboat bag limit. A major fishing association commented that charterboat captains will suffer more economic loss than anyone else. NOAA shares this concern and agrees that from a perspective of vessel catches, charterboat catches will be reduced by a larger percentage than private boats. However, from a perspective of individual fishermen, anglers aboard charterboats are entitled to 3 fish per trip (excluding captain and crew) which is an advantage over anglers on private boats. While this may be viewed as unfair from the perspective of the anglers aboard private boats, NOAA believes this is an appropriate socio-economic consideration given the importance of the charterboat industry to coastal economies. Therefore, this measure is implemented as proposed.

Fishing Permits

One commenter questioned the fairness of the requirement that at least ten percent of an individual's income must be from fishing during the preceding year in order to qualify for a permit. He was concerned that retired persons on pensions and/or social security would be denied a permit because their income from commercial fishing would be less than 10 percent of their total income. The criteria for this requirement states "that at least 10 percent of his or her *earned* income (§ 642.4(b)(6)) was derived from commercial fishing". The reference to "earned income" excludes income from pensions and/or social security in making the determination of 10 percent. Therefore NOAA has made no change to this requirement in the final rule.

One commenter recommended a 2-year moratorium on fishing followed by a requirement for permits for which a fee would be charged. He suggested these monies be used for enforcement purposes. The Magnuson Act prohibits charging fees for permits in excess of the administrative costs of issuing the permit. The $10 charge at § 642.4(e) is based upon administrative cost estimates from States that issue and charge for licenses or permits. Because of this limitation NOAA may not collect funds for enforcement purposes, and therefore no change is made in the final rule.

The South Atlantic and Gulf of Mexico Fishery Management Councils recommended that § 642.4(b)(6) be revised to state that earned income was derived from commercial fishing during the previous calendar year rather than the 3 preceding years as published in the proposed rule. NOAA concurs with this recommendation since the 3-year requirement was published in error. The final rule is revised to reflect this change.

The South Atlantic Fishery Management Council (SAFMC) stated it did not approve assessing a fee for any permit under § 642.4(e). No change has been made in the final rule because the SAFMC approved the amendment which allows for an administrative fee up to $10. NMFS, however, does not plan to charge a fee during the initial years of the amendment.

Owners or operators of commercial vessels fishing for Gulf migratory group king mackerel are required to have aboard the vessels a permit issued under § 642.4 during the initial fishing season for that group (September 22, 1985 through June 30, 1986). Applications for permits will be accepted by the Regional Director through November 29, 1985.

Mandatory Reporting

The Texas Parks and Wildlife Department objected to mandatory reporting by recreational fishermen. The mandatory reporting requirements for private recreational fishing vessels have been placed in reserve and will not be implemented until NMFS Southeast Fisheries Center determines the exact data requirements and develops a system to collect the data. Data being collected by the State of Texas will be considered in that determination.

Approval/Disapproval of the Amendment

A Florida sportsfishing club favored approval of the amendment with no changes. A major fishing organization recommended rejecting the amendment and implementing emergency regulations because of discrimination against commercial fishermen. NOAA does not agree because, except for the variable allocation formula which was disapproved, the amendment contains measures that are necessary to protect and rebuild the stock and simultaneously ensure fair and equitable treatment for all user groups. Emergency regulations would be effective for only 90 days with possible extension to 180 days. This would not be sufficient time to protect adequately the stocks since the emergency regulations would expire at the height of the fishing season. Therefore, NOAA implements the FMP amendment, with the exception of the variable allocation program.

Changes From the Proposed Rule

Section 642.4

Paragraph (a) was revised by adding the words "unless they will charter only in the Atlantic migratory group area." to clarify that a charter vessel which fishes in an area occupied by the Gulf group does not qualify for a permit.

In response to the Councils' recommendation and because of an error the time period required for qualifying for a permit is changed from three years to one year in paragraph (h)(6).

A new paragraph titled (j) *Alteration.* is added.

A new paragraph titled (k) *Replacement.* is added.

Section 642.5

Paragraph (d) *Recreational fishing vessels* is reserved in the final rule until more exact information is required than is currently obtained under the NMFS Marine Recreational Fishery Statistics Survey.

Section 642.7

In the final rule paragraph (13) is deleted to eliminate duplication with paragraph (22). Paragraphs (14) through (27) are renumbered (13) through (26).

Section 642.27

In paragraphs (c) and (d) the word "regulations" is removed and the words "draft notice action" inserted for clarification.

In paragraph (d) the wording "written reasons will be provided to the Councils for the rejection and" is inserted between the words "recommendations, existing" for clarification.

The allocation formula in the proposed rule has been disapproved by NOAA, therefore, paragraph (f)(3) is deleted from the final rule and former paragraph (f)(4) in renumbered (f)(3).

Section 642.28

In paragraph (a)(1) the words "captain and" are inserted between the words "vessel crew" in two places for clarification of FMP intent.

Classification

The Regional Director determined that the amendment is necessary for the conservation and management of the coastal migratory pelagic resources of the Gulf of Mexico and the South Atlantic, and that it is consistent with the Magnuson Act and other applicable law except for the variable allocation formula.

The Councils prepared a final supplemental environmental impact statement for this amendment that was filed on August 2, 1985, with the Environmental Protection Agency.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. Summary published at 50 FR 24244, June 10, 1985. However, the enforcement costs in the Summary are revised from the estimate of $40,000 with comparable State regulations and $64,000 without such regulations to $60,000 with State regulations and being extremely costly without comparable regulations.

The Councils prepared a final regulatory flexibility analysis which describes the effects this rule will have on small entities. A copy of this analysis may be obtained from the address listed above.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). The collection of this information, except for recreational fishermen, has been approved by the Office of Management and Budget, OMB control numbers 0648-0097, -0016, and -0159. When mandatory reporting by selected recreational fisherman is required, an additional request will be submitted to OMB.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 22, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Services.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In Part 642, the Table of Contents is amended by revising the headings for § 642.5 from "Recordkeeping and reporting requirements [Reserved]" to read "Reporting requirements", and for § 642.6 from "Vessel identification [Reserved]" to "Vessel identification" and by adding under Subpart B three new section designations to read as follows:

Subpart B—Management Measures

Sec.

* * * * *

642.27 Stock assessment procedures.
642.28 Bag and possession limits.
642.29 Area and time separation.

3. Section 642.2 is amended by adding the words ", or designee" to the end of the definition for Center Director, by changing the phase "U.S. harvested fish" to "U.S.-harvested fish" throughout Part 642, and adding in alphabetical order the new definitions "Acceptable biological catch", "Allocation", "Charter Vessel", "Migratory group", "Species", "Statistical area", "Total allowable catch", "Total length", and "Trip", to read as follows:

§ 642.2 Definitions.

* * * * *

Acceptable biological catch (ABC) means a range of harvest levels computed from stock assessment parameters that sets forth the levels of harvest which can be taken from a stock or migratory group while maintaining the stock at or near maximum sustainable yield. ABC may vary due to fluctuating recruitment, fluctuating abundance, and intensity of fishing effort.

Allocation means that portion or percentage of the total allowable catch of a stock or migratory group of fish which is allocated to a specific user group for harvest during a fishing year. Harvest levels may be limited to an allocation by specifying harvest quotas or by specifying nonquota restrictions such as bag limits, etc.

* * * * *

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee.

Charter vessel crew means those individuals, including the licensed-vessel captain, who receive monetary or other compensation from the vessel owner or from the passengers who are engaged in fishing from the vessel as anglers.

* * * * *

Migratory group means a group of fish that may or may not be a separate genetic stock but which for management purposes may be treated as a separate stock. (See Figure 2 and § 642.29 for geographical and seasonal boundaries

between migratory groups of king mackerel.)

* * * * *

Species refers to the specific scientific name for each fish identified under the definition of *coastal migratory pelagic fish.*

Statistical area means one or more of the statistical grids depicted in Figure 3.

Total allowable catch (TAC) means the maximum permissible level of annual harvest specified for a stock or migratory group after consideration of the biological, economic, and social factors with such level being specified from within the range of acceptable biological catch.

Total length means the distance from the tip of the head to the tip of the tail (caudal fin) while the fish is laying on its side normally extended.

Trip means a fishing trip regardless of number of days duration which begins with departure from a dock, berth, beach, seawall, or ramp and which terminates with return to a dock, berth, beach, seawall, or ramp.

* * * * *

4. Section 642.4 is revised in its entirety to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability.* Owners or operators of fishing vessels which fish for Gulf migratory group king mackerel under the commercial quotas are required to obtain an annual vessel permit. Owners or operators of charter vessels and headboats are excluded from eligibility for a vessel permit unless they will charter only in the Atlantic migratory group area.

(b) *Application for permits.* An application for a permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director or his designee within 60 days prior to July 1 of each year. Owners or operators of newly registered or documented vessels may submit an application at any time during a fishing year provided it is received by the Regional Director within 60 days after registration or documentation. In cases of demonstrated hardship the Regional Director may accept applications at other times. Permit applicants must provide the following information:

(1) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel:

(2) Name of vessel;

(3) The vessel's official number;

(4) Home port or principal port of landing, gross tonnage, radio call sign and length of vessel;

(5) Approximate fish hold capacity of the vessel;

(6) A sworn statement by the owner or operator certifying that at least 10 percent of his or her earned income was derived from commercial fishing during the preceeding calendar year (January 1 through December 31), and that the vessel for which the permit is intended will not be operated as a charter vessel in an area in which the Gulf migratory group of king mackerel is occurring; and

(7) Any other information concerning vessel, gear characteristics and fishing area requested by the Regional Director.

(c) *Proof of certification.* The Regional Director or his designee may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(6) before a permit is issued or to substantiate why such a permit should not be revoked under paragraph (i).

(d) *Issuance.* The Regional Director or his designee will issue a permit to the applicant only during May and June of each year. The Regional Director will issue permits to newly registered or documented vessels, or cases of demonstrated hardship at other times, as found at paragraph (b) of this section. Until the permit is received, fishermen must comply with the bag limit under §642.28.

(e) *Fees.* A fee may be assessed for any permit issued under this section. The cost of the permit, if any, will be posted on the application from and will be limited to the administrative cost of issuing the permit which may not exceed $10.00.

(f) *Duration.* A permit is valid only for the duration of the year for which it is issued (July 1—June 30) unless revoked or suspended pursuant to Subpart D of 15 CFR Part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable except on sale of the vessel to a new owner. A permit is valid only for the fishing vessel for which it is issued. New owners purchasing a permitted vessel to fish under the Gulf migratory group quota must comply with the provisions of paragraph (b) of this section. The application must be accompanied by an executed (signed) bill of sale. New owners who have purchased a permitted vessel may fish with the preceeding owner's permit until a new permit has been issued, but for a period not to exceed 60 days from date of purchase.

(h) *Display.* A permit issued under this section must be carried aboard the fishing vessel, and the vessel must be identified as provided for in § 642.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(i) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this section.

(j) *Alteration.* Any permit which is altered, erased, or mutilated is invalid.

(k) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(Approved by the Office of Management and Budget under control number 0648-0097)

5. A new § 642.5 is added to read as follows:

§ 642.5 Reporting requirements.

(a) *Commercial vessel owners and operators.* Any person who owns or operates a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter, or that fishes under a permit required in § 642.4, in the Gulf of Mexico FCZ or South Atlantic FCZ or in adjoining State waters, and who is selected to report must provide the following information regarding any fishing trip to the Center Director:

(1) Name or official number of vessel;

(2) Poundage of catch of any coastal migratory pelagic fish as defined by species;

(3) Depth fished and information regarding fishing location that is specific enough to enable the Center Director to ascertain the statistical area fished (see Figure 3);

(4) Amount and person to whom sold, bartered, or traded;

(5) Number, size and type of gear; and

(6) Period (hours or days) of fishing.

(b) *Charter vessel owners and operators.* Any person who owns or operates a charter vessel that fishes for or lands coastal migratory pelagic fish in the Gulf of Mexico FCZ or South Atlantic FCZ or adjoining State waters, and who is selected to report must maintain a daily fishing record on forms provided by the Center Director. These forms must be submitted to the Center Director weekly. Information to be included in the forms must include:

(1) Name or official number of vessel;

(2) Operator's Coast Guard license number;

(3) Date of trip;

(4) Number of fishermen on trip;

(5) Area fished;

(6) Fishing methods and type of gear;

(7) Hours fished;

(8) Species targeted; and

(9) Number and estimated weight of fish caught by species.

(c) *Dealers and processors.* Any person who receives coastal migratory pelagic fish or parts thereof by way of purchase, barter, trade, or sale from a

fishing vessel or person that fishes for, or lands said fish, or parts thereof in the Gulf of Mexico FCZ or South Atlantic FCZ or in adjoining State waters, and who is selected to report, must provide the following information to the Center Director at monthly intervals, or more frequently if requested, and on forms provided by the Center Director:

(1) Dealers or processors name and address;

(2) County where fish were landed;

(3) Total poundage of each species received during that month, or other requested interval;

(4) Average monthly price paid for each species; and

(5) Proportion of total poundage landed by each gear type.

(d) *Recreational fishing vessels.* [Reserved]

(e) Any owner or operator of commercial, charter, or recreational vessels, and dealers or processors may be required upon request to make such fish or parts thereof available for inspection by the Center Director for the collection of additional information or for inspection by an authorized officer.

(Approved by the Office of Management and Budget under control numbers 0648-0016 and -0159)

6. A new § 642.6 is added to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* Each vessel of the United States engaged in commercial fishing for Gulf migratory group king mackerel under a quota and the permit specified in § 642.4 must—

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number must be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number must be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from any enforcement vessel or aircraft.

7. Section 642.7 is amended by revising the introductory text and designating it as paragraph (a), redesignating existing paragraphs (a) through (m) as (1) through (13), revising paragraph (6), removing old paragraph (13), adding new paragraphs (13) through (26), and adding a new paragraph (b) to read as follows:

§ 642.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

* * * * *

(6) Fish for king and Spanish mackerel using a purse seine, except in compliance with § 642.24 (b) and (c);

* * * * *

(13) Fail to transfer or to display a permit as provided for in § 642.4 (g) and (h);

(14) Falsify or fail to report information required to be submitted by § 642.4 and § 642.5;

(15) Fail to make fish available for inspection as required by § 642.5(e);

(16) Falsify or fail to display the official vessel identification number or comply with other provisions for vessel identification as specified in § 642.6;

(17) Purchase, sell, barter, trade, or accept in trade, king mackerel, harvested in the FCZ from a specific migratory group or specific allocation zone or by purse seine gear, for the remainder of that fishing year specified in § 642.20, after the quota for that migratory group or allocation zone, or purse seine gear as specified in § 642.21 (a) or (b) has been reached and closure as specified in § 642.22 has been invoked (Table 2). (This prohibition does not apply to trade in king mackerel harvested, landed and bartered, traded or sold prior to the closure and held in cold storage by dealers and processors);

(18) Fish for, retain, or have in possession in the FCZ aboard a vessel permitted under §642.4 king mackerel from a migratory group or allocation zone after the quota for that migratory group or allocation zone specified in § 642.21(a) has been reached and closure has been invoked as specified in § 642.22 (Table 2);

(19) Fish for king or Spanish mackerel in the FCZ with purse seines after the quotas specified in § 642.21 (b) and (d) have been reached and closure has been invoked as specified in § 642.22 (Table 2);

(20) Fish for or have in possession onboard Spanish mackerel in or from the FCZ or purchase, sell, barter, trade or accept in trade, Spanish mackerel after the total allowable catch specified in § 642.21(c) is reached and closure has been invoked as specified in § 642.22 (Table 2);

(21) Land, consume at sea, sell, or have in possession at sea or time of landing, Gulf migratory group king mackerel harvested from the FCZ in excess of the bag limits specified in § 642.28, except as provided for under § 642.21;

(22) Fish for king mackerel from the Gulf migratory group in the FCZ as defined in § 642.29 under the quotas specified in § 642.21(a) without a permit as specified in § 642.4;

(23) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(24) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken coastal migratory pelagic fish or the final disposition of such coastal migratory pelagic fish through the sale of the coastal migratory pelagic fish;

(25) Land king mackerel from the Gulf migratory group in other than an identifiable form as specified in § 642.28(b); or

(26) Land Spanish mackerel and cobia without the head and fins intact as required by § 642.23(c).

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

8. Section 642.20 is revised in its entirety to read as follows:

§ 642.20 Seasons.

The fishing year for the Gulf migratory group of king mackerel for the commercial quota including purse seines begins at 0001 hours July 1 and ends at 2400 hours on June 30, local time (see Figure 2). The fishing year for the Atlantic migratory group of king mackerel begins at 0001 hours on April 1 and end at 2400 hours on March 31, local time. The purse seine quotas for king mackerel begin at 0001 hours on July 1 and end at 2400 hours on June 30, local time. The fishing year for all other coastal migratory pelagic fish begins at 0001 hours on January 1 and ends at 2400 hours on December 31, local time (Table 1).

9. Section 642.21 is revised in its entirety to read as follows:

§ 642.21 Quotas

(a) *Commercial quotas for king mackerel.* The initial commercial allocation for the Gulf migratory group of king mackerel is 4.552 million pounds per fishing year. This allocation is

divided into quotas as follows: (1) 2.940 million pounds for the eastern allocation zone; (2) 1.328 million pounds for the western allocation zone; and (3) 0.284 million pounds for purse seines (see Figure 2 and paragraph (e) of this section for description of allocation zones). The commercial allocation for the Atlantic migratory group of king mackerel is 4.382 million pounds per fishing year. A fish is counted against the commercial quota or allocation when it is first sold (Table 2).

(b) *Purse seine quota for king mackerel.* The harvest of king mackerel by purse seines from the Gulf migratory group is limited to 284,000 pounds each fishing year. The total harvest of king mackerel by purse seines from the Atlantic Ocean is limited to 400,000 pounds each fishing year. King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraph (a) of this section (Table 2).

(c) *Spanish mackerel.* The TAC of Spanish mackerel is 27 million pounds per fishing year in aggregate for all user groups (Table 2).

(d) *Purse seine quota for Spanish mackerel.* The harvest of Spanish mackerel by purse seines is limited to 300,000 pounds in the Gulf of Mexico and to 300,000 pounds in the Atlantic Ocean per fishing year. Spanish mackerel harvested by purse seines are included in the TAC specified in paragraph (c) of this section (Table 2).

(e) *Geographic boundaries and allocation zones.* The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and 83° W. longitude, proceeds north to 24°35′ N. latitude (Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland. The boundary between eastern and western zones established for commercial allocation of the Gulf migratory group of king mackerel is a line beginning at the boundary between the States of Alabama and Florida (30°16′53″ N. latitude and 87°31′06″ W. longitude) and running directly south to its intersection with the outer limit of the FCZ (Figure 2).

10. Section 642.22 is revised in its entirety to read as follows:

§ 642.22 Closures.

The Secretary, by publication of a notice in the **Federal Register**, will close the king or Spanish mackerel fishery to fishing in the FCZ for a particular gear type, allocation zone, or user group when the quota for that gear type, allocation zone, or user group under § 642.21 has been reached or is projected to be reached (Table 2). The notice of closure for quotas specified under § 642.21 will also provide notice that the purchase, barter, trade, and sale of king or Spanish mackerel taken from the FCZ after the closure for the migratory group or allocation zone affected is prohibited for the remainder of that fishing year. This prohibition does not apply to trade in Spanish or king mackerel harvested, landed, and bartered, traded or sold prior to the closure and held in cold storage by dealers or processors.

11. In § 642.23, paragraphs (a)(1) and (b) are revised and a new paragraph (c) is added to read as follows:

§ 642.23 Size restrictions.

(a) *Spanish mackerel—(1) Minimum size.* The minimum size for the possession of Spanish mackerel in or taken from the FCZ is 12 inches (fork length) or 14 inches (total length) for both recreational or commercial fisheries, except for the incidental catch allowance under paragraph (a)(2) of this section.

* * * * *

(b) *Cobia.* The minimum size limit for the possession of cobia in or taken from the FCZ is 33 inches (fork length) or 37 inches (total length).

(c) All Spanish mackerel and cobia must be landed with the head and fins intact.

12. In § 642.24, paragraph (b)(1)(i) is revised and a new paragraph (c) is added to read as follows:

§ 642.24 Vessel, gear, and equipment limitations.

* * * * *

(b)(1) * * *

(i) at least 30 days in advance of the beginning of the fishing year, or

* * * * *

(c) *Purse seine catch allowance and exclusions.* A vessel with a purse seine abroad will not be considered as fishing for king or Spanish mackerel for the purposes of paragraph (b) of this section and will not be considered in violation of a purse seine closure affected in accordance with § 642.22 provided the catch of king mackerel or Spanish mackerel does not exceed one or ten percent, respectively, by weight or number (whichever is less) of the catch of all fish abroad the vessel. Such king and Spanish mackerel must be reported in accordance with paragraph (b)(3) of this section and will be counted in the quotas provided for under § 642.21 and subject to the probihition on sale provided for under § 642.22.

13. A new § 642.27 is added to read as follows:

§ 642.27 Stock assessment procedures.

(a) The Councils will appoint an assessment group (Group) that will assess the condition of each stock of king and Spanish mackerel in the management unit on an annual basis. The Group will present a report of its assessment and recommendations to the Councils.

(b) The Councils will consider the report and recommendations of the Group and hold public hearings at a time and place of the Councils' choosing to discuss the Group's report. The Councils will convene an Advisory Panel and may convene the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, Councils will make findings on the need for changes.

(c) If changes are needed in MSYs, TACs, bag limits, quotas, or permits, the Councils will advise the Regional Director in writing of their recommendations, accompanied by the Group's report, relevant background material, and public comment. This report will be submitted each year by such date as agreed upon by the Councils.

(d) The Regional Director will review the Councils' recommendations, supporting rationale, public comments, and other relevant information. In the event the Regional Director rejects the recommendations, he will provide written reasons to the Councils for the rejection and existing regulations will remain in effect until the issue is resolved.

(e) If the Regional Director concurs that the Councils' recommendations are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director will recommend that the Secretary publish notice in the **Federal Register** of any preliminary changes prior to the appropriate fishing year. A 15-day period for public comment will be afforded. After consideration of public comments, the Secretary may publish notice in the **Federal Register** of any final changes for that fishing year.

(f) Appropriate adjustments which may be implemented by the Secretary by notice in the **Federal Register** are:

(1) Adjustment of the point estimates of MSY for mackerel within the following ranges:

(i) King mackerel—21.9 million pounds to 35.2 million pounds.

(ii) Spanish mackerel—13.5 million pounds to 49.1 million pounds.

(2) Setting TACs for each stock or group of fish which should be managed separately, as identified in the FMP. The TAC may be increased, not to exceed 30

percent annually when warranted by new information. Any number of increases may be made so long as they do not exceed 30 percent in any one year and provided that no TAC will exceed the best point estimate of MSY by more than ten percent. Downward adjustments of any percentage are allowed in order to protect the stock and prevent overfishing. Reductions or increases in allocations as a result of changes in the TAC are to be as equitable as may be practicable utilizing similar percentage changes to all participants in a fishery. (Changes in bag limit cannot always accommodate the exact desired level of change.)

(3) Implementing or modifying quotas, bag limits, or permits as necessary to limit the catch of each user group to its allocation.

14. A new § 642.28 is added to read as follows:

§ 642.28 Bag and possession limits.

(a) *Recreational allocation bag limit.* Persons who fish for king mackerel from the Gulf migratory group (see Figure 2) in the FCZ (except those fishing under the permit and quotas specified in § 642.4, § 642.21 and § 642.24(c)) are limited to the following:

(1) Possessing three (3) king mackerel per person per trip, excluding the vessel captain and crew or possessing two (2) king mackerel per person per trip, including the vessel captain and crew, whichever is the greater, when fishing from a charter vessel.

(2) Possessing two (2) king mackerel per person per trip when fishing from other vessels;

(b) All king mackerel from the Gulf migratory group must be landed in an identifiable form as to number and species (with the understanding that head and tail can be removed).

(c) After a closure under § 642.22 is invoked for a migratory group or allocation zone specified in § 642.21 vessels permitted under § 642.4 may not fish for Gulf migratory king mackerel under the bag limit specified under paragraph (a) of this section nor can persons fishing under the bag limit sell their fish.

15. A new § 642.29 is added to read as follows:

§ 642.29 Area and time separation.

(a) *Summer separation.* During the summer period (April 1 through October 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly west from the Monroe/Collier County, Florida boundary (25° 48′ N. latitude) to the outer limit of the FCZ (Figure 2).

(b) *Winter separation.* During the winter period (November 1 through March 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary (29° 25′ N. latitude) to the outer limit of the FCZ (Figure 2).

TABLE 1.—FISHING SEASONS FOR COASTAL MIGRATORY PELAGIC FISH IN THE FCZ

Type	Begins—	Ends—
King mackerel:		
Gulf migratory group	0001 hours July 1.	2400 hours June 30.
Atlantic migratory group	0001 hours Apr. 1.	2400 hours Mar. 31.
Purse seine quotas	0001 hours July 1.	2400 hours June 30.
Other fish and fishing:		
All other fishing	0001 hours Jan. 1.	2400 hours Dec. 31.

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES [1]

Migratory group(s)	Fishing year	Gear	Allocation zone	Initial year quota/TAC (million pounds)	Prohibition on sale and/or catch invoked when—
King Mackerel:					
Atlantic	1 Apr.–31 Mar.	All types	Entire range [2]	4.382	Sales from migratory group are projected to reach quota.
Gulf	1 July–30 June	All types	Entire range [2]	4.552	Sales from migratory group are projected to reach quota.
Gulf	1 July–30 June	All types	Western zone [3]	1.328	Sales from allocation zone are projected to reach quota.
Gulf	1 July–30 June	All types	Eastern zone [3]	2.940	Sales from allocation zone are projected to reach quota.
Gulf	1 July–30 June	P.S.[5]	Entire range [2]	0.284	Landings from migratory group are projected to reach quota.
G.A.[6]	1 July–30 June	P.S.[5]	Atlantic Ocean [4]	0.400	Landings from migratory group are projected to reach quota.
Spanish mackerel	1 Jan.–31 Dec.	All types	G.A.[6]	27.000	When landings are projected to reach TAC.
	1 Jan.–31 Dec.	P.S.[5]	Atlantic Ocean	0.300	When landings are projected to reach quota.
	1 Jan.–31 Dec.	P.S.[5]	Gulf of Mexico	0.300	When landings are projected to reach quota.

[1] See Figure 2 for delineation of migratory group ranges and allocation zones.
[2] The range of migratory groups varies by season (§ 642.29)—See Figure 2.
[3] See Figure 2 and § 642.21(e).
[4] See § 642.21(e).
[5] Purse Seines.
[6] Gulf & Atlantic.

BILLING CODE 3510-22-M

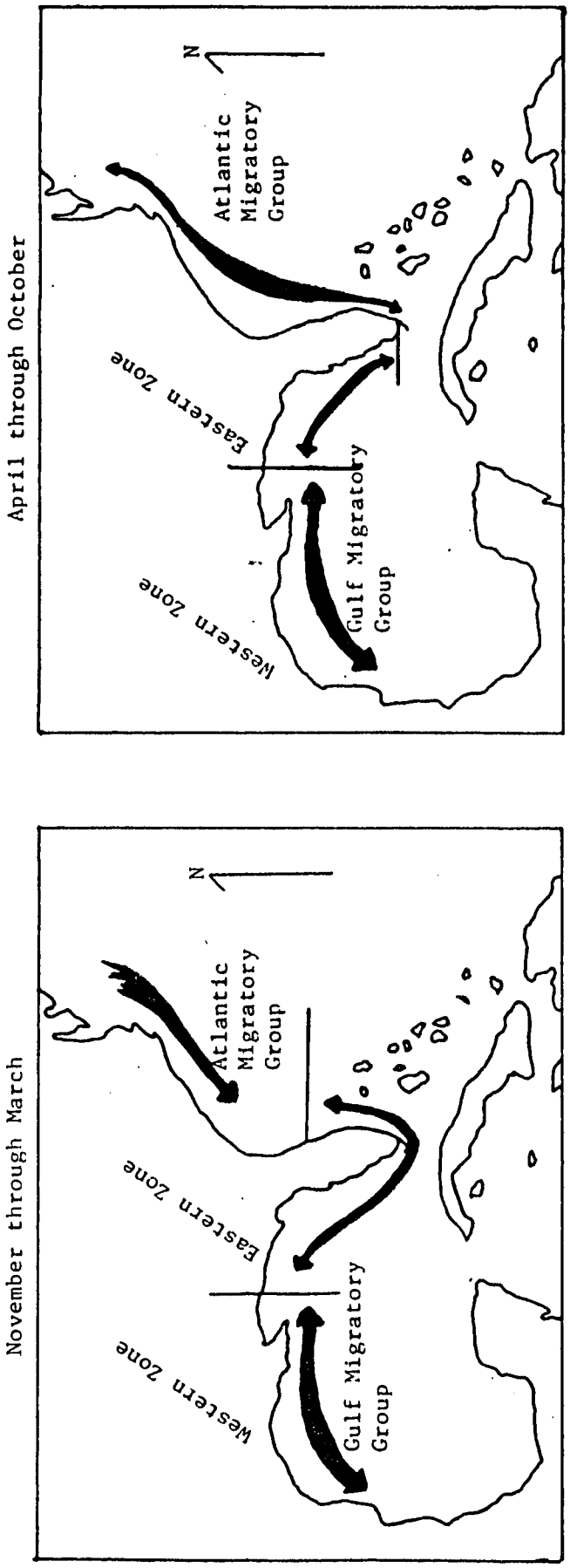
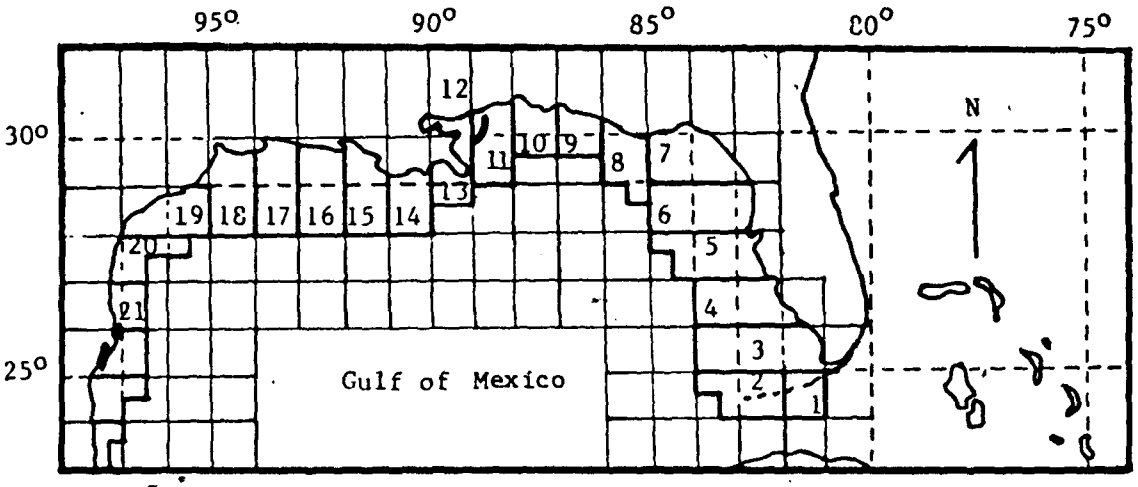
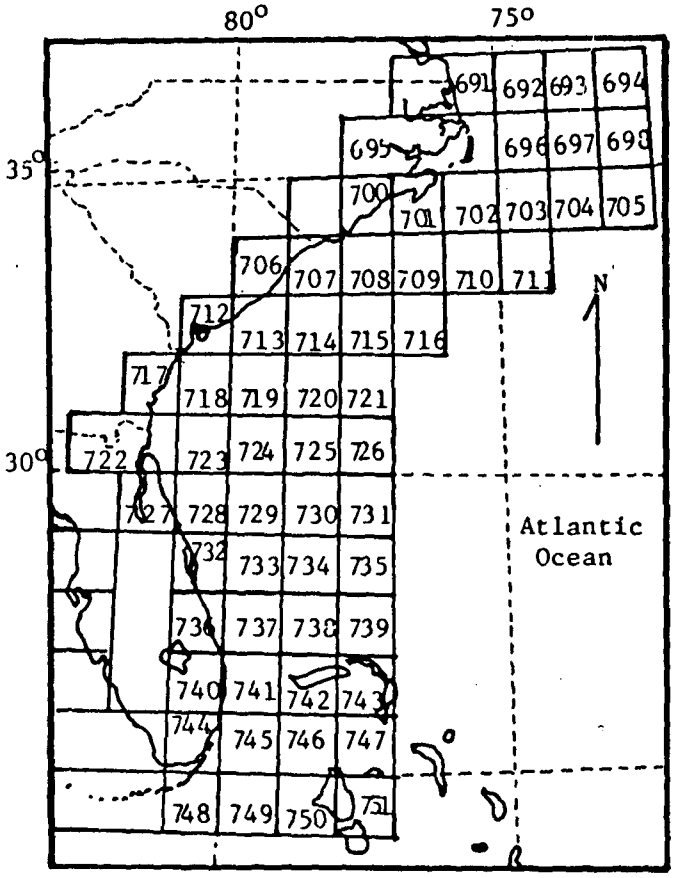


Figure 2. Range of Gulf and Atlantic migratory groups of king mackerel during winter and summer periods and commercial allocation zones for Gulf group king mackerel.

Figure 3. Statistical Grids for Reporting the Harvest of Coastal Migratory Pelagic Fish.



Statistical Grids in the Gulf of Mexico



Statistical Grids in the South Atlantic

[FR Doc. 85-20543 Filed 8-23-85; 2:50 pm]
BILLING CODE 3510-22-C

50 CFR Part 669

[Docket No. 50586-5132]

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The rule (1) establishes criteria for the construction of fish traps; (2) requires owner identification and marking of gear and boats; (3) prohibits the hauling of or tampering with another person's traps without the owner's written consent; (4) prohibits the use of poisons, drugs, other chemicals, and explosives for the taking of reef fish; (5) establishes a minimum size limit on the harvest of yellowtail snapper and Nassau grouper; and (6) establishes a closed season for the taking of Nassau grouper. The intent of the regulations is to rebuild declining reef fish species in the fishery and reduce conflicts among fishermen.

EFFECTIVE DATE: This rule is effective September 22, 1985, except for § 669.24 (a)(1) which becomes effective September 22, 1986.

ADDRESS: A copy of the combined final regulatory flexibility analysis/regulatory impact review may be obtained from Donald W. Geagan, Southeast Region, National Marine Fisheries Service (NMFS), 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTRACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Caribbean Fishery Management Council (Council), under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). The proposed rule to implement the FMP was published on June 10, 1985 (50 FR 24251) and comments were invited through July 20, 1985. This final rule implements the FMP.

The preamble to the proposed rule contained background information on the fishery, its economic value, condition of the stocks, and harvesting practices within the commercial and recreational sectors. Also discussed in detail were major problems in the fishery (i.e., declining catch per unit of effort by fish traps—the most abundant gear in the fishery, declines in the average size of yellowtail snapper and Nassau grouper in the landings, and problems associated with ciguatera poisioning and fragmented jurisdiction over the stocks involved). These discussions are not repeated here.

Comments and Responses

A total of six written responses were received from commercial fishermen. Although certain of the comments contained in these responses were in support of the proposed rule, some suggested that certain measures should be even more stringent than proposed. One commenter indicated that prohibitions against the use of explosives and chemicals should apply to marine waters in general, while another commenter suggested that minimum size restrictions should be applied to all species in the shallow-water reef fish fishery.

Generally, the prohibition against the use of drugs, poisons, other chemicals, and explosives for taking shallow-water reef fish would also afford protection to other species that live in association with the reef community; however, management measures must be restricted to the management unit addressed by the FMP. Regarding the application of minimum size limitations to all species in the management unit, the fishery will be monitored after the FMP is implemented and appropriate restrictions will be recommended for other species when data are supplied that indicate such actions are warranted. Comments in opposition to the proposed regulations are discussed by category as follows:

1. Size Limits and Seasonal Closures

Three respondents recommended that alternatives (such as providing training to pursue deep-water or pelagic fishery resources or by providing some form of monetary compensation) be offered to fishermen to offset the negative economic impacts they will suffer when the management program is implemented—especially the proposed minimum size limits and seasonal closures. In that regard, the regulations provide an incremental approach to the minimum size limits for yellowtail snapper and Nassau grouper wherein the attainment of optimum reproductive sizes will be phased-in over a period of years to minimize any social and economic disruption associated with these measures. The FMP thoroughly evaluated these impacts and estimated that the minimum size restrictions coupled with the three-month closed season for Nassau grouper each year will result in a net loss of $165,000 the first year and $80,000 the second year. After the second year, however, there will be a gross gain to the fishermen that will amount to an estimated $5.0 million over a period of ten years. Moreover, there are no provisions in the Magnuson Act that would authorize such compensation or training programs to alleviate these short-term impacts resulting from management.

Another commenter indicated that undersized fish in traps would die as a result of pressure changes when traps are retrieved from deepwater, and since these fish would be illegal to retain they would be wasted. While the condition of fishes taken at the bottom and brought to the surface undoubtedly will vary with depth of capture, preliminary evidence from studies conducted by NMFS on red snapper indicates a relatively high rate of survival—89 percent for those taken at a depth of 100 feet. The few fishes that were lost during those studies were attributed to hook damage. Although there is no direct evidence on survival for yellowtail snapper and Nassau grouper, it is conceivable that even higher survival rates may be obtained as most would be taken by traps rather than hook-and-line. Hopefully, fishermen taking large numbers of undersized fish would shift their effort to areas where larger fish are more abundant.

One commenter noted that yellowtail snapper commence reproducing before they reach eight inches and that the initial size limit should be smaller. Although some yellowtail snapper may reproduce at a smaller size, data indicate that optimum production occurs at twelve inches. Establishing a lower initial minimum size would only serve to delay the restoration of the stock along with the associated economic gains.

Another commenter suggested that the three-month seasonable closure for Nassau grouper be reduced to 30 days per year to lessen the economic impacts on fishermen. Spawning aggregations of Nassau grouper occur in the management area from January through April of each year and, according to public testimony, these aggregations have diminished considerably over recent years. Prohibiting the retention of Nassau grouper during three fourths of the spawning season already represents a concession of 25 percent but this, coupled with the incremental size limit, is believed to be a reasonable and prudent approach to stock recovery. Any further shortening of the closed season would defer the advantages of the management program and could lead to the collapse of the Nassau grouper stock. Therefore, NOAA is implementing the size limits and seasonable closure as proposed.

2. Habitat

One respondent stressed the importance of a program for protecting mangrove habitat which is essential to the development of numerous commercial species. NOAA agrees that the conservation of mangrove areas is very important to the development of commercial fishes and recreational species as well; however, the management program implemented by these regulations is restricted to the fishery conservation zone.

3. Gear Conflicts

One other commenter indicated that there is a problem with the theft of traps, especially in the Virgin Islands. The regulations at § 669.22 specify that traps may be tended or pulled only by persons aboard the trap owner's vessel, or from another vessel only if such vessel has aboard written consent of the trap owner. This constraint, in conjunction with vessel and gear identification requirements, is implemented to alleviate the trap theft problem.

Classification

The Regional Director determined that the FMP is necessary for the conservation and management of the shallow-water reef fish fishery of Puerto Rico and the U.S. Virgin Islands, and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared a final environmental impact statement for this FMP; a notice of availability was published on July 19, 1985; 50 FR 29480.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. Summary published at 50 FR 24251, June 10, 1985.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Summary published at 50 FR 24251. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0097.

The Council determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 669

Fisheries, Fishing.

Dated: August 22, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, Chapter VI of 50 CFR is amended by adding a new Part 669 to read as follows:

PART 669—SHALLOW-WATER REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Subpart A—General Provisions

Sec.
669.1 Purpose and scope.
669.2 Definitions.
669.3 Relationship to other laws
669.4 Permits.
669.5 Reporting and recordkeeping requirements (Reserved).
669.6 Vessel and gear identification.
669.7 Prohibitions.
669.8 Facilitation of enforcement.
669.9 Penalties.

Subpart B—Management Measures

669.20 Fishing year.
669.21 Closed seasons.
669.22 Harvest limitations.
669.23 Size limitations.
669.24 Gear limitations.
669.25 Specifically authorized activities.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 669.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

(b) This part regulates fishing for shallow-water reef fish within the Atlantic Ocean and Caribbean Sea portions of the fishery conservation zone (FCZ) adjacent to the State waters of Puerto Rico and the U.S. Virgin Islands.

§ 669.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meaning:

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Fish in the shallow-water reef fish fishery means any of the following species:

Squirrelfishes—Holocentridae

Squirrelfish, *Holocentrus ascensionis*
Longspine squirrelfish, *Holocentrus rufus*

Groupers—Serranidae

Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Nassau grouper, *Epinephelus striatus*
Yellowfin grouper, *Mycteroperca venenosa*

Jacks—Carangidae

Yellow Jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Bar jack, *Caranx ruber*

Snappers—Lutjanidae

Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Mangrove snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogani*
Lane snapper, *Lutjanus synagris*
Yellowtail snapper, *Ocyurus chrysurus*

Grunts—Haemulidae

Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
French grunt, *Haemulon flavolineatum*
White grunt, *Haemulon plumieri*
Bluestriped grunt, *Haemulon sciurus*

Porgies—Sparidae

Sea bream, *Archosargus rhomboidalis*
Jolthead porgy, *Calamus bajonado*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*

Goatfishes—Mullidae

Yellow goatfish, *Mulloidichthys martinicus*
Spotted goatfish, *Pseudupeneus maculatus*

Butterflyfishes—Chaetodontidae

Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*

Angelfishes—Pomacanthidae

Queen angelfish, *Holacanthus ciliaris*
Rock beauty, *Holacanthus tricolor*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*

Wrasses—Labridae

Spanish hogfish, *Bodianus rufus*
Puddingwife, *Halichoeres radiatus*
Pearly razorfish, *Hemipteronotus novacula*

Hogfish, *Lachnolaimus maximus*

Parrotfishes—Scaridae

Midnight parrotfish, *Scarus coelestinus*
Blue parrotfish, *Scarus coeruleus*
Striped parrotfish, *Scarus croicensis*
Rainbow parrotfish, *Scarus guacamaia*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Redband parrotfish, *Sparisoma aurofrenatum*
Redtail parrotfish, *Sparisoma chrysopterum*
Stoplight parrotfish, *Sparisoma viride*

Surgeonfishes—Acanthruidae

Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Blue tang, *Acanthurus coeruleus*

Leatherjackets—Balistidae

Queen triggerfish, *Balistes vetula*
Ocean triggerfish, *Canthidermis sufflamen*
Black durgon, *Melichthys niger*
Sargassum triggerfish, *Xanthichthys ringens*

Boxfishes—Ostraciidae

Spotted truckfish, *Lactophrys bicaudalis*
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Smooth trunkfish, *Lactophrys triqueter*

Fish trap or trap means any trap and the component parts (including the lines and buoys) thereof used for taking finfish, regardless of the construction material.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of the Commonwealth of Puerto Rico and the U.S. Virgin Islands to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing; including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator with respect to any vessel, means the master or other individual onboard and in charge of that vessel.

Owner with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, or a designee, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141.

Secretary means the Secretary of Commerce, or a designee.

State means the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

Total length means the greatest possible length of a fish with the mouth of the fish closed and the caudal fin (tail) squeezed together to give the greatest over-all measurement (Figure 1).

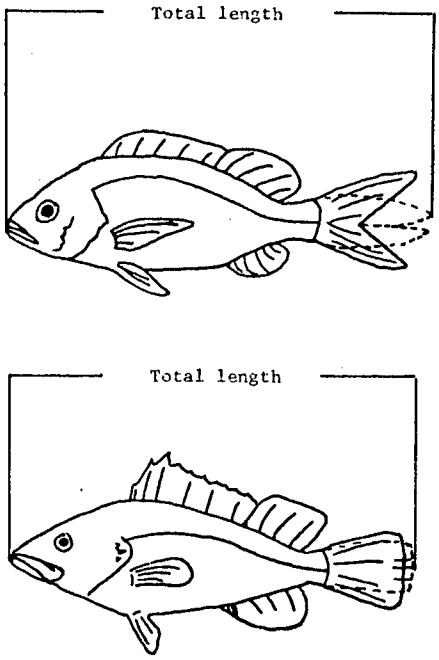


Figure 1. Measurement of total length for fishes with a forked tail, yellowtail snapper (top) and with a rounded tail, Nassau grouper (bottom).

U.S. fish processors means facilities located within the United States and vessels of the United States, used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 669.3 Relationship to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection, issuance of permits, and enforcement may be performed by

authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 669.4 Permits

No permits are required for fishing vessels engaged in the shallow-water reef fish fishery within the FCZ (see vessel and gear identification requirements in § 669.6).

§ 669.5 Reporting and recordkeeping requirements. [Reserved].

§ 669.6 Vessel and gear identification.

(a) *Applicability.* A vessel in the commercial shallow-water reef fish fishery fishing with traps in the FCZ must obtain an identification number and color code issued by the Regional Director unless the vessel possesses a valid identification number and color code issued by the Government of Puerto Rico or the Government of the U.S. Virgin Islands.

(b) *Application to the Regional Director.* (1) An application for an identification number and color code must be submitted to the Regional Director 45 days prior to the date on which the applicant desires receipt.

(2) Each application must contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The name and length of the vessel;

(iii) The vessel's official number; and

(iv) The vessel's radio call sign.

(c) *Vessel identification.* Each fishing vessel must display the identification number and color code issued to the vessel by the Regional Director or State on the port and starboard sides of the deckhouse or hull. In addition, each vessel over 25 feet long must display its identification number and color code on an appropriate weather deck. All identification numbers and color codes must be displayed permanently and conspicuously so as to be readily identifiable from the air and water. The number must contrast with the background and be in block Arabic numerals at least 18 inches high for vessels over 65 feet long, as least 10 inches high for vessels over 25 feet long, and at least 3 inches high for vessels 25 feet long or less. The color code representation must be in the form of a circle not less than 18 inches in diameter or a strip not less than 18 inches high and 18 inches long for vessels over 65 feet long; a circle not less than 10 inches in diameter or a strip not less than 10 inches high and 18 inches long for vessels over 25 feet long; and a circle not less than 3 inches in diameter or a strip not less than 3 inches high and 10 inches long for vessels 25 feet long or less.

(d) *Duties of operator.* The operator of each fishing vessel subject to this part must:

(1) Keep the identification number and color code clearly legible and in good repair.

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or anything else aboard obstructs the view of the identification number and color code from an enforcement vessel or aircraft.

(e) *Gear identification.* (1) All traps and buoys used in the shallow-water reef fish fishery must be marked and identified as follows:

(i) Buoys affixed to traps must bear the number and color code specified for the vessel. The identification number must be legible and at least 3 inches high on each buoy.

(ii) Traps must bear the number specified for the vessel. The number must be legible and at least 3 inches high, or as high as the widest available space if such space is less than 3 inches wide. As an alternative, the number may be stamped on a plate of non-corrosive metal or plastic and securely affixed to the trap.

(2) Traps and buoys for shallow-water reef fish fished in the FCZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to shallow-water reef fish traps which are lost or sold if the owner of such traps reports in writing the loss or sale within 15 days to the Regional Director. The report must specify the number of traps lost or sold, the color code and the identification number.

(3) Unmarked shallow-water reef fish traps deployed in the FCZ at any time are illegal gear and may be disposed of in any appropriate manner by the Secretary or an authorized officer. Lines and buoys are considered part of the trap. If owners of the unmarked traps can be ascertained, those owners remain subject to appropriate civil penalties.

(Approved by the Office of Management and Budget under control number 0648–0097.)

§ 669.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fish with traps for shallow-water reef fish in the FCZ without an identification number and color code as required by § 669.6;

(2) Falsify or fail to affix and maintain gear and vessel markings as required by § 669.6;

(3) Possess in, or harvest from the FCZ Nassau grouper during the closed fishing season specified in § 669.21;

(4) Tend, open, pull, or otherwise molest or have in one's possession aboard a fishing vessel another person's fish traps except as provided in § 669.22;

(5) Possess in, or harvest from the FCZ yellowtail snapper less than the minimum size limit specified in § 669.23(a);

(6) Possess in, or harvest from the FCZ Nassau grouper less than the minimum size limit specified in § 669.23(b);

(7) Possess in the FCZ or land any shallow-water reef fish harvested in the FCZ without head and fins intact as specified in § 669.23(d);

(8) Possess or use fish traps in the FCZ with a mesh size smaller than the size limit specified under §669.24(a)(1);

(9) Possess, or use fish traps in the FCZ without a degradable panel or degradable door fastening as specified in § 669.24(a) (2) and (3);

(10) Fish for shallow-water reef fish in the FCZ with explosives, including powerheads, as specified in § 669.24(b)(1);

(11) Fish for shallow-water reef fish in the FCZ with drugs, poisons or other chemicals as specified in § 669.24(b)(2);

(12) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any shallow-water reef fish or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(13) Fail to comply immediately with enforcement and boarding procedures specified in § 669.8;

(14) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purpose of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(15) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection under the Magnuson Act;

(16) Interfere with, delay, obstruct or prevent by any means a lawful investigation or search in the process of enforcing this part;

(17) Interfere with, obstruct, delay, or in any other manner prevent the seizure of illegally taken shallow-water reef fish or the final disposition of such shallow-water reef fish through the sale of the shallow-water reef fish;

(18) Resist a lawful arrest for any act prohibited by this part;

(19) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that

such other person has committed any act prohibited by this part; and

(20) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested shallow-water reef fish to any foreign fishing vessel, while such foreign vessel is in the FCZ unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of the U.S.-harvested fish of the species concerned.

(b) It is unlawful to violate any other provisions of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

§ 669.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable) and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must:

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

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.–.–) [1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.–.,–.– –,–.,–.– –) means "you should proceed at slow speed, a boat is coming to you." The signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (...,– –.–,...– –) means "you should stop or heave to: I am going to board you."

(4) "L" (.–..) means "you should stop your vessel instantly."

§ 669.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, and to 50 CFR Part 621, and 15 CFR Part 904 (Civil Procedures), and other applicable law.

[1] Period (.) means a short flash of light, and Dash (–) means a long flash of light.

Subpart B—Management Measures

§ 669.20 Fishing year.

The fishing year for the shallow-water reef fish fishery begins on January 1 and ends on December 31.

§ 669.21 Closed seasons.

The fishing season for Nassau grouper in the FCZ is closed from 0001 hours January 1 through 2400 hours March 31. Nassau grouper taken during this period must be returned to the sea immediately with a minimum amount of harm.

§ 669.22 Harvest limitations.

Fish traps may be tended or pulled only by persons (other than authorized officers) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has onboard written consent of the fish trap owner, or if the fish trap owner is aboard and has documentation verifying the identification number and color code. Owner's letter of consent must specify effective time period, and trap owner's vessel identification number and color code.

§ 669.23 Size limitations.

(a) The minimum size limit for the harvest or possession of yellowtail snapper in the FCZ is 8 inches total length. Effective September 22, 1986, the minimum size of yellowtail snapper will be increased to 9 inches. On each September 22 the minimum size will be increased one inch until reaching a minimum size of 12 inches total length on September 22, 1989.

(b) The minimum size limit for the harvest or possession of Nassau grouper in the FCZ is 12 inches total length. Effective September 22, 1986, the minimum size of Nassau grouper will be increased to 13 inches. On each September 22 the minimum size will be increased one inch until reaching a minimum size of 24 inches total length on September 22, 1997.

(c) Undersized yellowtail snapper and Nassau grouper must be returned to the water immediately and with minimum harm.

(d) All shallow-water reef fish harvested in the FCZ and subject to minimum size limits specified in this section must be landed with the head, fins, and tail intact.

§ 669.24 Gear limitations.

(a)(1) Effective September 22, 1986, fish traps must have a minimum mesh size of 1¼ inches in the smallest dimension of the mesh opening.

(2) Fish traps must have on the sides or top, a degradable panel or degradable door fastening made of any material listed in paragraph (a)(3) of this section.

The panel and door opening must not be smaller than either of the entry ports or funnel opening of the trap.

(3) Degradable material must be untreated fiber of biological origin, not more than three millimeters (approximately ⅛") maximum diameter, including but not limited to tyre palm, hemp, jute, cotton, wool, or silk, or non-galvanized black iron wire not more than 1.59 millimeters (approximately one-sixteenth inch) in diameter; that is, 16 gauge wire.

(b)(1) Explosives, including powerheads, may not be used to fish for shallow-water reef fish in the FCZ.

(2) Poisons, drugs, and other chemicals may not be used to fish for shallow-water reef fish in the FCZ.

§ 669.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

[FR Doc. 85-20544 Filed 8-23-85; 3:05 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 167
Wednesday, August 28, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program

Correction

In FR Doc. 85-18908 beginning on page 32207 in the issue of Friday, August 9, 1985, make the following corrections:

1. On page 32207, in the third column, in § 890.503(c)(1), in the twenty-first line, "Amount" should read "Amounts".
2. On page 32208, in the first column, in § 890.503(c)(2), in the last line, "OMP" should read "OPM".
3. On page 32208, in the first column, in § 890.503(c)(3), in the eleventh line, "for" should read "from"; in the ninth line from the end of the paragraph, "amount" should read "amounts".
4. Also on page 32208, in the first column, in § 890.503(c)(5), in the eighth line, "Amount" should read "Amounts."

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 2697S]

General Administrative Regulations—Appeal Procedure

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule; Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on Tuesday, August 13, 1985, at 50 FR 32576, issuing a new Subpart J of Part 400 in Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Appeal Procedure. These regulations as published contained an error of omission in the section dealing with the right of appeal. This notice is published to correct that error.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

1. The authority citation for 7 CFR Part 400, Subpart J continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. FR Doc. 85-19177, appearing at 50 FR 32576, August 13, 1985, is corrected on page 32577 by amending § 400.92(b) to read as follows:

(b) Any person whose claim for indemnity under insurance obtained pursuant to this Part has been denied;

Done in Washington, DC, on August 20, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-20594 Filed 8-27-85; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 451

[Docket No. 2383S]

Canning and Processing Peach Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Supplemental Notice of Proposed Policy Rulemaking and Extension of Comment Period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith issues this supplemental notice of proposed policy rulemaking for the purpose of soliciting public comment on a change in its proposed canning and processing peach crop insurance policy which deletes the provision for division of land in the definition of "unit."

FCIC is taking action to delete the provision allowing the division of units from all crop insurance policies, except small grains, effective for the 1986 crop year. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provisions.

DATES: Comment Date: Written comments, data, and opinions on this supplemental notice of proposed policy rulemaking must be submitted not later than September 27, 1985 to be sure of consideration.

ADDRESS: Written comments on this proposed rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review data established for these regulations is May 15, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that his action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility

Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, February 26, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 7787, proposing to issue a new Part 451 in Chapter IV of Title 7 of the Code of Federal Regulations (7 CFR Part 451), prescribing provisions for insuring canning and processing peaches. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule. No comments were received.

FCIC is taking action to delete the provision allowing the division of units from all crop insurance policies, except small grains, effective for the 1986 crop year. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

FCIC herewith solicits public comment for 30 days on its proposal to delete this provision from the proposed canning and processing peach crop insurance policy provisions. Written comments received pursuant to this notice will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 451

Crop insurance, Canning and processing peaches.

Supplemental Notice of Proposed Policy Rulemaking and Extension of Comment Period

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation makes a change in the proposed Canning and Processing Peach Crop Insurance Regulations published at 50 FR 7787 on February 26, 1985, as follows:

1. The Authority citation for 7 CFR Part 451 is:

Authority: Secs 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. Section 17.1 of Canning and Processing Peach Crop Insurance Policy set forth in §451.7(d) of the proposed Federal Crop Insurance Corporation regulation published at 50 FR 7790 is revised to read as follows:

17. Meaning of terms.

* * * * *

1. "Unit" means all insurable acreage of peaches in the county located on contiguous land on the date insurance attaches for the crop year:

(1) in which you have a 100 percent share; or

(2) which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the canning and processing peaches on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

* * * * *

Done in Washington, D.C., on May 9, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–20593 Filed 8–27–85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 21

[Docket No. 85–14]

Reports of Suspected Crimes

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to eliminate Interpretive Ruling § 7.5225 (12 CFR 7.5225) regarding reports by a national bank in the event of known or suspected crimes and replace it with a regulation that amends the requirements of the ruling. The proposed rule references a new report form, eliminates a requirement to send a report to the bank's bonding company, and extends the time for filing reports of mysterious disappearances. The current reporting system (§ 7.5225) is unduly burdensome on banks and has limited practical utility to the government agencies involved. The proposed rule is intended to make report filing more efficient for the banks and more useful for law enforcement agencies in identifying patterns of criminal activity and apprehending persons who commit crimes involving national banks. The proposed rule also clarifies the responsibilities of national banks in reporting and maintaining records of known or suspected crimes.

DATES: Comments must be received on or before October 28, 1985.

ADDRESSES: Comments should be directed to: Docket No. 85–14, Communications Division, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219, Attention: Lynnette Carter. Comments will be available for public inspection and photocopying at the same location.

The collection of information requirements contained in the proposed rule have been submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3504(h). Comments specifically addressing those information collection requirements should be submitted to: Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20500, Attention: Desk Officer for the Office of the Comptroller of the Currency; and should also be directed to this Office at the above address.

FOR FURTHER INFORMATION CONTACT: Jane Rasmussen, Attorney, Enforcement and Compliance Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 447–1818.

SUPPLEMENTARY INFORMATION:

Background

The OCC is charged with safeguarding the safety and soundness of national banks and is responsible for ensuring that national banks apprise law enforcement authorities of any potential violations of criminal statuts. Employee fraud, abusive insider transactions, check kiting schemes, and the like, can be serious threats to a bank's security and undermine the confidence and trust that individuals and businesses place in the banking industry. The OCC's primary concerns are losses sufficient in size or number to impact the safety and soundness of the bank, crimes committed by bank officials, and the adequacy of the bank's security systems and internal controls. The law enforcement community is concerned with receiving prompt reports with sufficient information to determine whether the matter warrants investigation and prosecution.

A Working Group was formed in December 1984 to address problems and promote cooperation toward the goal of improving the federal government's response to white collar crime in federally-regulated financial institutions. The Working Group is composed of senior officials of the financial institution regulatory agencies and the Justice Department. Among the

recommendations of the Working Group to improve the referral system for suspected bank fraud was the use of a uniform Criminal Referral Form for use by all federally-insured financial institutions and the regulatory agencies.

Purpose

This notice of proposed rulemaking is part of an effort by the OCC, in cooperation with the other federal financial institution regulatory agencies and the Department of Justice, to enhance the effectiveness of methods of discovering and prosecuting fraud and other crime in financial institutions. The goal of this rulemaking is to enhance the information quality of criminal referrals, thereby making the referrals more useful, and to provide a standard format. These changes will facilitate the assessment and investigation of possible criminal matters, aid in the identification of patterns of criminal misconduct, and improve the OCC's ability to track the disposition of criminal referrals.

Current Requirements

The OCC's § 7.5225, which is proposed to be removed, requires that a national bank make an immediate written report to the OCC, to the United States Attorney, the Federal Bureau of Investigation, and to the bank's bonding company when known or suspected thefts, embezzlements, check-kiting operations, misappropriations or other defalcations or other criminal violations involving bank personnel or bank funds occur. Reports of mysterious disappearances of bank funds of $1,000 or more are also required. A bank is required to include the identities of persons suspected and the reasons for suspicion in the report. No standard format is prescribed and the quality and amount of information reported has varied widely. These differences and shortcomings have hampered the agencies in their law enforcement efforts.

OCC Proposal

Proposed § 21.11 requires that a national bank submit a Criminal Referral Form upon the occurrence or discovery of any known or suspected theft, embezzlement, check-kiting operation, misappropriation or other defalcation involving bank personnel or bank funds, and any other suspected criminal violation. Mysterious disappearances or unexplained shortages of bank funds or other assets of $1,000 or more need not be reported if they are due to errors which have been discovered and corrected within seven business days. The seven-day deadline allows the bank sufficient time to resolve most shortages, thereby eliminating unnecessary reporting.

The Criminal Referral Form has two formats—a short form (CC-8010-08) and a long form (CC-8010-09). It is estimated that the short form will be used for 95% of the reports submitted.

The short form requires a bank to report the basic facts of the suspected crime: the approximate date and dollar amount of loss, the type of crime (embezzlement, check kiting, etc.), a brief summary of the violation, the identity of any person suspected, and the location of the offices to which the report is being sent. An expanded and more detailed report (the "long form") is required when the amount exceeds $10,000, or for any loss involving a bank insider (i.e., executive officer, director, or principal shareholder).

Failure to file reports required by the proposed rule could form the basis for civil money penalties against the bank, its officers, and its directors.

If a question exists as to whether to report an incident, the OCC recommends that a report be submitted. For example, a customer's pattern of cash deposits of just under $10,000 would not trigger the currency reporting requirements of 31 CFR Part 103, yet may indicate the existence of a money-laundering operation. Additionally, banks are free to report any potential violation, regardless of amount, either to federal, state or local authorities, whenever a violation of federal or state law is suspected.

Banks are also encouraged to telephone the appropriate authorities in situations which dictate an immediate notification, such as when a witness or evidence is likely to disappear. In such cases, the referral is to be documented by completion of the referral form.

The proposed rule provides for an exception to the reporting requirements for robberies, burglaries, and non-employee larcenies. This exception is provided because of an existing recordkeeping requirement in § 21.5(c). Under 21.5(c), a national bank is required to maintain a record of each robbery, burglary, or non-employee larceny committed or attempted at any of its banking offices. The record may be a copy of a police, insurance or similar report, or the bank's own record. Nothing contained in the proposed rule is intended to alter or eliminate the recordkeeping requirements of § 21.5(c).

Prior to October 6, 1981, § 21.5 also required a national bank to report each such instance to the OCC on Form CC-9030-02. This reporting requirement was eliminated because the limited benefits obtained from such reports did not justify the reporting burden on banks. 46 FR 49104 [October 6, 1981]. A national bank continues to be under an obligation to report robberies, burglaries, and larcenies to the appropriate law enforcement authorities.

How the Proposed Rule Differs From Current Procedure

National banks already report suspected crimes pursuant to § 7.5225. Proposed §21.11 requires the use of a criminal referral form and provides a uniform method for reporting. It is estimated that the short form will take less time to complete than preparing an original letter in each case. While the long form calls for more information than formerly was required for insider crimes and for crimes involving amounts of $10,000 or more, recent statistics gathered by the OCC indicate that only about 4% of the reported crimes involved more than $10,000, and that a very small proportion involved insiders. Further, a bank usually needs to gather such information in order to make an insurance claim, or in due course to prepare for prosecution.

This proposed rule eliminates the requirement that a bank send a report to its bonding company. These reports are a matter of the contractual agreement between the bank and the bonding company.

This proposed rule allows banks up to seven days to investigate and resolve mysterious disappearances and unexplained shortages before they are reported. Mysterious disappearances and unexplained shortages are frequently caused by clerical errors which are discovered and corrected. If the bank's investigation reveals that criminal activity was involved, then the incident must be reported even if it has been corrected.

The title of proposed §21.11 differs from that of § 7.5225 (removal proposed). The title "Defalcations by Employees" has been changed to "Reports of Suspected Crimes." The former title was too limited since activities which involve bank funds, such as check kiting operations, are embraced by the regulation whether perpetrated by outsiders or bank employees.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354m, 5 U.S.C. 601) it is certified that this notice of proposed rulemaking, if adopted as a final rule, will not have a

significant economic impact on a substantial number of small entities.

Executive Order 12291

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

List of Subjects in 12 CFR Parts 7 and 21

National banks, Criminal referrals, Insider abuse, Theft, Embezzlement, Check kiting, Defalcations.

Authority and Issuance

For the reasons set out in the preamble, Parts 7 and 21 of Chapter I of Title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 7—[AMENDED]

1. The authority citation for 12 CFR Part 7 is revised to read as follows:

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

§ 7.5225 [Removed]

2. Part 7 is amended by removing § 7.5225.

PART 21—[AMENDED]

3. The authority citation for 12 CFR Part 21 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 1818, as amended, and 1881–1884.

4. The title of Part 21 is revised to read as follows:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES AND REPORTS OF CRIMES AND SUSPECTED CRIMES

5. Sections 21.0 through 21.7 are designated "Subpart A—Minimum Security Devices and Procedures".

6. The title of § 21.0 is revised to read as follows:

* * * * *

§ 21.0 Purpose and scope of Subpart A.

7. New Subpart B consisting of § 21.11 is added to read as follows:

Subpart B—Reports of Crimes and Suspected Crimes

§ 21.11 Reports of Suspected Crimes.

(a) *Purpose.* This subpart applies to known or suspected crimes against national banks. This subpart ensures that the appropriate parties are notified when unexplained losses and known or suspected criminal acts are discovered. Based on these reports, OCC maintains a data base for monitoring the types and extent of crimes against banks.

(b) *Report required.* A national bank shall file Criminal Referral Form CC–8010–08 or CC–8010–09 in accordance with the instructions on the form. Copies are sent to the OCC District Administrator for the bank's district, the nearest office of the FBI, and the U.S. Attorney for the bank's district. A report is required in case of:

(1) Any known or suspected theft, embezzlement, check kiting operation, misapplication, or other defalcation involving bank personnel or bank funds in any amount.

(2) Any known or suspected criminal violation of any section of the United States Code or applicable state statutes involving the affairs of the bank.

(3) Any mysterious disappearance or unexplained shortage of bank funds or other assets of $1,000 or more which is not located by the bank within seven business days.

(c) *Exemptions.* Robberies, burglaries, and nonemployee larcenies which are explicitly covered by the recordkeeping requirements of § 21.5(c) are exempt from the reporting requirements of this section.

(d) *Notification to Board of Directors.* The chief executive or other appropriate bank officer shall notify the board of directors not later than at their next meeting, of the filing of any report hereunder.

(e) *Penalty.* Failure to file reports may subject the bank, its officers and directors to civil money penalties.

Dated. July 23, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85–20448 Filed 8–27–85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ANM-15]

Proposed Alteration of VOR Federal Airways V-269 and V-357; Oregon

Correction

In FR Doc. 85–19667, beginning on page 33352 in the issue of Monday, August 19, 1985, make the following correction:

On page 33353, second column, in amendatory instruction 2, "Section 71.23" should have read "Section 71.123".

BILLING CODE 1505-01-M

14 CFR Parts 71 and 73

[Airspace Docket No. 84-ANM-26]

Proposed Establishment of Restricted Area R-6714E; Yakima, WA

Correction

In FR Doc. 85–19670, beginning on page 33356, in the issue of Monday, August 19, 1985, make the following corrections:

On page 33356:

1. In the second column, in the heading, the Airspace Docket number should have read as set forth in the heading of this document.

2. In the third column, in the fifth line, "No. 85–" should read "No. 84–".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 842 3048]

Federated Department Stores, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Cincinnati, Ohio retailer and its division operating 14 department stores in Texas (Foley's), among other things, to inform rejected credit applicants if it used information from credit reporting agencies as a basis for denying credit, and the name and address of the credit reporting agencies used. The agreement would require respondents to comply with the provisions of the Fair Credit Reporting Act, and is binding on all of Federated's divisions. Additionally, Foley's would be required to review all credit applications rejected between January 1983 and February 1985 and send appropriate FCRA notices to all consumers who did not receive them.

DATE: Comments must be received on or before October 28, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kristen L. Malmberg, Dallas Regional Office, Federal Trade Commission, 8303 Elmbrock Dr., Dallas, TX 75247. (214) 767–7050.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Consumer credit, Trade practices.

Before Federal Trade Commission

[File No. 842-3048]

Agreement Containing Consent Order to Cease and Desist

In the Matter of FEDERATED DEPARTMENT STORES, INC., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Federated Department Stores, Inc., a corporation, and it now appearing that Federated Department Stores, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Federated Department Stores, Inc., by its duly authorized officer, and its attorney, and counsel for the Federated Trade Commission that:

1. Proposed respondent Federated Department Stores, Inc. is a corporation, organized, existing and doing business under and by virture of the laws of the State of Delaware, with its office and principal place of business located at Seven W. Seventh Street, Cincinnati, Ohio 45202. Foley's is a division of proposed respondent. Foley's principal office and place of business is located at 1110 Main Street, Houston, Texas 77002.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the proposed respondent, and the proceeding is in the public interest.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to settle or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim it may have under the Equal Access to Justice Act, 5 U.S.C. 50 *et seq.*

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission, pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions: For the purpose of this order the following definitions are applicable:

A. The term "consumer," "consumer report," "consumer reporting agency," and "person" shall be defined as provided in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

B. The term "no file response" shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given credit applicant indicating that the consumer reporting agency has no credit history information in its files under the name and/or other identifiers supplied by respondent.

C. The term "information" shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency reflecting slowly paid or delinquent credit obligations, garnishment, attachment, foreclosure, repossession, bankruptcy, suits or judgments, inquiries from creditors, an insufficient number of accounts reported, the absence or presence of certain types of credit accounts, the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit or insufficient positive information to meet such criteria.

I

It is hereby ordered that respondent Federated Department Stores, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any application by a consumer for credit that is primarily for personal, family or household purposes, do forthwith cease and desist from:

1. Failing, whenever such credit is denied wholly or partly or the charge for such credit is increased wholly or partly because of any information contained in a consumer report from one or more consumer reporting agencies (including

a "no-file response"), to disclose to the applicant a) that the adverse action was based wholly or partly on information contained in such consumer report or reports and b) the name and address of each consumer reporting agency that made such a report as required by section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

2. Failing to review each application for consumer credit as to which Foley's took adverse action between January 1, 1983, and February 4, 1985, to identify each of those applications as to which such adverse action was taken based wholly or partly upon information obtained from a consumer reporting agency.

3. Failing, within ninety (90) days of the date of service of this Order, for each application identified according to paragraph 2 above, to send, as specified herein, the applicant a copy of the letter attached hereto as Appendix A or B, as applicable, and described herein. The letter shall be on Foley's letterhead and shall show the name and address of the applicant as shown on the application and the date of mailing. The letter shall disclose the name and address of the cosumer reporting agency or agencies supplying the report(s) containing the information on which the adverse action was based. A letter need not be sent to any applicant whose application was identified pursuant to paragraph 2 of this Order, if the application file clearly shows that Foley's has previously sent the applicant an adverse action notification that complied in all respects with the provisions of paragraph 1 of this Order, nor to any applicant who subsequent to the adverse action on such application was granted credit by Foley's. Nothing in this Order shall prohibit respondent from adding a paragraph to Appendices A and B that resolicits the previously rejected applicants if, preceding such paragraph, respondents insert the following language: "You may want to check your file at the credit bureau mentioned above to make sure it is accurate and complete before reapplying."

II

It is further ordered that respondent shall maintain for at least three (3) years, and upon request make available to the Federal Trade Commission for inspection and copying, documents that will demonstrate compliance with the requirement of this Order, except that consumer application files need only be kept for the period required by § 202.12 of Regulation B. 12 CFR 202.12. Such documents include, but are not limited to all credit evaluation criteria instructions given to employees regarding compliance with the provisions of the Order, any notices provided to consumers pursuant to any provision of this Order, and the complete application file to which they relate.

III

It is further ordered that respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order. This provision shall remain in effect for a period of four (4) years from the date of this Order.

IV

It is further ordered that Foley's shall deliver a copy of this Order to cease and desist to all present employees engaged in reviewing or evaluating consumer reports in connection with applications for credit to be used for personal, family or household purposes, or engaged in preparing of furnishing notices to consumers as required by this Order. In addition, respondent shall deliver a copy of this Order to all present and future credit managers of each division, at least once per year, for a period of four (4) years from the date of this Order.

V

It is further ordered that the respondents herein shall within one hundred fifty (150) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Appendix A

Dear Customer: Our records show that Foley's denied your application for consumer credit sometimes after January 1, 1983. The Fair Credit Reporting Act gives persons denied consumer credit the right to be informed at the time credit is denied whether the denial was based on information supplied by a consumer reporting agency and, if so, the name and address of such agency. Credit Reports provide a variety of information to creditors, including information about how many and what type of credit accounts you have.

Consistent with an agreement we have made with the Federal Trade Commission, we have reviewed your application file. Our records show that we may not have informed you that we obtained a credit report in which we were advised by the consumer reporting agency that it showed no credit history for you. The consumer reporting agency from which we obtained the report is:

(Name of Consumer Reporting Agency)

(Street Address)

If you want more information about the federal credit laws, write the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Thank you.

Appendix B

Dear Customer: Our records show that Foley's denied your application for consumer credit sometime after January 1, 1983. The Fair Credit Reporting Act gives persons denied Consumer credit the right to be informed at the time credit is denied whether the denial was based on information supplied by a consumer reporting agency and, if so, the name and address of such agency. Credit reports provide a variety of information to creditors, including information about how many and what type of credit accounts you have.

Consistent with an agreement we have made with the Federal Trade Commission, we have reviewed your application file. Our records show that we may not have informed you that your Foley's application was denied wholly or in part because of your information contained in a credit report. The consumer reporting agency (or agencies) that furnished the report is (are) identified below:

(Name of Consumer Reporting Agency)

(Street Address)

If you want more information about the federal credit laws, write the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Thank you.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Federated Department Stores, Inc. (Federated), 7 West Seventh Street, Cincinnati, Ohio.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that Federated, through its Foley's division, violated section 615(a) of the Fair Credit Reporting Act by failing to advise certain rejected applicants of the name and address of consumer reporting agencies that furnished reports on these applications. The applicants who were denied credit, but were not given the

required FCRA notice, fall into of two classes described below:

1. The applicants were denied credit by Foley's and the denial was based in whole or in part on a no credit file report furnished by a consumer reporting agency; or

2. The applicants were denied credit by Foley's and the denial was based in whole or in part on information contained from more than one consumer reporting agency.

To remedy the alleged FCRA violations, the proposed consent agreement requires that a letter be sent to those rejected applicants falling into the above classes who applied during the time period from January 1, 1983, until February 4, 1985. This letter will advise each rejected applicant of the name and address of each particular consumer reporting agency which supplied the information. Further, Federated Department Stores, Inc. will be enjoined from future violations of section 615(a) of the Fair Credit Reporting Act.

The intent of the proposed consent order is to remedy past violations and to prevent future violations of the Act.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-20517 Filed 8-27-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Subpart L—Resources and Exclusions; Exclusion of Underpayments From Resources

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The proposed regulation reflects the provisions of section 2614 of Pub. L. 98-369, the Deficit Reduction Act of 1984, which amended section 1613(a) of the Social Security Act (the Act). Section 2614 provides for the excluding title XVI and title II retroactive payments from resources for 6 months following the month of receipt. A written notice of the 6-month exclusion limitation must be sent to the recipient at the same time as the retroactive payment.

DATES: We are inviting public comments on this Notice of Proposed Rulemaking. If we receive your comments no later than October 28, 1985, they will be considered in developing the final regulation.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7463.

SUPPLEMENTARY INFORMATION: Section 1613(a) of the Act specifies a list of exclusions to be used in determining the resources of an individual (and eligible spouse, if any). The existing regulations are silent concerning the exclusion of retroactive payments. Operating instructions interpreting the Act provided that, prior to October 1, 1984, the effective date of section 2614 of Pub. L. 98-369, retroactive Supplemental Security Income (SSI) payments were not counted as resources for 3 months following the month of receipt. Retroactive title II payments resulting from the Secretary's April 13, 1984, decision to suspend the continuing disability review process were not counted as resources for 3 months following the month of receipt.

Section 2614 of Pub. L. 98-369 adds a resource exclusion to section 1613(a) of the Act. Effective October 1, 1984 the amount of any title XVI or title II underpayment due for one or more prior months is excluded from resources for 6 months following the month of receipt. (It is our practice to use the term "retroactive payment" for the types of underpayments addressed by this amendment. Under our current regulations at 20 CFR 416.536, and for purposes of this exclusion, "underpayments" include federally administered State supplementary payments.) The exclusion applies to retroactive payments received by an individual (and spouse, if any) and by any other person whose resources are deemed to the individual. A written notice of the 6-month exclusion limitation will be given to the recipient when the payment is made.

The 6-month exclusion applies only to the funds from the title II or title XVI retroactive payment. The exclusion gives recipients time to use the funds from past benefits due to pay bills which may have accumulated because the recipient had no means with which to discharge his or her financial obligations. Once the money from the retroactive payment is spent, the exclusion no longer applies to items purchased with the money unless those items are otherwise excluded, even if the 6-month period has not yet expired. As long as funds from the retroactive payment are not spent, they are excluded for the full 6-month period.

To be consistent with the treatment of other excluded funds, we are requiring that money from the retroactive payment be kept identifiable from other resources. If the retroactive payment funds cannot be distinguished from other resources, they will be counted toward the nonexcludable resources limit as described in § 416.1205.

This proposed regulation adds 20 CFR 416.1233 to reflect the new exclusion from resources. We also added a reference to 20 CFR 416.1233 to the list of exclusions from resources found in 20 CFR 416.1210.

Regulatory Procedures

Executive Order 12291

This proposed regulation has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation because it will not have an annual effect on the economy of $100 million and will not cause increases in costs or prices. Therefore, a regulatory impact analysis is not required. We estimate that the program costs of implementing section 2614 of Pub. L. 98-369 will be less than $1 million per year and the administrative costs will be insignificant.

Regulatory Flexibility Act

We certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities because this rule affects only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This proposed regulation imposes no additional reporting or recordkeeping

requirements requiring the Office of Management and Budget clearance.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program.)

Dated: April 2, 1985.

Martha A McSteen,

Acting Commissioner of Social Security.

Approved: July 24, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subpart L of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart L of Part 416 continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f) and 1631(d) of the Social Security Act, as amended; 49 Stat. 647, as amended; 86 Stat. 1465, 1466, 1468, 1470, and 1473; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c(f) and 1383(d), unless otherwise noted.

2. In § 416.1210, the introductory text of the section is set out for the convenience of the reader and a new paragraph (m) is added to read as follows:

§ 416.1210 Exclusions from resources; general.

In determining the resources of an individual (and spouse, if any) the following items shall be excluded:

* * * * *

(m) Title XVI or title II retroactive payments as provided in § 416.1233.

3. Section 416.1233 is added to read as follows:

§ 416.1233 Exclusion of underpayments from resources.

In determining the resources of an individual (and spouse, if any), we will exclude from resources for 6 months following the month of receipt any title XVI retroactive payment that meets the definition of "underpayment" in § 416.536 of this part, or title II retroactive payment, which is due for 1 or more prior months and is received on or after October 1, 1984. This exclusion also applies to the resources of any other person whose resources are deemed to the individual (or spouse). This exclusion applies only to the funds from the title XVI or title II retroactive payment. Once the money from the retroactive payment is spent, the exclusion no longer applies to items purchased with the money unless those itmes are otherwise excluded under this part, even if the 6-month period has not expired. As long as funds from the retroactive payment are not spent, they are excluded for the full 6-month period. Money from the retroactive payment must be identifiable from other resources. If the funds from the retroactive payment are commingled with other funds so as to lose their identify, the retroactive payment funds will be counted toward the nonexcludable resources limit as described in §416.1205. We will give a written notice of the 6-month exclusion limitation to the recipient when we make the payment.

[FR Doc. 85-20545 Filed 8-27-85; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Alaska Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Alaska to amend its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed program amendment consists of proposed provisions to implement a blaster training, examination and certification program as required by 30 CFR Part 850.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on September 27, 1985 will not necessarily be considered. A public hearing on the proposal will be held on September 23, 1985 at the location listed below under **"SUPPLEMENTARY INFORMATION"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. Gene Filer, Acting Director, OSM Casper Field Office, by 4:00 p.m. on September 12, 1985. If no one has contacted Mr. Filer to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Filer, a public meeting, rather than a hearing may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. Gene Filer, Acting Director, Casper Field Office, Office of Surface Mining and Reclamation and Enforcement, Freden Building, 935 Pendall Boulevard, P.O. Box 1420, Mills, Wyoming 82644.

The public hearing, if requested will be at 1:00 p.m. at the Alaska Department of Natural Resources, Division of Mining, Frontier Building, Room 1360, 3601 "C" Street, Anchorage, Alaska 99503. See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Alaska program amendment and administrative record on the Alaska program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Filer, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, P.O. Box 1420, Mills, Wyoming 82644; Telephone (307) 261-5824.

SUPPLEMENTARY INFORMATION: Copies of the Alaska program amendment, the Alaska program and the administrative record on the Alaska program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holiday;

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240.

Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendall Boulevard, Mills, Wyoming 82644.

Alaska Department of Natural Resources, Division of Mining, Pouch 7-016, Anchorage, Alaska 999510

The Alaska program was approved by the Secretary of the Interior on May 2, 1983, **Federal Register** (48 FR 12274). On May 28, 1985, the State of Alaska submitted to OSM, for informal review, a draft blaster certification amendment

to its approved permanent regulatory program. Alaska, on August 1, 1985, notified OSM that the informal draft submission was to be considered as Alaska's formal blaster certification program amendment submission. The proposed program amendment is intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. The proposed amendment consists of proposed regulations governing the standards for certification of blasters and material addressing proposed training and certification programs available for individuals interested in becoming certified blasters. A discussion of each area of concern is provided in an outline which follows the Federal regulations at 30 CFR Parts 816, 817, (use of explosives) and 850 (blaster certification) as published in the March 4, 1983 **Federal Register** (48 FR 9486). In accordance with the provisions of 30 CFR 732.17, OSM is seeking comments from the public on the adequacy of the proposed program amendment. If the proposed amendment is found by the Director to be in accordance with SMCRA and no less effective than the Federal regulations, the amendment will be approved and codified at 30 CFR Part 902 as part of the approved Alaska program.

Additional Determinations

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

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

The Department of the Interior has determined that this rule would 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 would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would 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 902

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

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

Dated: August 23, 1985.

Brent Wahlquist,

Acting Director, Office of Surface Mining.

[FR Doc. 85-20519 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC-011; A-4-FRL-2888-5]

North Carolina; Approval and Promulgation of Implementation Plans Malfunction Regulation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In response to EPA's request that states define their policy for handling excess emissions during periods of equipment malfunction, startup and shutdown, North Carolina has adopted a new regulation 15 NCAC 2D.0535. EPA is proposing to approve the major part of this regulation which deals with excess emissions during equipment malfunctions. The approvable portion of the rule (15 NCAC 2D.0535(a)-(f)), was submitted to EPA on January 24, 1983, and is consistent with EPA's policy on excess emissions caused by malfunctioning equipment. Paragraph (g) of the rule deals specifically with startups and shutdowns and was submitted to EPA on April 17, 1984. EPA is proposing to disapprove 2D.0535(g) because it is inconsistent with EPA's policy on excess emissions during periods of startup and shutdown. EPA is also proposing to approve the repeal of 2D.0904 which covered malfunctions, breakdowns and upsets for VOC sources. The essence of this rule has been incorporated into the new malfunction regulation. The effect of the portion of the new regulation concerning malfunctions will be to require sources in the State to report excess emissions to the State agency and provide a demonstration that those exceedances could not have been avoided. In the event an adequate justification is not submitted, the excursions will be treated as violations of the State Implementation Plan (SIP) and enforcement action could ensue.

DATES: To be considered, comments must be submitted by September 27, 1985.

ADDRESSES: Written comments should be addressed to Janet Hayward of EPA Region IV's Air Management Branch (see Regional IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Division of Environmental Management, North Carolina Department of Natural Resources & Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV Air Management Branch at the above address and telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: Occasionally air pollution sources may experience excessive emissions due to unforeseen malfunctions, equipment breakdowns, or routine maintenance, startups and shutdowns. EPA recognizes that some types of exceedances are unavoidable and has adopted a policy which permits states to use enforcement discretion and to excuse excess emissions if they occurred under certain circumstances. Memoranda from former Assistant Administrator Kathleen Bennett to the Regional Administrators, dated September 28, 1982, and February 15, 1983, describe that policy as well as the rationale behind it. The policy permits the exercise of enforcement discretion with respect to excess emissions during malfunctions, provided the source adequately shows that the criteria specified in the policy have been satisfied. The policy also provides that excess emissions during startup and shutdown be treated as violations, unless the source adequately shows that the excess emissions could not have been prevented through careful planning and design, and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury or severe property damage.

Submittal and Regulatory History

In response to EPA's request that the State define its policy for handling excess emissions, North Carolina has developed a new regulation titled 15 NCAC 2D.0535—*Malfunction, Startup and Shutdown.* This rule was submitted,

to EPA for approval on January 24, 1983. At that time North Carolina also requested that EPA approve the repeal of regulation 2D.0904 (Malfunctions, Breakdowns and Upsets for VOC sources) which would be superseded by the new malfunction rule.

On December 21, 1983 (48 FR 56412), EPA proposed to disapprove the entire regulation because paragraph (g) was not consistent with EPA's "Policy on Excess Emissions During Startup, Shutdown, Maintenance and Malfunction." (See memorandum from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation to Regional Administrators I–X, dated February 15, 1983.) Paragraph (g) dealt solely with excess emissions during periods of startup and shutdown and stated that those emissions would not be considered violations. This automatic exemption was clearly unacceptable to EPA.

Because North Carolina desired to have a fully approvable regulation, they developed alternative language to address emissions during startups and shutdowns. A revised version of paragraph (g) was adopted by the Environmental Management Commission and submitted to EPA for approval on April 17, 1984. This new paragraph superseded the original version previously submitted on January 24, 1983.

The revised paragraph (g) continued to provide automatic exemptions for emissions excursions that occurred during startup and shutdown. The rule labeled excess emissions as violations only if the source could not demonstrate that the emissions were unavoidable when requested to do so. Exceedances were not required to be reported, however, so unless the director was notified, he would not request a demonstration. EPA feels this language would provide for automatic exemptions in an unlimited number of cases.

EPA communicated this position to North Carolina and the State indicated they would again attempt to revise paragraph (g) to satisfy EPA's concerns. For this reason, action on 2D.0535 was deferred in the October 17, 1984, notice of proposed rulemaking (49 FR 40607).

On October 4, 1984, North Carolina sent a letter to EPA which stated that they would not further revise their malfunction rule. The State felt that changing their startup and shutdown provisions to make them acceptable to EPA, would render them unmanageable at the state level. Therefore, the State asked that EPA reverse its original proposed disapproval of the entire regulation. If EPA could not approve the regulation as a whole, North Carolina requested that EPA approve all of 2D.0535 with the exception of paragraph (g).

Severability.

EPA has determined that 2D.0535(g) is severable from the remainder of the rule, because it is completely independent of paragraphs (a)–(f).

Public Comment

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Interested parties may submit written comments to the address listed above. Since EPA has previously proposed action on this regulation, several comments have already been received. All comments submitted during the present comment period, as well as those already received, will be considered in conjunction with the final rulemaking.

Proposed Action

EPA has reconsidered its original proposed disapproval of 2D.0535. The Agency believes that paragraphs (a) through (f) of the malfunction rule are largely consistent with EPA's excess emissions policy. Therefore, EPA is proposing to approve 2D.0535(a)–(f) as submitted on January 24, 1983. It should be noted that EPA is not proposing approval in advance any determination made by the State under paragraph (c), that a source's excess emissions were in fact unavoidable and excusable under the State's rule, but rather is proposing approval only of the procedures and criteria in paragraph (c). Thus, EPA would retain its authority to independently determine whether an enforcement action is appropriate in any particular case. EPA is also proposing to approve the repeal of 2D.0904 which is replaced by the new regulation.

EPA maintains its position on the unapprovability of 2D.0535 (g) and is proposing to disapprove only paragraph (g) of the regulation, which was submitted on April 17, 1984.

It should be noted that SIPs are not required to have provisions specifying how a state may exercise its enforcement discretion with respect to excess emissions during malfunctions and startups and shutdowns.

Further details supporting EPA action on North Carolina's malfunction rule are discussed in the technical support document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709.) EPA's disapproval of 2D.0535 (g) will not have a significant economic impact because it will simply maintain the status quo.

Under Executive Order 12291, today's action is not 'major'. It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: June 27, 1985.

Sanford W. Harvey, Jr.,

Acting Regional Administrator.

[FR Doc. 85–20576 Filed 8–27–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Fire Suppression Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: FEMA has determined that certain administrative changes should be made in the Fire Suppression Assistance regulations under section 417 of the Disaster Relief Act of 1974, Pub. L. 93–288. The changes are intended to clarify some provisions in existing regulations and add other provisions to update the regulations.

DATE: Comments due date October 28, 1985.

ADDRESS: Send comments to Rule Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Gene Morath, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW, Washington, DC 20472, Telephone (202) 646–3683.

SUPPLEMENTARY INFORMATION: The changes are, essentially, administrative in nature designed to (1) eliminate the requirement for an annual update of the FEMA-State Agreement for Fire Suppression Assistance (section 101), (2) retitle the Reimbursement section (104) to read Cost Eligibility and clarify portions of the cost eligibility section, (3) allow the use of reasonable State equipment rates instead of requiring the use of FEMA rates [section 104(b)], (4) comply with the Single Audit Act of 1984, Pub. L. 98–502 [section 105(d)], and (5) add a new section (103) entitled

"Grant Administration" applicable to the administration of fire suppression assistance grants.

Environmental Considerations

FEMA regulations at 44 CFR Part 10, Environmental Conservations, which implement the National Environmental Policy Act (NEPA) regulations, sets forth the determination that Fire Suppression Assistance authorized under section 417 of the Disaster Relief Act of 1974, 42 USG 5187 is entitled to a categorical NEPA exclusion. See 44 CFR 10.8(c)(3)(vii)(F). In addition, 44 CFR 10.8(c)(2)(i) states that the preparation of regulations, manuals, and other guidance related to an action which qualifies for categorical exclusion are also categorical exclusions. Thus, the preparation of an environmental assessment for the issuance of these regulations is not required.

Executive Order 12291, "Federal Regulations

This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more.

The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

The information collection require contained in this rule has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has been assigned OMB control number 3067-0066.

List of Subjects in 44 CFR Part 205

Disaster assistance, Grants programs Housing and Community Development.

Accordingly, Chapter 1 of Title 44, Code of Federal Regulations is proposed to be amended by revising subpart G to Part 205 to read as follows:

PART 205—[AMENDED]

* * * * *

Subpart G—Fire Suppression Assistance

Sec.
205.100 General.
205.101 FEMA-State agreements.
205.102 Request for assistance.
205.103 Providing assistance.
205.104 Cost Eligibility.
205.105 Grant administration.

Authority: 42 U.S.C. 5201 Reorganization Plan No. 3 of 1978, and E O. 12148.

Subpart G—Fire Suppression Assistance

§ 205.100 General.

When the Associate Director determines that a fire or fires threaten such destruction as would constitute a major disaster, assistance may be authorized, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 205.101 FEMA-State agreements.

Federal assistance under section 417 of the Act is provided in accordance with a continuing FEMA-State Agreement for Fire Suppression (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions, consistent with the provisions of applicable laws, Executive orders, and regulations, as the Associate Director may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed as required to update the continuing Agreement.

§ 205.102 Request for assistance.

When a Governor determines that fire suppression assistance is warranted, a request for assistance may be initiated. Such request shall specify in detail the factors supporting the request for assistance. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a telephone request to the Regional Director, promptly followed by a confirming telegram or letter.

(Approved by the Office of Management and Budget under the Control Numbers 3067-0066.)

§ 205.103 Providing assistance.

Following the Associate Director's decision on the State request, the Regional Director will notify the Governor and the Federal firefighting agency involved. The Regional Director may request assistance from Federal agencies if requested by the State. For each fire or fire situation, the State shall prepare a separate Fire Project Application based on Federal Damage Survey Reports and submit it to the Regional Director for approval.

§ 205.104 Cost eligibility.

(a) To be eligible under a FEMA grant, costs must meet the following general criteria:

(1) Be necessary and reasonable for proper and efficient administration of the approved work, be allocable thereto under these regulations, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

(2) Be authorized or not prohibited under State or local laws or regulations.

(3) Conform to any limitations or exclusions set forth in these regulations, Federal laws, or other governing limitations as to types or amounts of cost items.

(4) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

(5) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(6) Not be allocable to or included as a cost of any other federally financed program.

(7) Be net of all applicable credits which offset or reduce otherwise eligible cost, including discounts, insurance recoveries, and salvage.

(b) Eligible State costs are reimbursed in accordance with the terms and provisions of the Agreement. Only certain costs incurred in fire suppression operations are eligible for reimbursement. The following paragraphs describe those specific items which are clearly eligible or clearly ineligible.

(1) Eligible costs of the State consist of the following costs reasonably and directly related to fire suppression:

(i) All compensation for employees, except as noted under paragraph (b)(2)(i) of this section, directly engaged in authorized fire suppression activities. Included are field support personnel, such as cooks, guards, timekeepers, and supply personnel.

(ii) Travel and per diem costs for employees directly engaged in fire suppression activities.

(iii) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.

(iv) Cost for use of publicly owned equipment used on eligible fire suppression work based on reasonable State equipment rates.

(v) Cost of use of privately owned equipment based on the rental rate: Provided such costs are comparable to the going rate for the same or similar equipment in the locality, as determined by the Regional Director.

(vi) Cost to the State for use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State.

(vii) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.

(viii) Repair and reconditioning costs of tools and equipment used in eligible fire suppression activities.

(ix) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.

(x) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.

(xi) Mobilization and demobolization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.

(xii) Eligible costs of local governmental firefighting organizations which are reimbursed by the State pursuant to an existing cooperative mutual aid agreement, in suppressing an approved incident fire.

(xiii) State costs for suppressing fires on Federal land in cases in which the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis. This provision is an exception to normal FEMA policy under the Disaster Relief Act of 1974 and is intended to accommodate only those rare instances that involve State fire suppression of Section 417 incident fires involving commingled Federal/State and privately owned forest or grassland.

(2) Costs that are ineligible for reimbursement are:

(i) Any clerical or overhead costs other than field administration and supervision [see paragraph (b)(1)(i)].

(ii) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

(iii) any costs not incurred during the incident period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.

(iv) State costs for suppressing a fire on commingled Federal land where such costs are reimbursable to the State by a Federal agency under another statute (see 44 CFR Part 151).

(3) In those instances in which assistance under section 417 of the Act is provided in conjunction with existing Interstate Forest Fire Protection Compacts, eligible costs are reimbursed in accordance with eligibility criteria established in this section.

§ 205.105 Grant Administration.

(a) Project administration including audit shall be in accordance with applicable portions of Subpart H, 44 CFR 205. All grants for fire suppression assistance shall be approved as categorical grants.

(b) Each claim for reimbursement shall be supported by auditable documentation and shall include a program review and a certification by the State that the assistance and costs claimed are eligible under these regulations.

(c) In those instances in which reimbursement includes State fire suppression assistance on commingled State and Federal lands (section 205.104[b](1)(xiii)], the Regional Director shall coordinate with other Federal programs to preclude any duplication of payments. See 44 CFR Part 151.

(d) Audits shall be in accordance with the Single Audit Act of 1984, Pub. L. 98-502.

(e) Payment is made to the State for its actual eligible costs, subject to verification, as necessary, by Federal review, inspection and audit.

(f) A State may appeal a determination by the Regional Director on any action related to Federal assistance for fire suppression. Appeal procedures are contained in 44 CFR 205.120.

Dated: July 31, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-20492 Filed 8-27-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 83-1230; FCC 85-369]

International Communications Policies

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission is issuing proposed policies with respect to three issues involving the implementation of its Second Computer Inquiry in the international market: (1) Requests for designation of enhanced-service providers as recognized private operating agencies (RPOAs); (2) acquisition by users of indefeasible rights of user (IRUs) in submarine telephone cables; and (3) assignment of data network identification codes (DNICs) to United States data networks.

The three proposed policies are promulgated as a result of comments and proposals filed in response to the Commission's Notice of Inquiry in CC Docket No. 83-1230. That proceeding was instituted to develop policies to facilitate the extension of the Commission's Second Computer Inquiry into the international market.

DATES: Comments on the proposed policies are due on or before September 27, 1985, and reply comments are due on or before October 18, 1985.

ADDRESS: Pleadings on those issues should be submitted to: The Secretary, Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John F. Copes, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 63

International information Services Radio, Radio.

Notice of Proposed Rulemaking

In the Matter of International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes CC Docket No. 83-1230].

Adopted: July 12, 1985.

Released: August 19, 1985.

By the Commission.

This document is a summary of the full notice released by, and available from, the Commission.

1. By Notice of Inquiry (Notice) released December 22, 1983, 95 FCC 2d 627 (1983), we initiated this proceeding to develop policies and procedures to accommodate emerging competition in the international communications and information-services markets. More specifically, we requested comment from interested persons on three issues: (a) The need for policies governing conferral of recognized private operating agency (RPOA) status upon enhanced-service providers; (b) the desirability of a policy allowing enhanced-service providers and other non-carriers to acquire indefeasible rights of user (IRUs) in submarine cables; and (c) the need for a formal procedure governing the grant of data network identification codes (DNICs). In our Notice we discussed a number of potential benefits and detriments relating to each of the issues, requesting comment whether to adopt a formal policy with respect to

each issue and solicited suggestions as to appropriate procedures to implement such policies.

I. Issues

2. *RPA Status.* The issue with respect to RPOA status is whether enhanced-service providers are eligible to be designated as RPOAs. The ITU Convention defines an RPOA as "[a]ny private operating agency . . . which operates a public correspondence . . . service and upon which the obligations provided for in Article 44 of the Convention are imposed by the member in whose territory the head office of the agency is situated. . . ." International Telecommunication Union, International Telecommunication Convention, Annex 2, p. 149 (Edition Nairobi, 1982) [hereinafter cited as ITU Convention]. The Convention defines "private operating agency" as "[a]ny individual or company or corporation . . . which operates a telecommunication installation intended for an international telecommunication service or capable of causing harmful interference with such a service." *Id.* The issue arises because, under *Computer II,* we do not license or regulate providers of enhanced services. Some overseas administrations have indicated uncertainty whether the U.S. government "recognizes" such unlicensed enhanced-service providers, within the meaning of the Convention, and whether it will require such entities to obey the ITU Convention and regulations. As a result, foreign administrations are sometimes reluctant to enter into operating agreements with U.S. enhanced-service providers.

3. *Non-carrier Access to Transmission Facilities.* The issue with respect to non-carrier ownership of IRUs is whether we have the power to force carriers to sell IRUs to their customers. Nothing in the Communications Act bars IRU ownership of cables by non-carriers. The carrier owners of the cables, however, argue that we may not, under the Fifth Amendment to the U.S. Constitution, force them to sell IRUs to non-carriers. Allowing non-carriers cable IRUs would be consistent with our pro-competitive policies and could yield a number of public-interest benefits. For example, non-carrier IRUs could allow users to lower their costs for communications and give them greater service flexibility. We also, however, identified a number of potential drawbacks to a policy of non-carrier IRUs. Most particularly, we indicated that we must assure that allowing enhanced-service providers to own IRUs would not deprive us of any necessary control over use of such IRUs.

4. *DNICs.* The DNIC is a four-digit number used under CCITT Recommendation X.121 to identify particular public data networks and to route data traffic to subscribers attached to such networks. The first three digits of a DNIC constitute the Data Country Code (DCC) which identifies the region of the world and country in which the network is located. The first digit of the DCC indicates the region as numbered by the CCITT (the United States is in Region 3 which covers North America and the Caribbean basin). The next two digits of the DCC identify countries within the region (the United States has been assigned seven DCCs from 310–316). The fourth or last digit of the DNIC is known as the network identifier and indicates a particular network within a country identified by the DCC. Because all DCCs in the North American/Caribbean region must begin with the number 3, only 100 are available for use for all countries therein. Because the DNIC consists of only four digits and because the number of DCCs available for U.S. use is limited, it is likely that there will not be enough DNICs to allow us to assign a separate DNIC to every U.S. network with a need for one. As a result, we observed in our Notice that we might now plan for some way to deal with this potential scarcity so that we could assure that DNIC assignments best serve the public interest.

5. In the United States responsibility to administer the X.121 (DNIC) numbering plan resides ultimately with the Department of State as the U.S. Signatory to the Convention, but the Department has delegated the Commission authority to make specific DNIC assignments. In carrying out that function, we have assigned 36 DNICs on a "first-come, first-served basis" to carrier and enhanced-service-provider networks which originate and terminate international data traffic. In view of the potential scarcity, we questioned the continued viability of such a policy and sought alternatives. We also recommended one possible alternative: a "marketplace" allocation methodology based on either a lottery or an auction, which would operate without the need for Commission action.

II. Discussion

6. We tentatively conclude that the public interest will be served by a liberal policy of granting RPOA status to enhanced-service providers, a policy requiring carriers to sell non-carrier entities IRUs in the carriers' submarine cables, and adoption of a formal DNIC-assignment process which would rely upon shared DNICs.

7. *RPOA Status.* We believe that a policy permitting eligible enhanced-service providers to be designated as RPOAs may assist them in obtaining operating agreements from overseas administrations. Enhanced-service providers could generally meet the standards in the definition of an RPOA. The use of the term "public correspondence" in the definition of RPOA does not require that the entity be a "common carrier" or that it hold out service to the public indiscriminately. Rather, public correspondence is used as a synonym for "telecommunications services" to distinguish message services offered to the public—*i.e.,* the kinds of services offered by an administration—from "data processing"—which is not construed as a public offering. An entity eligible for RPOA status is, therefore, an entity which offers a message service to the public; whether the provider is licensed as a common carrier or is an unlicensed enhanced-service provider. The enhanced services under U.S. law which the ITU would treat as message services include packet switching, code and protocol conversion or other services which act upon the form but not the content of the subscriber's information, and electronic mail or other "store and forward" services.

8. RPOA designation is not required to assure compliance with the ITU Convention and regulations. The United States, as a signatory to the ITU Convention, has undertaken under Article 44 to assure that no U.S. citizen or resident acts in any way which would violate the rights of other signatories to the convention. However, if U.S. enhanced-service providers believe that obtaining designation as an RPOA would assist them in obtaining operating agreements, we have no objection to extending RPOA status to enhanced-service providers. Our only concern is that we do not wish an RPOA-certification process to become a substitute for common-carrier licensing or otherwise to impede the development of competition.

9. We find no express requirement in the Convention for a mandatory certification of enhanced-service providers as RPOAs. Enhanced-service providers who seek to operate internationally must first obtain an operating agreement. If an overseas administration is content to deal with a U.S. enhanced-service provider, without formal RPOA accreditation, we see no reason ourselves to require it. Rather, it is we tentatively conclude that it is sufficient to make RPOA status easily available to any enhanced-service

provider which seeks it. We also conclude that RPOA certification does not require the RPOA to join the CCITT. The only requirement in the Convention is that, if the RPOA elects to join the CCITT, that it pay its share of the costs thereof.

10. We also believe that there is no need for an elaborate RPOA-certification process. Rather, we propose to recommend to the Department of State that those seeking RPOA status be required to file an application with the Commission, patterned on § 63.03 of our Rules and Regulations, 47 CFR 63.03 (1984). Such an application would require the applicant to provide information relevant to RPOA certification: The applicant's name and place of incorporation, the nature of the service for which RPOA designation is sought, a statement that the applicant will offer the service internationally, a statement of its awareness of its obligations to obey the ITU regulations and Commission policies, and a certification that it will honor those obligations. Attached to this Notice of Proposed Rulemaking is a proposed rule setting forth the limited filing requirements for RPOA designation.

11. Upon the filing of the proposed application, we would review the submitted information. Notice to the public of the filing would be given in the Common Carrier Bureau's weekly notice of international applications filed, but we do not contemplate entertaining formal comments or petitions to deny. Persons who question whether the applicant is, in fact, offering a "public correspondence" may communicate their concerns informally by letter. Our staff would prepare a recommendation to the Department of State, which would then issue an appropriate document.

12. *Non-carrier IRUs.* We believe the allowing enhanced-service providers and other users to acquire IRUs in submarine cables will lower costs to users without adversely affecting the availability or quality of service to others, the viability of the carriers or our ability to control the use of the facilities.[1] As a result, we tentatively conclude that we should adopt a policy allowing voluntary sales to users of IRUs in unused capacity in submarine cables and to require sales of such IRUs if the carriers to not agree to do so.

13. The Fifth Amendment permits the government to take property so long as the person from whom the property is taken receives "just compensation" and so long as the taking is for a valid "public use." We would require users to reimburse AT&T or other carrier sellers fully and fairly for the reasonable value of all IRUs they are required to sell. The sale of IRUs to users required by our proposed policy would constitute a valid public use. Modern courts give a broad reading to the term "public use." The U.S. Supreme Court, in *Hawaii Housing Authority v. Midkift,* 104 S. Ct. 2321 (1984), held that the government has power to take property even if it ultimately inures to the benefit of a private interest so long as the taking is in furtherance of a valid public purpose. We conclude that the benefits of allowing non-carrier users to own their own transmission facilities would constitute a sufficient public purpose to justify mandatory sales of IRUs.[2]

14. The primary benefit we see from non-carrier IRUs is that the purchase of IRUs could allow users to reduce their cost of communications services and give them greater flexibility in tailoring their communications to their needs. Additionally, we believe that our policy could benefit even users who elect to continue to use carrier leased-channel service by exerting a downward pressure on leased-channel rates. Enhanced-service providers would especially benefit, since IRU ownership would guarantee them favorable access to facilities and allow them to pass their reduced facilities costs on to their users.

15. We also believe that requiring the carriers to sell IRUs to users would not threaten the viability of any carrier or otherwise adversely affect users. Our proposed policy would affect only the carriers' leased-channel services. A reduction in leased-channel revenues would not affect the costs or revenues of MTS, telex, or other services.

16. The potential detriments to carriers of requiring private IRU sales are also likely to be minor. To the extent the carriers' existing leased-channel customers elect to acquire IRUs the carriers' leased-channel revenues could be reduced.[3] The effect of such a reduction, however, is not likely to be of sufficient magnitude as to threaten the continued viability of the carriers or their ability to offer good-quality, economical service to their remaining customers. Leased-channel service represents less than 20 percent of the carriers' total international revenues and less than 10 percent of all curcuits in use. Even the loss of a substantial number of its leased-channel customers, would not threaten any carrier's existence. Furthermore, requiring sales of IRUs would increase neither the carriers' capital costs nor their operating expenses. The carriers would continue to receive monthly contributions from users who elect to acquire IRUs to cover the users' ratable shares of cable operating and maintenance expenses. Finally, the carriers will receive compensation from users for every IRU the carriers sell and can invest that payment in other activities. As a result, we believe that the net effect of our proposed policy on carriers is likely to be relatively minor and that it would be more than balanced by the benefit to users of increased choice.

17. We believe it clear that sales of IRUs would not deprive us of the authority to assure compliance with international regulations. We retain ample jurisdiction over cable IRUs and their operation by users under Title I of the Communications Act. Since cable circuits are now owned in undivided half interests by a U.S. entity (carrier) and an overseas administration, both parties must agree to any transfer of an IRU. As a result, we propose to make a sale of an IRU conditional upon the U.S. entity's obtaining agreement from the overseas entity. To assist the U.S. entity in obtaining such agreement we shall make clear in authorizing private IRUs that we retain full control to assure that the U.S. entity obeys all international regulations.

18. We have recently sought to introduce facilities competition. *See Tel-Optik, Ltd.,* FCC 85-99,—FCC 2d— (released April 5, 1985). If and when such alternative, non-common-carrier cable systems are introduced, users will have an alternative to the common-carrier cables and it may be less appropriate to require involuntary sales of IRUs. However, since we do not now know whether those systems will in fact be built, we must go forward with our policy proposal now. We shall, however, review the entire IRU-sales issue in no

[1] We here consider only the ability of users to acquire IRUs. We shall consider the issue of whether such users should be allowed in future cables to particiate as full owners at such time as we next consider an application for construction of a cable in which a non-carrier seeks ownership.

[2] We note that, in authorizing the TAT-8 cable we expressly conditioned our grant upon the possibility that we might decide to allow non-carrier IRUs. The cable participants have accepted that condition and have thus acceded to our right to order sales of circuits in that cable.

[3] It is also certain that requiring sales of private IRUs would in fact cause AT&T or other carriers to lose substantial numbers of their leased-channel customers. Purchasing an IRU would require the customer to enter into a long-term arrangement, under which it is obligated to contribute its ratable share of annual maintenance and operating expenses for the life of the cable, and to run the risk that its needs for communications might change before the end of the cable life. If the carriers price their leased-channel service attractively, many customers may elect to continue to take service from the carriers.

more than two years from the adoption of a final policy in this proceeding.

19. *DNICs.* We tentatively conclude that we develop policies to cope with the likely scarcity of DNICs. important function of the DNIC is routing. In a world of interconnected, automated data networks, it is vital to have a simple device for routing traffic from network to network. The routing function the DNIC performs is needed whether the traffic to be routed is domestic or international, particularly in a country such as the United States which has a competitive domestic communications market and a strong preference for customer routing. As a result, any DNIC-assignment plan we adopt as a result of this proceeding must permit the selection of all overseas and domestic interexchange networks needed to route a call from the origination to the called party. Not every network, however, needs its own DNIC—only those which operate their own overseas facilities and interact with overseas administrations. This is because Recommendation X.121 specifies that international routing must be accomplished by use of a DNIC (we cannot require an overseas administration to read more than the DNIC). Other networks can rely upon the DNIC of the network or networks with which they interconnect or share a DNIC. In either case, identification and routing can be accomplished through a DNIC and information contained in the subscriber's data number. U.S. switches can be programmed to route traffic solely from the information in the data number.

20. When multiple U.S. networks share a DNIC, since every such network does not interconnect with every other U.S. network, "routing ambiguities" can occur in which routing information in the four-digit DNIC is not sufficient to identify and allow switching of traffic to a particular network using the DNIC. As a result, attempts by an overseas PIT to make traffic to a U.S. network will fall, but not without first having tied up the administration's domestic network, the international networks of two nations and the domestic network of the United States, depriving other users of the use of the networks and failing to generate revenues. Thus, while we believe that a plan under which most destination and interexchange networks share a DNIC or DNICs (leaving individual DNICs for U.S. overseas networks) is the best longterm solution to the shortage of DNICs, we also believe that any such plan must be structured to eliminate or minimize routing ambiguities. This, in turn, seems to be possible only if every network sharing a DNIC is interconnected with each other and with every U.S. overseas network that serves any network using that DNIC.

Options

21. We put out for comment six particular proposals for a DNIC-assignment procedure.

Option 1

22. *First-Come, First-Served.* One approach would be to continue, as we have in the past, to assign DNICs on a first-come, first-served basis. Such an approach would certainly be fair and easy to administer by both the Department of State and this Commission. The problem is that this approach may, in the not-too-distant future, cause a shortage of DNICs. the only course we could follow in such an event would be to reallocate a DNIC from one entity to another, if the latter could demonstrate a greater need. Our experience has shown us that such a process is likely to be complicated and contentious. Thus, although we agree with the parties that we have the power to reassign DNICs, our experience indicates that such an undertaking would be difficult. Rather, we think the better course would be to seek a DNIC-allocation procedure which would avoid running out of DNICs.

Option 2

23. *Marketplace procedures.* Another approach, relying upon an auction or lottery to determine DNIC assignments, would also meet most of the objectives of the data numbering plan. Such an approach would be fair, since it would substitute objective price criteria for subjective comparative-worth criteria, and would assure that DNICs go to those who have the most need of them. A market approach would also be easy to administer. After the initial assignment the market would operate independently. Once the initial assignment of DNICs has been made by auction or lottery, data-network operators who need a DNIC would be free to negotiate with DNIC holders and to buy one. The DNIC is a business tool and of use only to an entity which can use it to serve customers and earn a profit. The more customers a network serves, or the more profit the operator believes it can use the DNIC to generate, the more the operator would be willing to pay for it. As a result, under a market approach, DNICs would go to those who have the most customers or those who can make the best economic use of them.[4] The market approach, however, cannot increase the number of DNICs available or assure that everyone who needs a DNIC can get one. Even under a market approach, some networks may be forced to negotiate arrangements to share DNICs. Because all U.S. networks are not interconnected, without preplanning, the market approach would not guarantee the absence of routing ambiguities.

Option 3

24. *National DNIC.* Another potential solution to the shortage of DNICs would be the creation of an alternative, "national DNIC," with significance only within the United States, to supplement the DNICs assigned under Recommendation X.121. A "national DNIC" would be a four-digit number beginning with 0, 1, 8 or 9, the digits not used for DNICs under X.121. Such a national DNIC could be used for routing purposes in the RPOA-selection field for networks who operate solely within the United States.[5] However, since overseas switches would not recognize the national DNIC, they could not use it to route traffic to U.S. networks. As a result, a purely domestic network operator which later decided to begin terminating international traffic, might at that time be required to acquire an X.121 DNIC and to renumber all their subscriber terminals. Further, because of the lack of nationwide interconnection, use of the national DNIC could still allow routing ambiguities to occur.

Options 4 and 5

25. *Shared DNICs.* Another way we might assure everyone access to a DNIC would be to require networks to share one or more X.121 DNICs. Two such sharing schemes have been proposed: the proposal by the United States Telephone Association (USTA) for one shared nationwide DNIC and the proposal made separately by several of the regional BOCs for several shared regional DNICs.

26. *The USTA Proposal (Option 4).* The USTA proposes that all operators of

[4] To prevent clear abuses, we would limit participants in the auction or lottery to those who are at that time good-faith providers of data networks. To prevent hoarding or trafficking in DNICs, we could limit any one entity to one DNIC.

[5] A national DNIC would consist of a four-digit number, beginning with 0, 1, 8, or 9. These numbers were selected because Recommendation X.121 does not use them. A four-digit number beginning with one of those digits could perform the Domestic DNIC routing function (U.S. switches would be programmed to recognize them) and would not interfere with overseas administrations (their switches simply would not recognize DNICs beginning with 0, 1, 8 or 9 and would ignore them). National DNICs would free up X.121 DNICs for assignment to those networks which operate with overseas networks and receive traffic routed by those overseas networks.

local telephone exchange networks who offer data services share one DNIC. Differentiation of the particular networks would be accomplished by a private network identification code (PNIC)—the first six of the ten digits which follow the DNIC in creating the international data number. The customer would be identified by the last four digits of the data number.

27. Routing from overseas would be performed by use of the U.S. overseas carrier's DNIC. Routing in the United States would be accomplished by programming U.S. switches to read the PNIC. The first three digits of the PNIC would be analogized to the three-digit area code under the North American Numbering Plan for telephony. The second three digits would be analogous to the three-digit central-office codes. The last four-digit group would be analogized to the subscriber code in telephony. Indeed, the North American numbering plan could be adapted to data communications. Such an approach already well understood and could, thus, be easily implemented for data services. USTA volunteers to administer the shared DNIC and to assign PNICs.

28. The USTA proposal, however, does have some limitations. For example, since overseas routing is solely by DNIC, unless all networks sharing the DNIC are interconnected with each other, or with every interexchange carrier with overseas connections, routing ambiguities will occur. Further, the regional Bell Operating Companies (RBOCs) argue that the use of one nationwide DNIC would not give any routing information in the DNIC. As a result, all routing functions would have to be accomplished by the PNIC—a fact which the RBOCs assert would place a significant burden on the interexchange carriers because it would require them to inlcude a detailed routing table in all of their service nodes and to incur as a significant cost. The RBOCs also argue that use of one, nationwide DNIC would limit to 65,535 the number of closed user groups (CUGs) which could be accommodated in all packet networks combined. The RBOCs find this an uncomfortably small number, which they believe might be exhausted quickly. The RBOCs also believe that the use of one DNIC may result in exhaustion of available DNPA and DCO assignments (the first six digits of the data number) are require the Commission to add new DNICs. Requiring customers and service providers to change DNICs after they have planned and implemented their networks would be disruptive and costly process.

Option 5

29. *The RBOC Proposal.* Some of the RBOCs argue that each will need its own DNIC, but that they are willing to share the DNIC with other networks. The RBOCs, thus, argue for a regional rather than a nationwide, shared, DNIC: each network sharing the regional DNIC would be assigned a six-digit PNIC composed of a three-digit area code and a three-digit central-office code. The RBOCs state that they would be willing to administer the shared DNIC and assign the PNICs for their areas. We agree that a regional approach would likely yield benefits and that it may be superior to a single, nationwide DNIC. The RBOC approach would also conserve DNICs. Thr RBOC proposal, however, would not eliminate the problem of routing ambiguities. Because overseas routing is by DNIC, the RBOC approach would still require every exchange network sharing a regional DNIC to interconnect with each other. The RBOC approach would reduce the number of required connections (and expenditures). It should be noted, however, that each of the RBOC territories encompasses several states and a variety of LATAs. There may still be a large number of networks which must interconnect. On the whole, however, it appears to us that the RBOC approach is more flexible than the shared USTA DNIC proposal and that it represents a workable solution. We invite further comment on the benefits and limitations of the regional-DNIC approach, particularly on how it could be administered so as to minimize or eliminate routing ambiguities.

Option 6

30. *Integrated Numbering Plan.* The weakness in all of the options we have considered is that they could create routing ambiguities. Short of assigning a DNIC to every destination and interexchange network, which appears not to be possible, the only way to avoid ambiguities would be to require every network to interconnect with each other. The main difficulty in avoiding routing ambiguities through universal interconnection is the expense of the required interconnections. The RBOC proposal for seven regional and one nationwide DNIC would ease the problem somewhat by reducing the number of interconnections required and the length of required connecting facilities. A larger number of regional DNICs, with correspondingly smaller geographic areas, might improve the situation even more. One such approach would be assign a DNIC to each of the RBOC LATAs. Under such an approach, all private and public destination data networks within the LATA would share the LATA DNIC. Domestic interexchange networks which do not interact with overseas administrations can rely for routing upon programming U.S. switches to read the PNIC or through use of a national DNIC. The use of the national DNIC would permit identification of up to 4,000 different inter-exchange networks without reducing the supply of available X.121 DNICs.

31. The use of a DNIC for every LATA will not, however, prevent routing ambiguities. That is, even with 164 DNICs, there must still be interconnection so that every interexchange carrier that serves a given LATA can deliver the traffic to every network in that LATA. The relatively small geographical area of a LATA should reduce the number of entities sharing any one DNIC, and thus the number of entities with which a particular network must interconnect. It should also reduce the cost of interconnection by reducing the length of any required interconnection facilities.[6]

32. Each of the options we have considered has its own features and will, to a greater or lesser degree, provide for workable traffic routing. We thus solicit comments from interested persons on any of the options. However, in the interest of DNIC conservation, we incline toward one of the plans for sharing DNICs, such as the USTA, RBOC or integrated numbering plan. Moreover, because we believe that the existence of routing ambiguities is likely to be a significant problem, which must be avoided, and that the only solution to it is a rather extensive program of interconnection, Option 6 (the integrated numbering plan) may be the best solution overall. We do not by expressing our preference wish to limit parties to this rulemaking. They are free to address any or all of the options and to suggest others as well.

Administration of Numbering Plans

33. Because all of the proposals which call for sharing DNICs will require potentially competitive networks to work together, the question of administration is of great importance. We have already discussed USTA's

[6] It should be noted that entities which operate in more than one LATA need not effect interconnections in all of them. So long as the particular network is connected somewhere in the United States to a network with overseas facilities, the destination network can rely upon the interconnection and its national DNIC for routing to its subscribers.

offer to administer a shared-DNIC scheme, as well as the RBOC offer to administer a regional DNIC approach. Another potential administrator which has been proposed is Bell Communications Research (Bellcore). Bellcore now administers the North American Numbering Plan for telephony and would certainly have the expertise necessary for assigning PNICs under a variety of shared-DNIC approaches. However, because providers of data services will have overlapping service areas and, thus, will compete for the same customers, administration of a data-service numbering plan will likely be more complicated (and more susceptible to controversy) than the telephone-service numbering plan. Yet another candidate for administrator would be the Exchange Carrier Standards Association (ECSA) or some other body sanctioned by the American National Standards Institute (ANSI). ECSA, or one of its "T1" telecommunications technical subcommittees, appears to be particularly a good choice for administrator. The ECSA is impartial, expert, represents a wise variety of interests. Thus, we tentatively conclude that we should assign the administration of a DNIC-sharing plan to ECSA. The United States government is obligated to assure that DNIC assignments are in accordance with its agreements in the ITU and to oversee the administration of a numbering plan.

III. Regulatory Flexibility Act—Initial Analysis

34. Pursuant to Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (1980), the following is an initial analysis of the impact of this proposed rulemaking:

A. Reason for Action

35. *RPOA Status.* Because overseas administrations are concerned that unlicensed, U.S. enhanced-service providers may not be obligated to obey the ITU Convention and Regulations, some administrations have been reluctant to enter into operating agreements with U.S. enhanced-service providers. To assist such enhanced-service providers in obtaining agreements, we are proposing a simple application procedure for those seeking RPOA status which will give such enhanced-service providers U.S. governmental recognition and affirmatively place upon them the obligations of all U.S. communications entities operating internationally to obey the Convention and Regulations.

36. *Non-carried IRUs.* Because the ownership of circuits in submarine cables can allow certain users of international communications services to achieve maximum service flexibility, assure the satisfaction of their communications needs on a long-term basis and potentially to reduce their cost for service, we are proposing a policy of allowing enhanced-service providers and other users to acquire IRUs in such cables and requiring the owners of those cables to make IRUs available to users. The proposal would extend to international common-carrier submarine cables policy of non-carrier ownership the Commission has already adopted with respect to domestic satellite facilities, domestic terrestrial cable facilities and international non-common-carrier submarine cables.

37. *DNIC Assignemnt.* Since the number of U.S. data networks who have a need to route data traffic to and from other U.S. domestic and international networks, and who thus could benefit from access to a DNIC, is likely to exceed the number of DNICs available for United States use, we are proposing a DNIC-assignment plan which will provide for various networks to share a DNIC or DNICs, thus conserving scarce codes and assuming the widest possible access to a code.

B. The Objective

38. To encourage greater flexibility and customer choice in the satisfaction of their communications needs so as to apply a downward pressure on the costs and charges for international communications and information services.

C. Legal Basis

39. Authority for these policies is premised upon 47 U.S.C. 154(i), 201–205, 214 and 403 (1976).

D. Description of Potential Impact and Number of Small Entities Affected

40. The proposed policies are unlikely to have a significant impact upon a sustantial number of entities who would constitute "small businesses" under section 601(3) of the Regulatory Flexibility Act, or "small entities" within the meaning of section 3 of the Small Business Act.

41. *RPOA Status.* Most existing enhanced-service providers are affiliates of large corporations. The proposal would, however, assist any potential enhanced-service providers who would constitute a small business who may wish to offer international service.

42. *Non-carrier IRUs.* Most users of international private-line services, the ones most likely to acquire IRUs, are large corporations or U.S. governmental entities. However, allowing users to acquire IRUs in submarine cable facilities will assist even small entities in arranging their communications needs.

43. *DNIC Assignments.* Most of the common carriers, enhanced-service providers and operators of private data networks who would seek DNIC assignments are large corporations. The purpose of the DNIC-assignment plan is to make it easy for any entity with a need for a DNIC to have access to one, either individually or shared.

E. Record Keeping and Other Compliance Requirements

44. The proposals would impose no new reporting requirements. Implementation of the RPOA status application procedure would require applicants to file a more formal application than they now do. Implementation of the non-carrier IRU policy will require the carrier owners of the cables to calculate a price for an IRU and to file an application under 47 U.S.C. 214 for authority to transfer the IRUs from common-carrier use. Potential non-carrier purchasers of IRUs in cables would be required to provide the Commission with a copy of an operating agreement with an overseas administration and a statement that the administration consents to the sale. Implementation of the DNIC-assignment procedure will require the designation of an administrator to supervise assignments of DNICs and PNICs. Applicants for DNICs or PNICs will continue to file an application.

F. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

45. None.

G. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objectives

46. The proposals do not increase regulatory burdens upon small entities. Rather, they were designed to minimize regulatory burdens on users, large or small.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

The Federal Communications Commission is proposing to amend 47 CFR Part 63, as follows:

1. The authority citation for Part 63 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154.

2. Sections 63.701 and 63.702 are proposed to be added as follows:

§ 63.701 Contents of application.

Except as otherwise provided in this part, any party requesting designation as a Recognized Private Operating Agency within the meaning of the International Telecommunication Convention shall request such designation by filing an original and two copies of an application stating the nature of the service to be provided and a statement that the applicant is aware of its obligation under Article 44 of the Convention to obey all international regulations promulgated under the Convention to which the United States is a Signatory and its pledge that it will in fact honor those regulations. Such statement must include the following information where applicable:

(a) The name and address of each applicant;

(b) The Government, State, or Territory under the laws of which each corporate applicant is organized;

(c) The name, title and post office address of the officer of a corporate applicant, or representative of a non-corporate applicant, to whom correspondence concerning the application is to be addressed;

(d) A statement whether the applicant is a carrier subject to section 214 of the Communications Act, an operator of broadcast or other radio facilities, licensed under Title 3 of the Act, capable of causing harmful inteference with the radio transmissions of other countries, or a non-carrier provider of services classed as "enhanced" under § 64.702(a).

(e) A statement that the services for which designation as a recognized private operating agency is sought will be extended to a point outside the United States or are capable of causing harmful interference of other radio transmission and a statement of the nature of the services to be provided;

(f) A statement setting forth the points between which the services are to be provided; and

(g) A statement as to whether covered services are provided by facilities owned by the applicant, by facilities leased from another entity, or other arrangement and a description of the arrangement.

§ 63.702 Form.

Application under § 63.701 shall be submitted in the form specified in § 63.53 for applications under section 214 of the Communications Act.

[FR Doc. 85-20562 Filed 8-27-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-255; RM-4982]

FM Broadcast Station in Oswego, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 244A to Oswego, New York, as that community's second local FM allotment at the request of William Kirkpatrick.

DATES: Comments must be filed on or before October 17, 1985, and reply comments on or before November 1, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

The authority citation for Part 73 continues to read:

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

Proposed Rulemaking

In the matter of amendment of §73.202(b), table of allotments, FM broadcast stations (Oswego, New York); MM Docket No. 85-255, RM-4982.

Adopted: August 13, 1985.

Released: August 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by William Kirkpatrick ("petitioner") requesting the allocation of Channel 244A to Oswego, New York, as that community's second local commercial FM channel. The petitioner states that he will apply for the channel, if allocated.

2. Oswego currently receives local service from noncommercial educational Station WRVO and commercial Station WSGO-FM, Channel 288A. Channel 244A can be allocated in compliance with the Commission's mileage separation requirements if the transmitter is sited at least 7.1 miles (11.4 kilometers) east to avoid a short-spacing to Station WCMF, Rochester, New York. This site restriction requires that the transmitter be located beyond the distance for which we could assume that a city grade signal could be provided to the entire community. Therefore, we request that the petitioner furnish us with a study showing that a site is available from which a Channel 244A operation could provide the required 70 dBu signal over Oswego in its entirety.

3. Oswego is located within 320 kilometers (200 miles) of the U.S.-Canadian border. Therefore, the concurrence of the Canadian Government must be received before the channel can be allocated.

PART 73—[AMENDED]

§73.202 [Amended]

4. We believe the public interest would be served by proposing the allocation, as it could provide Oswego with its second local commercial FM service. Accordingly, we propose to amend the FM Table of Allotments, §73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Oswego, New York	288A	244A, 288A

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

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

6. Interested parties may file comments on or before October 17, 1985, and reply comments on or before November 1, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: William Kirkpatrick, P.O. Box 1306, Ridgewood, New Jersey 07451 (petitioner).

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

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

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

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

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

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

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

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

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

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

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

[FR Doc. 85-20558 Filed 8-27-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-254; RM-4990]

FM Broadcast Station in Aiken, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of FM Channel 258C2 for Channel 257A at Aiken, South Carolina, at the request of Aiken Radio, Incorporated.

DATES: Comments must be filed on or before October 17, 1985, and reply comments on or before November 1, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

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

Proposed Rule Making

Amendment of § 73.202(b), table of allotments, FM broadcast stations (Aiken, South Carolina); MM Docket No. 85-254, RM-4990.

Adopted: August 13, 1985.

Released: August 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the petition of Aiken Radio, Inc. ("petitioner"), licensee of Station WNEZ(FM), Aiken, South Carolina, requesting the substitution of FM Channel 258C2 for its Channel 257A, and the modification of its license to specify operation on the higher powered frequency. Aiken currently receives local FM service from Station WNEZ(FM) and Station WJFX, Channel 240A.

2. Petitioner states that Aiken has a population of 14,978 persons [1] and is the seat of Aiken County (population 105,625). It claims that the allotment of the higher powered frequency would result in the dramatic improvement of service by Station WNEZ to both Aiken and the surrounding area. This expanded coverage could provide essential weather information to outlying farms and rural areas, according to the petitioner, as well as providing service to travelers along Interstate 20 between Columbia, South Carolina, and Augusta, Georgia.

3. We believe the proposal warrents consideration in view of the expressed need for a wide coverage area FM

[1] Population figures are taken from the 1980 U.S. Census, unless otherwise noted.

station. A staff engineering study shows that Channel 258C2 can be allocated to Aiken in compliance with the Commission's minimum distance separation requirements if the transmitter is restricted to an area at least 22.8 kilometers (14.2 miles) northwest to avoid short-spacing to Station WDMC-FM, Douglas, Georgia, and to the construction permit of Barnacle Broadcasting Ltd. for Channel 259 at Port Royal, South Carolina.[2]

4. In view of the above, we will propose to modify the license of Station WNEZ(FM), as requested by the petitioner. However, in conformity with Commission precedent, as expressed *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976), should another interest in the allotment be shown, the modification could not be made unless an additional equivalent channel is available in the community to accommodate any other expressions of interest. See, *Modification of FM and TV Station Licenses*, 56 R.R. 2d 1253 (1984).

PART 73—[AMENDED]

§ 73.202 [Amended]

5. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Aiken, South Carolina	240A, 257A	240A, 258C2

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

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

7. Interested parties may file comments on or before October 17, 1985, and reply comments on or before November 1, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner as follows: Gary S. Smithwick, Esq., Keith & Smithwick, 1320 Westgate Drive, Winston-Salem, North Carolina 27103 (Counsel to petitioner).

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

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

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

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

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

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

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

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

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.410 (a), (b) and (c) of the Commission's Rules.)

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

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference

[2] Channel 259 was allocated to Beaufort, South Carolina by *Report and Order*, Docket 80-204, 46 FR 14017 (1981). Beaufort County Broadcasting Company has filed an appeal with the U.S. Court of Appeals for the District of Columbia Circuit of the Commission's denial of its application for use of Channel 259 at Beaufort and the grant of Barnacle Broadcasting's application for use of the channel at Port Royal, South Carolina. Should the channel ultimately be licensed to Beaufort, Channel 258C2 could not be used at Aiken as the communities are only 175 kilometers apart instead of the required 188 kilometers for first adjacent Class C and C2 stations.

Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-20559 Filed 8-27-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-252; RM-5011]

FM Broadcast Station in Neillsville, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 224A to Neillsville, Wisconsin, as that community's second FM allocation, at the request of Foster Broadcasting.

DATES: Comments must be filed on or before October 17, 1985, and reply comments on or before November 1, 1985.

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

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

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

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

Notice of Proposed Rulemaking

In the matter of: amendment of § 73.202(b), table of allotments, FM broadcast stations. (Neillsville, Wisconsin), MM Docket No. 85-252 RM-5011.

Adopted: August 13, 1985.

Released August 26, 1985.

By the Chief, Policy and Rules Divisions.

1. A petition for rule making was filed by Foster Broadcasting ("petitioner"), proposing the allotment of channel 224A to Neillsville, Wisconsin, as that community's second FM service. Petitioner has expressed an intention to apply for the channel.

2. The channel can be allotted in compliance with the Commission's minimum distance separation requirements, with a site restriction of 1.1 kilometers (0.7 miles) north of Neillsville to avoid a short spacing to Station WIZM-FM, Channel 227, at La Crosse, Wisconsin.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. In view of the fact that the proposed allotment could provide a second FM broadcast service to Neillsville, Wisconsin, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Neillsville, Wisconsin	298	224A, 298

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

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

5. Interested parties may file comment on or before October 17 1985, and reply comment on or before November 1, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Mr. Mark Foster, Foster Broadcasting, 10002 Hewitt Street, Neillsville, Wisconsin 54456.

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

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

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

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

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

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

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

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

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

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

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

[FR Doc. 85-20560 Filed 8-27-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-253; RM-4980]

FM Broadcast in Sturtevant, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Sentry Broadcasting, Inc., proposes the allocation of Channel 284A to Sturtevant, Wisconsin, as that community's first FM channel.

DATES: Comments must be filed on or before October 17, 1985, and reply comments on or before November 1, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

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

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Sturtevant, Wisconsin), MM Docket No. 85-253; RM-4980.

Adopted: August 13, 1985.
Released: August 26, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Sentry Broadcasting, Inc., ("petitioner") seeking the allotment of Channel 284A to Sturtevant, Wisconsin, as that community's first FM channel. Petitioner states its intention to apply for the channel, if allotted.

2. The channel can be allotted in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules, with a site restriction of 5.8 kilometers (3.6 miles) north of the city. The site restriction is necessary, in order to avoid short spacing to Station WCSJ (Channel 284) at Morris, Illinois.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. In view of the fact that Sturtevant could receive a first FM channel, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Sturtevant, Wisconsin		284A

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

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

5. Interested parties may file comments on or before October 17, 1985, and reply comments on or before November 1, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Julian P. Freret, Booth, Freret & Imlay, 1920 N Street NW.—Suite 520, Washington, D.C. 20036.

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

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

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

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in

initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. it should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

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

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

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

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

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

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

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

[FR Doc. 85-20561 Filed 8-27-85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 334; (Sub-6)]

Review of Car Hire Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments.

SUMMARY: The Commission is extending the due date for filing comments on its Advance Notice of Proposed Rulemaking in this proceeding which was initiated to review the regulation of railroad car-hire charges. This extension is in response to a petition seeking an extension of time for filing comments.

DATE: Initial comments are due by October 28, 1985; reply comments are due by January 8, 1986.

ADDRESS: Send comments to: (Please refer to Ex Parte No. 334 (Sub-No. 6) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

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

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking published April 29, 1985 (50 FR 16724) established due dates of June 28 and August 27, 1985, respectively, for the filing of initial and reply comments in this proceeding. In response to a joint petition filed June 11, 1985, by the American Short Line Railroad Association, BRAE Corporation, and Itel Rail Corporation, a 60-day extension of those dates was granted. Thus, the date for filing comments was extended to August 27, 1985, and for replies to October 28, 1985. In a joint petition filed August 12, 1985, Consolidated Rail Corporation and the CSX Railroads now seek a second 60-day extension of time for filing comments. Under the petition, reply comments would be due on December 27, 1985. Because experience shows that due dates around holiday periods can rarely be held to a firm schedule, the date for reply comments is set as January 8, 1986.

Because of the complex issues, a second extension is warranted. This will enable all parties to better define their positions, and thus produce a better ultimate disposition of this proceeding in a manner which will promote the public interest.

Decided: August 16, 1985.

By the Commission, Malcolm M.B. Sterrett, Acting Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-20451 Filed 8-27-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards School Bus Body Joint Strength

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition filed by Wayne Corporation for rulemaking to amend Motor Vehicle Safety Standard No. 221 *School bus body joint strength.* Perceiving what appeared to it to be deficiencies in the standard, the Indiana-based school bus manufacturer asked that dynamic tests involving a contoured moving barrier and a pole simulator be substituted for the existing static tensile test of 8-inch segments cut randomly from joints. The agency denies Wayne's petition in this notice because it disagrees with the petitioner's criticims of the standard and believes that a dynamic test would create additional expense for manufacturers with no discernable improvement in school bus safety.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Williams, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C. 20590 (202 426-2264).

SUPPLEMENTARY INFORMATION: This notice denies a petition for rulemaking filed by Wayne Corporation of Richmond, Indiana, a school bus manufacturer. The petitioner alleged the existence of "problems" under Federal Motor Vehicle Safety Standard No. 221 *School bus body joint strength* due to "faulty test procedures" which "have been very costly and time consuming to Wayne and the industry". It attributed this to a "lack of correlation between the test procedures, the realities of school bus construction, and crash environment", and concluded that the

test procedure must be changed by a rulemaking.

The criticisms of the standard were as follows. First, Wayne alleged that the test procedure of paragraph S6 of the Standard was not practicable in light of the realities of school bus construction. This is a tensile test in which a test specimen is cut from the body consisting of any randomly selected 8-inch segment of a joint. In Wayne's view, the procedure fails to take into account the fact that in many cases one or both of the constituent body panels are curved and therefore are straightened in the process of being tested which has the effect of weakening the joint. In addition, the procedure does not make allowance for the testing of compound joints, those that are not only curved but on different panels and in complex configurations. Wayne further alleged that the integrity of a joint may be compromised in the process of extracting a specimen from a bus body.

In Wayne's opinion, the procedure does not meet the need for motor vehicle safety. The procedure covers only the tensile strength "of a very small body segment" and does not test torque, shear or bending strengths and therefore can not determine the extent to which a bus could resist a crash. In addition, the failure to test joints as they are situated in a bus body is not realistic because it does not test joints "in the manner in which they are designed to bear stress or withstand impact in an accident situation". Further, the procedure fails to take into account the speed, mass, direction of an opposing vehicle in an accident or if not a vehicle, the shape and rigidity of an object with which the bus collides. The petitioner argued that the present standard could actually derogate from safety in that additional rivets inserted to insure compliance could weaken the panel so that in a crash the panel would rip along the line of its rivet holes, in the manner in which stamps are separated along their perforation lines.

Petitioner also believes that the standard does not provide objective criteria, specifically that the definition of "body panel joint" creates ambiguities, and that the industry is unable to understand the agency's rationale for excluding certain interior joints from compliance such as cove and aisle moldings. Test instructions are also alleged to be unclear, such as S6.3.2's directive that the testing machine's grips be adjusted so that the joint under load will be in stress "approximately perpendicular" to the joint; the quoted phrase is cited as an example of ambiguity.

Because of this, Wayne recommended adopting a test procedure under which a fully loaded bus would be subjected to impacts by a moving barrier and pole simulator. The intrusion of body components and panels into the occupant space would be measured to determine compliance.

NHTSA has reviewed these arguments, concluded that they are without substantive merit and that the suggested dynamic tests for buses are both arbitrary and impracticable as well as inconclusive, absent frequency of exposure and injury data with which to quantify their benefits. It has denied the petition.

About 6 months prior to receipt of the Wayne petition, NHTSA conducted tests on two school buses (not manufactured by Wayne) in support of an investigation of an apparent non-compliance with FMVSS No. 221. The tests included a test specimen (in accordance with S6.1.3 of Standard No. 221) that was removed from the roof of a school bus and tested according to S6.5. The specimen was selected so that it maintained its roof curvature and was instrumented with nine strain gauges. The purpose of the test was to measure the strain distribution across the 8-inch joint width at the center of the specimen when pulled with flat end clamps and curved end clamps to show that: (a) Stress distribution at the joint under load will be "approximately perpendicular" to the joint of S6.3.2 and (b) stress distribution at the joint under load is not significantly affected by the use of flat or curved end clamps. A basic statistical analysis of the data showed there is no significant difference in strain distribution with a 90 percent probability of being correct. There have been no curved joints, other than ceiling joints, tested by NHTSA and the agency has concluded that the criticism is immaterial. To be sure, compound joints do present a different problem, but no noncompliances of compound joints have been noted.

In preparation of test samples, NHTSA routinely, as standard practice, removes oversize portions of the bus body and the final test specimen is trimmed from this segment, reducing the possibility of damaging the test joint through heat or vibration. NHTSA therefore cannot accept as valid the criticism that it has been negligent in preparation of test specimens.

NHTSA considered the petitioner's argument that the standard's tensile test did not meet the need for motor vehicle safety. In establishing the standard, the agency made the judgment that the overall strength of the school bus body could be best improved by requiring a minimum strength of body joints. Tensile strength is measured by opposing forces that seek to separate the joint, and is the method specified by S6.3 for compliance testing. It represents the crash force that tends to pull apart a joint, and it is relatively easily tested. Presumably other forces occur in school bus crashes, but NHTSA knows of no test procedure with repeatable results by which resistance to these forces can be judged; however, it seems logical to assume that in many cases an improvement in a joint fastening system to improve tensile strength would also improve other stress tolerances. The tensile test is based on ASTM standards, and is used in many other industries to measure the quality of sheet metal joints.

Wayne has commented that the samples chosen for testing may be unrepresentative because of their location and size and eccentricities of loading. Because the standard provides for testing of any randomly selected 8-inch segment of a joint larger than 8 inches without specifying the location of the sample, except to forbid the bisection of a discrete fastener, it is theoretically possible that the sample selected may contain fasteners or fastening materials that are not typical of the joint either in quantity or distribution. However, the agency has not found practical differences between the strength of tested segments and the apparent strength of overall joints from which test segments have been taken. The agency believes that this issue can be addressed by considering whether clarifying amendments or interpretations may be appropriate to assure that the selection of samples and test procedures continue to measure compliance with the standard's tensile strength requirement fairly. Petitioner has not presented evidence indicating that this issue is important enough to justify rescission of this regulation and substitution of an impractical and expensive dynamic test.

Nor does NHTSA agree that Standard No. 221 may derogate from safety. As a practical matter, the agency sees no evidence of any change in the thickness of structural panels of buses built before or after the standard was effective. As for the standard's alleged ambiguity, the agency provided extensive interpretations between 1976 and 1978 to schoolbus manufacturers on the standard's coverage. Virtually no interpretations have been required since 1980, leading NHTSA to conclude that the coverage of the standard is well understood by industry. Although the

standard does contain the unquantified phrase "approximately perpendicular" in its test procedure, its published Laboratory Procedures require that the axis of a test specimen in all planes coincide with the center line of the heads of the testing machine so that bending stresses are not introduced. Strain measurements are made on a special test specimen to determine the axial strain gradient produced at the joint location between the center and edges of the specimen by the clamping/loading technique. At that point, the maximum differences in measured strain near the strain limit of the specimen are determined. On school buses tested in 1977 and 1978 the differences in measured strain were 10%. This was an inconsequential difference because all joint failures occurred at margins far greater than 10%. On buses tested in 1979 and subsequent years, however, this margin has purposely been narrowed to 3% as a closer approximation to perpendicular.

NHTSA therefore found the criticisms of Standard No. 221 insufficient to justify a conclusion that ameliorative rulemaking was required. As for the merits of a dynamic test, NHTSA notes that Wayne's suggested procedure was based upon the Vehicle Equipment Safety Commission's proposed Standard 13. When that proposed standard was revised in 1978 the dynamic tests outlined therein were abandoned as impracticable, and the VESC adopted the requirements of Standard No. 221 by reference in its Standard VESC-6 and VESC-10 covering large and small school buses respectively. The costs of conducting dynamic tests would be substantial without any evidence of a quantifiable increase in the level of safety. A dynamic test procedure could result in school bus manufacturers having to revise their manufacturing methods, procedures, and the like at significant expense without corresponding increase in safety benefits.

In consideration of the foregoing, at the conclusion of the technical review the agency has determined that there is no reasonable possibility that the order requested in the petition would be issued at the conclusion of the rulemaking proceeding, and the petition by Wayne Corporation for rulemaking to amend Standard No. 221 is hereby denied.

(Secs. 103, 119, 124, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407, 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8))

Issued on August 23, 1985.

Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 85-20533 Filed 8-23-85; 1:26 pm]
BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1150

[Ex Parte No. 392 (Sub-1)]

Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption and Rules.

SUMMARY: The Commission proposes to exempt, under 49 U.S.C. 10505, acquisitions and operations under 49 U.S.C. 10901 (see 49 CFR 1150.1). This exemption would also include: (1) Acquisition of trackage rights governed by 10901; (2) acquisition by a noncarrier of rail property that would be operated by a third party; (3) operation by a new carrier of rail property acquired by a third party; and (4) a change in operators on the line. This exemption would not apply when a Class I railroad abandons a line and a Class I railroad then acquires the line in a proposal that would result in a major market extention as defined at 49 CFR 1180.3(c). The regulations at 49 CFR Part 1150 would be amended and a Subpart D, *Exempt Transactions,* would be added. This expands a proposal filed by Anacostia & Pacific Corp. (APC) seeking exemption for noncarrier acquisitions and operations, where the noncarrier would be Class III carrier after completion of the transaction. We invite comment on both APC's exemption request and the expanded exemption proposal.

DATES: An original and 15 copies of comments should be filed by September 27, 1985.

ADDRESS: Comments referring to Ex Parte No. 392 (Sub-No. 1) should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

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

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2229, Interestate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

List of Subjects in 49 CFR Part 1150

Administrative practice and procedure, Railroads.

Decided: August 16, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Simmons concurred in the issuance of the notice. Commissioner Lamboley concurred in the notice.

James H. Bayne.
Secretary.

Appendix

Title 49, Subtitle B, Chapter X, Part

1150 of the Code of Federal Regulations will be amended by adding a new Subpart D to read as follows:

PART 1150—[AMENDED]

1. The authority citation for Part 1150 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10326, 10901, 10903, and 10505; 5 U.S.C. 553 and 559.

2. New Subpart D is added as follows:

Subpart D—Exempt Transactions

Sec.
1150.31 Scope of exemption.
1150.32 Procedures and relevant dates.
1150.33 Information to be contained in notice.
1150.34 Format for caption summary.

Subpart D—Exempt Transactions

§ 1150.31 Scope of exemption.

This exemption applies to all acquisitions and operations under section 10901 (See § 1150.1, *supra*). This exemption also includes: (a) Acquisition of trackage rights governed by 10901; (b) acquisition by a noncarrier of rail property that would be operated by a third party; (c) operation by a new carrier of rail property acquired by a third party; and (d) a change in operators on the line. This exemption does not apply when a Class I railroad abandons a line and a Class I railroad then acquires the line in a proposal that would result in a major market extension as defined at 49 CFR 1180.3(c).

§ 1150.32 Procedures and relevant dates.

(a) To qualify for this exemption, applicant must file a verified notice providing details about the transaction, and a brief caption summary, conforming to the format in § 1150.34, for publication in the **Federal Register**.

(b) Before filing the notice, applicant must obtain a docket number from the Commission's Office of Secretary. The exemption will be effective 7 days after the notice is filed. Notice will be published in the **Federal Register** within 30 days of the filing. A change in operators would follow the provisions at 49 CFR 1150.24, and notice must be given to shippers.

§ 1150.33 Information to be contained in notice.

(a) The full name and address of the applicant.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

(d) The operator of the property;

(e) A brief summary of the proposed transaction, including (1) the name and address of the railroad transferring the subject property, (2) the proposed time schedule for consummation of the transaction, (3) the mile-posts of the subject property including any branch lines and (4) the total route miles being acquired;

(f) A brief description of the amount and type of traffic expected to be handled on the line;

(g) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties and States; and

(h) The amount of projected revenues that will be generated in the first year by operations on the property to be acquired.

§ 1150.34 Format for caption summary.

The document submitted as a caption summary must be submitted in the following form:

Interstate Commerce Commission

Notice of Exemption

Finance Docket No.

(Name of entity acquiring—EXEMPTION or operating the line, or both).	(The transaction—acquisition or operation, or both).	(The transferor)

(Name of entity acquiring or operating the line, or both) has filed a notice of exemption to (The transaction, acquisition or operation, or both) a line of (The transferor)'s between (Describe the line).

The notice is filed under 49 CFR 1150.31. 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.

[FR Doc. 85-20523 Filed 8-27-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672 and 675

[Docket Nos. 50720-5120 and 50834-5034]

Groundfish of the Gulf of Alaska and Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area; Corrections

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

ACTION: Proposed rules; correction.

SUMMARY: This document corrects the Paperwork Reduction Act statement in the regulatory text of the proposed rules to implement Amendment 14 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, published July 26, 1985, 50 FR 30481, and Amendment 9 to the Fishery Management Plan for the Groundfish of the Bering Sea and Aleutian Islands Area, published August 16, 1985, 50 FR 33080.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, 907-586-7229, concerning Amendment 14, Groundfish of the Gulf of Alaska; and Janet E. Smoker, 907-586-7230, concerning Amendment 9, Groundfish of the Bering Sea and Aleutian Islands Area.

The following corrections are made: (1) Groundfish of the Gulf of Alaska, FR Doc. 85-17826 (July 26, 1985), on page 30486, column 3, paragraph 3 is deleted and (2) Groundfish of the Bering Sea and Aleutian Islands Area, FR Doc. 85-19656 (August 16, 1985), on page 33082, column 2, paragraph 2 is deleted. In place of the deleted paragraphs, the following paragraph is inserted: "This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the PRA. Comments should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for NOAA."

(16 U.S.C. 1801 *et seq.*)

Dated: August 23, 1985.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-20569 Filed 8-27-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 167
Wednesday, August 28, 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

Forms Under Review by Office of Management and Budget

August 23, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Food and Nutrition Service
Federal State Agreement
FNS 74
Annually
State or local governments; 82 responses; 28 hours; not applicable under 3504(h).
Albert V. Perna (703) 756-3600

• Food and Nutrition Service
National Commodity Processing Program for Processing UDSA Donated Food
FNS 513, 516 and 519
Monthly; Annually
Businesses or other for-profit; 27,050 responses; 5,275 hours; not applicable under 3504(h)
Alberta C. Frost (703) 756-3585

• Rural Electrification Administration
Rating Summary of Operations and Maintenance (REA Electric System)
REA 300
On occasion
Small businesses or organizations; 331 responses; 1,324 hours; not applicable under 3504(h)
Archie Cain (202) 382-9082

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 85-20578 Filed 8-27-85; 8:45 am]

BILLING CODE 3410-01-M

Soil Conservation Service

Smyth County Landfill Critical Area Treatment RC&D Measure, VA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY Pursuant to section 102(2)(C) of the National 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 Smyth County Landfill Critical Area Treatment RC&D Measure, Smyth County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240, telephone 804-771-2455.

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, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for erosion and sediment damage reduction to the Smyth County Public Service Authority Landfill and consists of 500 feet of diversion and the establishment of seven (7) acres of grasses and legumes on their property. The planned work will include 500 feet of grass-lined diversion and the shaping, seeding and mulching of the seven (7) acre site.

The Notice of 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. Basis data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of federally assisted programs and projects is applicable)

Dated: August 12, 1985.

Manly S. Wilder,
State Conservationist.

[FR Doc. 85-20575, Filed 8-27-85; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Louisiana 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 Louisiana Advisory

Committee to the Commission will convene at 1:00 p.m. and adjoun at 5:00 p.m. on September 20, 1985, at the Sheraton-New Orleans, 500 Canal Street, Bonnie Burn Room, New Orleans, Louisiana. The purpose of the meeting is to discuss project and monitoring activity, a report on school desegregation, and administrative concerns.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael Fontham, or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229-5570, (TDD 512/229-5580).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 23, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-20598 Filed 8-27-85; 8:45 am]

BILLING CODE 6335-01-M

Montana 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 Montana Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 1:00 p.m. on September 21, 1985, at the Fort Belknap Roller Rink, Fort Belknap Agency, Montana. The purpose of the meeting is to receive information from community representatives on Indian-school board representation, relations, and policy.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lawrence D. Huss or William Muldrow, Acting Director of the Rocky Mountain Regional Office, at (303) 844-2211, (TDD 303/844-3031).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 23, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-20599 Filed 8-27-85; 8:45 am]

BILLING CODE 6335-01-M

Oklahoma 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 Oklahoma Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on September 27, 1985, at the Sheraton Inn-Skyline East, 1333 E. Skelly Drive, Council Room, Tulsa, Oklahoma. The purpose of the meeting is to plan future SAC projects and activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles L. Fagin, or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229-5570, (TDD 512/229-5580).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 23, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-20600 Filed 88-27-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Review Scheduled for the Proposed Weeks Bay (Alabama) National Estuarine Sanctuary Management Plan

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS,) National Oceanic and Atmospheric Administration (NOAA), Commerce.

SUMMARY: The Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA) U.S. Department of Commerce, in compliance with 15 CFR § 921.21(f) announces that the State of Alabama will hold a public meeting for the purpose of discussing the proposed Final Sanctuary Management Plan prepared for the proposed Weeks Bay National Estuarine Sanctuary. The meeting will be held on August 29, 1985 at 7:00 P.M. in the City Council Chambers, Fairhope Municipal Complex, Fairhope, Alabama.

As part of the procedures leading to the designation of the Sanctuary, the State of Alabama must submit the proposed final management plan to NOAA for its review and approval. Copies of the plan are available upon request from the Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Montgomery, Alabama 36105.

FOR FURTHER INFORMATION CONTACT: Kelvin Char, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 3300 Whitehaven Street, NW., Washington, DC 20235, 202/634-4236.

(Federal Domestic Assistance Catalog No. 11.420 Coastal Zone Management Estuarine Sanctuaries)

Dated: August 23, 1985.

James P. Blizzard,

Acting Director, Office of Ocean and Resource Management.

[FR Doc. 85-20597 Filed 8-27-85; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Issuance of Permit; John D. Hall; Modification

Pursuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR 216), Scientific Research Permit No. 506 issued to Dr. John Hall, Solace Enterprises, P.O. Box 4885, Anchorage, Alaska 99510 on June 13, 1985 (50 FR 25733 July 21, 1985), is modified as follows:

Section B.2 is deleted and replaced by:

2. "The Holder shall exercise caution when approaching animals, approach no closer than 25 meters, retreat to a greater distance when harassment occurs, and avoid repeated harassment of individual animals."

This modification becomes effective upon publication in the **Federal Register.**

Dated: August 21, 1985.

Richard B. Roe,

Acting Assistant Administrator for Fisheries.

[FR Doc. 85-20547 Filed 8-27-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Cotton and Man-Made Fiber Textile Products From the People's Republic of China

August 22, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive

published below to the Commissioner of Customs to be effective on August 22, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive establishing import limits for specified categories of cotton and man-made fiber textile products, including Categories 340 (men's and boys' woven cotton shirts), 342 (women's, girls' and infants cotton skirts), and 635 (women's, girls' and infants' man-made fiber coats), produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1985, was published in the **Federal Register** on December 28, 1984 (49 FR 50432). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, the Government of the People's Republic of China has notified the Government of the United States of its intention to use flexibility in the form of swing to be applied to the current-year limits for these categories. The limit for Category 340 is being increased from 638,223 dozen to 670,134 dozen. The limits for Categories 342 and 635 are being reduced to 144,157 dozen and 394,159 dozen, respectively, to account for the increase applied to Category 340.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and the Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 22, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 24, 1984 from the Chairman, Committee for the Implementation of Textile Agreements, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1985.

Effective on August 22, 1985, the directive of December 24, 1984 is hereby further amended to adjust the previously established restraint limits for Categories 340, 342 and 635 to the following, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended: [1]

Category	Adjusted 12-mo limit [1] (dozen)
340	670,134
342	144,157
635	394,159

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 85–20580 Filed 8–27–85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

August 22, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 28, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On July 11, 1985 a notice was published in the **Federal Register** (50 FR 28242) which announced that, on May 31, 1985, the Government of the United States had requested consultations with the Government of Malaysia concerning imports of women's, girls' and infants' trousers of man-made fibers in Category 648. The letter of July 8, 1985 to the Commissioner of Customs which followed that notice established an import level of 104,949 dozen for man-made fiber textile products in Category 648, produced or manufactured in Malaysia and exported during the sixty-day period which began on May 31, 1985 and extended through July 29, 1985. This level was established under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5, 1980 and February 27, 1981, as amended and extended, between the Governments of the United States and Malaysia.

A new bilateral agreement was effected by exchange of notes between the two governments, dated July 1, and 11, 1985. The new agreement which dates from January 1, 1985 and extends through December 31, 1989, includes a consultation provision calling for a ninety-day period during which the two governments will attempt to reach agreement on a mutually satisfactory solution concerning imports in any category not subject to a specific limit which threaten to impede the orderly development of trade between the two countries. In accordance with the terms of the new agreement, the letter published below to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements cancels the letter of July 8, 1985 and establishes a level of 122,400 dozen for the ninety-day period which began on May 31, 1985 and extends through August 28, 1985 for goods in Category 648 exported during that period. It also establishes a prorated twelve-month specific limit of 143,765 dozen for man-made fiber textile products in Category 648, exported during the period beginning on August 29, 1985 and extending through December 31, 1985. In the event the limit established for the ninety-day period is exceeded, such excess amounts will be charged to the level established for the subsequent period.

If a different solution is reached in consultations, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff

[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by a square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 22, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This letter cancels and supersedes the letter of July 8, 1985 which directed you to prohibit entry of man-made fiber textile products in Category 648, produced or manufactured in Malaysia and exported during the sixty-day period which began on May 31, 1985 and extended through July 29, 1985.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and 11, 1985, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 28, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 648 produced or manufactured in Malaysia and exported during the period which began on May 31, 1985 and extends through August 28, 1985, in excess of 122,440 dozen.[1]

You are further directed, effective on August 29, 1985, to prohibit entry for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 648, produced or manufactured in Malaysia and exported during the period beginning on August 29, 1985 and extending through December 31, 1985 in excess of 143,765 dozen. Textile products in Category 648, exported during the ninety-day period which began on May 31, 1985 and which are in excess of the level established for that period shall be charged to the prorated twelve-month level beginning on August 29, 1985.

Textile products in Category 648 which have been exported to the United States prior to May 31, 1985 shall not be subject to this directive.

Textile products in Category 648 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

[1] The limit has not been adjusted to reflect any imports exported after May 30, 1985.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-20581 Filed 8-27-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Levels for Certain Cotton Textile Products Produced or Manufactured in Taiwan

August 23, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 29, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On July 18, 1985 a notice was published in the **Federal Register** (50 FR 29248) announcing that, in June 1985, the American Institute in Taiwan (AIT), under the terms of the agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan, had requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of terry and other pile towels in Category 363 and luggage in Category 369pt (only T.S.U.S.A. numbers 706.3200, 706.3650, and 706.4111), among other categories. Consultations were held July 22-24, 1985, but no agreement was reached on mutually satisfactory levels for these categories. The United States Government has decided, therefore, as provided in the agreement to establish levels for goods exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985. The level for Category 363 will be 11,821, 532 numbers and for Category 369pt., 2,151,242 pounds.

No charges have been made to these levels to account for any goods exported during 1985. Such adjustments will be made as the data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 23, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 21, 1984, which established limits for certain categories, produced or manufactured in Taiwan and exported during 1985.

Effective on August 29, 1985, the directive of December 21, 1984 is hereby amended to include the following levels for cotton textile products in Categories 363 and 369pt.[1]

Category	12-mo restraint level [1]
363 (numbers)	11,821,532
369 pt. (lb)	2,151,242

[1] Import charges from January 1-May 31, 1985 for Category 363 are 3,545,881 numbers; for Category 369pt. they are 734,646 pounds.

Textile products in Categories 363 and 369pt. which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Categories 363 and 369pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-20582 Filed 8-27-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 369 only T.S.U.S.A. number 706.3200, 706.3650, 706.4111.

COMMODITY FUTURES TRADING COMMISSION

Performance of Registration Functions by National Futures Association

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order authorizing National Futures Association (NFA) to perform additional portions of the registration functions of the Commodity

Futures Trade Commission (Commission) applicable to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, and their respective associated persons.

SUMMARY: The Commission is authorizing NFA to deny, condition, suspend, restrict or revoke the registration of any person applying for registration or registered as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or an associated person of such entities. All such adverse registration actions by NFA must be taken in accordance with the standards established in the Commodity Exchange Act, Commission interpretive statements, and relevant case law and with rules that comport with the procedures and safeguards established in the Commission's regulations thereunder. This Order does not authorize NFA to accept or act upon requests for exemption or withdrawal from registration or to render "no-action" operations or interpretations with respect to applicable registration requirements.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Linda Kurjan, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Authorizing the Performance of Registration Functions

I. Authority and Background

Pursuant to section 8a(10) of the Commodity Exchange Act (Act), the Commodity Futures Trading Commission (Commission) previously has issued Orders authorizing National Futures Association (NFA) to perform various portions of the Commission's registration functions and responsibilities under the Act.[1] In particular, on August 1, 1983, NFA assumed responsibilities for processing and granting applications for initial and renewal registrations of introducing brokers and their associated persons.[2] Subsequently, on December 3, 1984 NFA assumed such responsibilities from the Commission with respect to the registration of futures commission merchants, commodity pool operators, commodity trading advisors, and associated persons of such registrants.[3]

Section 17(*o*)(2) of the Act permits NFA, in performing Commission registration functions, to be authorized to deny, condition, suspend, restrict or revoke any registration, subject to Commission review.[4] However, the Commission has heretofore expressly not authorized NFA to take any such adverse registration action. In withholding the ability to take adverse actions from the scope of registration functions transferred to NFA, the Commission indicated that, among other things, it would first be necessary for the Commission to adopt its own regulations and procedures to govern Commission review of any adverse NFA determinations concerning Commission registrations.[5]

In order to process applications for registration, NFA must conduct investigations as appropriate to determine whether an applicant, registrant or principal thereof may be subject to a statutory disqualification.[6] To date, NFA has not been permitted to take any final action with respect to any person that appears to be subject to a statutory disqualification, however.[7] Rather, except in such limited circumstances as specified by the Commission or authorized staff, NFA has been required to forward to the Commission the entire registration file (or such portion as the Commission or its staff may request) of each such person for Commission review and determination.

II. NFA Rules: Initial Determinations

On August 21, 1985 the Commission approved rules adopted by NFA, pursuant to which NFA shall conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any applicant for registration or registrant who may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act and for whom NFA has been authorized to perform the Commission's registration functions.[8] The procedures embodied in these NFA rules closely parallel those specified by the Commission in Subpart C of Part 3 of its regulations.[9] Notably, NFA adopted the Commission's standards defining the scope of evidence that may be presented by the applicant or registrant to challenge allegations of statutory disqualification, as well as the standards to be followed by the party reviewing the matter and making determinations. Where NFA has adopted procedures that modify those prescribed for comparable Commission proceedings, the Commission believes that the modifications are appropriate and consistent with the requirements of the Act and the Commission's regulations and will not adversely affect the rights of applicants and registrants who become subject to proceedings and orders under NFA's procedures.

NFA's rules governing proceedings to deny, condition, suspend, restrict or revoke registrations under the Act, as such rules are currently adopted and approved, are specified in an appendix to this Order. NFA shall ensure that its rules in this regard remain consistent with provisions of the Act and the Commission's regulations thereunder as presently established and as may be amended hereafter. In this regard, NFA shall also implement such additional procedures as necessary or appropriate (and acceptable to the Commission) to ensure that investigations, proceedings and actions taken pursuant to the authority conferred by this Order are conducted in a timely manner and consistent with the procedures and safeguards established in the Act and Commission rules and orders thereunder.

III. Commission Rules: Review

In addition to providing that NFA may issue final orders affecting the registration of persons for which it is performing registration functions, section 17(*o*)(2) of the Act specifies that persons against whom NFA takes such adverse actions have the right to petition the Commission to review the NFA decisions. In its discretion, or on its

[1] Pursuant to section 8a(10) of the Act, the Commission may authorize any person to perform any portion of the registration functions under the Act in accordance with rules, notwithstanding any other provision of law, submitted by the person to the Commission and subject to the provisions of the Act applicable to registrations granted by the Commission. 7 U.S.C. 12a(10) (1982). *See* 48 FR 15940 (April 13, 1983); 48 FR 35158 (August 3, 1983); 48 FR 51809 (November 14, 1983); 49 FR 8226 (March 5, 1984); and 49 FR 39593 (October 9, 1984).

[2] 48 FR 35158 (August 3, 1983).

[3] 49 FR 39593 (October 9, 1984); 49 FR 45418 (November 16, 1984).

[4] 7 U.S.C. 21(*o*)(2) (1982).

[5] 48 FR 35158, 35159 (August 3, 1983); *see also* 49 FR 39593, 39594–95 (October 9, 1984).

[6] 49 FR 39593, 39594 (October 9, 1984).

[7] NFA has, however, been permitted routinely to notify applicants, registrants and principals thereof of deficiencies in their applications and to deem applications withdrawn when such deficiencies are not corrected within a reasonable time. *Id.*, n. 11.

[8] NFA Bylaw 305, Schedule A, Sections I(c) and I(d).

[9] 17 CFR Part 3, Subpart C (1985).

own initiative, the Commission may grant or decline review.

In order to implement these provisions of section 17(o)(2), the Commission has published for comment a new Subpart F of Part 3 of the Commission's regulations to govern Commission review of any proceeding conducted by NFA, pursuant to delegated authority, to deny, condition, suspend, restrict or revoke registations under the Act.[10] Upon proper consideration of the comments received thereon, the Commission intends to adopt and implement final rules prior to the time NFA will be able to issue a final order in any such proceeding.

IV. Related Requirements; Recordkeeping

In performing the additional registration functions of the Commission pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it, and in the manner prescribed, by the Commission in existing or future Orders or regulations. Such requirements concern, among other things, the maintenance of records and access thereto by the Commission and others. NFA shall implement such additional procedures (or modify existing procedures) as necessary and acceptable to the Commission to ensure the security and integrity of records of investigations, proceedings and actions taken pursuant to the authority conferred by this Order; to facilitate prompt access to these records by the Commission and its staff, particularly as described in other Commission Orders or rules, including Subpart F of Part 3 of the Commission's regulations as may be promulgated; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission Orders or rules and to keep logs as required by the Commission concerning disclosures of nonpublic information; and otherwise to safeguard the confidentiality of the records.

In addition, NFA shall maintain a system to track all fitness investigations and adverse action proceedings. The system with respect to fitness investigations shall, at a minimum, identify the applicant or registrant involved, type of registration involved, nature of the apparent deficiencies or potential disqualifications, reasons that open cases remain pending, age of pending cases, and dispositions. With respect to adverse action proceedings, the system shall, at a minimum, identify the applicant or registrant involved, type of registration involved, nature of the apparent disqualifications (including statutory citation), type of action sought, status and age of open proceedings, and final disposition. NFA shall at no charge provide the Commission, periodically or at the request of the Commission or its staff, with reports on the fitness investigations and adverse action proceedings undertaken by NFA, including, but not limited to, statistical summaries.

V. Conclusion and Order

The Commission has determined, in accordance with its authority under sections 8a(10) and 17(o)(2) of the Act, to authorize NFA as of September 30, 1985, to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any person applying for registration or registered as a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor, or associated person of such categories of registrants, who is or may be subject to a statutory disqualification from registration under sections 8a(2) through 8a(4) of the Act. This Commission determination is based upon the congressional intent that NFA assume responsibility under the Act to deny, condition, suspend, restrict or revoke registrations of persons in the course of NFA's performance of Commission registration functions under the Act; NFA's representations with respect to adoption and implementation of rules, standards and procedures to be followed in administering these additional functions consistent with the Act, the Commission's regulations and interpretive statements thereunder and relevant case law; and the Commission's forthcoming adoption of its own rules to govern review of adverse registration actions taken by NFA. This Order does not, however, authorize NFA to accept or act upon requests for exemption or withdrawal from registration[11] or to render "no-action" opinions or interpretations with respect to applicable registration requirements.

Issued by the Commission on August 22, 1985, in Washington, D.C.

Jean A. Webb,

Secretary of the Commission.

[10] 50 FRR 32737 (August 14, 1985).

[11] *See* Commission Regulation 3.33, 17 CFR 3.33 (1985).

Appendix

National Futures Association Bylaws 305, Schedule A, Section I(d): Proceedings To Deny, Condition, Suspend, Restrict or Revoke Registration

Bylaw 305. Registration and Proficiency Requirements.

* * * * *

Schedule A

* * * * *

I. Registration

(d) Proceedings to Deny, Conditions, Suspend, Restrict or Revoke Registration.

(1) Service.

(A) For purposes of any proceeding to deny, condition, suspend, restrict or revoke registration, service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested, properly addressed to the applicant or registrant at the address shown on the application or any amendment thereto. Service will be complete upon mailing.

(B) A copy of any notice served in accordance with paragraph 1(A) shall also be served upon:

(i) Any registrant sponsoring the applicant or registrant pursuant to CFTC Regulation 3.12 or 3.16 if the applicant or registrant is an individual registered as or applying for registration as an associated person; or

(ii) Any futures commission merchant which has entered into a guarantee agreement pursuant to CFTC Regulation 1.10(j) with an applicant or registrant applying for registration or registered as an introducing broker.

(C) Documents served by an applicant or registrant upon the Secretary under this Section shall be considered served or filed only upon actual receipt at the offices of National Futures Association, 200 W. Madison Street, Chicago, Illinois 60606.

(2) Withdrawal of application for registration.

(A) Notice. Whenever information comes to the attention of NFA that an applicant for initial registration in any capacity may be found subject to a statutory disqualification under section 8a(2), 8a(3) or 8a(4) of the Act, the Director of Compliance or the Director's designee may serve written notice upon the applicant, which shall specify the statutory disqualifications to which the applicant may be subject and notify the applicant that:

(i) The information, if true, is a basis upon which the applicant's registration may be denied;

(ii) Unless the applicant voluntarily withdraws the application, it may be necessary to institute the denial procedures described in the following paragraphs; and

(iii) If the applicant does not confirm in writing that the applicant wishes to have the application given further consideration, the application will be deemed to have been withdrawn.

(B) The applicant must serve the written confirmation referred to in paragraph 2(A)(iii) upon the Secretary within twenty days after the date the Notice is served.

(3) Notice of Intent to Deny, Condition, Suspend, Restrict or Revoke Registration.

(A) Notice of Intent. On the basis of information obtained, NFA may at any time serve a Notice of Intent upon any person required to register under the Act pursuant to Section I(a) of this Schedule A that:

(i) NFA alleges and is prepared to prove that the applicant or registrant is subject to one or more of the statutory disqualifications set forth in section 8a(2), 8a(3) or 8a(4) of the Act;

(ii) The allegations set forth in the Notice of Intent, if true, constitute a basis upon which registration can be denied, conditioned, suspended, restricted or revoked (if the Notice of Intent proposes conditioning or restricting registration, the Notice shall specify the conditions or restrictions); and

(iii) The applicant or registrant is entitled to have the President consider written evidence of the type set forth in paragraph 3(B) in determining whether the applicant or registrant is subject to such statutory disqualification.

(B) Scope of Written Submission. If the statutory disqualification alleged is set forth in Section 8a(2) of the Act, the scope of the applicant's or registrant's written submission shall be limited to challenging the accuracy of the allegations set forth in the Notice of Intent, including evidence as to (1) the applicant's or registrant's identity, (2) the existence of a clerical error in any record documenting the statutory disqualification, (3) the nature or date of the statutory disqualification, (4) the post-conviction modification of any record of conviction or (5) the favorable disposition of any appeal. If the statutory disqualification alleged is set forth in section 8a(3) or 8a(4) of the Act, the scope of the applicant's or registrant's written submission shall be limited to the information set forth above and the type of information set forth in paragraph 6(D). Such written submission must be served upon the Secretary within twenty days after the date of service of the Notice of Intent upon the applicant or registrant.

(C) The Notice of Intent shall inform the applicant or registrant of the procedures which will be followed if no written submission is made in accordance with paragraph 3(B).

(4) Authority to Deny Registration Pursuant to Section 8a(2) of the Act.

(a) Reply. If an applicant who has received a Notice of Intent to deny registration based on a statutory disqualification set forth in Section 8a(2) of the Act makes a written submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of the receipt of such submission submit to the President and serve upon the applicant a written reply.

(B) Determination. After the receipt of the applicant's written submission and any reply thereto, the President shall determine whether the applicant is subject to a statutory disqualification under Section 8a(2) of the Act. Such determination shall be based upon the application, the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submission filed by the applicant, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Order. Within 30 days after receipt of the applicant's written submission and any reply thereto, the President shall issue an order granting or denying registration.

(5) Default of Applicant—8a(2) Denial.

(A) If an applicant for registration who has received a Notice of Intent to deny registration based on a statutory disqualification set forth in section 8a(2) of the Act fails to make a timely written submission in accordance with paragraph 3(B):

(i) The applicant will be deemed to have waived the right to submit evidence in writing on all issues, and the facts stated in the Notice of Intent shall be deemed true for the purpose of finding that the applicant is subject to a statutory disqualification under section 8a(2) of the Act; and

(ii) Twenty days after the date the Notice of Intent to deny is served upon the applicant, such Notice shall become a final order of NFA denying registration. NFA shall serve written confirmation upon the applicant that registration has been denied.

(B) Vacating the order. An applicant for registration against whom an order referred to in paragraph 5(A)(ii) was issued may file a petition and supporting affidavit with the Secretary if the Notice of Intent under paragraph 3 was not timely received by the applicant. Upon receipt of the petition, the order shall be vacated, and NFA shall serve upon the applicant a copy of the Notice of Intent required under paragraph 3. The procedures set forth in this paragraph 5(B) shall be available only once to an applicant.

(6) Authority to Suspend and Revoke Registration Pursuant to Section 8a(2) of the Act.

(A) Reply. If a registrant who has received a Notice of Intent to suspend or revoke registration based on a statutory disqualification set forth in section 8a(2) of the Act makes a written submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of receipt of such submission submit to the President and serve upon the registrant a reply.

(B) Determination. After the receipt of the registrant's written submission and any reply thereto, or if no written submission is made, the President shall determine whether the registrant is subject to a statutory disqualification. Such determination shall be based upon the evidence of the statutory disqualification, the Notice of Intent with proof of service, the written submission, if any, filed by the registrant in response thereto, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Suspension and order to show cause. (i) If the President determines that the registrant is not subject to a statutory disqualification, the President shall issue an order to that effect.

(ii) If the President determines that the registrant is subject to a statutory disqualification, the President shall issue an interim order suspending registration and requiring the registrant to show cause to the Membership Committee or its designated Subcommittee within twenty days of the date of the interim order why, notwithstanding the existence of the statutory disqualification, the registration should not be revoked. The registration shall be suspended effective five days after the interim order is served upon the registrant, and such suspension shall remain in effect until a final order with respect to the order to show cause has been issued: *Provided that,* if the sole basis upon which the registrant is subject to a statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the

temporary order, judgment or decree shall have expired: *Provided, however, that* in no event shall the registrant be suspended for a period to exceed six months.

(D) Registrant's Response. Within twenty days of the date of the order to show cause, the registrant may file with the Membership Committee or its designated Subcommittee a written response which may include briefs, affidavits and supporting memorandums, but in any event shall be limited in content to:

(i) Evidence, not previously set forth in any written submission filed under paragraph 3(B), challenging the accuracy of the allegations establishing the statutory disqualification;

(ii) The existence of any facts which constitute a clear and compelling showing that, notwithstanding the existence of the statutory disqualification, the continued registration would be in the public interest; or

(iii) In the case of an associated person, written confirmation by the registrant's sponsor that, notwithstanding the existence of the statutory disqualification, the sponsor is willing to supervise the activities of the registrant subject to such restrictions as the Membership Committee or its designated Subcommittee shall impose: *Provided that,* with respect to such sponsor: (1) An adjudicatory proceeding brought by or before the Commission pursuant to the provisions of sections 6(b), 6(c), 6d or 8a of the Act is not pending, and (2) in the case of a sponsor which is a futures commission merchant, the sponsor is not subject to the reporting requirements of CFTC Regulation 1.12(b).

(E) Reply. Within ten days after receipt of the registrant's response, the Director of Compliance may submit to the Membership Committee or its designated Subcommittee and serve upon the registrant a reply.

(F) Oral hearings. Oral hearings shall not be granted except under extraordinary circumstances and upon written request to the Membership Committee or its designated Subcommittee. Such request shall include the issues to be addressed, the evidence to be adduced and showing of compelling need. If the Membership Committee or its designated Subcommittee determines to grant a request for an oral hearing, the hearing shall be conducted pursuant to paragraph 9 as the Membership Committee or its designated Subcommittee deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.

(G) Order. Within 30 days of the receipt of a registrant's response to the order to show cause, and any reply thereto, the Membership Committee or its designated Subcommittee shall, upon consideration of the record as a whole, make a finding as to whether the registrant has shown cause why the registration should not be suspended or revoked and shall issue an order accordingly. If the Membership Committee or its designated Subcommittee, on the basis of the showing described in paragraph 6(D)(ii), finds that, notwithstanding the existence of the statutory disqualification, the registration should not be revoked, the Committee may issue an order further suspending the registrant for a period not to exceed six months. In the case of an associated person the order may further restrict the registration of the registrant.

(H) Notwithstanding the sponsor's written confirmation under paragraph 6(C)(iii), the Membership Committee or its designated Subcommittee may issue an order revoking or further suspending for a period not to exceed six months the registration of an associated person and, in any event, may not issue an order restricting such registration if:

(i) The associated person is subject to a statutory disqualification under section 8a(2) of the Act as a result of conviction of a felony or misdemeanor under Section 9 of the Act; or

(ii) The associated person has been the subject of more than one proceeding in which findings of fact constituting a statutory disqualification under section 8a(2) of the Act have been entered against the associated person; or

(iii) The associated person is subject to an adjudicatory proceeding brought by or before the Commission pursuant to the provision of section 6(b), 6(c), 6d or 8a of the Act; or

(iv) The associated person was previously granted a conditional or restricted registration and was found to have failed to conform to such condition or restriction; or

(v) The associated person willfully made any materially false or misleading statement or willfully omitted to state any material facts in any written submissions filed under this section as to any facts which would constitute statutory disqualifications under section 8a(2) of the Act; or

(vi) The registrant with whom the associated person is associated willfully made false or misleading statements of material fact in the confirmation referred to in paragraph 6(D)(iii) or willfully failed to state any material facts which were required to be stated therein.

(I) Default. (i) If the registrant fails to file a timely response to the order to show cause, the registrant shall be deemed in default. The President shall thereafter, upon a finding that service was effected, enter an order revoking, restricting or further suspending the registration. Such finding shall be based upon the evidence of the statutory disqualification, any written submission filed by the registrant in response to the Notice of Intent in accordance with paragraph 3(B) and any written reply thereto submitted by the Director of Compliance.

(ii) If the President issues an order under paragraph 6(I)(i) revoking, restricting or further suspending registration, the registrant may file a petition and supporting affidavit with the Secretary setting forth the reasons why the registrant failed to file a response to the order to show cause. Such petition must be accompanied by the registrant's response. Upon receipt of the petition, the President may, for good cause, shown, vacate the order.

(7) Proceedings under Section 8a(2)(E) of the Act.

NFA will not initiate a proceeding based on a statutory disqualification set forth in section 8a(2)(E) of the Act, if respondent superior is the sole basis upon which the registrant may be found subject to such statutory disqualification.

(8) Authority to Deny, Condition, Suspend, Restrict or Revoke Registration Pursuant to Sections 8a(3) and 8a(4) of the Act.

(A) Reply. If an applicant or registrant who has received a Notice of Intent to deny, condition, suspend, restrict or revoke registration based on a statutory disqualification set forth in sections 8a(3) or 8a(4) of the Act makes a written submission pursuant to paragraph 3(B), the Director of Compliance may within ten days of receipt of such submission submit to the President and serve upon the applicant or registrant a reply.

(B) Determination. After receipt of the applicant's or registrant's written submissions and any reply thereto, or if no written submission is made, the President shall determine whether the applicant or registrant has shown why the registration should not be denied, conditioned, suspended, restricted or revoked. Such determination shall be based upon the evidence of the statutory

disqualification, the Notice of Intent with proof of service, the written submissions, if any, filed by the applicant or registrant in response thereto, any written reply submitted by the Director of Compliance and such other papers as the President may require or permit.

(C) Notice of determination. (i) If the President determines that registration should be denied, conditioned, suspended, restricted or revoked, the President shall notify the applicant or registrant and shall inform the applicant or registrant of the right to request a hearing before the Membership Committee or its designated Subcommittee.

(ii) If the President determines that registration should not be denied, conditioned, suspended, restricted or revoked, the President shall issue an order to that effect.

(D) Right to a Hearing. A hearing before the Membership Committee or its designated Subcommittee may be obtained by filing a written request with the Secretary within ten days of the date of service of the Notice of the President's Determination.

(E) Waiver of a Hearing. If no request for a hearing is received by NFA within 10 days after the Notice of the President's determination has been served, the right to a hearing shall be deemed to have been waived and the President shall, upon consideration of the record as a whole, make a finding as to whether the registration should be denied, conditioned, suspended, restricted or revoked and shall issue an order accordingly.

(F) Request for a Hearing. If an applicant or registrant makes a timely request for a hearing on the question of whether the applicant or registrant is subject to a statutory disqualification under section 8a(3) or 8a(4) of the Act, or whether notwithstanding the existence of the statutory disqualification, registration should nevertheless be granted or should not be conditioned, suspended, restricted or revoked, a hearing shall thereafter be conducted in accordance with the procedures set forth in paragraph 9 as the Membership Committee or its designated Subcommittee deems appropriate. For purposes of the hearing, the Notice of Intent given in accordance with paragraph 3 shall be treated as a duly authorized complaint by the President seeking the relief specified therein, and the request for hearing shall be threated as an answer.

(G) Order. Within 30 days of the date of the conclusion of the hearing, the Membership Committee or its designated Subcommittee shall make a finding as to whether the applicant has shown that registration should not be denied or conditioned or whether the registrant has shown that the registration should not be suspended, restricted or revoked and shall issue an order accordingly.

(9) Hearing Procedures.

If an applicant or registrant requests a hearing before the Membership Committee or its designated Subcommittee a record of the hearing shall be kept. At such a hearing the applicant or registrant may be represented by counsel, submit evidence, call and examine witnesses, examine the evidence upon which the President made a determination and at the discretion of the Membership Committee or its designated Subcommittee, present oral or written argument.

(10) Orders.

(A) Any order issued by the President, the Membership Committee or its designated Subcommittee under this section (except an interim order suspending registration pursuant to paragraph 6(C)(ii)) shall become a final order of NFA on the date it is served upon the applicant or registrant. A copy of each final order issued by NFA shall be served upon the Commission at the same time it is served upon the applicant or registrant.

(B) Any final order of NFA which denies, conditions, suspends, restricts or revokes registration shall inform the applicant or registrant of the right to petition the Commission for review under Section 17(o) of the Act and applicable Commission regulations.

(C)(i) Any final order of NFA denying registration shall remain in effect pending any review initiated or granted by the Commission.

(ii) Any final order of NFA suspending, restricting or revoking registration shall become effective 15 days after service on the registrant unless within that time a petition for review by the Commission is filed in accordance with Commission Regulations, or the Commission initiates review.

(iii) Any final order of NFA granting or conditioning registration shall become effective 30 days after service on the applicant unless the Commission otherwise directs. Prior to such effective date, registration shall not be granted.

[FR Doc. 85-20522 Filed 8-27-65; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD-University Forum Working Group on Export Controls; Advisory Committee; Meeting

Summary: The Working Group on Export Controls of the DoD-University Forum will meet in open session on September 13, 1985, from 10:00 a.m. until 2:00 p.m., at the Sheraton Grand Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001-1527.

The mission of the DoD-University Forum Working Group on Exports Controls is to assess the impact on universities of proposed international export controls.

The meeting is scheduled to discuss development of procedures for complying with draft national policy statement on Dissemination of Scientific and Technical Information, the potential for controls on access to supercomputers, on biotechnology, and on research performed under the Strategic Defense Initiative. The members will also be brought up to date on the activities of groups working in related areas.

Public attendance will be accommodated as space permits. Public attendees are requested to telephone Mr. Frank Sobieszczyk of the DoD Office of Research and Laboratory Management, (202) 694-0205 by close of business, September 11, 1985, to be advised of the meeting room and seating accommodations.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 23, 1985.

[FR Doc. 85-20524 Filed 8-27-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent to Prepare an Environmental Impact Statement; Westover AFB, MA

The Air Force plans to prepare an environmental impact statement on a proposal to replace 16 C-130E aircraft at Westover AFB, MA with eight C-5A aircraft. Also, to be included is an alternate proposal to increase the number of C-5A aircraft to 16.

With the proposed action, the mission of the 439 Tactical Airlift Wing (TAW) would change to a strategic mission. The 439 MAW would still recruit, organize, and train Air Force reservists while maintaining operationally ready aircraft, crews, and support personnel. In terms of aircraft flying activity, the current

number of local sorties of 30 per week would decrease to nine per week for the proposed eight C-5As. The annual flying hours (currently 6,460 for the C-130s) would be 4,065 for eight C-5As and 7,640 for 16 C-5As.

This proposed new mission would require an increase in support manpower, both full time and reserve personnel. An increase of approximately 460 full time (Air Reserve Technicians and civilians) and approximately 515 reservists would be required to support eight C-5As. To support the 16 C-5As would require an increase of approximately 700 full time and 1,400 reserve personnel.

To support the proposed mission new construction valued at approximately $40 million will be required at Westover AFB.

The Air Force will conduct a public scoping process. Individuals, organizations, and agencies may provide topics for analysis at the address below. A public scoping meeting is scheduled to be held in late September 1985 on or near Westover AFB MA. The date, time, and location will be announced through the Westover AFB Public Affairs Office.

Correspondence and items for consideration in the preparation of the environmental impact statement should be addressed to: Headquarters, Air Force Reserve/DEPV, ATTN: Ms Joan Lang, Robins Air Force Base Georgia 31098-6001.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-20537 Filed 8-27-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Application Notice Establishing Closing Dates for Transmittal of Certain Fiscal Year 1986 Noncompeting Continuation Awards; Correction

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: An application notice establishing closing dates for the transmittal of applications for noncompeting continuations for certain Fiscal Year 1986 Special Education and Rehabilitative Services programs was published on July 22, 1985 at 50 FR 29721-29733. In that notice, an error was made in the dates by which the State Single Points of Contact must mail their comments under the State's Intergovernmental Review Process to the Secretary of Education, as required by Executive Order 12372. *There are no changes in the closing dates for the transmittal of applications.*

The correct dates for transmittal of State Review Process comments are listed by the Catalog of Federal Domestic Assistance (CFDA) Number below:

84.158F (on page 29723)—October 30, 1985
84.158H (on page 29724)—November 14, 1985
84.024B-B (on page 29724)—November 14, 1985
84.158B (on page 29726)—November 25, 1985
84.024B-A (on page 29727)—January 27, 1986
84.158D (on page 29727)—February 14, 1986
84.025B (on page 29728)—February 26, 1986
84.078D (on page 29731)—April 14, 1986
84.024F (on page 29732)—May 30, 1986

FOR FURTHER INFORMATION CONTACT: Ms. Mary A Smith, Division of Regulations Management, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 2134, FOB-6), Washington, DC 20202. Telephone: (202) 245-7091.

(20 U.S.C. 1422, 1423, 1424a, 1425)

Dated: August 22, 1985.

Joan Standlee,

Acting Assistant Secretary for Special Education and Rehabilitation Services.

[FR Doc. 85-20497 Filed 8-27-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent To Issue a Grant With Restricted Eligibility

Summary

The Department of Energy announces that, pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant award to the United Negro College Fund to demonstrate a method for assisting predominantly Black, low resource institutions in obtaining alternative funding sources to undertake major capital intensive, retrofit projects which would lower their operating costs and reduce energy consumption. United Negro College Fund (UNCF) has been asked to submit a proposal under DE-FG01-85CE64859. This effort is estimated at $286,636.

Background

There are currently 43 United Negro College Fund member colleges and universities in the United States. Each of the institutions, principally located in the Southeast, serves a largely low-income population. Students of UNCF institutions are less able than many others to absorb increases in tuition costs. Energy costs, nationwide, have increased greatly over the past decade and UNCF college tuitions have been unable to keep pace with rising operating costs.

UNCF schools must continually seek ways to curb costs. Utility bills are among their largest operating expense item and are clearly the fastest growing cost. As a result, these schools are highly motivated to use whatever means available to encourage energy conservation, but are uncertain about how to pursue it.

The funding provide by DOE will be used by the UNCF to review the energy consumption patterns of all of its member colleges and universities, to develop detailed energy efficiency management plans for four institutions selected to be demonstration sites, to monitor implementation, and to prepare a final report which, among other things, will discuss how best to expand this approach to energy savings to other low resource schools.

Eligibility for this project is being restricted to the United Negro Fund's Research Department because it is the most comprehensive source of data on Black colleges and universities in the United States, and it enjoys a unique relationship with its member institutions of higher education. Specifically, it is nationally recognized as the chief vehicle for raising funds and securing public support for these colleges and universities, and over the many years that the organization has served in this role, the Fund has been an essential link between these institutions and the Federal Government. Furthermore, no other organization in the Nation has this degree of acceptance by a large group of low resource schools, a factor essential to the successful conclusion of this project.

The outcome of this project will also provide significant lessons for any number of smaller, low-resource institutions including church affiliated primary schools, inner-city public schools, and others. The potential fuel savings in substantial. Without this project, the experience and knowledge necessary to benefit from energy efficiency will not be enhanced in these institutions, and without this project, the opportunities available through these demonstrated approaches will not be accepted by, and thus not available to, the most needy institutions.

Scope of Project

The proposed project will focus on developing an Energy Management Program designed for private educational institutions with limited resources, developing criteria and procedures for identifying qualified energy service companies to engage in shared savings agreements and assisting four specific institutions by selecting energy service companies to demonstrate the viability of such an agreement. This effort is intended to be completed no later than September 1987.

For further information contact: Ms. Rosemarie H. Marshall, MA-453.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-1688.

Issued in Washington, D.C. on August 20, 1985.

Edward T. Lovett,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 85-20551 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

Intent To Renew a Cooperative Agreement

Summary

The Department of Energy announces that, pursuant to the 10 CFR 600.7(b), it is restricting eligibility for the award of additional effort under existing Cooperative Agreement No. DE-FC01-84CE76246 to Midwest Research Institute (MRI), who is currently evaluating the biochemical effects of human body fluids exposed to uniform 60-Hz electric and magnetic fields. This additional effort is expected to be approximately $400,000 per year for three additional years. MRI has been asked to submit a proposal for this additional work under DE-FC01-85CE76246.

Project Scope

The purpose of this effort is to continue research into the effects on humans exposed to 60Hz electric and/or magnetic fields by extracting blood samples and collecting body fluids for analysis before, during and after exposure and where necessary, extend research for statistical accuracy. Eligibility for award of this additional effort is being limited at this time to MRI because the MRI, under contract to the New York State Department of Health, has constructed the only U.S. facility for the controlled and safe exposure of humans to 60Hz fields.

For further information contact: Ms. Rosemarie H. Marshall, MA-453.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252-1688.

Issued in Washington, DC. on August 20, 1985.

Edward T. Lovett,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 85-20554 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

San Francisco Operations Office; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy, San Francisco Operations Office.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The Department of Energy, San Francisco Operations Office, announces that it intends to award a grant to the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), Atlanta, GA, in the amount of $150,000, for "Active Solar Technology Transfer". Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), DOE/SAN has determined that eligibility for this grant award shall be limited to ASHRAE.

Grant Number: DE-FG03-85SF15754.

Scope of Project: ASHRAE proposes to continue technology transfer activities in the Solar Buildings area, including the development and dissemination of appropriate engineering and applications documentation and development and adoption of engineering standards based on Government-sponsored research. This effort is expected to ensure a maximum utilization of the technology evolving from the Government research programs. Specifically, this activity is expected to result in the formulation and preparation of manuals, handbooks, computer data bases or other useful engineering tools. Also, background data is expected to be made available for the design, operation and/or maintenance of active solar systems.

FOR FURTHER INFORMATION CONTACT: Jeff Mark, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, August 13, 1985.

R.A. Du Val,

Manager.

[FR Doc. 85-20553 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

San Francisco Operations Office; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy, San Francisco Operations Office.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The Department of Energy, San Francisco Operations Office, announces that it intends to award a grant to the University of Chicago, Chicago, IL, in the amount of $220,858, for "Advanced Tubular Concentrator". Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), DOE/SAN has determined that eligibility for this grant award shall be limited to the University of Chicago.

Grant Number: DE-FG03-85SF15753

Scope of Project: The University of Chicago proposes to perform research in the area of advanced, non-tracking, evacuated tubular collectors, in four areas:

(1) The exploration of advanced optical design methods for the efficient collection of solar radiation at high temperature operation;

(2) The exploration of thermal; design configurations;

(3) The development of analytical methods to assist other researchers in subsequent R&D activities;

(4) Studies to explore alternate design configurations.

This research is expected to directly support other industrial research and will result in optimize analytical designs, design tools and direct assistance by University of Chicago staff to the engineering development of commercial designs.

FOR FURTHER INFORMATION CONTACT: Jeff Mark, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, August 13, 1985.

R.A Du Val,

Manager.

[FR Doc. 85-20555 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Pre-Freshman Engineering Program (PREP)

AGENCY: Office of Energy Research.

ACTION: Program Solicitation Announcement.

SUMMARY: The purpose of this notice is to announce the availability of the PREP solicitation, to identify the institutions which will be eligible for this grant program, and to inform potential

applicants of the closing date and location for submission of applications for awards under this program.

FOR FURTHER INFORMATION CONTACT: All communications or questions regarding this program solicitation should be directed to: Mr. J.D. Burleson, Contracting Officer; Procurement and Contracts Division; Oak Ridge Operations; Department of Energy; Oak Ridge, Tennessee 37831; Telephone Number: (615) 576-0794.

Background

The Department of Energy (DOE) is concerned with the supply of science and engineering professionals to perform its research and development mission and is authorized in the Energy Reorganization Act of 1974 to "assure an adequate supply of manpower for the accomplishment of energy research and development programs by sponsoring and assisting in education and training activities in postsecondary institutions, vocational schools, and other institutions. . . ." Individuals with engineering training will continue to play critically important roles in the Nation's overall energy programs. Specifically, DOE's concern is based on the consideration that the future supply of engineering manpower is threatened by two factors: fewer students are enrolling in science and mathematics courses in high school and fewer students are available to join the science and engineering pool due to declining birth rates. Students who have completed the ninth grade in high school often decide not to take another science or mathematics course. Once the traditional math/science sequence is disrupted, it is too late for students to meet the minimum requirements for admission to college and university engineering programs. The primary purpose of PREP will be to alleviate these projected manpower shortages in engineering by preparing and guiding high school students in the selection of college-preparatory courses in science and mathematics.

In the past twelve years, one hundred and sixty-one PREP projects have been funded. These projects have reached over ten thousand socially or economically disadvantaged high school students. Pending Congressional action, DOE intends to commit about $300,000 for the Pre-Freshman Engineering Program for fiscal year 1986. DOE invites all qualified universities (see following section) to write for a copy of its Pre-Freshman Engineering Program solicitation, DOE-ER-0171/1, Notice of Program Announcement Number DE-PS05-86ER75209.

Eligibility and Limitations

The overall intent of the program is to increase the number of engineers who graduate from college. Since PREP is designed to accomplish this purpose by preparing high school students for, and guiding them in, the selection of college-preparatory courses in science and mathematics, institutions which offer engineering-degree programs are deemed most qualified. Accordingly, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), applications will be accepted only from institutions which grant engineering degrees at the baccalaureate level or from institutions which have formal dual-degree pre-engineering programs with institutions granting engineering degrees at the baccalaureate level. (If applying under the latter category, specific information should be given regarding the formal dual-degree program.)

Other institutions interested in participating in PREP may do so through cooperative projects with engineering degree-granting institutions (in this case, the applications must be submitted by the engineering degree-granting institution).

Application Forms

Program solicitations are expected to be ready for mailing by August 30, 1985. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation. Copies of this solicitation may be obtained by writing to: Division of University and Industry Programs, ER-44, Office of Field Operations Management, Office of Energy Research, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone Number: (202) 252-1634.

Closing Date for Submission of Applications.

To be eligible; applications must be received by the Department of Energy at the Washington, DC address in the preceding paragraph by 4:30 p.m., October 30, 1985.

(Catalog of Federal Domestic Assistance No. 81.047, Pre-Freshman Engineering Program)

Issued in Washington, DC, on August 14, 1985.

Alvin W. Trivelpiece,

Director, Office of Energy Research.

[FR Doc. 85-20550 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 85-16-NG]

Natural Gas Imports and Great Lakes Gas Transmission Co.; Application To Amend Import Authorization

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application to Amend Authorization to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 19, 1985, of the application of Great Lakes Gas Transmission Company (Great Lakes) to amend its authorization to import Canadian natural gas. The amendment for which Great Lakes seeks approval would permit Great Lakes to continue to receive natural gas from TransCanada Pipelines Limited (TransCanada) at a pressure of not less than 750 pounds per square inch (psig), and continue to pay TransCanada a compression service charge pursuant to a "delivery pressure agreement" dated July 1, 1975, as amended. Great Lakes requests that the ERA extend the term of the agreement with TransCanada for a five-year period from October 31, 1985, to October 31, 1990, if ERA does not approve extension of its agreement on an indefinite year-to-year basis. Further, Great Lakes requests that the authorization apply to all volumes of Canadian natural gas for which Great Lakes has authorization from the ERA or the Federal Power Commission (FPC) to import or to transport for the account of others, or for which such authorizations may be granted during the term of the new five-year authorization.

Great Lakes also requests that the ERA process its application under the shortened proceedings prescribed in 10 CFR 590.316 of its Rules and Regulations.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to invervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on September 27, 1985.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000

Indpendence Avenue, SW., Washington, D.C. 20585, (202) 252-9590

Diane Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: Great Lakes, a Delaware Corporation whose principal place of business is Detroit, Michigan, is presently authorized to purchase approximately 120,763 MMcf of natural gas annually from TransCanada at a point on the United States-Canadian international boundary, near Emerson, Manitoba (Emerson interconnection) for resale in the United States and for compressor fuel and other company uses. Great lakes is authorized to transport approximately 301,125 MMcf of natural gas annually for the account of TransCanada, Texas Eastern Transmission Company, Tennessee Gas Pipeline Company, a division of Tenneco, Inc., and ANR Pipeline Company, from the Emerson interconnection to various delivery points on Great Lakes' pipeline system. Great Lakes is also authorized to transport gas from the Emerson interconnection on behalf of Northern Natural Gas Company, a division of InterNorth, Inc.

Great Lakes originally was authorized to import natural gas into the United States from Canada at a pressure of 550 psig, pursuant to FPC orders issued on June 20, 1967 (Docket No. CP66-110), April 30, 1970 (Docket Nos. CP70-19 and CP70-100), and June 1, 1971 (Docket No. CP71-222).

In these original authorizations the FPC found that the Great Lakes system required pressurization of the gas to 750 psig and assumed that the pressurization would be accomplished after the gas was imported, with compressor capacity to be built by Great Lakes. However, TransCanada and Great Lakes entered into an agreement whereby Great Lakes would pay TransCanada an additional charge for pressurization service so that the gas would be delivered to Great Lakes at 750 psig. By orders issued on march 25, 1971, April 24, 1972, and on October 24, 1975, in the above-referenced dockets and in Docket Nos. CP71-223 and CP71-299, the FPC amended Great Lakes' import authorizations to permit importation of gas at the higher pressure and payment to TransCanada for the pressurization service, in lieu of installation of new compression equipment by Great Lakes.

In issuing its October 24, 1975, order, the FPC concluded that the lower cost resulting from the pressurization contract with TransCanada, as amended, justified the granting of Great Lakes' request to continue payment to TransCanada for pressurization, through October 31, 1980. The FPC also again concluded the delivery at 750 psig was necessary for Great Lakes to meet the delivery requirements of its customers.

On April 10, 1980, Great Lakes filed an application with the ERA, pursuant to section 3 of the Natural Gas Act, requesting that the ERA amend the previous authorization granted by the FPC relating to its service agreement with TransCanada. In considering previous FPC orders and the substantial cost savings demonstrated by Great Lakes, the ERA approved extension of the amending agreement for five years, until October 31, 1985, by issuance of DOE/ERA Opinion and Order No. 22 (Order No. 22) on October 22, 1980 (1 ERA 70,521).

In its application now before the ERA, Great Lakes states that it has reevaluated the relative costs of constructing its own compression facilities versus the cost of continued compression service by TransCanada and finds that it would required a 24,000 horsepower compressor unit to produce the requisite line pressure, at a cost of 2.53¢ per Mcf, compared to the present TransCanada charge of 0.794¢ per Mcf. According to Great Lakes, at an annual throughput of approximately 391,855 MMcf, its customers would save approximately $6.80 million annually if the gas is compressed by TransCanada. The cost of installing and operating a compressor unit and gas aftercooler was compared with current compression charge of 0.20¢ (Canadian) per Mcf, plus an additional charge calculated by multiplying .0025 times 105 percent of the price in ¢ (Canadian) per Mcf under TransCanada's Manitoba Zone Rate Schedule calculated at 100 percent load factor. Great Lakes contends that the inclusion of the Manitoba Zone Rate Clause in this formula, under which only about .3% of an increase in the Manitoba Zone Rates would be added to the compressor charge, was deemed necessary to protect TransCanada against any future changes in price of gas purchased by TransCanada to be used as compressor fuel.

Great Lakes' Agreement with TransCanada remains in effect until October 31, 1985, after which time the agreement remains in effect on a year-to-year basis, unless cancelled by either party upon eighteen months written notice. Great Lakes requests the ERA to grant an authorization that would permit it to receive all gas from TransCanada for an open-ended period as provided for in the amended agreement. If the ERA isues an order with a termination date, Great Lakes requests that the authorization be for an additional five-year term ending October 31, 1990.

Great Lakes maintains it does not have the ability to install compressors before the curent authorization expires, and requests that the ERA issue an emergency interim order if a final order has not been issued by October 31, 1985, to allow it to continue to receive all gas from TransCanada at a pressure of 750 psig.

Other Information

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed not later than 4:30 p.m., September 27, 1985.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on

the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provided notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses, filed by parties pursuant to this notice, in accorance with 10 CFR 590.316.

A copy of Great Lakes' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 22, 1985.

James W. Workman,

Director, Office of Fuels Program, Economic Regulatory Administration.

[FR Doc. 85-20584 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Period of July 1 Through August 2, 1985

During the period of July 1 through August 2, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: August 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Farmers Union Co-op Oil Association, Howells, Nebraska, HEE-0157, Gasoline

Farmers Union Co-op Oil Association (Farmers) filed an Application for Exception from the provisions of an Energy Information Administration reporting requirement. The exception request, if granted, would relieve Farmers of obligation to submit Form EIA-782B, entitled "Resellers/Retailers" Monthly Petroleum Product Sales Report." On August 2, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

[FR Doc. 85-20587 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of July 19 Through July 26, 1985

During the Week of July 19 through July 26, 1985, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 19 through July 26, 1985]

Date	Name and location of applicant	Case No.	Type of Submission
July 23, 1985	Department of the Interior, Washington, D.C	HED-0284	Motion for discovery. If granted: Discovery would be granted to Department of the Interior in connection with its Application for Exception (Case No. HEE-0083).
July 25, 1985	Economic Regulatory Administration, Washington, D.C	HER-0108	Request for modification/rescission. If granted: The April 20, 1978 Decision and Order issued to Eason Oil Company (Case No. DXE-0921) would be modified regarding the firm's non-product cost increases and the amount of exception relief would be reduced accordingly.
July 25, 1985	Gulf Oil Corporation, Washington, D.C	HEF-0590	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V in connection with a June 14, 1985 Consent Order entered into with the Gulf Oil Corporation.
July 26, 1985	Cities Service Oil & Gas Corporation, Washington, D.C	HRD-0285 and HRH-0285	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing convened in connection with the Statement of Objections submitted by Cities Service Oil & Gas Corporation in response to the Proposed Remedial Order (Case No. HRO-0285) issued to the firm.
July 26, 1985	Petrade International, Inc., Washington, D.C	HRR-0109	Request for modification/rescission. If granted: The December 6, 1983 Decision and Order (Case No. HRJ-0043) issued to the Economic Regulatory Administration/REB Petroleum, Inc. would be modified to permit Petrade International, Inc. use of those exhibits released under the Protective Order.

REFUND APPLICATIONS RECEIVED

[Week of July 19 to July 26, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/22/85	Receive Orders/Amber Refining	RF171-5
7/17/85	Boswell/Universal Supply & Equipment Company	RF179-1
7/22/85	McCarty/Ottawa Oil Company	RF143-15
7/22/85	McCarty/Mid-Wood, Inc	RF143-14
7/22/85	Arkla Chemical/Arkansas Cement Corp	RF153-16
7/22/85	Arkansas Louisiana/Arkansas Cement Corporation	RF154-4
7/22/85	McCarty/Hertz Corporation	RF143-16
7/22/85	Point Landing/Internation Trading & Transportation Ltd	RF122-9
7/22/85	McCarty/Madison Landmark, Inc	RF143-17
7/22/85	Nielson/Fiscal Oil Company, Inc	RF141-11
7/22/85	LARCO/Central Distributing Co., Inc	RF112-168
7/17/85	St. James/J.L. Jenney Coal Company	RF180-1
7/19/85	St. James/Dennis K. Burke, Inc	RF180-2
7/22/85	St. James/Cleghorn, Oil, Inc	RF180-3
7/22/85	St. James/Manbeck Dredging Company	RF180-4
7/15/85	Aminoil/Miller's Bottled Gas, Inc	RF139-52
7/22/85	St. James/Clyde W. Billman	RF180-5
7/23/85	F.O. Fletcher/Schroeder Fuel Co	RF172-5
7/23/85	Red Triangle/James F Crowell	RF178-3
7/23/85	Red Triangle/Hensley's Used Cars	RF178-2
7/23/85	Arkla Chemical/Coca Cola Bottling Company	RF153-17
7/24/85	Red Triangle/Ben M. Valles	RF178-4
7/25/85	McCarty/Clark Landmark, Inc	RF143-18
7/25/85	Windham/Ohio	RQ43-206
7/25/85	Coline/Nevada	RQ2-218
7/24/85	Receive Orders/Pennsylvania Company	RF171-6
7/26/85	National Helium/West Virginia	RQ3-219
Pennzoil/West Virginia	RQ10-220	
7/26/85	McCarty/Minster Oil Company	RF143-19
7/26/85	Aminoil/Davis Propane	RF139-48
7/26/85	Aminoil/Fulton Hydro Gas Company	RF139-49
7/26/85	Aminoil/Central Propane Service, Inc	RF139-50
7/26/85	Aminoil/Bechtol Gas Service	RF139-51

[FR Doc. 85-20585 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of July 26 Through August 2, 1985

During the Week of July 26 through August 2, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 26 through Aug. 2, 1985]

Date	Name and location of applicant	Case No.	Type of submission
July 29, 1985	Southwestern States Management Corp./Kenneth Walker, Abilene, Texas.	HRZ-0263	Interlocutory order. If granted: The Proposed Remedial Order (Case No. HRO-0258) issued jointly to Southwestern States Management Corporation and Kenneth Walker would be amended to withdraw allegations relating to the firm and Mr. Walker's liability.
July 30, 1985	Atlantic Richfield Company, Washington, DC	HEF-0591	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the June 27, 1985 Consent Order entered into with the Atlantic Richfield Company.
July 31, 1985	Economic Regulatory Administration, Washington, DC	HRZ-0265	Interlocutory order. Certain portions of the Statement of Objections submitted by Murphy Oil Corporation in response to a Proposed Order of Disallowance (Case No. BRO-0984) which are based upon "delay theories" would be dismissed.
July 31, 1985	Murphy Oil Corporation, Washington, DC	HRZ-0264	Interlocutory order. If granted: Portions of the Economic Regulatory Administration's Response to Murphy Oil Company's Supplemental Statement of Objections to the Proposed Order of Disallowance would be stricken from the record in the proceeding (Case No. BRO-0984).
August 1, 1985	Louisiana Crude Oil & Gas Co., Inc., New Orleans, Louisiana.	HEA-0012	Appeal of an order for disposition of refunds. If granted: The July 1, 1985 Order for Disposition of Refunds issued to Eastern Oil Company by the Economic Regulatory Administration would be rescinded.

REFUND APPLICATIONS RECEIVED

[Week of July 26 to August 2, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/29/85	Bayou State/Ida Gasoline	RF117-15
7/29/85	LARCO/Blue & White Transport, Inc	RF112-169

REFUND APPLICATIONS RECEIVED—Continued

[Week of July 26 to August 2, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/29/85	St. James/Brockton Nightingale Oil	RF180-7
7/29/85	St. James/Wildcat Petroleum Corp	RF180-6
7/29/85	McCarty/Agri-Urban, Inc	RF143-20
7/29/85	APCO/K.C. Jeffries Oil Company	RF83-138
7/29/85	F.O. Fletcher/West Fuel Company	RF172-6
7/29/85	Red Triangle/Al's Gulf Service	RF178-5
7/29/85	Aminoil/Bil-Mar Foods, Inc	RF139-53
7/30/85	Nielsen/Berger Oil Company	RF141-12
7/30/85	Aminoil/Modern LP Gas Company	RF139-54
7/29/85	Aminoil/Miller LP Gas Service	RF139-55
7/30/85	Gulf/Greg Achtor	RF40-3038
7/30/85	Gulf/Flatley Oil Company	RF40-3939
2/19/85	Moore Terminal/Dixie Oil of Tennessee	RF181-1
7/30/85	Receive Orders/Kern Oil & Refining Company	RF171-7
7/30/85	Receive Orders/USA Petroleum Corp	RF171-8
7/31/85	Red Triangle/Black's Gulf	RF178-6
7/31/85	St. James/Curtis Oil Co., Inc	RF180-8
7/31/85	St. James/Town River Oil Company	RF180-9
7/31/85	Aminoil/Tanks Trucks, Inc	RF139-56
7/30/85	APCO/Lincoln Smith	RF83-139
7/31/85	St. James/C.J. Thibodeaux & Co	RF180-10
7/31/85	Receive Orders/Pioneer Refining Ltd	RF171-10
7/31/85	Receive Orders/Beacon Oil Company	RF171-9
7/31/85	Receive Orders/Morgan Products, Inc	RF171-11
7/31/85	Receive Orders/Southern Oil Company	RF171-12
7/31/85	Aminoil/Avon LP Gas Company	RF138-57
8/1/85	Husky/Nevada	RF161-4
8/1/85	Fields/Kar Kwik, Inc	RF173-2
8/1/85	Inland/Kellett Oil Company	RF176-2
8/1/85	Ayers/Elvins "66" Service	RF177-2
8/1/85	Receive Orders/Navajo Refining Co	RF171-13
8/1/85	Receive Orders/Plateau, Inc	RF171-14
8/1/85	Receive Orders/Little America Refining Company	RF171-16
8/1/85	Receive Orders/Placid Refining Co	RF171-15
8/1/85	Amoco/Duponty Brothers	RF21-12397
8/1/85	Boswell/Barton Brands, Inc	RF179-2
8/1/85	Husky/Dallas & Mavis Forwarding Co., Inc	RF161-5
8/1/85	St. James/Elman Fuel Co	RF180-11
8/2/85	St. James/Parker Fuel Co	RF18-12
8/2/85	St. James/Needham Oil Company	RF180-13
8/2/85	Red Triangle/Angelina Hernandez	RF178-7
8/2/85	F.O. Flecther/Roger Malfait	RF172-7
8/2/85	Aminoil/Hayes-Albion Corp	RF139-58
8/1/85	Southern Union/Chevron, USA, Inc	RF182-1
8/2/85	Arkansas Chemical/Yellow Cab Co	RF154-5

[FR Doc. 85-20586 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to eligible claimants a total of $2,404,055 (plus accrued interest) obtained by the DOE under the terms of a consent order entered into with Beacon Oil Company. The funds are being held in escrow following settlement of all claims and disputes arising from an audit by the Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed on or before September 27, 1985 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case numbers HEF-0203.

FOR FURTHER INFORMATION CONTACT: Geoffrey D. Stein, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order tentatively establishes procedures to distribute to eligible claimants $2,404,055 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Beacon Oil Company (Beacon) on December 17, 1979. The funds were provided to the DOE by the firm in order to settle all claims which the Economic Regulatory Administration could have pursued under the DOE price and allocation regulations relating to transactions by Beacon involving the production, refining, and marketing of petroleum products during the period August 19, 1973 through March 31, 1975 (the consent order period).

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively fomulated to distribute the contents of the escrow accounts funded by Beacon. The DOE has tentatively decided that Applications for Refund should be accepted from firms and individuals who purchased refined petroleum products from Beacon during the consent order period. The Proposed Decision and Order provides that in order to be entitled to receive any portion of the settlement funds, a purchaser must furnish the DOE with evidence which demonstrates that the claimant was injured by the alleged unlawful prices for covered products charged by Beacon. This evidence includes specific documentation concerning the date, place, price, and volume of product purchases, whether the increased costs were absorbed by the claimant or passed through to other

purchasers, and the extent of any injury alleged to have been suffered.

The Proposed Decision and Order also refers to the distribution in a second-stage proceeding of any funds remaining after all valid claims are paid. The DOE solicits comments on any proposals that claimants may suggest for this second-stage distribution.

Until final procedures are adopted, no claims for refunds will be accepted. Applications for Refund, therefore, should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Dated: August 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

August 21, 1985.

Name of Case: Beacon Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0203.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received as a result of enforcement proceedings involving alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with Beacon Oil Company (Beacon). Under the terms of the consent order, Beacon agreed to refund a total of $6,800,000, including payments to the DOE, in settlement of all civil and administrative claims by the DOE relating to Beacon's compliance with the federal petroleum price regulations applicable to refiners of petroleum products during the period from August 19, 1973 through March 31, 1975 (the consent order period).

I. Background

Beacon was a "refiner" of petroleum products as that term was defined in 10 CFR 212.31. During the consent order period, Beacon was engaged in the production, refining, and marketing of products covered by the federal petroleum price regulations set forth in 6 CFR Part 150 and 10 CFR Part 212. The ERA audited Beacon to determine the firm's compliance with these regulations. In the course of the audit process, Beacon entered into a consent order with the DOE, whereby the firm agreed to refund a total of $6.8 million to various parties to resolve all issues regarding Beacon's application of the regulations during the consent order period. Notice of this proposed consent order was published for public comment at 44 FR 58950 (1979). Claims and comments were filed by approximately 100 interested parties. The proposed consent order was adopted without modification as a final order of the DOE on December 17, 1979. 44 FR 73139 (1979).

The consent order set forth different methods for refunding the settlement funds to various categories of Beacon customers. Beacon paid refunds to ultimate consumers either directly by check or by issuing credit memoranda to be applied against future purchases from Beacon. The firm also instituted a price rollback through its company-operated service stations to effect refunds to end-users. To customers other than ultimate consumers, Beacon paid refunds either by issuing credit against future purchases or by making payments to the DOE for appropriate distribution. In the latter category, Beacon paid a total of $2,297,505 into an escrow account administered by the DOE. In addition, the consent order stipulated that if petroleum products were decontrolled, Beacon would pay any remaining unpaid credit or price rollback amounts into the DOE escrow account. After deregulation occurred on January 28, 1981, *see* Executive Order 12287, 46 Fed. Reg. 9909 (January 30, 1981), Beacon paid a total of $106,550 to the DOE to cover the portion of credit payments and price rollbacks to certain customers which were planned but never instituted. Therefore, this ERA Petition to OHA pertains to Beacon's total payment to escrow of $2,404,055, plus accumulated interest (hereinafter referred to as the consent order fund). [1]

II. Jurisdiction To Fashion Refund Procedures

The Subpart V process may be used in situations where the DOE is unable to readily identify the persons who may be eligible to receive refunds as a result of enforcement proceedings or to readily ascertain the amount that such persons should receive. 10 CFR 205.280. Subpart V authorizes the OHA, upon request by an appropriate DOE enforcement official, to fashion special procedures to distribute moneys obtained as part of a settlement agreement. 10 CFR 205.281-.282. After reviewing the record in this proceeding, we have determined that the implementation of Subpart V procedures is appropriate. As noted in the consent order itself, there is a significant degree of difficulty in identifying the purchasers who may have been injured by Beacon's pricing practices. Consent Order at 3. In addition, the alleged overcharges were associated with the price methodology of a refiner, so that any impact likely was spread throughout a broad range of customers. Furthermore, for a large portion of the consent order fund, it is difficult to ascertain the proper amount of refunds to identifiable injured parties. Therefore, the provisions of Subpart V provide a very useful mechanism for refunding money to parties likely to have been injured by the alleged violations. Accordingly, the OHA has decided to exercise jurisdiction over the funds received by the DOE pursuant to the Beacon consent order.

III. Proposed Refund Procedures

A. Refunds to Identifiable Purchasers

During the first stage in the refund process, the consent order funds should be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Beacon's alleged overcharges in sales of covered products. The claims procedures we propose to implement are set forth below. In addition, as in many prior special refund cases, we propose adoption of certain persumptions. First, we will tentatively adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Beacon during the consent order period. We therefore propose to calculate refunds based on a per-gallon, volumetric refund amount. Second, we will propose a presumption of injury with respect to small claims.

[1] The Beacon escrow account contained $4,120,305.54 as of June 30, 1985.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in these cases will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider refund applications in the most efficient way possible in view of the limited resources available.

A claimant will be eligible to receive a refund equal to the documented number of gallons bought from Beacon during the consent order period, multiplied by a volumetric percentage. This percentage is computed by dividing the total amount of consent order funds by the total number of gallons of covered products sold by Beacon during the consent order period. Based on information from the Beacon audit files, we estimate that Beacon sold 446,571,042 gallons of covered products during the consent order period. This figure results in a volumetric refund amount of $.005383 per gallon ($2,404,055 of consent order funds divided by 446,571,042 gallons sold). In addition, the interest which has accrued on the consent order funds will be applied to each paid refund on a pro rata basis. Finally, we intend to set a minimum refund amount for potential claimants. In prior refund cases, we have not granted refunds for less than $15.00 because the cost of issuing such refunds exceeds the restitutionary benefits which may be achieved. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,214 (1982). We will utilize the same minimum refund in the present case.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by Beacon were spread equally over all gallons of product marketed by the firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser may have been greater than the pro rata amount determined by the volumetric presumption. Certain purchasers may believe that they suffered disproportionate injury as a result of Beacon's pricing practices during the consent order period. Any such purchaser may file a refund application for an amount greater than that calculated using the volumetric presumption, provided that the claimant documants the disproportionate impact of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

We proppse that reseller and retailer purchasers of Beacon products seeking refunds totalling $5,000 or less based on the volumetric presumption will not be required to provide a detailed demonstration of injury resulting from the alleged overcharges. The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the consent order is based on a number of considerations. *see, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factural information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a reseller or retailer claimant seeking a volumetric refund will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the consent order period is many years past and the cost of compiling sufficient data is probably quite high, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein.

A reseller or retailer which claims a total refund in excess of $5,000 will be required to document its injury. While there are a variety of means by which a claimant can make such a showing, a firm is generally required to show that market conditions would not permit it to pass through the increased costs associated with the alleged overcharges. In addition, a reseller or retailer of petroleum products must show that that it maintained a "bank" of unrecovered costs, in order to demonstrate that it did not subsequently recover these costs by increasing its prices. *See, e.g., Triton Oil and Gas Corporation/Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). If actual, contemporaneously calculated cost banks are not available due to specific circumstances, we will accept other types of information which conclusively prove the existence of cost banks during the consent order period. For example, monthly profit margin data may in some cases demonstrate the existence of cost banks. *See Husky Oil Company*, 13 DOE ¶ 85,045 (1985); *Bayou State Oil Corporation*, 12 DOE ¶ 85,197 (1985).[2]

The consent order stipulated that all ultimate consumers or end-users who purchased products directly from Beacon during the consent order period would receive refunds either by direct payment or by credit issued against future purchases. Based on information in the Beacon audit file, we believe that almost all refunds to these end-users have been paid fully in accordance with the consent order and that other than unpaid credit amounts due to two ultimate consumers, the consent order funds pertain only to products sold to purchasers who were not ultimate consumers purchasing directly from

[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed documentation of their injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981).

Beacon.[3] However, we propose to accept claims from other end-users of Beacon products who demonstrate conclusively that they were customers during the consent order period but did not receive refunds pursuant to the consent order. Specifically, this category of purchaser may include ultimate consumers who bought Beacon products from resellers. Any such claimant need only document its purchase volumes in order to make a sufficient showing that it was injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that downstream end-user purchasers of a consent order firm's petroleum products need only document their purchase volumes in order to make a sufficient showing that they were injured by the alleged overcharges.

In addition, refund applications from firms regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that the firm absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of the alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they are allowed to charge their customers. Refunds to agricultural cooperatives will likewise directly influence the prices charged to member customers. Consequently, these firms too need only document their purchase volumes from Beacon to make an adequate showing of injury. *See Office of Special Counsel*, 9 DOE ¶82,538. However, along with their applications these firms should provide a full, detailed explanation of the manner in which refunds would be passed through to customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of a refund.

As in previous cases, we propose that there is a class of potential claimants who may be presumed to have suffered no injury from the alleged overcharges. Those parties are firms that made spot purchases of Beacon petroleum products.[4] *See Office of Special Counsel*, 10 DOE ¶85,048 (1982); *Office of Enforcement*, 8 DOE ¶22,597 (1981) (hereinafter cited as *Vickers*). As we stated in *Vickers*:

> [T]hese customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Vickers motor gasoline at increased prices unless they were able to pass through the full amount of Vickers' quoted selling price at the time of purchase to their own customers.

8 DOE at 85,336-37. We believe that the same rationale applies in this case. Consequently, we propose to establish a rebuttable presumption that spot purchasers were not injured by the pricing practices resolved in the consent orders. Thus, a spot purchaser claimant will be required to submit additional evidence sufficient to establish that it was unable to recover the prices it paid to Beacon.

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. Applications should provide all relevant information necessary to establish a claim in accordance with the presumptions outlined above, including, where necessary, specific documentation concerning the date, place, price, and volume of product purchased, the retention of increased costs, and the extent of any injury alleged. Detailed procedures for filing applications will be provided in a final Decision and Order. *See Vickers*. Before disposing of any of the consent order funds, we intend to publicize widely the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, notice will be provided in publications in the areas of California in which Beacon marketed its products during the consent order period. Purchasers of covered products who filed claims in response to the original consent order notice in the **Federal Register** will be informed of these refund procedures by mail. As a final matter, we note that refund applications filed on behalf of groups of claimants identifying themselves as adversely affected purchasers also will be considered. Such applications will be evaluated on a case-by-case basis.

B. Distribution of the Remainder of the Consent Order Fund

After all meritorious claimants have received an appropriate refund, it is possible that the consent order funds may not be exhausted. Any remaining funds should be distributed during a second stage of the refund process in furtherance of the goals set forth in the DOE's enabling legislation and implementing regulations. However, any consideration of the second-stage procedure at this point in time involves a number of uncertainties. As was noted in *Vickers*:

> [Such] a step would be difficult to justify before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the Consent Order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme.

8 DOE at 85,397. We will consider any comments received regarding second-stage alternatives and then issue a final Decision and Order establishing procedures for the first stage. In that decision, we will summarize and address briefly the comments received concerning second-stage procedures, and will solicit another round of comments on the distribution of the funds that may remain after payment of claims in the first stage. In this way, we will have adequate opportunity to consider the outstanding issues before reaching a final decision on the second stage.

It is therefore ordered that:

The funds remitted to the Department of Energy by Beacon Oil Company

[3] The two ultimate consumers whose credit memoranda were not fully paid off by Beacon when deregulation occurred on January 28, 1981, were Harris Feeding Company ($314 outstanding credit) and Vie Del Company ($805 outstanding credit). These firms did receive most of the credit refunds due them pursuant to the consent order, and we propose that each be eligible to receive a refund equal to its outstanding credit amount, instead of a refund based on the volumetric method. Each firm need only submit proof of participation in the credit program to apply for its remaining refund, since, as is discussed *infra*, we find that ultimate consumers were injured by the alleged overcharges.

[4] We will except from this principle cooperative organizations which made spot purchases of products from Beacon and resold these products to their members. In the past, we have treated refund applications by cooperatives as applications made on behalf of their members, who, as ultimate consumers, were not in a position to pass along increased costs. Similarly, any refund received by a cooperative would presumably be passed on to its members, in the form of either a price reduction or a distribution of surplus income. Office of Special Counsel, 9 DOE ¶82,538 (1982) at 85,203. *See, e.g.*, Anadarko Production Co./Cities Service Co., 12 DOE ¶85,060 (1984). Cooperative purchasers therefore will be presumed to have been injured in spot purchases of Beacon products when these products were resold to members. Cooperatives in this category will be eligible to apply for refunds. These firms must explain in their refund applications the manner in which any refunds will be distributed to members.

pursuant to the consent order finalized on December 17, 1979, will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-20588 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Marathon Petroleum Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of proposed Consent Order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Marathon Petroleum Company ("Marathon"). The agreement proposes to resolve matters relating to Marathon's compliance with the Federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. ERA has assessed the effects of Marathon's alleged regulatory violations resolved by this proposed agreement, and has determined that the maximum amount Marathon could have overcharged is approximately $13.5 million. This amount, plus an additional amount for interest, represents Marathon's maximum liability if the government ultimately were to prevail in litigating all of the issues resolved by this Consent Order. Marathon disputes ERA's allegations of regulatory violations and denies any overcharge liability.

ERA is proposing that Marathon's possible liability for overcharges and interest be settled for $20 million. The settlement reflects the negotiated compromises present in every settlement, including assessments of litigation risks in the signficant areas of dispute between ERA and Marathon.

Within thirty days of the effective date of the Consent Order, Marathon will pay $20 million, plus interest from the date the Consent Order was executed by DOE. ERA will then petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V. In that proceeding, any person who claims to have suffered injury from Marathon's alleged overcharges would have the opportunity to submit a claim to OHA.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice and should be addressed to: Marathon Consent Order Comments, RG-13, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

Following this comment period, on September 30, 1985, at 10:00 a.m. at the Department of Energy Auditorium, Room GE-086, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, ERA will conduct a public hearing to provide interested persons an additional opportunity to present comments, information and recommendations as to whether the settlement should be finalized by DOE.

Requests to make presentations must be received in writing by 5:00 p.m., September 30, 1985 and should be marked "Requests to Make Oral Comments" and forwarded to the same address indicated for written comments.

The request should identify the person (with address and telephone number) who wishes to make a presentation and the amount of time desired. Presentations should be limited to 15 minutes. Persons wishing to participate in the hearing who have not scheduled time will be allowed to make presentations following those who have been scheduled.

ERA will consider the comments, information and recommendations received from the public in finally evaluating the proposed settlement. This will result in one of the following courses of action: rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Meyer Magence, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 252-4945.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Results of the Audit
  A. Areas of Dispute
  B. Determination of Maximum Overcharge Liability
III. Determination of Reasonable Settlement Amount
IV. Terms and Conditions of the Consent Order
V. Resolution of Litigation Matters

I. Introduction

Marathon is a major petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order (January 1, 1973 through January 27, 1981), Marathon engaged in, among other things, the production, importation, refining, and sale of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, propane and other refined petroleum products; and the extraction, fractionation and sale of natural gas liquids and natural gas liquid products.

ERA conducted an intensified audit of Marathon's compliance for the period beginning in 1973 to the date when federal price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287). During this audit, ERA identified areas in the pricing and sales of crude oil and refined petroleum products in which it believes that Marathon had failed to comply with the requirements of the federal price and allocation regulations. A number of issues arose which involved Marathon's accounting procedures in which ERA disagreed with Marathon's calculation of the amounts of increased costs which were incurred and eligible for recovery through product price increases. These apparent cost errors are not the same as, and do not necessarily translate into, overcharge liabilities.

The regulations governing the pricing of refined petroleum products were complex. The starting point for determining the maximum lawful sales price in any month for products covered by the regulations ("covered products") was the refiner's May 15, 1973 selling prices to its various classes of purchaser. A refiner was permitted to increase those prices only to the extent necessary to recover specified categories of cost increases incurred as compared to those costs incurred in the month of May, 1973. For example, refiners could recover increased costs of acquiring crude oil and refined products ("product costs"); and their labor, marketing, manufacturing and interest costs ("non-product costs").

If a refiner failed to fully recover the cost increases incurred in the preceding month, it could "bank" those unrecovered costs for recovery (subject to certain limitations) in succeeding months. The regulations required refiners to allocate those recoverable costs to product categories, and provided some discretion to refiners to reallocate those costs among product groups.

Having specified the amount of increased costs eligible for recovery, the extent to which unrecouped "banked"

costs could be recovered, and the allocation of those increased costs to product categories, the regulations thereby enabled refiners to calculate the maximum amount of increased costs eligible for recovery in each month. Thus, each month a refiner calculated its maximum lawful sales price for each covered product to each class of purchaser, which was the sum of its May 15, 1973 price, the current amount of increased costs, and the amount of banked costs not previously recovered in its sales. A refiner could recover its increased costs by increasing its prices by any amount up to levels at which the full amount of recoverable increased costs would be recovered in the form of increased prices. A refiner infrequently charged the price it calculated to be its maximum lawful price. As a consequence, an error made in cost calculations for a particular month did not usually result in overcharges to purchasers but rather would have reduced the refiner's claimed cost banks in subsequent months.

It is the actual overcharges that represent the dollar amount of refund liability under the refiner pricing rules. The fact that the accounting for a particular transaction was not in total conformity with the regulation did not necessarily mean that the refiner received more for its products than it was permitted to charge or that the customer suffered an overcharge. Overcharges by a refiner are limited to the amounts that such refiner received from its customers in excess of the refiner's correctly determined maximum lawful prices.

In the case of Marathon, for the issues covered by this proposed settlement, ERA calculated that the alleged refund amounts related to sales of refined products total $8.1 million. In addition, ERA preliminarily determined that Marathon may be liable for a maximum of $5.4 million in crude oil overcharges. Marathon's potential refund liability, therefore, is believed by ERA to total $13.5 million, plus the interest which could be assessed on that amount.

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with establishing the alleged overcharges, and considering the factual veracity and appropriate settlement compromises related to the many issues.

The settlement calls for Marathon to pay $20 million (plus interest from the date of execution by DOE) to discharge in full its obligations under the price and allocation regulations, except for those matters excluded from the agreement. Under the terms of the proposed Consent Order, the ERA would petition the OHA to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V.

II. Results of the Audit

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit, the nature of the alleged regulatory violations, and the "banks" of costs that Marathon was entitled to recover in previous months but did not. ERA also considered the extent to which these banks were available to offset the alleged cost and recovery violations and thus prevent the occurrence of overcharges on refined products. The alleged crude oil overcharges were separately considered by ERA in its assessment of the total settlement value.

During the Marathon negotiations, ERA examined all the alleged regulatory violations and the amount of costs it determined Marathon should be allowed in the calculation of the company's maximum lawful prices and total overcharge exposure. In the enforcement documents filed by the ERA, improper cost calculations totalling $286 million are alleged against Marathon. The company presented information relevant to its calculations of increased costs and selling prices, which enabled ERA to make adjustments and corrections accruing both to the detriment and the benefit of Marathon. For settlement purposes, ERA determined that Marathon's allegedly improper cost calculations totalled $290 million. ERA determined that if it were successful on all of these costs and recovery issues, Marathon would be liable for $8.1 million in overcharges on refined products plus interest on that amount. In addition Marathon's maximum liability for crude oil overcharges would be $5.4 million plus interest.

A. Areas of Dispute

The two major areas of dispute between ERA and Marathon concern alleged errors in its calculations of maximum lawful prices for crude oil produced by Marathon, and alleged overstatements of increased costs and/or understated recoveries of such costs which would affect the calculated maximum legal prices for refined products.

1. Crude Oil Overcharge Dispute

Excluded from the terms of the settlement are the crude oil overcharges for properties and issues pending or arising out of the Stripper Well Exemption Litigation. The remaining crude oil overcharge disputes, which are resolved by the Consent Order, include the application of incorrect posted prices and improper computation of base production control levels. These issues, which OHA addressed in a recent Remedial Order, involved $5.4 million plus interest.[1]

2. Cost and Recovery Disputes

As previously indicated, ERA has initiated enforcement proceedings against Marathon alleging cost and recovery adjustments of $286 million. These claims include alleged overstatements of increased product costs for crude oil and natural gas liquids, alleged overstatements of increased no-product costs and alleged understatements of costs recovered.

Based upon adjustments and corrections of its audit data, ERA has determined that these violations would be resolved by a refund of $8.1 million plus interest.

a. Product Cost Disputes. ERA has estimated that violations totalling $110 million in overstated increased crude oil costs and $8 million in overstated increasd purchased product costs relating primarily to NGL's were committed by Marathon. These alleged cost calculation errors include inter-affiliate transfer prices for foreign crude oil; improper determination of marine transportation costs; failure to use consistent accounting methods for calculating increased crude oil costs; overstatement of increased costs due to the inclusion of unrecouped June and July 1973 costs; inclusion of imputed interest costs for two vessels used to transport crude oil; and, cost overstatements attributable to an improper methodology in acounting for intrafirm transfers of NGL's and to errors made in calculating the firm's increased costs of shrinkage associated with Marathon's natural gas liquids extraction operations.

b. Non-product Cost Disputes. ERA estimates the overstated increased nonproduct costs by Marathon totalled $71 million. The areas of dispute include: failure to properly calculate marketing costs; failure to apply the marketing cost cents per gallon limitations; improperly netting nonproduct cost decreases; and, erroneous duplicate inclusion of certain additive cost increases.

[1] This amount represents the approximately $3.4 million Marathon was ordered to refund in the Remedial Order proceeding before OHA (12 DOE ¶83,010 (June 22, 1984); 12 DOE ¶82,525 (Aug. 3, 1984); 12 DOE ¶83,032 (Feb. 22, 1985)) which is presently on appeal to FERC (R084-14-000; R085-8-000), plus $2 million in possible violations associated with the self-audit issues which are currently stayed by OHA in DRO-0195.

c. Cost Recovery Disputes. ERA has alleged that Marathon did not fully comply with the equal application rule; failed to pass through equal increased cost increments at its company operated service stations; and failed to compute sufficient cost recoveries for benzene and toluene. In addition, Marathon has challenged regulatory restrictions on some of its credit and billing practices. These issues were estimated to total $100 million in recovery adjustments or, as explained below, $60 million plus a separate refund of $812,000 and interest.

B. Determination of Maximum Overcharge Liability

ERA calculated the amount of overcharges for which Marathon might be liable. ERA's calculations of available costs were compared to costs actually recovered by Marathon in its sales of its products. This comparison yielded the information necessary to determine the maximum refined product overcharge liability.

Under the regulations, a refiner was permitted to "bank" any increased costs in a given month that it was permitted to recover in its product prices but did not. Costs could be "banked" and used, subject to certain limitations, in later months in pricing products. At the conclusion of the period of regulatory controls, Marathon had accumulated a claimed "bank" in excess of $400 million in unrecovered increased costs.

However, based upon a monthly calculation in which ERA effected $250 million in adjustments to Marathon's claimed costs and recoveries during the 88-month period of price controls, ERA determined that success on all of those costs and recovery disputes would result in overcharges of $7.3 million and a reduction of $243 million to Marathon's claimed banks. One issue involving Marathon's unequal price increases at some of its company operated service stations, which previously had been alleged as a $36 million adjustment to increased cost recoveries, was assessed as a direct cash liability by measuring the amount of refunds necessary to equalize Marathon's cost passthrough to its service station customers at the lowest level. The direct refund amounts so measured on a monthly basis was $812,000 and that amount added to the $7.3 million of calculated overcharges yields Marathon's maximum overcharge liability of $8.1 million for refined products.

In addition to the $8.1 million of possible overcharge liability for refined product sales, ERA determined that Marathon's maximum overcharge liability for the crude oil pricing issues resolved by the Consent Order is $5.4 million. Thus, Marathon's maximum overcharge liability, excluding interest, for the matters resolved by this Consent Order total approximately $13.5 million.

III. Determination of Reasonable Settlement Amount

In determining a reasonable settlement amount, ERA reviewed its maximum overcharge determinations totalling $13.5 million. This amount is based on audit samples, extimates, projections and extrapolations and represents the maximum recovery, excluding interest, that could result if all issues resolved by this settlement were adjudicated in ERA's favor. The inherent risks in litigation make such an outcome unlikely. In determining an appropriate compromise of Marathon's maximum overcharge liability, ERA considered the probabilities of success on the issues important for purposes of proving overcharges. In assessing the issues, ERA found that several significantly affected the amount of Marathon's overcharge liability even when all other issues are considered in the government's favor, and that others would merely affect the amount of banks claimed by Marathon.

The necessity for the government to prevail in litigation on all of the significant issues in order to achieve the maximum overcharge recovery from Marathon was an important consideration in ERA's preliminary determination that Marathon's agreement to pay $20 million is in the public interest. Furthermore, that analysis presupposes that the government will prevail in litigating all other disputes.

In arriving at an overall judgment, in addition to the analysis of litigation risks, ERA took into account such factors as the interest which could be added to possible adjudicated refund amounts, the number and complexity of the legal and factual issues, the time and expense required for the government to fully litigate every issue, as well as the operative principle necessary for a successful settlement between capable adversaries—mutual recognition by the parties of the need to reasonably compromise their respective interests and expectations. Based on all of these considerations, ERA concludes that the resolution of these matters for $20 million is an appropriate settlement.

IV. Terms and Conditions of the Consent Order

Within thirty days of the effective date of the Consent Order, Marathon will pay the principal amount of $20 million, plus interest, to DOE. If the settlement is not made final by November 21, 1985, Marathon may withdraw from the proposed agreement. If the Consent Order is made final, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Marathon provide necessary information to OHA.

Unless specifically excluded, Marathon and DOE mutually release each other from claims and actions arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Marathon, or of Marathon or the DOE to take action against any other party.

Several matters are excluded from the settlement. The proposed Order does not resolve:

(a) The issues or claims pending or arising out of the subject matter now before the courts in *Marathon Oil Company* v. *FEA*, Civil Action No. *78-1357* (D.Kan.), consolidated in *In Re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D.Kan.);

(b) The issues or claims pending or arising out of the subject matter now before the courts in *Exxon, et al.* v. *DOE and 341 Tract Unit of the Citronelle Field*, C.A. No. 81-25, *et al.* (D.Del.), and before the OHA in *In Re 341 Tract Unit of the Citronelle Field*, Case Nos. BEN-0078, *et al.*;

(d) Any obligation or right to sell entitlements which may be imposed or made available to Marathon should the entitlements notice of January 1981 be published or any obligation to buy or sell entitlements which may be imposed on Marathon pursuant to the operation of 10 CFR 211.69, including any adjustments made to the entitlements notice for January 1981 or to any notice issued pursuant to 10 CFR 211.69 as a result of the granting of exception relief by the Office of Hearings and Appeals;

(e) Any entitlement obligations or reporting requirements which may be imposed either pursuant to future modification of the requirements of the entitlements program (10 CFR 211.67 *et seq.*) by the DOE on its own initiative, or at the direction of a final judgment of a court of competent jurisdiction;

(f) The issues or claims pending or arising out of the alleged class of purchaser violation in OHA Case No.

HRO–0024 concerning Growmark, Inc. (formerly F.S. Services, Inc.);[2]

(g) Marathon's rights concerning claims under 10 CFR Part 205, Subpart V, or its claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations by third parties, including Marathon's claim for a refund in *United States* v. *Exxon*, Civil Action No. 78–1035 (D.D.C.)

Finally, this agreement only resolves certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against Marathon.

V. Resolution of Litigation Matters

The proposed settlement resolves a number of enforcement matters that are being litgated by Marathon and DOE. This involves administrative and judicial litigation and includes the following cases:

Administration Litigation

Proposed Remedial Orders:
OHA Case NO: HRO–0024[3]
OHA Case No: HRO–0025
OHA Case No: HRO–0026
OHA Case No: DRO–0195[4]
Proposed Orders of Disallowance:
OHA Case No: BRO–0983
OHA Case No: HRO–0242
Remedial Orders:
OHA Case No: BRO–1295, FERC Case No: R085–19–000
OHA Case No: DRO–0195, FERC Case No: R084–14–000[5]; FERC Case No: R085–8–000

Judicial Litigation

Marathon Petroleum Company v. *FEA, et al.*, Civil Action No. CA 74–316 (N.D. Ohio, Western Div.) Marathon as a Plaintiff in *Mobil Oil Corporation* v. *DOE, et al.*, Civil Action No. 79–CV–11 (N.D.N.Y.).

Submission of written comments: The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested persons are invited to submit written comments concerning this proposed Consent Order to the address noted above, and to appear at a public hearing, beginning at 10:00 a.m. on September 30, 1985. All comments received by the thirtieth day following publication of this notice in the **Federal Register**, and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received and the comments at the hearing, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f). Issued in Washington, D.C., on August 22, 1985.

M.C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[Case No. RMNA0001]

Consent Order with Marathon Petroleum Company

I. Introduction

101. This Consent Order is entered into between Marathon Petroleum Company (formerly known as Marathon Oil Company) and the United States Department of Energy. Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Marathon, as hereinafter defined, relating to Marathon's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by Sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners, including Marathon, with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212 and 213, and rules, ruling, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order, except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel (OSC), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Marathon" shall include, besides Marathon Petroleum Company, its parent, Marathon Oil Company (formerly known as USS Holdings Company), as well as its and their affiliates, subsidiaries, and predecessors but only for the acts of such companies

[2] All other issues in this case would be resolved by the proposed settlement.

[3] The issues or claims pending or arising out of the alleged class of purchaser violation concerning Growmark, Inc., would be excluded by the proposed Consent Order.

[4] A portion of the PRO relating to unaudited properties was stayed before OHA. This matter is resolved by the Consent Order. For the remainder of the issues in this case, OHA issued a Remedial Order and some of these matters are also settled by the proposed agreement with Marathon.

[5] Issues involving the counting of injection wells on certain properties which have been joined in this case are not resolved by the proposed settlement.

while they were subsidiaries or affiliates of Marathon, Marathon's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise, and except as provided in Article IV, *infra*, directors, officers and employees of Marathon.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Marathon was a "refiner" and a "producer" of crude oil as those terms are defined in the federal petroleum price and allocation regulations, and was subject to the jurisdiction of the DOE. During the period covered by this Consent Order, Marathon engaged in, among other things, the production, importation, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, propane, and other refined petroleum products, and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products.

302. In 1973, the DOE began an audit to determine Marathon's compliance with the federal petroleum price and allocation regulations. In 1977, pursuant to the mandate of the Secretary of Energy, OSC continued the audit on an intensified basis. The audit encompassed an examination of Marathon's policies and procedures pertaining to, and Marathon's compliance with, specific federal petroleum price and allocation regulations.

303. As part of its audit, the DOE examined Marathon's books and records relating to Marathon's compliance with the federal petroleum price and allocation regulations and the reporting requirements incidental to those regulations. In addition, at the DOE's request, Marathon prepared and submitted to the auditors a substantial number of specific responses to audit inquiries not necessarily limited to, or readily available from, individual books or records.

304. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Marathon's application of the federal petroleum price and allocation regulations. The DOE has taken various administrative enforcement actions against Marathon, including the issuance of letters, Notices of Probable Violation, Notices of Proposed Disallowance, Proposed Remedial Orders, Proposed Orders of Disallowance and Remedial Orders. Marathon maintains, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Marathon disagree in several respects concerning the proper application of the federal petroleum price and allocation regulations to Marathon's activities with respect to the matters covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the negotiation process. However, in order to avoid the expense of protracted, complex litigation and disruption of its orderly business functions, Marathon has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

Terms and Conditions

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which might have been sought by the DOE against Marathon for such matters under 10 CFR 205.199I or otherwise, Marathon shall pay twenty million dollars ($20,000,000), plus interest accruing at the rate specified in paragraph 404 between the date of execution by DOE of this Consent Order and the date of payment, pursuant to paragraph 402, to be disbursed as provided in paragraph 403.

402. Marathon agrees to pay twenty million dollars ($20,000,000) plus interest accrued for the period described in paragraph 401, to DOE within thirty (30) days of the effective date of this Consent Order.

403. OSC and Marathon agree that OSC will petition DOE's Office of Hearings and Appeals (OHA) to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the amount specified in paragraph 402.

404. Interest shall be deemed to be earned from the date of execution by DOE of this Consent Order at an interest rate reflecting the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding said date of execution. Thereafter, the interest deemed to be earned shall be revised to reflect the average price bid at the auction of 13-week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter next following said date of execution. The revised interest rate will apply on the first day after the relevant auction, and will continue to apply until and including the day of the next relevant auction. Upon each quarterly revision of the interest rate or upon payment to DOE, the interest earned since the date of execution of this Consent Order by DOE in the case of the first such quarterly revision or in the case of payment to DOE before such quarterly revision or since the immediately preceding quarterly revision in all other cases shall be computed and added to the balance at the end of the computation period. The interest for the computation period shall be computed at a rate equal to the annual coupon equivalent for the 13-week U.S. Treasury Bill auction average bid price at the auction governing the interest rate for the computation period times a fraction the numerator of which shall be the number of calendar days in the computation period and the denominator of which shall be 365. Interest shall be deemed earned as of 2:00 P.M. Daylight Savings Time.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Marathon regarding Marathon's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Proposed Order of Disallowance, Remedial Order, action in court or otherwise, are resolved and extinguished as to Marathon by this Consent Order, except that this Consent Order does not cover or affect:

(a) The issues or claims now pending or arising out of the subject matter now before the courts in *Marathon Oil Company* v. *FEA*, Civil Action No. 78-1357 (D. Kan.), consolidated in *In Re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.);

(b) The issues or claims pending or arising out of the subject matter now before the courts in *Exxon, et al.* v. *DOE and 341 Tract Unit of the Citronelle Field*, C.A. No. 81-25, *et al.* (D. Del.), and before OHA in *In Re Three Forty One*

(341) Tract Unit of the Citronelle Field, OHA Case Nos. BEN-0078, *et al.;*

(c) The issues or claims pending or arising out of the subject matter now before the courts in *Marathon Oil Company* v. *DOE,* Civil Action No. 81-634 (N.D. Ohio, Western Div.), and in *Texaco* v. *DOE,* Civil Action No. 84-391 (D. Del.), *American Petrofina* v. *DOE,* Civil Action No. 84-410 (D. Del.), and *Pennzoil* v. *DOE,* Civil Action No. 84-456 (D. Del.).

(d) Marathon's rights in all regards concerning claims under 10 CFR Part 205, Subpart V, or its claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations by third parties, including, without limitation, Marathon's claim for a refund in *United States* v. *Exxon,* Civil Action No. 78-1035 (D.D.C.);

(e) The issues or claims pending or arising out of the alleged class of purchaser violation in OHA Case No. HRO-0024 concerning Growmark, Inc. (formerly F.S. Services, Inc.).

(f) Any obligation or right to sell entitlements which may be imposed or made available to Marathon should the entitlements notice of January, 1981 be published or any obligation to buy or sell entitlements which may be imposed on Marathon pursuant to the operation of 10 CFR 211.69, including any adjustments made to the entitlements notice for January 1981 or to any notice issued pursuant to 10 CFR 211.69 as a result of the granting of exception relief by the Office of Hearings and Appeals;

(g) Any entitlements obligations or reporting requirements which may be imposed either pursuant to future modification of the requirements of the entitlements program (10 CFR 211.67 *et seq.*) by the DOE on its own initiative, or at the direction of a final judgment of a court of competent jurisdiction.

502. (a) Except as otherwise provided herein, compliance by Marathon with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Marathon, except as to those matters excluded by paragraph 501, the DOE hereby releases Marathon completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or may otherwise be able to assert against Marathon before or after the date of this Consent Order, for alleged violations of the federal petroleum price and allocation regulations, with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Marathon or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Marathon or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Marathon has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to Marathon in derogation of this Consent Order.

(b) Nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations. The DOE also reserves the right to initiate and prosecute enforcement actions against any party other than Marathon for noncompliance with the federal petroleum price and allocation regulations, including, for example, suits against operators for overcharges for crude oil when Marathon is a working interest or royalty interest owner in such crude oil production. However, if Marathon was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any party for non-compliance with the federal petroleum price and allocation regulations during such period relative to such property, except to the extent such party received its interest from such property in kind. Marathon and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Marathon's activities as a working interest or royalty interest owner on properties on which it is not the operator. Furthermore, Marathon and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other party for violations on properties of which (but only for the times during which) Marathon is or was a working interest or royalty interest owner (and not the operator or affect any rights or obligations between Marathon and such working interest or royalty interest owners. Except for the matters excluded by this paragraph and paragraph 501, the DOE agrees that this Consent Order settles and finally resolves all aspects of Marathon's liability to the DOE under the federal petroleum price and allocation regulations in its capacity as a producer, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property.

(c) Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action, or against any civil action brought by any purchaser or covered products from Marathon, or against any civil action brought by an agency of the United States other than by the DOE under (i) Section 210 of the Economic Stabilization Act of (ii) any statute or regulations other than the federal petroleum price and allocation regulations. However, the DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based solely on the information and evidence presently in its possession for the matters covered by this Consent Order; provided that nothing in the Consent Order precludes the DOE from exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. Finally, except as herein specifically provided, this Consent Order does not affect or prejudice any private action brought by a third party against Marathon, or by Marathon against any third parties, including an action for contribution; nor may this Consent Order be used to establish, enlarge, or abridge the rights of third parties seeking contribution from Marathon, or the rights of Marathon to seek contribution from third parties. Nothing herein shall preclude Marathon from asserting any legal or factual position or argument in any action brought against Marathon by any third party under section 210 of the Economic Stabilization Act, the federal petroleum price and allocation regulations or any other statute, rule, regulation or order.

(d) Marathon expressly agrees that in consideration for the DOE's performance under the Consent Order, Marathon releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities or causes of action that Marathon has asserted or may otherwise be able to assert against the DOE under the federal petroleum price and allocation regulations, except for matters specifically excluded from this Consent Order.

503. Marathon and the DOE agree to stipulate to the dismissal with prejudice of *Marathon Petroleum Company* v.

FEA, et al., Civil Action No. CA74–316 (N.D. Ohio, Western Div.). Within fifteen (15) days after the effective date of this Consent Order, Marathon will execute and deliver to the DOE a stipulation in the form attached hereto as Exhibit A.

504. Marathon and the DOE agree to stipulate to the dismissal with prejudice of Marathon as a plaintiff in *Mobil Oil Corporations, et al.* v. *DOE, et al.*, Civil Action No. 79–CV–11 (N.D.N.Y.). Within fifteen (15) days after the effective date of this Consent Order, Marathon will execute and deliver to the DOE a stipulation in the form attached hereto as Exhibit B.

505. Within thirty (30) days after the effective date of this Consent Order, the DOE and Marathon will file or cause to be filed appropriate pleadings to dismiss with prejudice all proceedings against Marathon or commenced by Marathon covered by this Consent Order then pending before the DOE's OHA or on appeal from OHA to the Federal Energy Regulatory Commission, except as follows:

(a) In Case No. DRO–0195, with respect to the following properties and the issues excluded by paragraph 501(a), *supra*, the Proposed Remedial Order will be dismissed without prejudice: Grass Creek Frontier Unit, and Haynesville Pettit Lime Unit; and

(b) In Case No. HRO–0024, with respect to the issues excluded by paragraph 501(e), the Proposed Remedial Order will not be dismissed and this Consent Order shall not affect the position of either party or constitute a waiver of any defense or position with respect to such issues.

506. Execution of this Consent Order constitutes neither an admission by Marathon nor a finding by the DOE of any violation by Marathon of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE expressly agrees that it will not seek any such civil penalties. None of the payments or expenditures made by Marathon pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures. Payments made by Marathon pursuant to this Consent Order are attributable only to the matters resolved by this Consent Order which do not include any willful violation of federal petroleum price and allocation regulations.

507. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Marathon, but only if Marathon has concealed facts relating to such violations. The DOE and Marathon also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

Reporting, Recordkeeping

VI. Requirements and Confidentiality

601. Marathon shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 402, Marathon shall also maintain sales volume data and customers' names and addresses regarding its initial sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until six months after the date of completion of payment to DOE of the amount set forth in paragraph 402, unless DOE notifies Marathon in writing that this period is extended, in which case Marathon shall maintain such information until the end of the extension. If requested, Marathon shall make such information available to DOE. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 402 of this Consent Order, Marathon is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order, and Marathon will not be subject to any report orders, subpoenas, or other administrative discovery by DOE relating to Marathon's compliance with the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order for the period covered by this Consent Order; provided, however, that Marathon will not invoke this Consent Order as a defense to report orders, subpoenas and other administrative discovery it may receive regarding other firms subject to DOE's information gathering and reporting authority.

602. The DOE will treat the sensitive commercial and financial information provided by Marathon pursuant to negotiations which were conducted with respect to the settlement agreed to in this Consent Order or obtained by DOE in its audit of Marathon and related to matters covered by this Consent Order, as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Marathon with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Marathon's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Marathon may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Marathon and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Marathon (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. Consistent with its Departmental policy, the DOE will undertake the defense of the Consent Order as finalized, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Marathon agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. Marathon hereby waives its right to administrative or judicial review of this Order.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that its proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments to DOE and to appear at a public hearing conducted by ERA. The DOE will consider all written comments and the statements made at the hearing to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Marathon, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Marathon, Marathon reserves the right, at any time thereafter until the effective date, to withdraw its agreement to this Consent Order by written notice to the DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Marathon, hereby agree to and accept on behalf of Marathon the foregoing Consent Order.

G.N. Nicholson,

Marathon Petroleum Company.

Dated: July 24, 1985.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing consent Order.

Milton C. Lorenz,

Special Counsel, Department of Energy.

Dated: June 6, 1985.

Exhibit A In the United States District Court for the Northern District of Ohio

[Civil Action No. 74-316]

Marathon Petroleum Company Plaintiff, v. *Federal Energy Administration, et al.,* Defendants.

Stipulation of Dismissal

Plaintiff, Marathon Petroleum Company ("Marathon") and the defendants, the Department of Energy, et al. ("DOE"), the successor agency to the Federal Energy Administration, hereby stipulate as follows:

1. Marathon and DOE have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Order has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Marathon and DOE hereby stipulate that the instant action be dismissed with prejudice, each party to bear its own costs.

Marathon Petroleum Company

By:

Attorneys for Plaintiffs.

United States Department of Energy

By:

Dennis G. Linder,

Director, Federal Programs Branch, Department of Justice, Washington, D.C. 20530.

Attorneys for Defendants.

This ——— day of ————, 1985, the foregoing Stipulation is approved, and

It is so ordered.

United States District Judge.

Exhibit B In the United States District Court for the Northern District of New York

[Civil Action No. 79-CV-11]

Mobil Oil Corporation, et al., Plaintiff, v. *Department of Energy, et al.,* Defendants.

Stipulation of Dismissal

Plaintiff, Marathon Petroleum Company ("Marathon") and the defendants, the Department of Energy, et al. ("DOE"), hereby stipulate as follows:

1. Marathon and DOE have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Order has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Marathon and DOE hereby stipulate that, as between Marathon and DOE only, the instant action be dismissed with prejudice, each party to bear its own costs.

Marathon Petroleum Company

By:

Attorneys for Plaintiffs.

United States Department of Energy

By:

Dennis G. Linder,

Director, Federal Programs Branch, Department of Justice, Washington, D.C. 20530.

Attorneys for Defendants.

This ——— day of ————, 1985, the foregoing Stipulation is approved, and

It is so ordered.

United States District Judge.

[FR Doc. 85-20583 Filed 8-27-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OP-66122; FRL-2887-7]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

EFFECTIVE DATE: September 27, 1985.

ADDRESS: By mail, submit comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4

p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lela Sykes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: RM. 718C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
241-66	Thimet® LC-8 Systemic Insecticide	American Cyanamid Co., Agricultural Research Ctr., P.O. Box 400, Princeton, NJ 08540.	Nov. 17, 1961.
241-102	Thimet® 600 Systemic Insecticide	do	June 8, 1964.
241-141	Thimet® LC-87 Systemic Insecticide	do	Dec. 22, 1965.
241-166	5-10-5 Fertilizer Thimet® Soil and Systemic Insecticide	do	Sept. 23, 1966.
241-167	5-10-5 Fertilizer and Thimet® Soil and Systemic Insecticide	do	Oct. 5, 1966.
241-196	Fertilizer and Thimet® Soil and Systemic Insecticide (Phorate 20%)	do	Mar. 1, 1968.
241-197	Fertilizer and Thimet® Soil and Insecticide Corn	do	Apr. 1, 1968.
241-209	Thimet® Liquid Concentrate Systemic Insecticide	do	Nov. 13, 1967.
241-223	Biothin® 6E	do	Nov. 24, 1972.
241-226	18-46-0 Fertilizer and Thimet® Soil and Systemic Insecticide	do	May 19, 1972.
241-227	0-46-0 Fertilizer and Thimet® Soil and Systemic Insecticide	do	Do.
241-228	11-48-0 Fertilizer and Thimet® Soil and Systemic Insecticide	do	Do.
241-255	Nem-A-Tak 2L Nematicide	do	Sept. 28, 1981.
241-258	Thimet® 15-G Rice Insecticide	do	May 15, 1981.
241-263	Nem-A-Tak 4L Nematicide Insecticide	do	Sept. 28, 1981.
279-108	Niagara Ground Bluestone	FMC Corporation, Agricultural Chemical Div., 2000 Market St., Philadelphia, PA 19103.	Jan. 3, 1967.
279-153	Niagara New Cucurbit Dust	do	Apr. 12, 1948.
279-423	Copper Compound No. 53	do	Mar. 17, 1949.
279-505	Niagara Powdered Bluestone	do	May 26, 1950.
279-617	Thiodan Pyrenone Fly Spray	do	Dec. 14, 1951.
279-1257	Niagara Thiodan 4 Dust Insecticide	do	Mar. 3, 1958.
279-1266	Copper Zinc Dust	do	Apr. 2, 1958.
279-1344	Niagara Thiodan 3 Dust	do	Aug. 4, 1958.
279-1382	Thiodan 50 Base	do	Mar. 2, 1959.
279-1394	Trithion 4.0 Miscible	do	Mar. 30, 1959.
279-1405	Thiodan 3 Dust	do	Apr. 21, 1959.
279-1437	Trithion Sulfur 3-50 Dust	do	June 18, 1959.
279-2021	Sulfur 50 DX Dust	do	Feb. 27, 1963.
279-2095	Thiram 75 WP	do	Jan. 27, 1964.
279-2109	Niagara Thiodan 3 Granular	do	Mar. 12, 1964.
279-2299	Thiodan 5 Dust	do	Oct. 1, 1965.
279-2544	Niagara Penta Concentrate 40	do	May 4, 1967.
279-2574	Methyl Parathion 15 Thiodan 25 WP	do	July 7, 1967.
279-2700	Thiodan Miscible with Pyrenone Insecticide	do	Nov. 26, 1968.
279-2722	Copper 6 Lime Dust	do	June 4, 1969.
279-2858	New Prime Tobacco Spray	do	June 8, 1971.
279-2875	Furadan 75 Wettable Powder	do	Mar. 7, 1972.
279-2946	Copper Zinc Sulfate	do	July 17, 1974.
352-291	Manzate D Fungicide	E.I. Dupont de Nemours and Co., Agricultural Chemicals Department, Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898.	July 5, 1963.
352-306	Manzate T Maneb Fungicide	do	July 6, 1964.
352-423	Manzate Flowable Fungicide with Zinc	do	Sept. 22, 1982.
359-360	ChipCal Granular	Rhone-Poulenc, Inc, Agricultural Div., P.O. Box 125, Monmouth Junction, NJ 08852.	Jan. 15, 1959.
359-536	Chipman Meta-A-Pellet	do	Feb. 17, 1964.
400-214	De Pester Tedion E-1	Uniroyal Chemical, Division of Uniroyal, Inc., 74 Amity Road, Bethany, CT 06525.	Mar. 29, 1963.
400-227	Methoxychlor Dust #5	do	May 24, 1965.
400-256	Du-Nema G-15	do	Mar. 18, 1968.
400-264	De Pester Tedion 3% Dust	do	May 17, 1968.
400-265	De Pester Tedion Sulfur 4-25	do	May 22, 1968.
400-266	De Pester Guthion-Sulfur 3-30	do	May 28, 1968.
400-272	De Pester Tedion-Dibrom-Sulfur 2-4-20	do	July 30, 1968.
400-275	De Pester Guthion 3 Dust	do	Sept. 16, 1968.
400-279	Bactur Dust Insecticide	do	Nov. 4, 1968.
400-293	De Pester Tedion W-50 A Wettable Powder	do	Nov. 10, 1970.
464-368	Dursban M Insecticide	Dow Chemical Co., P.O. Box 1706, Midland, MI 48640	May 19, 1980.
464-396	Dursban IG	do	June 29, 1971.
464-447	Lorsban 2E	do	Oct. 4, 1974.
464-450	Dursban 24E Insecticide Concentrate	do	Oct. 25, 1974.
464-483	Dow Simazine 80W Herbicide	do	Jan. 11, 1974.
464-489	Chloropyrifos 50P Insecticide Concentrate	do	Mar. 13, 1974.
464-501	Dow Lorsban 25-SL Wettable Powder	do	June 20, 1975.
464-521	Chloropyrifos Special Mixture #1	do	July 2, 1975.
464-553	FA-5 Insecticide	do	Dec. 12, 1979.
464-575	Dursban 5G	do	Mar. 18, 1982.
476-914	Pyrenone 1.27-.13 Bin Spray	Stauffer Chemical Co., Labeling and Registration Dept., 1200 S. 47th St., Richmond, CA 94804.	May 7, 1956.
476-2017	Tedion 4 Flowable	do	July 8, 1968.
539-65	Sears Insect Dust Containing Rotenone	Sears, Roebuck and Co., Sears Tower, Dept. 766-68th Floor, Chicago, IL 60654.	Feb. 23, 1955.
539-76	Sears Fruit Spray	do	Feb. 21, 1950.
539-97	Sears 50% Malathion Spray	do	Feb. 3, 1955.
539-236	Sears Lawn Renovator and Grass and Weed Killer	do	Apr. 24, 1968.
539-259	Sears Pre-emerge Crabgrass Killer and Fertilizer 10-6-4	do	Sept. 20, 1969.
539-283	Garden Dust Insecticide, Fungicide	do	Apr. 22, 1974.
655-71	Prentox® 5% Emulsifiable Concentrate	Prentiss Drug and Chemical Co., Inc., CB 2000, 21 Vernon St., Floral Park, NY 11001.	Aug. 17, 1954.
655-83	Prentox® Malathion 80	do	May 18, 1955.
655-88	Prentox® Pyrethrum-Sodium Fluoride Powder	do	Aug. 18, 1955.
655-282	Prentox® 10% Pyrethrum Extract	do	May 27, 1966.

Registration No.	Product name	Registrant	Date registered
655-288	Prentox[1] Warfarin Concentrate Rax Powder w/Malathion	do	Oct. 26, 1966.
655-293	Prentox[1] Permacide Concentrate DFS	do	Apr. 13, 1967.
655-367	Prentox[1] Pyronyl Crop Spray	do	Jan. 14, 1970.
655-369	Prentox[1] Methoxychlor 50W	do	Feb. 2, 1970.
655-375	Prentox[1] Intermediate DC-100	do	July 13, 1970.
655-389	Prentox[1] Grain Protectant Concentrate	do	Feb. 25, 1971.
655-448	Prentox[1] Intermediate Concentrate PYB-100	do	July 31, 1972.
655-478	Prentox[1] MCPP-Tech	do	Apr. 17, 1973.
1183-12	Corvel Flyte Spray	Corvel Division, Eli Lilly and Co., P.O. Box 618, Indianapolis, IN 46206	Dec. 17, 1965.
1471-31	Greenfield Rose and Flower Spray	Elanco Products Division, 740 S. Alabama St., Indianapolis, IN 46285	Oct. 18, 1962.
1471-34	Dymid 80W	do	Dec. 20, 1962.
1471-42	Greenfield Dichondra Weed Control	do	May 31, 1968.
1471-43	Dymid 5G	do	July 23, 1964.
1471-47	Dymid 50W	do	Nov. 18, 1964.
1471-48	Greenfield Rose and Ornamental Disease Control	do	Dec. 10, 1964.
1471-51	Elanco Dymid D Liquid Dispersion	do	Mar. 24, 1965.
1471-54	Tutane Carbonated	do	Sept. 20, 1965.
1471-76	Diphenamid Technical 98%	do	Mar. 29, 1972.
1471-91	Frucote	do	Nov. 2, 1972.
2995-6	Bingman's Ciodrin Livestock Spray Emulsifiable Concentrate	Bingman Labs, Inc., P.O. Box 88, Sarahsville, OH 43779	July 27, 1967.
3635-77	Oxford Bacto-phene Hospital Disinfectant	Oxford Chemicals, Inc., P.O. Box 80202, Atlanta, GA 30366	Dec. 19, 1963.
3635-129	Ophene 15	do	June 19, 1972.
3640-73	Diazinon Ant and Roach Residual Bomb	Stearns Chemical Corp., 4200 Sycamore Ave., Madison, WI 53704	May 28, 1974.
3743-180	Royal Brand 50% Sevin Dust Base	Southern Agricultural Chemicals, Inc., P.O. Box 527, King Street, SC, 29556	Jan. 17, 1967.
4822-50	Johnson's New Formula Crew	S. C. Johnson and Son, Inc., Racine, WI 53401	Apr. 28, 1964.
4823-14	Nelco Pine Odor Disinfectant-Deodorant Cleanser	Maintenance Supply Service, P.O. Box 498, Huntersville, NC 28078	Aug. 11, 1971.
5535-13	Gro-Well Flower and Rose Spray	J and L Adikes, Inc., 102-12 93rd Ave., Jamaica, NY 11423	Nov. 22, 1957.
5535-35	Gro-Well Pre-Vent	do	Feb. 1, 1961.
5535-49	Gro-Well Ren-O-Vate	do	Mar. 13, 1964.
5535-60	Gro-Well Ren-O-Vate (Dry)	do	Jan. 27, 1967.
5535-78	Gro-Well Pre-Vent Pre-Emergent Crabgrass Control with Fertilizer	do	Apr. 19, 1971.
5535-79	Gro-Well Home and Garden Spray	do	Mar. 7, 1973.
5535-93	Gro-Well Wasp and Hornet Spray	do	July 5, 1974.
5535-95	Gro-Well Patio Fogger	do	Jan. 24, 1973.
5778-23	Super Chinch Trithion Dust	Gro Chemical Co., 3530 NW. 31st St., Miami, FL 33142	Jan. 17, 1968.
6294-4	Comet Insecticide Spray AA-1	Comet Mfg. Corp., 1381 Dalon Road, NE, Atlanta, GA 30306	Feb. 18, 1959.
6294-14	Cattle Spray	do	July 29, 1966.
6294-20	Comocide 999 Insect Spray	do	July 18, 1966.
6735-141	Tide Special Pest Mix Household Insecticide Spray	Tide Products, Inc., P.O. Box 1020, 800 N. Closner St., Edinburg, TX 78539	July 9, 1968.
6735-143	Tide Trithion 4E	do	Aug. 5, 1968.
6735-165	Trithion 3 Dust	do	Apr. 12, 1971.
6735-208	Tide Big "D"	do	Jan. 6, 1975.
6993-34	Germains Dichondra and Ornamental Weed Control	Germains, Inc., 4620 East 50th St., Los Angeles, CA 90058	Nov. 17, 1969.
6993-38	Germains Rose and Flower Dust	do	May 3, 1971.
7173-104	Chempar's Trichlorfon 80% Soluble Powder	Chempar Products, Division of Lipha Chemicals, Inc., 660 Madison Ave., New York, NY 10021.	Sept. 13, 1972.
8220-1	Pemco Algo	Lambert Kay, Division of Carter-Wallace, Inc., P.O. Box 418, Cranbury, NJ 08512.	Feb. 17, 1971.
8220-12	Lambert-Kay Dri Brite	do	July 7, 1971.
8660-1	Sta-Green Pre-Emergence Crabgrass Killer	Sta-Green Plant Food Co., Sylacauga, AL 35150	Oct. 8, 1964.
10185-4	Dale's Hog and Cattle Oil	Dale's Machine Co., Inc., 225 W. Grant St., Thorntown, IN 46071	Jan. 30, 1973.
13344-2	Crabgrass Preventor Plus	Target Stores, Inc., 777 Nicollet Mall, Minneapolis, MN 55402	Feb. 10, 1975.
32259-4	Woodlast Clear Wood Preservative	Hoboken Paints, 40 Industrial Road, Lodi, NJ 07644	Mar. 19, 1982.
41848-1	Smith Algaecide	Smith Engineering, Inc., 125 Columbia Court, Jonathon Industrial Ctr., Chaska, MN 55318.	May 21, 1981.

The Agency has agreed that each cancellation shall be effective (September 27, 1985. Unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue until the supply is exhausted, or for one year from the effective date of cancellation. Other persons may continue to sell and distribute these products until the supply is exhausted. Continued sale and use of such existing stocks has been determined to be in accordance with the provisions of FIFRA and must be consistent with the label and labeling approved by EPA. Production of these products after the effective date of cancellation is prohibited and would be a violation of FIFRA.

Requests that the registration of these products be continued may be submitted in triplicate to the Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66122]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136d.

Dated: August 15, 1985.

Steve Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-20307 Filed 8-27-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-40006B; FRL-2887-8]

Intent To Approve Revised Department of Defense Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve Federal agency certification plan.

SUMMARY: EPA approved the Department of Defense plan to certify its employees as pesticide applicators, as published in the **Federal Register** of June 13, 1978 (43 FR 25468). Notice is hereby given of the intention of the EPA Administrator to approve a revised

Department of Defense Pesticide Applicator Certification Plan (DOD Plan). The existing DOD Plan will remain in effect pending approval of the revised DOD Plan. The DOD Plan was revised to expand and update policies and procedures as dictated by changes in laws, regulations, and the needs of the military services. A summary of the revised DOD Plan appears below. Interested persons are invited to comment.

DATE: Comments should be submitted on or before September 27, 1985.

ADDRESSES: Submit three copies of comments, identified by the document control number "OPP-40006B," by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

See **"SUPPLEMENTARY INFORMATION"** for the locations where the DOD Plan is available for inspection.

FOR FURTHER INFORMATION CONTACT: John MacDonald, Policy and Grants Division, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, Rm. M-2510, 401 M St., SW., Washington, DC 20460, (202-382-7846).

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense, Deputy Assistant Secretary of Defense (Installations), Armed Forces Pest Management Board (AFPMB) was designed as the lead agency responsible for the program's development, implementation and coordination.

In its coordination capacity the AFPMB serves as counsultant body to the cooperating military services on pest management programs, provides liaison with other Federal and State agencies in these matters, and provides guidance for the cooperating agencies on standards for pesticide applicator competency levels. This DOD Plan applies to all the Military Departments (including their National Guard and reserve components), the organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

Federal employees are considered by EPA to be commercial applicators. The Department of Defense has proposed certification for its employees in 1 or more of the 10 commercial categories defined in 40 CFR 171.3 plus an additional proposed category defined as Aerial Applicator Pest Control. These are the categories in the existing, EPA-approved, DOD Plan.

Department of Defense will certify its employees to apply pesticides on Department of Defense property. In the infrequent instances when Department of Defense employees will be applying pesticides on other property, they will work under the supervision of appropriately certified State or Federal personnel.

The revised DOD Plan will, like the existing DOD Plan, consist of a training phase and a certification phase. While not all categories of applicators must undergo training, if they meet specified criteria, all must be examined for competency. Prior to certification all applicators must pass a written examination and demonstrate on-the-job competency. Samples of written test questions are included in the DOD Plan.

The DOD Plan allows for the inclusion of more stringent substantive State standards. In instances where a State decides its substantive standard is more stringent than or is additional to standards established in the DOD Plan, it may notify the Department of Defense and request compliance. The request will be immediately forwarded to the Administrator, EPA. As soon as possible thereafter, the Department of Defense will forward its opinion as to whether the standard is substantive or administrative in nature. In cases of disagreement between the State and the Department of Defense, the DOD Plan proposes mediation by the Administrator, EPA.

Those certifications issued under the existing DOD Plan will remain valid until their expiration date. The revised DOD Plan, like the existing DOD Plan, will certify applicators for a period not to exceed 3 years. The DOD Plan cites Department of Defense Directives that require the cooperating agencies to conduct periodic programs to assure that applicators continue to meet the requirements of changing technology. Annual inspections of installation pest control activities will be performed by professional pest management personnel at which time competency of certified employees will be evaluated and recommendations for early recertification will be made as required.

Each certified applicator will be issued a certificate and wallet-size identification card to be carried when applying pesticides or supervising their application. These documents will identify the certified applicator, the categories in which he or she is certified, the date of issuance, expiration date, and issuing authority. An example of this document is contained in the DOD Plan.

Pesticides classified for restricted use will be applied either by a certified applicator or by a competent applicator under the direct supervision of a certified applicator. The revised DOD Plan's direct supervision requirement exceeds the requirement of 40 CFR 171.6 and the existing DOD Plan's requirement. The revised DOD Plan requires supervision that includes being at the specific location where the work is conducted and maintaining a line-of-sight view of the work performed.

The revised DOD Plan contains authority to deny, suspend, or revoke certification for falsification of a record, misuse of a pesticide, or other violations of FIFRA. The revised DOD Plan outlines the procedures for conducting such actions.

Records on the kinds, amounts, uses, dates, and places of restricted use pesticide applications will be maintained for no less than 2 years at the installation conducting the pesticide application. Such records will be available through the installation commanding officer to appropriate Federal and State officials upon request.

Employees of commercial firms contracted to apply restricted use pesticides at Department of Defense installations must be certified by the appropriate State or EPA authority. The Department of Defense will cooperate with a State or EPA in any subsequent investigation or actions.

Annual reports containing the information outlined at 40 CFR 171.7(d) and other information requested by the EPA Administrator will be submitted. The annual reports will be based on activities conducted during the Federal fiscal year.

Copies of the DOD Plan are available for inspection at the following locations:

1. Armed Forces Pest Management Board, Forest Glen Section, Walter

Reed Army Medical Center (WRAMC), Washington, D.C. 20307-5001.

2. Environmental Protection Agency, Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.
3. Environmental Protection Agency, Region I, John F. Kennedy Building, Boston, MA 02203.
4. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278.
5. Environmental Protection Agency, Region III, Curtis Building, 841 Chestnut St., Philadelphia, PA 19107.
6. Environmental Protection Agency, Region IV, 345 Courtland St., NE., Atlanta, GA 30365.
7. Environmental Protection Agency, Region V, Pesticides Branch, 230 South Dearborn St., Chicago, IL 60604.
8. Environmental Protection Agency, Region VI, 1201 Elm St., First International Building, Dallas, TX 75270.
9. Environmental Protection Agency, Region VII, 726 Minnesota Ave., Kansas City, KS 66101.
10. Environmental Protection Agency, Region VIII, One Denver Place, Suite 1300, 999 18th Ave., Denver, CO 80202-2413.
11. Environmental Protection Agency, Region IX, 215 Fremont St., San Francisco, CA 94105.
12. Environmental Protection Agency, Region X, 1200 Sixth Ave., Seattle, WA 98101.

The DOD Plan is also available for inspection at selected Department of Defense installations throughout the country. Interested persons desiring the location of the installation in their State should contact the Armed Forces Pest Management Control Board at the address given above or telephone Captain Larry Lewis, U.S.N. (202-427-5191).

Dated: August 15, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-20306 Filed 8-27-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Interagency Committee on Dam Safety (ICODS); Charter and Operating Rules

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Publication of the Charter and Operating Rules of the Interagency Committee on Dam Safety.

SUMMARY: The Federal Emergency Management Agency is providing notice of the publication of the formal charter and operating rules of the Interagency Committee on Dam Safety (ICODS). The purpose of ICODS is to coordinate policies for and provide guidance to all participants of the National Dam Safety Program.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Bivins, Acting Chief, Program Development Branch, Earthquakes and Natural Hazards Programs Division, Washington, DC 20472, (202) 646-2817.

SUPPLEMENTARY INFORMATION: The National Dam Safety Program was established October 4, 1979, when the President instructed the heads of each Federal agency responsible for any aspect of dam safety to adopt the Federal Guidelines for Dam Safety. This coincided with the formation of the Federal Emergency Management Agency (FEMA), by Executive Order 12148, and the agencies were directed to report their progress in implementing the guidelines to the Director of FEMA. The executive order and Presidential directive designated FEMA as the lead agency for efforts to enhance the safety of dams. To fulfill its reponsibilities FEMA requested the formation of the Interagency Committee on Dam Safety (ICODS) to encourage the establishment and maintenance of effective Federal and State dam safety programs. ICODS represent 9 Federal departments and agencies. They are: The Departments of Agriculture, Army, Interior, and Labor; Nuclear Regulatory Commission; U.S. Section, International Boundary and Water Commission; Federal Energy Regulatory Commission; Tennessee Valley Authority; and FEMA (Chair).

ICODS provides a permanent forum for member agencies to coordinate interagency activities and to identify, discuss, and recommend solutions to institutional, managerial, technical, legislative, and policy issues which affect national dam safety. ICODS has been active on several fronts since its formation and it is now considered appropriate to formally announce its Charter and Operating Rules and its objectives, mission and oversight role for the National Dam Safety Program. Set forth below is the Charter and Operating Rules for the Interagency Committee on Dam Safety originally adopted at the April 24, 1980 organizational meeting.

Dated: August 20, 1985.

Richard W. Krimm,

Assistant Associate Director, Office of Natural and Technological Hazards Programs.

Interagency Committee on Dam Safety (ICODS) Charter and Operating Rules

I. Preamble

The need for positive action and leadership to assure safe dams has been clearly established through direction of the President, by the actions of Federal agencies, State governments, professional societies and engineers involved with dams, and by the concerns expressed by the public.

It is necessary that Federal agencies having an involvement with dams coordinate their activities to assure optimum use of agency resources in the establishment of principles and guidance that will lead to safer dams. These agencies also have a responsibility to provide leadership so others might benefit from the skills, experience, and programs of the Federal establishment. The Interagency Committee on Dam Safety (ICODS) provides the framework for meeting these objectives. The members will individually carry ICODS decisions and recommendations that impact on policy and legislative matters to their respective agencies for appropriate action.

ICODS considers a dam to be as defined in the *Federal Guidelines for Dam Safety.*

II. Purpose

The purpose of ICODS is to encourage the establishment and maintenance of effective Federal and State programs, policies, and guidelines intended to enhance dam safety for the protection of human life and property. This is achieved through coordination and information exchange among agencies sharing common problems and having responsibilities for any aspect of dam safety (e.g., planning, design, construction, operation, emergency actions, inspections, maintenance, regulation or licensing, technical or financial assistance, research, data collection, and ultimate disposition). Such coordination is not limited to Federal dam safety matters as State and local issues may provide a need for technology exchange. ICODS will provide a permanent forum for these organizations to advise the Federal Emergency Management Agency (FEMA) in its role of coordinating interagency activities and to identify, discuss, and make recommendations on institutional, managerial, technical,

legislative, and policy issues which affect national dam safety.

III. Organization

A. Membership

The members are to be one representative designated from each of the following Federal Departments/Agencies: Agriculture; Army; Interior; Labor; Federal Energy Regulatory Commission; U.S. Section, International Boundary and Water Commission; Nuclear Regulatory Commission; Tennessee Valley Authority; and Federal Emergency Management Agency.

B. Chair

The FEMA member will serve as designated Chair. In the absence of the designated FEMA member, a representative of a member Federal Department/Agency will be named by FEMA to act as Chair. At the discretion of the Chair, others may participate in ICODS meetings and subcommittee activities.

C. Subcommittees

ICODS will establish necessary subcommittees to fulfill its purpose. A member of ICODS will be named by the Chair as contact person for each subcommittee. Subcommittees, their memberships, chairmanships, and assignments will be approved by ICODS.

D. Meetings

The Chair will call meetings as needed. A minimum of one meeting per calendar quarter will be scheduled.

E. Voting and Rules

Each member of ICODS shall have one vote. Each subcommittee member shall have one vote on their subcommittee. A member may designate an alternate to vote in his or her absence. Every effort will be made to arrive at a consensus. Robert's Rules of Order will be followed.

F. Funding

Each agency will be responsible for supporting its representatives. Any cost for consultants, printing, etc., will be mutually agreed upon prior to commitment.

IV. Amending Charter and Operating Rules

Amendments may be made to the Charter and Operating Rules, the members desiring, by a two-thirds vote of the membership.

Amended————.

(Originally adopted by Interagency Committee on Dam Safety at the April 24, 1980, organizational meeting, Washington, DC.

[FR Doc. 85-20296 Filed 8-27-85; 8:45 am]
BILLING CODE 6718-01-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, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, 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.: 224-003753-004.

Title: Baltimore Terminal Agreement.

Parties:

Maryland Port Administration (MPA)

ITO Corporation of Baltimore (ITO)

Synopsis: Under this agreement the MPA requests an amendment to its current lease with ITO for use of the South Locust Point Marine Terminal under revised leased terms until its expiration on April 30, 1986. MPA will receive all dockage and wharfage fees assessed by ITO at the terminal in lieu of current provisions. Such dockage and wharfage shall be as set forth in the current MPA terminal services tariff. The parties have requested a shortened review period for the agreement.

Agreement No.: 213-010601-003.

Title: Neptune Orient Lines, Ltd. (NOL), Orient Overseas Container Line, Inc. (OOCL) and Kawasaki Kisen Kaisha, Ltd. (K-Line) Sailing Agreement.

Parties:

Neptune Orient Lines, Ltd.

Orient Overseas Container Line, Inc.

Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed amendment would modify the agreement to (1) add Kawasaki Kisen Kaisha, Ltd. as a party to the agreement in the Atlantic Service only; (2) enlarge the geographic scope to include transshipment to and from ports and points in Bangladesh, Macao, Brunei Darussalam, Papua New Guinea, New Zealand and utilize Long Beach, California as a port for both services; (3) increase the NOL and OOCL maximum fleet from 17 to 23 vessels but reduce the minimum TEU requirement for each vessel, including the two vessels to be introduced into the Atlantic Coast Service by K-Line, to 1250 TEU's from the current 1500 TEU's. It would provide that K-Line will not be allowed to participate in nor be a party to any arrangement between NOL and OOCL and ocean common carriers regarding the Pacific Coast Service. It would also restate the agreement to conform with the Commission's format, organization and content requirements and would make certain administrative changes.

Agreement No.: 224-010807.

Title: Long Beach Terminal Agreement.

Parties:

The City of Long Beach (City)

Moller Steamship Company, Inc. (Moller)

Synopsis: The agreement provides that the City will assign to Moller the remainder of terminal areas at Berths 243-244, Pier J, within the Port of Long Beach. The premises are to be used to conduct a full marine terminal operation. The agreement is for an initial term of five years with Moller having the right to extend the term for up to 3 additional periods of 5 years each. The compensation in the terminal agreement is based on a percentage of dockage and wharfage revenues, subject to payment of a guaranteed annual minimum compensation.

Agreement No.: 222-010808.

Title: Long Beach Terminal Equipment Agreement.

Parties:

City of Long Beach (City)

Moller Steamship Company, Inc. (Moller)

Synopsis: The agreement provides for the preferential assignment by the City to Moller of two existing cranes at Berths 243-244, Pier J, Port of Long Beach, plus an additional crane to be purchased by the City. The compensation is a fixed annual amount based on a percentage of the purchase price. The agreement is for an initial term of 5 years with Moller having the right to extend the term for up to 3 additional periods of 5 years each.

Agreement No.: 224-010809.

Title: Tampa Terminal Agreement.

Parties:

Tampa Port Authority (Authority)

Holland America Westours, Inc. (Holland America)

Synopsis: This agreement provides for the granting by the Authority to Holland America of a non-exclusive preferential use passenger terminal facility at Berth 202, Tampa, Florida. The agreement will become effective upon the

determination of its effective date by the Commission. The term of the agreement shall be for five years. Upon the effective date determined by the Commission, this agreement will cancel and supersede Agreement No. T-4060, approved by the Commission on November 15, 1982.

Agreement No.: 224-010810.

Title: Portland Terminal Agreement.

Parties:

The Port of Portland (Port)

Pacific Molasses Company (PMC)

Synopsis: The agreement provides that PMC will lease a 2.54 acre liquid bulk facility from the Port for the purpose of handling the movement of bulk liquids in waterborne commerce. The term of the agreement will be for ten years, with an option to extend the term for an additional ten years providing PMC removes the obsolete tanks and constructs replacement tanks of equivalent storage capacity on the premises. The agreement becomes effective on the first day of the month following the date that the Commission designates as its effective date.

By Order of the Federal Maritime Commission.

Dated: August 22, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-20489 Filed 8-27-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; RNA Shipping Co. et al.; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Rosa N. Aviles dba RNA Shipping Co., 670 84th Street, Brooklyn, NY 11228

Crown Shipping (USA) Inc., 1909 East Ashley Avenue, Folly Beach, SC 29439. Officers: Neil Roger Hardman, President/Director, Ernest Krautwald, Executive Vice President/Director, Kjeld Jepsen, Executive Vice President/Director.

Dated: August 23, 1985.

By the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-20526 Filed 8-27-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Pouch Forwarding Corp. et al.; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1676

Name: Pouch Forwarding Corporation

Address: One Edgewater Plaza, P.O. Box R, Staten Island, NY 10305

Date Revoked: August 1, 1985

Reason: Failed to maintain a valid surety bond

License Number: 2564

Name: Cargo World Incorporated

Address: 4284 Lockfield, #130, Houston, TX 77092

Date Revoked: August 7, 1985

Reason: Failed to maintain a valid surety bond

License Number: 1310

Name: Neptune World Wide Moving, Inc.

Address: 55 Weyman Ave., New Rochelle, NY 10805

Date Revoked: August 7, 1985

Reason: Failed to maintain a valid surety bond

License Number: 2485

Name: Amcorp Shipping, Inc.

Address: 76 Beaver Street, 24th Fl., New York, NY 10005

Date Revoked: August 10, 1985

Reason: Failed to maintain a valid surety bond

License Number: 2803

Name: Pacific Western Shipping Company

Address: 1221 Third Street, Oakland, CA 94623

Date Revoked: August 16, 1985

Reason: Failed to maintain a valid surety bond

License Number: 2520

Name: Metropolitan Forwarders, Inc.

Address: 3340 N.W. 78th, Miami, FL 33122

Date Revoked: August 18, 1985

Reason: Failed to maintain a valid surety bond

Eugene P. Stakem,

Deputy Director, Bureau of Tariffs.

[FR Doc. 85-20525 Filed 8-27-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Franklin Capital Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 19, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Franklin Capital Corporation,* Wilmette, Illinois; to acquire 100 percent of the voting shares of First Security Bank, Addison, Illinois.

2. *First National Bancorp of Cullom, Inc.,* Cullom, Illinois; to become a bank holding company by acquiring at least 82 percent of the voting shares of The First National Bank of Cullom, Cullom, Illinois.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198.

1. *Applewood Bankcorp, Inc.,* Wheat Ridge, Colorado; to acquire 100 percent of the voting shares of Jefferson Bank South, Lakewood, Colorado.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *RepublicBank Corporation,* Dallas, Texas; to acquire 100 percent of the voting shares of RepublicBank Preston

North, N.A., Plano, Texas, a *de novo* bank.

2. *Rio Grande Financial Corporation*, Brownsville, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of NTL Bank of Commerce of Brownsville, Brownsville, Texas.

Board of Governors of the Federal Reserve System, August 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20527 Filed 8-27-85; 8:45 am]

BILLING CODE 6210-01-M

Norbanc Group, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 17, 1985.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *NorBanc Group, Inc.*, Pine River, Minnesota; to acquire certain assets and assume certain liabilities of Backus State Agency, Inc., Backus, Minnesota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to section 4(C)(8)C)(i) of the Act. These activities would be conducted in Cass and Crow Wing Counties in Minnesota.

2. *NorBanc Group, Inc.*, Pine River, Minnesota; to acquire Cass Insurance Services, Inc., Backus, Minnesota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to section 4(C)(8)(C)(i) of the Act. These activities would be conducted in Cass and Crow Wing Counties in Minnesota.

Board of Governors of the Federal Reserve System, August 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20528 Filed 8-27-85; 8:45 am]

BILLING CODE 6210-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

Privacy Act of 1974; Amendment of Notices of Systems of Records

AGENCY: Foreign Claims Settlement Commission of the United States.

ACTION: Amendment of Notices of Systems of Records Justice/FCSC-1 Through 34 for: (1) Recent Judicial Interpretation of the Privacy Act; and (2) Redesignation of System Manager.

SUMMARY: The Foreign Claims Settlement (FCSC) hereby amends its notices of records systems designated "Justice/FCSC-1 through Justice/FCSC-34" in accordance with the Privacy Act Guidance-Update issued by the Office of Management and Budget on May 24, 1985. This amendment is to conform the language regarding "routine uses" in the FCSC's prior Privacy Act notices to limit disclosures of information in the course of litigation to records which have been determined by the FCSC to be relevant and necessary to the litigation and to cases where such disclosures have been determined by the FCSC to be a use compatible with the purpose for which the records were collected.

The FCSC also hereby designates its Administrative Office as the system manager for all of its systems of records.

EFFECTIVE DATE: Date of Publication.

FOR FURTHER INFORMATION CONTACT: David H. Rogers, General Counsel, Foreign Claims Settlement Commission, 1111-20th Street NW., Washington, DC 20579. Telephone No. (202) 653-5883.

Systems Names

Bulgaria, Claims Against (1st Program)—Justice/FCSC-1
Bulgaria, Claims Against (2nd Program)—Justice/FCSC-2
Certifications of Awards—Justice/FCSC-3
China, Claims Against Communist—Justice/FCSC-4
Civilian Internees (Vietnam)—Justice/FCSC-5
Correspondence (General)—Justice/FCSC-6
Correspondence (Inquiries Concerning Claims in Foreign Countries)—Justice/FCSC-7
Cuba, Claims Against—Justice/FCSC-8
Czechoslovakia, Claims Against—Justice/FCSC-9
East Germany, Registration of Claims Against—Justice/FCSC-10
Federal Republic of Germany, Questionnaire Inquires from—Justice/FCSC-11
Payroll Records—Justice/FCSC-12
General Personnel Records—Justice/FCSC-13
General Financial Records—Justice/FCSC-14
Hungary, Claims Against (1st Program)—Justice/FCSC-15
Hungary, Claims Against (2nd Program)—Justice/FCSC-16
Indexes of Claimants (Alphabetical)—Justice/FCSC-17
Italy, Claims Against (1st Program)—Justice/FCSC-18
Italy, Claims Against (2nd Program)—Justice/FCSC-19
Micronesia, Claims Arising in—Justice/FCSC-20
Panama, Claims Against—Justice/FCSC-21
Poland, Registration of Claims—Justice/FCSC-22
Poland, Claims Against—Justice/FCSC-23
Prisoners of War (Pueblo)—Justice/FCSC-24
Prisoners of War (Vietnam)—Justice/FCSC-25
Rosters of Prisoners of War and Civilian Internees—Justice/FCSC-26
Romania, Claims Against (1st Program)—Justice/FCSC-27
Romania, Claims Against (2nd Program—Justice/FCSC-28
Soviet Union, Claims Against—Justice/FCSC-29
Yugoslavia, Claims Against (1st Program)—Justice/FCSC-30
Yugoslavia, Claims Against (2nd Program)—Justice/FCSC-31
German Democratic Republic, Claims Against—Justice/FCSC-32
General War Claims Program, Claims Filed in—Justice/FCSC-33
Vietnam, Claims for Losses Against—Justice/FCSC-34

(1). The Foreign Claims Settlement Commission of the United States hereby amends each of the previously published notices of the above 34 systems of

records by inserting the following language at the end of the "ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES": element of such notices as follows:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

* * * * *

(2). The Foreign Claims Settlement Commission of the United States also hereby amends each of the previously published notices of the above 34 systems of record by deleting in each "SYSTEM MANAGER(S) AND ADDRESS" element the words "Executive Director or Office of the Executive Director" and inserting in place thereof, "Administrative Office".

Dated at Washington, D.C., on August 20, 1985.

Bohdan A. Futey,

Chairman.

[FR Doc. 85-20506 Filed 8-27-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that the organizational meeting of the President's Commission on Americans Outdoors will be held at 9:00 a.m., September 13, 1985, in Room 2856, National Geographic Society building, 1146 16th Street, NW, Washington, DC 20036.

The proposed agenda is to define the purpose of the Commission, to select an Executive Director, to establish a plan of organization and a preliminary schedule of meetings.

This meeting will be open to the public.

Further information concerning this meeting may be obtained from Victor H. Ashe, Interim Executive Director, Room 3142, U.S. Department of the Interior, 18th and C Streets, NW, Washington, DC 20240. Telephone Number: (202) 343-4905.

Dated: August 21, 1985.

Victor H. Ashe,

Interim Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 85-20546 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-70-M

Fish and Wildlife Service

Receipt of Applications for Marine Mammal Permit

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.)*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

File No. PRT 697747

Applicant: Name: Dr. David S. Bruce, Wheaton College Biology Dept., Wheaton, IL.

Type of Permit: Scientific Research.

Name and Number of Animals: Polar bear (*Ursus maritimus*) 4.

Summary of Activity to be Authorized: The applicant proposes to import four 20-cc blood plasma samples; two to be taken from a pair of winter adult bears and two to be taken from a pair of summer adult bears. The bears will have been previously immobilized by a Canadian research team. The blood is requested for the purpose of researching whether denning winter polar bears are or are not true hibernators.

Source of Marine Mammals for Display: Churchill, Manitoba, Canada.

Period of Activity: 1 year.

File No. PRT 696107

Applicant: Name: California Department of Fish and Game, Sacramento, CA.

Type of Permit: Scientific Research.

Name and Number of Animals: California sea otter (*Enhydra lutris*), up to 200.

Summary of Activity to be Authorized: The applicant proposes to capture, anesthetize, tag, extract premolar and release 100 otters and herd approximately 75 otters. The purpose of the activity is to develop and refine capture techniques and identification methods to influence the distribution of sea otters without capturing (i.e., herding).

Source of Marine Mammals for Research: Coastal Waters of California.

Period of Activity: Through December 31, 1987.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of these applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on these applications should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above applications are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: August 23, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-20566 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-55-M

Endangered and Threatened Species; Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-698233

Applicant: U.S. Fish & Wildlife Service, Jackson, MS

The applicant requests a permit to trap and relocate Perdido Key beach mice (Peromyscus polionotus tryssillepsis), for the purpose of enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: August 22, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-20565 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Oregon/Idaho Wilderness Inventory Reevaluation

The Interior Board of Land Appeals (IBLA 82-1284) has directed the Bureau of Land Management to reevaluate the decision not to designate the Oregon and Idaho wilderness inventory unit OR-3-194A/ID-16-48A as a wilderness study area. Specifically, the IBLA decision requires BLM to reconsider and document the following point:

Failure to provide adequate justification for the determination that the area was lacking wilderness characteristics.

The following constitutes the reevaluation in accordance with the IBLA decision:

Reevaluation for Naturalness

Intrusions within the unit include approximately 15 miles of bladed fenceline, 5 miles of unbladed fenceline, 2 wells with windmills, 20 reservoirs, 48 miles of ways, 11 miles of bladed stateline, and 1 dirt airstrip.

The bladed fenceline bisects the unit approximately in half from north to south. The unbladed fenceline branches off the bladed fenceline near the unit's center and exits near the northwest corner. Both fencelines are substantially unnoticeable due to the flatness of terrain and vegetative screening provided by sagebrush. The blade scar is regenerating as a result of invading sagebrush.

The windmills located at Stoney Corral and Tent Creek are both substantially unnoticeable. The windmill at Tent Creek lies at the bottom of a small canyon and is screened under the canyon rim. The windmill at Stoney Corral is situated against a rim and also screened.

Randomly dispersed throughout the unit are 20 reservoirs and stock water ponds. Individually they are substantially unnoticeable due to their small size in relation to the large size of the unit. The excavated fills are partially stabilized by vegetation, which blends into surrounding flats. The wide distribution of reservoirs and low frequency of contact (averaging over three miles apart) result in their cumulative impact also being substantially unnoticeable.

In the southeastern corner of the unit, the ways and their close proximity to one another, the dirt airstrip, plus a large reservoir in Tent Creek, cause a substantially noticeable cumulative impact that one cannot avoid coming into contact with. The concentration of these intrusions near a boundary road adds to the possibility of users noticing the developments.

Because of their concentration, only the intrusions in the southeastern 4,800 acres of the unit are substantially noticeable to a casual observer. The remaining 99,600 acres of the unit are natural in character. In this larger area, the location, number, and relative distribution of imprints of man, combined with topographic and vegetative screening, make the intrusions substantially unnoticeable.

Reevaluation for Solitude

Low vegetation can provide excellent screening on flat terrain if the area involved is large enough to provide distance for other visitors or external influences to blend or disappear into the landscape. When combined with the slightly undulating terrain found in this large unit, the knee- to waist-high sagebrush provides sufficient screening between users. Not only does the low vegetation provide screening, it also provides a sense of remoteness and vastness, adding to the solitude of the unit.

There is little pronounced topographic screening, slightly undulating terrain, and an occasional small canyon. The unit is roughly triangular with the bulk of the unit over ten miles wide. This distance is significantly more than necessary for a reasonable number of visitor groups or limited external influences to blend or disappear into the landscape. The lack of distinct topographic or vegetative features also eliminates the potential for concentration of visitor use in any one portion of the unit. Because of the shape and large size of the unit, the screening ability of low vegetation, and the sense of vastness, the opportunities for solitude are outstanding.

Reevaluation for Primitive and Unconfined Recreation

The unit lacks exceptional scenery and a diversity of land forms that would result in a moderate to strong attraction for any type of primitive recreation activity.

Backpacking or horseback riding across the unit would be a monotonous experience. There are no unique photographic opportunities. Hunting opportunities are limited due to low game populations. There is a minimal challenge attached to any of these activities.

The lack of scenic quality and diversity of land forms render the opportunities for primitive and unconfined recreation less than outstanding.

Recommendation

Reevaluation of this unit following IBLA's decision indicates that the imprints of man are indeed substantially unnoticeable except for intrusions found on 4,800 acres in the southwest corner of the unit. Vegetative screening coupled with the size and vastness of the unit provides outstanding opportunities for solitude. Therefore, it is the decision that 99,600 acres (65,200 acres in Oregon and 34,400 acres in Idaho) should be designated a wilderness study area and that 4,800 acres in Idaho should be dropped from further consideration as wilderness. Any person adversely affected by this decision may appeal to the Interior Board of Land Appeals as specified in the 43 Code of Federal Regulations (CFR) Part 4.

Jimmie A. Buxton,

Acting Deputy State Director for Renewable Resources.

[FR Doc. 85-20529 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-GG-M

[A-18970]

Conveyance of Public Land; Reconveyed Land Opened to Entry; Arizona

August 19, 1985.

Notice is hereby given that the following described land has been transferred out of Federal ownership pursuant to section 206 of the Federal

Land Policy and Management Act of 1976 in exchange for privately owned land. The land transferred to private ownership is described as:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 21 W.,
Sec. 30, Lots 2, 3, 4, NW¼SE¼NW¼, N½ SW¼SE¼NW¼.

Comprising 134.96 acres in Mohave County.

Land acquired by the United States is described as:

Gila and Salt River Meridian, Arizona

T. 26 N., R. 14 W.,
Sec. 19, SE½ (that portion lying southeast of a diagonal line drawn from the northeast corner to the southwest corner of said section);
T. 25 N., R. 15 W.,
Sec. 1, Lots 1 to 4, inclusive, S½N½, S½;
T. 18 N., R. 16 W.,
Sec. 25, Lots 1 and 2;
Sec. 27, N½.

Comprising 1,348.59 acres in Mohave County.

The exchange was made based on approximately equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and acquisition of private land by the Federal Government.

The land acquired by the Federal Government in this exchange will be open to entry under the general land laws, at 9 a.m. on September 23, 1985. The mineral estate is owned by the Santa Fe Pacific Railroad Company.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-20507 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-32-M

[A-18971]

Conveyance of Public Land; Reconveyed Land Opened to Entry; Arizona

August 19, 1985.

Notice is hereby given that the following described land has been transferred out of Federal ownership pursuant to section 206 of the Federal Land Policy and Management Act of 1976 in exchange for privately owned land. The land transferred to private ownership is described as:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 21 W.,
Sec. 30, S½SW¼SE¼NW¼, N½NW¼ NE¼SW¼.

Comprising 10 acres in Mohave County.

Land acquired by the United States is described as:

Gila and Salt River Meridian, Arizona

T. 18 N., R. 16 W.,
Sec. 11, SW¼SW¼NW¼, W½SE¼SW¼ NW¼,
Sec. 15, N½NE¼, E½SE¼NW¼, SW¼ SE¼NW¼, E½NE¼SW¼, E½NW¼ SW¼,
Sec. 17, E½NE¼SE¼.

Comprising 185 acres in Mohave County.

The exchange was made based on approximately equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and acquisition of private land by the Federal Government.

The land acquired by the Federal Government in this exchange will be open to entry under the general land laws, at 9 a.m. on September 27, 1985. The mineral estate is owned by the Santa Fe Pacific Railroad Company.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-20508 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-32-M

[U-52873]

Realty Action; Sale of Public Lands in Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as N½NE¼NE¼NE¼ Section 25 (containing 5 acres) and SE¼SE¼ NE¼SE¼, W½SE¼NE¼SE¼, SW¼ NE¼SE¼, Section 24, (containing 17.5 acres), all T. 41 S. R. 8 W SLB&M, Utah is proposed for direct non-competitive sale to Fern Hansen Morrison Jensen at the fair market value of $1,900.00. It is also proposed to sell 25 acres of public land described as SE¼SE¼NW¼SE¼, E½NE¼ SW¼SE¼, SW¼NE¼SW¼ SE¼, SE¼SW¼SE¼, E½SW¼SW¼ SE¼, Section 24 T. 41 S., R. 8 W. SLB&M Utah by competitive bidding at no less than fair market value of $2,000.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments will be accepted until October 15, 1985. The sale will be held on October 30, 1985 at 10:00 A.M.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Kanab Area Office, 318 North First East, Kanab, Utah 84741, (801) 644-2672. Comments should also be sent to the same address. The sale will be held in the Kanab Area Office, BLM, 318 North First East, Kanab, Utah 84741.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.
2. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.D. 945.
3. Title transfer will be subject to valid existing rights.
4. If the public lands are not sold pursuant to this notice they will remain available for sale on a continuing basis until sold.

Any comments received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of any objections, this realty action notice will be the final determination of the Department of the Interior.

Dated: August 16, 1985.

Morgan S. Jensen,

District Manager.

[FR Doc. 85-20509 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-DQ-M

[U-53694]

Realty Action for Lands in Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This a Notice of a direct sale of 40 acres of public land in Tooele County, in accordance with existing law.

DATE: The date of the sale is October 22, 1985.

ADDRESS: Comments concerning the sale will be accepted for a period of 45 days from the date of this notice by the: District Manager, Salt Lake District, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, Pony Express Realty Specialist, (801) 524-6792.

SUPPLEMENTARY INFORMATION: The following described public land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) of FLPMA:.

Legal Description and Acreage

T. 5 S., R. 5 W., SLB+M, Section 8, SE¼NE¼—40 acres

The land is being offered by direct sale to Globe Investment Company, also referred to as the Company in this Notice, at the appraised fair market value. The lands are being offered for sale to serve the public objective of economic development and community expansion. Authorizing the farming of these lands will enhance Globe Investment Company's adjoining farm operation. The objective could not be achieved on other public land such as a parcel that was noncontiguous. The parcel does not possess more important public values than economic development since livestock grazing is the present and projected use of the land. The tract is no larger than necessary to support a family-sized farm.

A direct sale to Globe Investment Company will recognize a preference to the Company as a user with existing improvements and as an adjoining landowner, as set forth in FLPMA.

The sale is consistent with the Bureau of Land Management's planning system and with Tooele County planning and zoning.

The public lands will be sold on the 22nd day of October, 1985. Terms and conditions applicable to the sale are:

1. The sale of these lands is subject to all valid existing rights.
2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).
3. All minerals are reserved to the United States.
4. Federal law requires that the buyer be a U.S. citizen or a corporation subject to the laws of any state of the United States. Proof of this requirement shall be presented by the Company on the date of the sale.

The designated purchaser, Globe Investment Company, will be required to submit a nonrefundable deposit of one-tenth of the full price on the sale date, October 22, 1985, by certified check. The remainder of the full price shall be paid within 180 days of the sale date. Failure to pay the full price within 180 days shall disqualify the Company as the designated purchaser and the deposit shall be forfeited and disposed of as other receipts of sale. The lands may then be offered on a competitive bidding basis, with details of such a sale to be set forth in a subsequent notice.

Detailed information concerning the sale including the planning documents and environmental assessment is available for review at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

John H. Stephenson,
Acting Salt Lake District Manager.

[FR Doc. 85-20510 Filed 8-27-85; 8:45 am]
BILLING CODE 4310-DQ-M

[OR 5435 (WA)]

Realty Action; Washington; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed classification and patent under the Recreation and Public Purposes (R&PP) Act.

SUMMARY: This notice corrects and supercedes a notice recently published in the **Federal Register.**

The following land on John's Island, San Juan County, Washington, has been examined and classified suitable for lease or sale under the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Willamette Meridian, Washington

T. 37 N., R. 4 W.
Sec. 25, Lot 1.
Encompassing 4.30 acres.

The Washington State Parks and Recreation Commission has submitted application to patent the above land for public recreation purposes compatible with retention of the land's scenery and natural characteristics.

The land lacks national significance and is not essential to any Bureau of Land Management Program.

The proposed use is consistent with local land use planning.

The proposed action will have no significant effects on the environment.

Patenting this land to Washington State will serve important public objectives by providing public recreation compatible with retention of the land in a natural condition.

DATES: For a period of thirty days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, East 4217 Main Avenue, Spokane, Washington 99202. Additional information concerning this proposal is available for review at the above office.

Any adverse comments will be evaluated by the State Director, who may vacate or modify this action and issue a final determination. In the absence of any action by the State Director, this action will become the final decision of this Department.

Joseph K. Buesing,
District Manager.

[FR Doc. 85-20511 Filed 8-27-85; 8:45 am]
BILLING CODE 4310-33-M

[N-12906]

Order Providing for Opening of Lands; Nevada; Correction

August 16, 1985.

In FR Doc 84-28889 issued on Friday, November 2, 1984, second column, line 8 under (N-12906) should read W½NE¼, NW¼SE¼.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 85-20571 Filed 8-27-85; 8:45 am]
BILLING CODE 4310-HC-M

Minerals Management Service

Development Operations Coordination Document; Mobil Oil Exploration and Producing Southeast Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Oil Exploration and Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 078, Block 51, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 16, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS

Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 19, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-20513 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Seagull Energy E&P Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Seagull Energy E&P Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-3991, Block 45, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 19, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301, North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 20, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-20514 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Texaco USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2680, Block 138, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 16, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 19, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-20515 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Central Valley Project, California; Transfer of Administrative Jurisdiction of Land; Sugar Pine Reservoir, Auburn-Folsom South Unit

In accord with an agreement between the Bureau of Reclamation and the USDA Forest Service, dated June 11, 1985, and by virtue of the authority vested in the Secretary of the Interior by section 7(c) of the Act of July 9, 1965, (79 stat. 217), and his delegation of authority to the Commissioner of Reclamation dated February 25, 1966, published March 4, 1966, (31 FR 3426), jurisdiction over the following described lands, aggregating some 699.26 acres which lie within or adjacent to the Tahoe National Forest, and that were acquired by the Bureau of Reclamation in the development of the Sugar Pine Reservoir, Auburn-Folsom South Unit, Central Valley Project, are hereby transferred to the Secretary of Agriculture for recreational and other National Forest System purposes.

Mount Diablo Meridian

Acquired Lands

T. 15 N., R. 10 E., MDM
Sec. 13, S½ SW¼NE¼, SE¼NE¼, S½SW¼SW¼E½SW¼, N½NW¼ SE¼.
T. 15 N., R. 10 E., MDM
Sec. 24, N½NW¼, E½.
T. 15 N., R. 11 E., MDM
Sec. 18, S½ Lot 1, Lot 2, NE¼NW¼, N½ SE¼NW¼.

Pursuant to said section 7(c) of the aforesaid Act of July 9, 1965, the above lands shall become National Forest lands provided that all lands and waters within the Sugar Pine Reservoir area needed or used for the operation of the Central Valley Project or for any other Reclamation purposes shall continue to be administered by the Commissioner of Reclamation to the extent that he determines to be necessary for such operation.

Dated: August 22, 1985.

Clifford I. Barrett,

Acting Commissioner.

[FR Doc. 85-20535 Filed 8-27-85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Docket Nos. AB-33 (Sub-No. 35X); AB-35 (Sub-No. 9X)]

Union Pacific Railroad Co.; Discontinuance of Service in Clark County, NV, and Los Angeles & Salt Lake Railroad Co.; Abandonment in Clark County, NV; Exemption

Union Pacific Railroad Company (UP) and the Los Angeles & Salt Lake Railroad Company (LA&SL) filed a notice of exemption under 49 CFR Part 1152 Subpart F-*Exempt Abandonments.* The line involved is a portion of the Boulder City Branch, extending from milepost 10.85 near Henderson to the end at milepost 22.36 near Boulder City, a distance of approximately 11.51 miles in Clark County, NV. UP will discontinue service and LA&SL will abandon the line.

UP and LA&SL have certified: (1) That no local traffic has moved over the line for at least 2 years, (2) the line does not handle overhead traffic, and (3) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service on the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period preceding this notice. The Public Service Commission or equivalent agency in the State of Nevada has been notified. See *Exemption of Out of Service Rail Lines,* 336 I.C.C. 885 (1983).

While the facts in this matter depart somewhat from those ordinarily involved in a Subpart F abandonment exemption, we nevertheless believe that our prior review and approval is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a. No local traffic has moved over the line for at least 2 years, but UP and LA&SL anticipate the future movement of approximately 10 shipments of transformers from Indiana, which will terminate on the line near Boulder City. These movements will commence in August and be completed in October, 1985. Petitioners maintain that they are "one-time, nonrecurring movements." Applicants have agreed with the shipper to continue operations over the line to provide service for these transformers.

In exempting the abandonment of rail lines that have been out of service for at least two or more years, we found that abandonment of those lines would have no impact on interstate commerce and no competitive or operational impact. *Exemption of Out of Service Rail Lines, supra.* The abandonment of the line involved here, considering that no traffic has been generated on the line for the past two years and the only shipments that will move are non-recurring and limited in number, will similarly have no impact on interstate commerce or have a competitive or operational impact.

In these unique circumstances, we conclude, therefore, that the proposal qualifies for exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments.*

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on September 27, 1985 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by September 6, 1985 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 17, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Any petitions filed regarding AB-33 (Sub-No. 35X) should be marked "See AB-33 (Sub-No. 35X)." A copy of any petition filed with the Commission must be sent to UP and LA&SL's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 19, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Strenio dissented on grounds that it is more appropriate to treat applicant's request as a regular petition for exemption rather than as a class exemption. Commissioner Simmons did not participate in this proceeding. Chairman Taylor was absent and did not participate in the disposition of this matter.

James H. Bayne,

Secretary.

[FR Doc. 85-20596 Filed 8-27-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Crime Victim Compensation Grants; Program Guideline

AGENCY: Office of Justice Programs, Justice.

ACTION: Final Guideline.

SUMMARY: The Office of Justice Programs is publishing a final guideline to implement the crime victim compensation grant provisions of the Victims of Crime Act of 1984.

EFFECTIVE DATE: August 28, 1985.

FOR FURTHER INFORMATION CONTACT: Charles M. Hollis (202) 724-5947.

SUPPLEMENTARY INFORMATION: On March 13, 1985, the Office of Justice Programs (OJP) published in the **Federal Register** a Notice of Program Guideline for crime victim compensation grants. 50 FR 10119. The guideline implements the crime victim compensation grant provisions of the Victims of Crime Act of 1984, Pub. L. 98-473, Title II, Chap. XIV, 42 U.S.C. 10601, et seq., which was signed into law by President Reagan on October 12, 1984.

The Act authorizes the Attorney General to make annual grants from a Crime Victims Fund in the United States Treasury. Fifty percent of the amount in the Fund is allocated for grants to State crime victim compensation programs. Funds permitting, compensation programs will receive 35% of their prior year's victim compensation awards. The remaining 50% of the Fund is allocated for grants to the States for crime victim assistance programs. The Attorney General may take up to 5% of the Fund from the portion allocated for victim assistance grants and expend it for the purpose of providing services to victims of Federal crimes.

In addition to written comments on the guideline, OJP solicited and received oral comments at four regional meetings attended by representatives of crime victim compensation boards, other units of State and local government, and victims assistance organizations. All of these comments were considered by OJP in preparing the final guideline. An analysis of the comments received, and our response to them is set forth below.

1. Mental Health Counseling

Of the 25 comments received on the guideline, 20 responded to our invitation for comment on the proposed definition of "mental health counseling and care." Among those commenting on the definition were six State victim compensation boards, the American Psychiatric Association, the American Psychological Association, and a variety of victim service providers.

Several commenters criticized the portion of the definition requiring that counseling be provided "by a person who meets such standards as may be set by the State" for mental health counseling. The thrust of their criticism

was that physicians, psychiatrists, and other licensed mental health professionals should be specifically identified in the guideline as persons who must be included among any State's list of acceptable mental health counselors.

After careful consideration of these comments, we believe that the proposed language should be retained in the final definition. The primary reason for our conclusion is that the State is the appropriate level of government to make this determination. The State, not the Federal government, must be responsible for determining what qualifications are necessary to provide mental health counseling to those victimized within its borders. Some States may feel that only those persons who meet the State's licensing requirements for physicians or psychiatrists are capable of providing quality mental health care; some may feel that only persons who have received specific training in counseling crime victims or who have a certain amount of experience or formal education in the field are capable.

These fundamental issues must be weighed and resolved in the context of each State's needs and resources. It would, in our view, be highly inappropriate for the Federal Government to impose a blanket requirement on all States without any knowledge of whether that requirement would actually be helping or hurting crime victims in a particular State. The State is best equipped, e.g., to evaluate whether its medical licensing requirements assure quality mental health care for crime victims, to determine what standards should be established to assure the availability of quality counseling to all segments of the community and all locations in the State, and to assess the financial impact of alternative standards on both crime victims and the State. For these reasons, no change has been made in this portion of the proposed definition.

Several commenters also responded to our request for comment on how to best assure that grant funds are not used to subsidize mental health counseling for problems unrelated to the victimization incident, e.g., family problems existing prior to the incident. These commenters cautioned that, particularly in child abuse and spouse abuse cases, the underlying family problems are directly connected to the victimization episode, and that subsequent counseling must often address those pre-existing problems as well as the criminal incident. We have not amended the proposed definition to require States to cover such preexisting problems in any particular manner, but wish to highlight the issue for States' consideration in framing their mental health counseling rules. The final guideline permits States to compensate victims for problems pre-existing the victimization incident and to receive Federal assistance of up to 35% of the cost of whatever mental health care compensation they choose to extend to such victims.

One other set of comments warrants discussion. A number of writers recommended that crime victims be permitted to receive mental health counseling compensation regardless of whether they suffered a physical injury as a result of the crime. OJP believes that this too is clearly an issue best left to the individual States for resolution. The State must be permitted to decide whether the potentially substantial cost of providing mental health care benefits to crime victims who have not suffered physical injury outweighs the sometimes urgent need of those victims for counseling, or vice versa. Because this problem has its most direct and substantial impact on the State, the Federal government should leave the State to choose its own course on the basis of its own needs and resources.

2. Application Requirements

A. FFY 1985 Grants

At the regional conferences, substantial discussion was devoted to the Act's requirement that grant funds be obligated by the end of the Federal fiscal year following the year of award. Because of this requirement, some attendees felt that their States would be well advised to defer their grant applications until early FFY 86 so as to have almost two full years to obligate the funds. This issue was not addressed in the proposed guideline.

To fully inform State decisionmakers of the ramifications of this issue, a new section IIB. has been added to the final guideline explaining the "year plus one" rule and its impact on the States. The new section also sets an FY 1985 compensation grant application deadline of October 1, 1985. Receipt of applications by that date will permit OJP to make final calculations of each State's compensation and victim assistance grants without the need for later setoffs or other financial adjustments.

Two other changes in the FFY 1985 application provisions were made at the suggestion of commenters. One compensation board official observed that, in his State, only the Secretary of State could certify copies of statutes, and recommended adding that official to the list of appropriate certifying officers. That suggestion was accepted as was the suggestion made by two commenters that the victim compensation guideline use the same language to explain the nonsupplementation clause as was used in the proposed victim assistance guideline. As a result, a sentence emphasizing that Federal funds should be used to enhance or expand State compensation programs has been added to the final guideline.

B. Future Fiscal Year Grants

Several comments focused on the proposed guideline's implementation of the Act's requirement that recipient programs promote victim cooperation with law enforcement. The proposed guideline would have required the States to "at a minimum, require a victim to report the crime to the appropriate criminal justice agency and assist in the identification of the suspect." The commenters observed that some victims decline to do so out of fear for their own personal safety, or are simply unable to do so for serious health reasons. To accommodate this concern, OJP has added a sentence to section IIIC. of the guideline allowing a State, if it wishes, to permit an uncooperative victim to receive benefits if he or she can "convincingly demonstrate that the failure to cooperate was due to a compelling health or safety reason."

In addition, section IIIA. was amended by changing the description of the fundamental criterion of eligibility from an "operational State-administered" compensation program to "an operational State" compensation program. This change was made at the suggestion of a State whose compensation program is established by State law but actually administered at the district level.

3. Financial Requirements

The proposed guideline would have limited allowable costs under the compensation grant to medical expenses (including mental health counseling), lost wages, and funeral expenses. The payment of these costs is a criterion of eligibility under the Act, but the Act does not limit the use of grant funds to strictly those benefits. The statute simply requires that grant funds be used only "for awards of compensation." Section 1403(a)(1). Accordingly, Section IVB. of the guideline has been amended to permit grant funds to be used for the payment of any crime victim compensation authorized under State law, except property damage.

Although the use of grant funds for property damage payments is not expressly precluded by the Act, OJP is precluding their use for that purpose as a matter of policy. This restriction is consistent with the Act's prohibition on including property damage payments in the amount to be used in calculating the amount of the grant to the compensation program. Both prohibitions are intended to discourage the use of compensation funds for that purpose and to encourage their use for other, more critically needed benefits.

4. Reporting Requirements

The final guideline substantially changes the reporting requirements set forth in section VI of the proposed guideline. First, although only an annual report will be required for FY 1986 activities, the final guideline requires submission of semiannual reports for FY 1987. In addition, the report form will solicit more statistical information about the State compensation program than was contemplated in the proposed guideline.

The primary reason for these changes is the need to provide a comprehensive report to Congress in 1987 on the cumulative results of the Victims Act grant programs. OJP does not anticipate that the changes will create significant new burdens for the States. Our review of the annual reports submitted by State compensation programs indicated that most States are collecting much of the basic information that would be required in compiling the compensation information being requested in the final guideline.

A third change in the final guideline eliminates the requirement that recipient programs submit information concerning benefit claims, awards, and denials by race, color, national origin, religion, handicap, and sex. Programs are still required to maintain this information but need not submit it as part of the performance report.

The House Select Committee on Aging suggested that we also require recipients to maintain information by age. Their recommendation was based on their concern that the Federal government be able to adequately measure the special needs of elderly crime victims. OJP agrees, not only because more information is needed about the criminal victimization of the elderly but about the victimization of children as well. Accordingly, programs will also be required to maintain information concerning benefit claims, awards, and denials by age.

5. Grandfather Clause

One commenter requested that OJP clarify the date triggering the State's obligation to conform its compensation legislation to the requirements of the Act. Section I of the final guideline has accordingly been revised to clarify that a State must enact necessary amendments to its legislation one regular legislative session after the date the first grant to that State is made.

6. Audit Provisions

Section IV C. of the guideline has been substantially revised to reflect the promulgation of new OMB Circular No. A-128 ("Audits of State and Local Governments") on April 12, 1985. A sentence has also been added to section IV B. explaining that the Victims of Crime Act prohibits the use of compensation grant funds for the payment of audit costs.

This guideline does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

In addition, because the guideline will not have significant economic impact on a substantial number of small entities, no analysis of the impact of these rules on such entities is required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

A projected state-by-state distribution of FY 1985 victim compensation and victim assistance grants is also appended to the guideline.

The final crime victim compensation grant guideline is, accordingly, revised to read as follows:

Guideline for Crime Victim Compensation Grants

I. Overview of the Statute

The Act provides that, funds permitting, the Attorney General will make an annual grant to an eligible crime victim compensation program in an amount equal to 35% of the amount paid from State funds by the program as compensation to victims of crime (excluding amounts paid to compensate victims for property damage) during the preceding fiscal year. Section 1403(a)(1). If the amount of money in the Fund is insufficient to award each State 35% of its prior year compensation payouts, all States will be awarded the same percentage of their prior year payouts out of available funds. Section 1403(a)(2). For purposes of the victim compensation provisions of the Act, "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States. Section 1403(d)(4).

Section 1403 of the Act prescribes the conditions and eligibility criteria related to crime victim compensation grants. Section 1403(c), of the Act, however, is a "grandfather" clause that, in effect, permits each State with a compensation program that was awarding benefits in Federal fiscal year (FFY) 1984 to receive a grant during FY 1985 even if the program does not conform to the Act's criteria. The clause allows a State one regular legislative session after the date the first grant to that State is made to conform its laws to the Act. States not in compliance with the Act at the time subsequent grants are made will be ineligible for those grants.

II. Program Requirements for FY 1985 Grants

A. Application Contents

In order to be eligible for awards under the Act in FY 1985 the program need only provide evidence that it was "in effect" on the date the first grants are to be made. This will require submission of only the following information and assurance:

(1) A statement certified by the chief executive of the State of the total amount of money spent by the program for crime victim compensation awards in the preceding Federal fiscal year (October 1, 1983–September 30, 1984);

(2) The amount of such compensation paid for "property damage";

(3) The total amount and each source of revenue for the program in FY 1984;

(4) A certified copy of the State statute or other legal authority establishing the program; and

(5) An assurance that funds received under the Act will not be used to supplant State funds otherwise available for crime victim compensation.

For the purpose of requirement (1), the amount to be certified is only the amount actually spent by the program to compensate victims of crime in Federal FY 1984. Amounts expended for administration of the program or other types of victim assistance are to be excluded, as are amounts appropriated or collected for the purpose of victim compensation which were not expended.

For the purpose of requirement (2), the term "property damage" is defined by the act to exclude damage to prosthetic devices and dental devices. Therefore, States may include payments made for damage to those devices in the amount

reported under requirement (1) as compensation to victims of crime. Compensation paid to reimburse crime victims for damages to, or loss of, any other real or personal property must be reported under requirement (2).

For the purpose of requirement (4), certification may be effected by the chief executive, the State Attorney General, the Secretary of State, or the clerk of the State legislature.

With respect to requirement (5), the Act prohibits States from using the Federal funds made available under the Act to supplant State funds otherwise available from crime victim compensation. Section 1403(b)(3). This prohibition, however, is one of the statutory eligibility criteria rendered inapplicable to FY 1985 compensation grants by the "grandfather" clause found in Section 1403(c) of the Act. Nevertheless, OJP is adopting the nonsupplantation clause as a statement of policy applicable to FY 1985 grants.

The nonsupplantation provision is fundamentally intended to assure that the States use the Federal funds provided under the Act to augment, not replace, otherwise available State funding for victim compensation. Federal funds should be used to enhance compensation benefits or expand program coverage, not simply substitute for previously available State monies. The States may not decrease their financial commitment to crime victim compensation solely because they are receiving Federal funds for the same purpose.

The requested information and assurance may be provided in a letter attached to Standard Form 424, "Application for Federal Assistance". Eligible programs must also provide the information and assurances explained in the Civil Rights and Financial sections of the Guideline below (See Sections IV and V).

B. Date of Application

Section 1402(e) of the Act permits a State to obligate its grant funds at any time during the Federal fiscal year (FFY) of award and the following FFY. Funds that are not obligated at the end of the following FFY must be returned to the general fund of the United States Treasury. Accordingly, grant funds awarded in FFY 1985, i.e., before October 1, 1985, must be obligated by the State by September 30, 1986. Grant funds awarded in FFY 1986, i.e., on or after October 1, 1985, must be obligated by September 30, 1987. In deciding when to submit their applications, therefore, the States should balance their need for the grant funds as soon as possible against their need for a longer time to obligate the funds.

Applications for FY 1985 grants must be received by OJP no later than October 1, 1985.

III. Program Requirements: Future Fiscal Year Grants

After FY 1985, State crime victim compensation programs must meet the statutory criteria set forth below:

"A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if—

"(1) Such program is operated by a State and offers compensation to victims of crime and survivors of victims of crime for—

"(A) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

"(B) Loss of wages attributable to a physical injury resulting from a compensable crime; and

"(C) Funeral expenses attributable to a death resulting from a compensable crime;

"(2) Such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

"(3) Such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

"(4) Such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

"(5) Such program provides compensation to victims of crimes occurring within such State that would be compensable crimes, but for the fact that such crimes are subject to Federal jurisdiction, on the same basis that such program provides compensation to victims of compensable crimes; and

"(6) Such program provides such other information and assurances related to the purposes of this section as the Attorney General may reasonably require." Section 1403(b).

The Act defines certain terms used in section 1403(b) as follows:

"(1) The term 'property damage' does not include damage to prosthetic devices or dental devices;

"(2) The term 'medical expenses' includes, to the extent provided under the eligible crime victim compensation program, expenses for dental services and devices and prosthetic devices and for services rendered in accordance with a method of healing recognized by the law of the State;

"(3) The term 'compensable crime' means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program; and

"(4) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States." Section 1403(d).

A. Eligible Program Generally

The fundamental criterion of eligibility is an operational State crime victim compensation program. Although an authorized program that has not actually paid out compensation benefits would be technically eligible under subsection 1403(b)(1), the program would not be entitled to any Federal funds because it had not awarded any benefits that the Federal government could match (up to 35%) under subsection 1403(a)(1). Federal funds may not be used as "start-up" funds for a new State program.

B. Compensation Criteria (Sec. 1403(b)(1))

The Act requires as a condition of eligibility that a crime victim compensation program offer compensation for crime-related medical expenses (including mental health counseling and care), lost wages, and funeral expenses. This criterion does not require the payment of all these expenses without limitation; rather, it requires that the State offer compensation in each area, subject to such limitations and conditions as the State deems appropriate.

"Mental health counseling and care" means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is required to alleviate psychological trauma resulting from a compensable crime. Such intervention must be provided by a person who meets such standards as may be set by the State for victim mental health counseling and care.

C. Cooperation With Law Enforcement (Sec. 1403(b)(2))

This criterion requires that a State program promote victim cooperation with the reasonable requests of law enforcement authorities. The States may impose such reasonable requirements as they see fit, but must, at a minimum, require a victim to report the crime to the appropriate criminal justice agency and assist in the indentification of the suspect. A State, if it wishes, may permit an uncooperative victim to receive benefits only if the victim can convincingly demonstrate that the failure to cooperate was due to a compelling health or safety reason.

D. Nonsupplantation (Sec. 1403(b)(3))

As noted under Section II above, this criterion requires the State to certify that the Federal funds received under the Act will not supplant State funds otherwise available for victim compensation. The discussion of the nonsupplantation provision under

Section II is applicable in full to post-FY 1985 grants.

E. Nondiscrimination Against Nonresidents (Sec. 1403(b)(4))

This provision is intended to assure that nonresidents of a State who are victimized in a State that has an eligible compensation program are provided the opportunity to apply for and receive the same compensation benefits that are available to residents of the State. The maintenance of reciprocal agreements with certain other State, or foreign compensation programs will not suffice to meet this criterion. Eligibility for Federal funding will require the program to extend its coverage to all nonresidents victimized in the State.

F. Coverage of Victims of Federal Crimes (Sec. 1403(b)(5))

This criterion will require States to compensate victims of crimes committed within their borders that are subject to exclusively Federal reservation inside the State must be afforded the same benefits that would be available to her if the rape were committed elsewhere in the State.

G. Other Information and Assurances (Sec. 1403(b)(6))

Pursuant to this subsection, the Department of Justice may make reasonable requests for other information and assurances pertinent to the statute, e.g., the civil rights, financial, and program information requested below. This criterion will not be used to impose substantive conditions or requirements on State compensation programs. The information and assurances requested under this provision will be only those needed to effectively administer the program or to prepare the statutorily-required report to Congress on the Act's effectiveness. See section 1407(b).

IV. Financial Requirements

A. Payment of Grant Funds

1. *Annual Requirement Under $120,000.* Grantees whose annual fund requirement is less than $120,000 will receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a REQUEST FOR ADVANCE OR REIMBURSEMENT, H-3 Report (Form 7160/3) by the grantor agency, a voucher and a schedule for payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issuance and mailing of the check directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly.

2. *Annual Requirement Over $120.000.* Grantees whose annual fund requirement exceeds $120,000 generally receive Federal funds by utilizing the "Letter of Credit" procedures. This funding method is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients.

3. *Check Issuance.* All checks drawn for the payment of fund requests, either under the "Check Issued" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and not by the grantor agency.

4. *Termination of Advance Funding.* If a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, the grantor agency may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee will then be made by the direct Treasury check method to reimburse the grantee for actual cash disbursements. It is essential that grantee organizations maintain a minimal amount of cash on hand and that drawdowns of cash are made only when necessary for disbursement.

B. Cost Allowability

The only costs allowable under crime victim compensation grants are compensation payments to victims of compensable crimes. These may include payments for medical expenses, including expenses for mental health counseling and care; lost wages; funeral expenses; loss of support; child care expenses; and any other cost payable as crime victim compensation under State law, except payments for property damage.

Amounts expended for administration of the program (including the performance of audits under section IV C. below) are not allowable costs. Although under OMB Circular No. A-128, audit costs are generally allowable charges under Federal grants, the Victims of Crime Act expressly states that crime victim compensation grant funds may be used "only for awards of compensation." Sec. 1403(a)(1).

C. Financial Status Report

A Financial Status Report (Form H-1) is required for all grants. This report shall be submitted by the grantee within 45 days after the end of the calendar quarter. Final reports are due 90 days after the end date of the grant. Failure to comply with this requirement may result in administrative action such as the withholding of payments, cancellation of a Letter of Credit, or noncertification of new grant awards. In lieu of using the standard H-1 Report, grantees may satisfy the financial reporting requirements by completing an H-1 turnaround document. This document is a facsimile of the H-1 extracted from the grantor agency's computer files and sent directly to each grantee. Pertinent information such as grantee name and address, grant number and the previously submitted financial information (if any) is printed on the form by the computer.

D. Audit Responsibilitures

Pursuant to Office of Management and Budget Circular A-128, "Audits of State and Local Governments", grantees, subgrantees and subrecipients have the responsibility to provide for an audit of their activities. These audits shall be made annually, unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. Grantees, as well as their subgrantees, contractors or other organizations under cooperative agreements or purchase of service contracts are to arrange for examinations in the form of independent audits in conformance with OMB Circular A-128. These audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

The required audits are to be performed on an organization-wide basis as opposed to a grant-by-grant basis. The audit reports must include:

(1) The auditor's report on financial statements of the recipient organization, and a schedule of financial assistance, showing the total expenditures for each Federal assistance program;

(2) The auditor's report on compliance containing: (A) A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements; (B) a negative assurance of those items not tested, and a summary of all instances of noncompliance; and (C) the auditor's report on the study and evaluation of internal control systems, which must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with applicable laws and regulations. It must

also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of that evaluation.

E. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

(1) Financial statements of the government, department, agency, or establishment that present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each Federal assistance program.

F. Audit Implementation

Grantees are required to specify their arrangement for complying with the provision of OMB Circular A-128 and include in their grant application, to the extent possible, the following information:

(1) The identity of the organization that will conduct the audit;

(2) Approximate timing of when the audit will be performed;

(3) Audit coverage to be provided. Where the audit will not provide the coverage requirements as specified previously, the audit policy or procedure must describe the specific arrangements for obtaining audit services that will meet the requirements;

(4) An identification of the audit standards, if any, with which the grantees will not comply;

(5) Receipt and appropriate distribution of the resultant audit report; and

(6) Audit resolution policies and procedures to be followed in resolving the audit report.

G. Fund Suspension or Termination

If, after notice and opportunity for a hearing, OJP finds that a State has failed to substantially comply with the Victims of Crime Act or any implementing regulations or guidelines, OJP must suspend or terminate funding to the State, or take other appropriate action. Only States may request a hearing; subgrantees in the State may not.

H. Grant Application

The "Application for Federal Assistance" (Standard form 424, (4000/3)) should be used in the formal application for crime victim compensation projects. Only the face sheet of the application form need to submitted. An original and two copies are required.

V. Civil Rights

A. General

The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity receiving funds under the Act on the basis of race, color, religion, national origin, handicap, or sex. Section 1407(e). Recipients of funds under the Act are also subject to Title VI of the Civil Rights Act of 1964, 42 US.C. 2000d (prohibiting discrimination in Federally-funded programs on the basis of race, color, or national origin), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (prohibiting discrimination in such programs on the basis of handicap), the Age Discrimination Act of 1975, 42 U.S.C. 6101, et seq., and the Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts, C, D, and G.

B. Required Assurances and Information

To be eligible for funding under the Act, a crime victim compensation program must submit the following assurances and information:

(1) An assurance that the program will comply with all applicable nondiscrimination requirements;

(2) An assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, sex, handicap, or age against the program, the program will forward a copy of the finding to the OJP Office of Civil Rights Compliance (OCRC); and

(3) The name of a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCRC.

Recipient programs must also maintain information on victim claims, awards, and denials by race, sex, national origin, handicap, and age.

VI. Reporting Requirements

A crime victim compensation program receiving funds under the Act will be required to submit an annual performance report to OJP on the effect the Federal funds have had on the program in FY 1986. Semi-annual performance reports will be required for FY 1987. OJP will prepare a form for the reports that will solicit the required information in the most convenient manner possible. The FY 1986 performance report is due November 1, 1986. The FY 1987 reports will be due May 1, 1987 (for the October 1, 1986-March 31, 1987 reporting period) and November 1, 1987 (for the April 1, 1987-September 30, 1987 reporting period).

Each program will be asked to provide the following information for the applicable period:

1. Copies of any amendments to the State victim compensation statute and regulations indicating the changes made in the program since the receipt of funds under the Act, e.g., higher benefit limits, modified eligibility criteria;

2. The amount and each source of revenue for the program;

3. Claim statistics, e.g., the total number of claims, awards, denials, and pending claims, and the total amount of awards;

4. Claim analysis, i.e., average awards; the number and total amount of awards; the number and amount of awards for Federal victims and non-resident victims; the number and amount of awards by type of crime; and the number and amount of awards by type of expenses, i.e., medical, mental health counseling, dental, funeral, etc.

5. Analysis of mental health counseling awards by type of provider, e.g., psychiatrist, psychologist, rape crisis center, community mental health center; number and amount of awards; and duration of awards.

6. Referral sources to the compensation program.

Proposed reporting forms will be distributed to recipient programs for comment prior to adoption of a final form.

Lois Haight Herrington,

Assistant Attorney General, Office of Justice Programs.

Set forth below is OJP's estimated projection of fund distribution from the Crime Victims Fund for FY 1985. The projection is based on an estimated $60 million being available for distribution to the States. Actual receipts in the Fund through July 1985 total approximately $58 million. The $60 million estimate is, therefore, a conservative one and reflects a 5% deduction from the total

receipts for the Federal Crime Victim Assistance program described in Section 1404(c) of the Victims of Crime Act. Final figures for FY 1985 will be known by mid-October and disseminated to the States as soon as possible thereafter.

If a State wishes to project the size of its victim assistance grant based on a different amount in the Fund, it should (1) subtract $28,829,000 from the amount of the Fund, (2) multiply the remainder by its percentage of U.S. population (Column 4), and if it is one of the 50 States, District of Columbia or Puerto Rico, add $100,000.

Please review the compensation figures for your state. If you have any questions, please contact Charles Hollis, Program Manager at 202/724-5947.

PROJECTED DISTRIBUTION OF CRIME VICTIMS FUND (FY 1985)

State	Compensation		Population		Assistance award	Total
	1984 payments	1985 award	Number	Percent		
Alabama		0	3,990,000	1.66371	$619,000	$619,000
Alaska	$809,349	$283,000	500,000	0.20849	165,000	448,000
Arizona		0	3,053,000	1.27301	497,000	497,000
Arkansas		0	2,349,000	0.97946	405,000	405,000
California	14,813,000	5,185,000	25,622,000	10.68363	3,430,000	8,615,000
Colorado	1,349,885	472,000	3,178,000	1.32513	513,000	985,000
Connecticut	1,262,798	442,000	3,154,000	1.31513	510,000	952,000
Delaware	350,001	123,000	613,000	0.25560	180,000	303,000
District of Columbia	243,308	85,000	623,000	0.25977	181,000	266,000
Florida	4,264,544	1,493,000	10,976,000	4.57667	1,527,000	3,020,000
Georgia		0	5,837,000	2.43386	859,000	859,000
Hawaii	427,501	150,000	1,039,000	0.43323	235,000	385,000
Idaho		0	1,001,000	0.41739	230,000	230,000
Illinois	3,547,277	1,242,000	11,511,000	4.79975	1,596,000	2,838,000
Indiana	334,514	117,000	5,498,000	2.29251	815,000	932,000
Iowa	162,179	57,000	2,910,000	1.21339	478,000	535,000
Kansas	331,739	116,000	2,438,000	1.01658	417,000	533,000
Kentucky	609,068	213,000	3,723,000	1.55238	584,000	797,000
Louisiana	220,243	77,000	4,462,000	1.86052	680,000	757,000
Maine		0	1,156,000	0.48202	250,000	250,000
Maryland	1,337,284	468,000	4,349,000	1.81341	665,000	1,133,000
Massachusetts	1,106,437	387,000	5,798,000	2.41760	854,000	1,241,000
Michigan	1,997,546	699,000	9,075,000	3.78401	1,279,000	1,978,000
Minnesota	543,378	190,000	4,162,000	1.73543	641,000	831,000
Mississippi		0	2,598,000	1.08329	438,000	438,000
Missouri	761,150	266,000	5,008,000	2.08819	751,000	1,017,000
Montana	368,981	129,000	824,000	0.34358	207,000	336,000
Nebraska	87,505	31,000	1,606,000	0.66966	309,000	340,000
Nevada	301,662	106,000	911,000	0.37986	218,000	324,000
New Hampshire		0	977,000	0.40738	227,000	227,000
New Jersey	3,550,515	1,243,000	7,515,000	3.13354	1,077,000	2,320,000
New Mexico	184,813	65,000	1,424,000	0.59377	285,000	350,000
New York	6,954,524	2,434,000	17,735,000	7.39498	2,405,000	4,839,000
North Carolina	0	0	6,165,000	2.57063	901,000	901,000
North Dakota	92,722	32,000	686,000	0.28604	189,000	221,000
Ohio	6,769,527	2,369,000	10,752,000	4.48327	1,497,000	3,866,000
Oklahoma	535,565	187,000	3,298,000	1.37517	529,000	716,000
Oregon	744,708	261,000	2,674,000	1.11498	448,080	709,000
Pennsylvania	2,538,555	888,000	11,901,000	4.96237	1,647,000	2,535,000
Rhode Island	350,411	123,000	962,000	0.40113	225,000	348,000
South Carolina	492,931	173,000	3,300,000	1.37600	529,000	702,000
South Dakota		0	706,000	0.29438	192,000	192,000
Tennessee	1,412,931	495,000	4,717,000	1.96685	713,000	1,208,000
Texas	4,205,691	1,472,000	15,989,000	6.66695	2,178,000	3,650,000
Utah		0	1,652,000	0.68884	315,000	315,000
Vermont		0	530,000	0.22099	169,000	169,000
Virginia	530,634	186,000	5,636,000	2.35005	833,000	1,019,000
Washington	2,770,437	970,000	4,349,000	1.81341	665,000	1,635,000
West Virginia	150,396	53,000	1,952,000	0.81393	354,000	407,000
Wisconsin	815,065	285,000	4,766,000	1.98728	719,000	1,004,000
Wyoming		0	511,000	0.21307	166,000	166,000
Puerto Rico		0	3,267,000	1.36224	525,000	525,000
Virgin Islands	175,809	62,000	103,800	0.04328	13,000	75,000
Guam		0	116,400	0.04854	15,000	15,000
Am. Samoa		0	34,500	0.01439	4,000	4,000
N. Mariana Is.	0	0	18,200	0.00759	2,000	2,000
Trust Territories		0	124,000	0.05170	16,000	16,000
Total	67,504,583	23,629,000	239,824,900	100.00000	36,371,000	60,000,000

Population and award figures rounded to nearest thousand. Column 1—FY 1984 qualifying victim compensation payments. Column 2—FY 1985 award based on 35% of Column 1. Column 3—State population estimates based on Bureau of Census' most recent reports. Column 4.—Each state's percentage of the United States and Territories population. Column 5.—Amounts based on $100,000 base for 50 states, District of Columbia and Puerto Rico: balance spread using state percentage of United States population. Column 6—Total of Column 2 and 5.

[FR Doc. 85-20567 Filed 8-27-85; 8:45 am]

BILLING CODE 4410-18-M

Bureau of Prisons

Announcements of Grants, Services, and Training; Annual Program Schedule FY 1986

AGENCY: Bureau of Prisons; Justice.

ACTION: Notice.

SUMMARY: The National Institute of Corrections, U.S. Department of Justice, has published its Annual Program Plan/Training Schedule for Fiscal Year 1986. The document describes the grant monies and services available beginning October 1, 1985, as well as training that will be provided at the Institute's National Academy of Corrections. Eligibility criteria for participation in the training sessions and an application form are included.

Those interested in obtaining a copy of the Annual Program Plan/Training Schedule may contact the National Institute of Corrections, 320 First Street, NW, Washington, DC 20534 (telephone 202-724-8449) or its Academy or Jail Center, 1790 30th Street, Boulder, CO 80301 (telephone 303-497-6060 or 6700).

Dated: August 21, 1985.

Raymond C. Brown,

Director, National Institute of Corrections.

[FR Doc. 85-20572 Filed 8-27-85; 8:45 am]

BILLING CODE 4410-36-M

New Award Under the Competitive Program Offering; Model Architectural Plans for Small Jails; Application

AGENCY: Bureau of Prisons; Justice.

ACTION: Application Notice for Competitive Program Offering on Model Architectural Plans for Small Jails.

SUMMARY: The National Institute of Corections, U.S. Department of Justice. is soliciting proposals to conduct the second-year, final part of a project entitled, "Model Architectural Plans for Small Jails." The $150,000 effort will involve analysis of detailed data collected from nearly 500 small jails constructed over the past 10 years as well as data collected from 30 site visits to a sampling of those jails.

Using that data, the award recipient will develop prototypical architectural plans for a 20-bed jail and a 40-bed jail. A companion design guide, including schematics and discussions of all related architectural, management, and operational elements, will be developed and prepared in camera-ready form.

The award will be made as a cooperative agreement, as there will be significant federal involvement in the review and development of the project elements. One award of up to $150,000 will be made. Applicants must have architectural experience, as well as expertise in jail planning, design, and construction. Applications must be received by October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mike O'Toole, National Institute of Corrections Jail Center, 1790 30th Street, Suite 440, Boulder, Colorado 80301; telephone 303-497-6700.

Dated: August 21, 1985.

Raymond C. Brown;

Director, National Institute of Corrections.

[FR Doc. 85-20573 Filed 8-27-85; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF LABOR

Office of Federal Contact Compliance Programs

William B. Reily & Co., Inc., d/b/a/ Luzianne Blue Plate Foods; Debarment

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Debarment, William B. Reily & Co., Inc. d/b/a/ Luzianne Blue Plate Foods.

SUMMARY: This notice advises of the debarment of William B. Reily & Co., Inc. d/b/a/ Luzianne Blue Plate Foods as an eligible bidder on Government contracts and subcontracts. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Charles Pugh, Deputy Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-3416, Washington, D.C. 20210 (202-523-9475).

SUPPLEMENTARY INFORMATION: On May 28, 1985, pursuant to 41 CFR 60-30.32(c), Administrative Law Judge E. Earl Thomas issued a final administrative Decision and Order: (1) Finding William B. Reily & Co., Inc. d/b/a/ Luzianne Blue Plate Foods in violation of Executive Order 11246, as amended, and the implementing regulations; (2) cancelling all Federal Contracts and subcontracts and all federally-assisted construction contracts and subcontracts of William B. Reily & Co., Inc.; and (3) declaring William B. Reily & Co., Inc. and its successors ineligible for the award of any Government contracts or subcontracts and ineligible for extensions or other modifications of any existing Government contract or subcontract. A copy of the Decision and Order is attached.

The debarment from future Government contracts and subcontracts and from extensions or other modifications of existing contracts is effective immediately, and applies to William B. Reily & Co. Inc., its successors, officers, agents, servants, employees, and attorneys, and to those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. That part of the order cancelling existing contracts will not become effective until the relevant contracting agencies have been consulted as required by Section 209(a)(5) of Executive Order 11246, as amended by Executive Order 12086.

Signed August 21, 1985, Washington, D.C.

William E. Brock,

Secretary of Labor.

Decision and Order

In the Matter of *The Department of Labor, The Office of Fair Contract Compliance Programs* v. *William B. Reily & Co., Inc. d/b/a Luzianne Blue Plate Foods,* Case No. 85-OFC-5.

This proceeding arises under Executive Order No. 11246 (30 FR 12319) as amended by Executive Order No. 11375 (32 FR 14303) and the regulations issued pursuant thereto at 41 CFR Part 60.

On January 23, 1985 the Department of Labor (DOL) filed a Complaint in this matter which alleged that the Defendant was a government contractor subject to the above-cited Order and regulations and was in breach of its government contract due to its failure to develop a written affirmative action program as required by 41 CFR 60-2.1. The Complaint states that the DOL sought voluntary compliance through conciliatory efforts but was unsuccessful. The Complaint specifically invoked the Expedited Hearing procedures available under 41 CFR 60-30.31 to 60-30.37. A Notice of Docketing was issued on February 26, 1985. The Defendant has not filed an Answer to date.

On April 26, 1985 the DOL filed a "Motion for Relief Pursuant to 41 CFR 60-30.6 and 60-30.32(c)." Under 60-30.6 the failure to file an Answer within 20 days of service of the complaint shall constitute an admission of each allegation contained in the Complaint. Under 41 CFR 60-30.32(c) such failure to answer also constitutes a waiver of hearing. That section further provides that:

If a hearing is not requested or is waived within 25 days of the complaint's filing, the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint and shall order the appropriate sanctions and/or penalties sought in the complaint. 41 CFR 60-30.32(c).

By operation of 41 CFR 60-30.6 and 60-30.32(c) the Defendant is found to have waived his opportunity for a hearing, and is deemed to have admitted the allegations contained in the Complaint.

Accordingly, I hereby adopt the material facts set out in the Complaint (attached hereto) as my findings of fact and conclude that the Defendant is currently in violation of Executive Order No. 11246 and its regulations with regard to affirmative action plans. In light of the Defendant's disregard for the Executive Order and the regulations incorporated into his contract with the Federal government, I order the following relief:

1. All of defendant's federal and federally-assisted contracts and subcontracts are cancelled;
2. Defendant and its successors shall be ineligible for the award of any contracts or subcontracts funded in whole or in part with federal funds; and
3. Defendant shall be ineligible for extensions or other modifications of any existing government contract or subcontracts.

This relief is to be in effect until such time as the Defendant has satisfied the Director of OFCCP that it is in compliance with the provisions of Executive Order 11246 and the rules and regulations issued thereunder.

Dated: May 28, 1985.

E. Earl Thomas,

Deputy Chief Judge.

Office of Administrative Law Judges

The Department of Labor, OFCCP, Plaintiff, v. *William B. Reily & Co., Inc. d/b/a Luzianne Blue Plate Foods, Defendant,*

Case No. ———.

Complaint

The United States Department of Labor, by its attorneys, alleges:

1. This action is brought by the Department of Labor, OFCCP, to enforce the contractual obligations imposed by Executive Order 11246 (30 FR 12319), as amended by Executive Order No. 11375 (32 FR 14303) [hereinafter Executive Order 11246].

2. This tribunal has jurisdiction of this action under Sections 208 and 209 of Executive Order 11246, 41 CFR 60-1.26, and 41 CFR part 60-30.

3. This action is brought under the *Expedited Hearing Procedures,* 41 CFR 60-30.31-37 and the hearing is subject to

the expedited hearing procedure. 41 CFR 60–30.32.

4. Defendant, William B. Reily Co., Inc., is a corporation and at all times hereinafter mentioned, has done business as Luzianne Blue Plate Foods and has maintained and continues to maintain a place of business and employment at 640 Magazine, New Orleans, Louisiana.

5. Defendant is a Government contractor within the meaning of Executive Order 11246, and is now, and at all material times has been, subject to the contractual obligations imposed on Government contractors and subcontractors by Executive Order 11246 and the Executive Orders which preceded it, inlcuidng Executive Order 10925, and the implementing regulations issued thereunder.

6. Section 201 of Executive Order 11246 vests primary responsibility for administration of Part II of Executive Order 11246, which is entitled "Nondiscrimination in Employment by Government Contractors," in the United States Secretary of Labor (hereinafter the Secretary of Labor). In addition, Section 201 empowers the Secretary of Labor to "adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purpose" of Executive Order 11246. Pursuant to that authority, the Secretary of Labor has promulgated implementing regulations which are published in Title 41, Code of Federal Regulations, Chapter 60 (hereinafter 41 CFR 60–1 *et seq.*).

7. Pursuant to 41 CFR 60–1.4(e) of the Secretary of Labor's regulations, the following provisions are considered to be a part of every contract and subcontract required by Executive Order 11246, and its implementing regulations, to include such provisions:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action, shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. In his regulations implementing Executive Order 11246, the Secretary of Labor has provided that every Government contractor who has 50 or more employees and a contract or subcontractor of more than $50,000 per year with the United States must develop a written affirmative action program for each of its establishments (41 CFR 60–2.1).

9. Defendant has, and at all material times hereto has had, more than 50 employees and a Government contract of $50,000 or more.

10. Defendant is subject to the Executive Order and the Secretary of Labor's implementing regulations including, *inter alia,* 41 CFR Part 60–2, 41 CFR Part 60–3, and 41 CFR Part 60–20

11. During the period since November, 1981, defendant has failed to adopt and implement an affirmative action compliance program (hereinafter AAP) for its New Orleans, Louisiana establishment as required by 41 CFR Part 60–2.

12. The acts and practices described in paragraph 11 above violates Executive Order 11246, as amended, and the regulations issued pursuant thereto, and therefore violate defendant's contractual obligations to the Federal Government.

13. Upon identifying the violation at the facility, efforts were made by the Office of Federal Contracts Compliance to secure, through conciliation and persuasion, voluntary compliance by defendant with Executive Order 11246 and the rules, regulations and other promulgated thereunder. Those efforts were unsuccessful.

14. Unless restrainted by order of this Court, defendant will continue to violate the obligations imposed upon it by Executive Order 11246.

Wherefore, plaintiff prays for an order pursuant to 41 CFR 60–30.35 preliminarily and permanently enjoining the defendant, its officers, agents, employees, successors, and all persons in active concert or participation with them, from failing and refusing to comply with the requirements of Executive Order 11246 and the regulations issued pursuant thereto, and for an order requiring the defendant to develop and implement a written affirmative action program in conformance with Executive Order 11246 and the regulations.

Plaintiff further prays for a recommended decision pursuant to 41 CFR 60–30.35 and 41 CFR 60–30.30 providing that all of defendant's Federal and Federally-assisted contracts and subcontracts be cancelled, and that defendant and its successors shall be ineligible for the award of any contracts or subcontracts funded in whole or in part with Federal Funds, and shall be ineligible for extensions or other modifications of any existing

Government contracts and subcontracts, until defendant has satisfied the Director of OFCCP that defendant is in compliance with the provisions of Executive Order 11246, and the rules, regulations and orders issued thereunder and for such additional relief as justice may require.

Address: U.S. Department of Labor, Office of the Solicitor, 555 Griffin Square, Suite 501, Dallas, Texas 75202. Telephone: 214/767-4902. SOL Case No. 21475.

Francis X. Lilly,
Solicitor of Labor,

James E. White,
Regional Solicitor,

Heriberto De Leon,
Counsel for Employment Standards.

By Max A. Wernick, *Attorney.*

Attorneys for the Department of Labor, OFCCP, Plaintiff.

Certificate of Service

I, Max A. Wernick, one of the attorneys for the plaintiff, do hereby certify that I have served a true and correct copy of the foregoing complaint upon the defendant, by depositing same in the U.S. mail on the eighteenth day of January, 1985, addressed to the following:

Mr. William B. Reily III, President, 640 Magazine, New Orleans, Louisiana 70130.

Mr. Andrew P. Carter, Monroe & Lehman, Whitney Building, New Orleans, Louisiana 70130.

Max A. Wernick,
Attorney.

Service Sheet

Case Name: DOL, OFFCP v. William B. Reily & Co., Inc.

Case No.: 85-OFC-5.

Title of Document: Decision and Order.

A copy of the above document was sent to the following:

Sheila Smith,
Clerk-Typist.

Francis X. Lily, Solicitor of Labor, U.S. Department of Labor, Office of the Solicitor, Rm. S-2002, FPB, 200 Constitution Avenue, NW, Washington, DC 20210

David O. William, Office of Special Counsel, U.S. Department of Labor/ETA, Rm. 1500, 601 D Street, NW, Washington, DC 20213

Office of Federal Contract, Compliance Programs, U.S. Department of Labor, Rm. C-3325, 200 Constitution Ave., NW, Washington, DC 20210

Mr. William B. Reily III, President, 640 Magazine, New Orleans, LA 70130

Mr. Andrew P. Carter, Monroe & Lehman, Whitney Building, New Orleans, LA 70130

Max A. Wernick, Office of the Solicitor, 555 Griffin Square Building, Dallas, TX 75202

James E. White, Regional Solicitor, 555 Griffin Square Bldg., Suite 707, Griffin and Young Sts., Dallas, TX 75202.

[FR Doc. 85-20496 Filed 8-27-85; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-54]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by September 9, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Michael Weinstein, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

Reports

Title: DOD Industrial Plant Equipment Requisition (NASA Use).

OMB Number: 2700-0021.

Type of Request: Extension.

Frequency of Report: On occasion.

Type of Respondent: Businesses or other for-profit, non-profit institutions, small businesses or organizations.

Annual Responses: 200.

Annual Burden Hours: 44.

Abstract-Need/Uses: Before NASA contractors acquire new equipment under NASA contracts, they must check for availability of the equipment within NASA. Rather than creating a new government form, DD Form 1419 is used as an application by a contractor to obtain government equipment.

L.W. Vogel,
Director, Logistics Management and Information Programs Division.

August 9, 1985.

[FR Doc. 85-20490 Filed 8-27-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-55]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the National Commission on Space (NCS).

DATE AND TIME: September 17-18, 1985, 8 a.m. to 5:15 p.m. each day.

ADDRESS: Comptroller of Currency, Conference Center, 490 L'Enfant Plaza East, SW., Room 3-b (third floor), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mrs. Mechthild E. "Mitzi" Peterson, National Commission on Space, Suite 3212, 490 L'Enfant Plaza East, SW., Washington, DC 20024 (202/453-8685).

SUPPLEMENTARY INFORMATION: The National Commission on Space was established to study existing and proposed U.S. space activities; formulate an agenda for the U.S. civilian space program; and identify long-range goals, opportunities, and policy options for civilian space activity for the next 20 years. The Commission, chaired by Dr. Thomas O. Paine, consists of 15 voting members. The meeting will be open to the public up to the seating capacity of the room (approximately 80 persons including Commission members and other participants).

Type of meeting: Open.

Agenda

September 17, 1985

8 a.m.—Opening Remarks.
8:15 a.m.—Commercial Space Activities.
11:15 a.m.—Phobos/Deimos Mission.
1 p.m.—Lunar Settlement Working Group.
3 p.m.—Life in 21st Century.
5:15 p.m.—Adjourn.

September 18, 1985

8 a.m.—Presentations by Aerospace Companies:
- Inner Solar System Space Infrastructure,
- Earth to Low Earth Orbit Transportation Cost Reduction,
- International Competition and Cooperation.

3:15 p.m.—Committee Discussion.
5:15 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

August 21, 1985.

[FR Doc. 85-20491 Filed 8-27-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Presenters Section) to the National Council on the Arts will be held on Tuesday, Wednesday and Thursday, September 17-19, 1985 from 9:00 a.m.-6:00 p.m. and on Friday, September 20, 1985 from 9:00 a.m.-3:30 p.m. in room 714 of the Nancy Hanks Center of the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, D.C.

A portion of this meeting will be open to the public on Friday, September 20, 1985 from 10:00 a.m.-3:30 p.m. to discuss the Five Year Plan, Guidelines and Grant Levels.

The remaining sessions of this meeting on September 17-19, 1985 from 9:00 a.m.-6:00 p.m. and September 20, 1985 from 9:00-10:00 a.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sections will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

August 23, 1985.

[FR Doc. 85-20698 Filed 8-26-85; 3:57 pm]

BILLING CODE 7537-01-M

Iner-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Presenting Organizations Section) to the National Council on the Arts will be held on Wednesday, September 18, 1985 from 9:00 a.m.-8:00 p.m., Thursday, September 19, 1985 from 8:30 a.m.-8:00 p.m., Friday, September 20, 1985 from 8:30 a.m.-6:30 p.m., Saturday, September 21, 1985 from 8:30 a.m.-7:30 p.m. and on Sunday, September 22, 1985 from 8:30 a.m.-3:00 p.m. in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on Sunday, September 22, 1985 from 9:00 a.m.-1:00 p.m. to discuss guidelines, the Five Year Plan and other policy issues.

The remaining sessions of this meeting on September 18, 1985 from 9:00 a.m.-8:00 p.m. September 19, 1985 from 8:30 a.m.-8:00 p.m., September 20, 1985 from 8:30 a.m.-6:30 p.m., September 21, 1985 from 8:30 a.m.-7:30 p.m. and September 22, 1985 from 8:30 a.m.-9:00 a.m. and 1:00-3:00 p.m. are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowmen for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations.

August 23, 1985.

[FR Doc. 85-20699, Filed 8-26-85; 3:57 pm]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7934.

SUPPLEMENTARY INFORMATION: On July 15th and July 18th, 1985, the National Science Foundation published a notice in the **Federal Register** of permit applications received. On August 19, 1985 permits were issued to: Arthur L. DeVries, Philip R. Kyle, David F. Parmelee, Donald B. Siniff, Wayne Z. Trivelpiece.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 85-20574 Filed 8-27-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-352]

Philadelphia Electric Co. (Limerick Generating Station, Unit 1); Rescission of Order

On August 16, 1985, the Director of the Office of Nuclear Reactor Regulation issued an "Order Suspending Operation Above 5 Percent Power" applicable to the Limerick Generating Station, Unit 1. The Order was based on a stay issued on August 15, 1985, by the United States Court of Appeals for the Third Circuit. The court stayed the Commission's Order of August 8, 1985, which authorized issuance of a full power license, License No. NPF-39, for Limerick Unit 1. The Director's Order suspended operation of the facility

above 5% of rated power to effectuate the court's stay of operations under the new license. The Director's Order stated that the suspension of operation above 5% of rated power would be rescinded upon action by the court to lift its stay.

On August 21, 1985, the court lifted its stay. Accordingly, the "Order Suspending Operation Above 5 Percent Power" issued by the Director of Nuclear Reactor Regulation on August 16, 1985, is hereby *rescinded.*

Dated at Bethesda, Maryland this 21st day of August 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-20590 Filed 8-27-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 12-14, 1985, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on August 21, 1985.

The agenda for the subject meeting will be as follows:

Thursday, September 12, 1985

8:30 A.M.-8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.-10:45 A.M.: Reactor Operations (Open)—The members will hear reports from representatives of the NRC Staff and will discuss recent operating events and incidents at nuclear power plants.

10:45 A.M.-12:30 P.M. and 1:30 P.M.-3:15 P.M.: General Electric Standardized Safety Analysis Report (Open/Closed)—The members will hear the report of its subcommittee regarding the request for Final Design Approval for this standardized nuclear island. Members of the NRC Staff and representatives of the Applicant will make presentations and repond to questions regarding this project.

Portions of this session will be closed as required to discuss Proprietary Information applicable to this project and detailed security provisions for this type of facility.

3:15 P.M.-4:30 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the report of its subcommittee regarding proposed changes in emergency core cooling requirements in nuclear plants and proposed changes in NRC Regulatory Guide 1.82, Revision 1 regarding containment sump performance in nuclear plants. Representatives of the NRC Staff will take part in this discussion as appropriate.

4:30 P.M.-5:30 P.M.: Primary System Integrity (Open)—The Committee will hear and discuss the report of its subcommittee regarding proposed changes in 10 CFR Part 50, Appendix A, General Design Criteria-4, Environmental and Missile Design Bases, regarding the criteria for main primary coolant piping failures in water-cooled nuclear power plants. Representatives of the NRC Staff will participate, as appropriate.

5:30 P.M.-6:00 P.M.: Items for Meeting with NRC Commissioners (Open)—The members will discuss proposed ACRS comments with respect to topics to be discussed with the NRC Commissioners including: ACRS participation in NRC regulation of the DOE program for management and disposal of high-level civilian radioactive wastes; the NRC Severe Accident Policy Statement; and the need for human factors research in the NRC safety research program.

6:00 P.M.-6:30 P.M.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

Friday, September 13, 1985

8:30 A.M.-10:30 A.M.: ACRS Effectiveness (Open)—The Committee will hear and discuss the report of its Panel on ACRS Effectiveness regarding the conduct and scope of ACRS activities.

10:30 A.M.-12:00 Noon: Meeting with NRC Commissioners (Open)—The members will meet with the NRC Commissioners to discuss the topics noted above.

12:00 Noon-1:00 P.M.: Reorganization of the NRC Office of Nuclear Regulation (Open)—The members will hear a briefing from the Director, NRR regarding the recent reorganization of the Office of Nuclear Reactor Regulation.

2:00 P.M.-4:00 P.M.: Selection of Nuclear Power Plant Personnel (Open)—The members will hear and discuss reports from invited experts regarding the use of natural aptitude testing in selection of nuclear power plant personnel.

4:00 P.M.-6:00 P.M.: River Bend Nuclear Plant (Open)—The members will continue their review of the River Bend operating license application. Representatives of the NRC Staff and the licensee will also make presentations and participate in the discussion to the degree considered appropriate.

Saturday, September 14, 1985

8:30 A.M.-12:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding items considered during this meeting. In addition, the members will consider a proposed report regarding the application of PRAs to nuclear power plants.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the matters being discussed, and detailed security provisions for the GESSAR II plant design.

1:30 P.M.-4:00 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the activities of designated ACRS subcommittees with respect to safety related issues and the regulatory process including physical protection of fuel containing HEU at nonpower reactors; Regulatory Guide 1.99, Rev. 2, Effects of Residual Elements on Predicted Radiation Damage to Reactor Vessel Materials; and ACRS Procedures and Practices including the recommendations of the Panel on ACRS Effectiveness.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 1984 (49 FR 193). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that approximate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.

F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)], and detailed security information [5 U.S.C. 552b(c)(3)].

Further information regading topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m. EDT.

Dated: August 23, 1985.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 85–20591 Filed 8–27–85; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on August 14, 1985 (50 FR 32787), through August 19, 1985.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By September 27, 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. Requests 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 as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearng conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held

would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: October 24, 1984, as supplemented February 27, 1985 and July 8, 1985.

Description of amendment request: This proposed action was noticed on March 27, 1985 (50 FR 12139). However, on July 8, 1985 additional information was provided and a new section 3.6.1.3. action statement b. The proposed amendments would change the Limiting Condition for Operation (LCO), the Surveillance Requirements and the associated bases for Specification 3/4.6.1.3, Primary Containment Air Locks, to specifically address the air lock door interlocks. Additionally, the Technical Specifications will be reformatted to more closely follow the guidance of the NUREG-0123, Standard Technical Specifications.

The current Specification does not specifically address an inoperable door interlock in the LCO. As such, it could be interpreted that an inoperable door interlock falls outside the "degraded mode" permitted by paragraph 3.6.1.3(a) and (b). Were that to be the interpretation, this interlock would fall under Paragraph 3.6.1.3(c) which directs the plant to be in hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours. CP&L has concluded that this was not the intent of the Specification, since an inoperative door lock is clearly of a similar nature as the "degraded mode" permitted by paragraphs 3.6.1.3(a) and (b).

The amendments, therefore, proposed that the action described for an inoperable air lock door is sufficient to compensate for an inoperable door interlock. The current Technical Specification requires that the operation of the air lock door interlock be verified every six months. This verification presents the following problems:

(1) The interlock surveillance is performed independently of the air lock operability requirements.

(2) The interlock surveillance cannot be performed when the unit is at power with the drywell inerted, as the drywell is inaccessible.

(3) A low power drywell entry just to perform the interlock surveillance would present an unnecessary safety hazard and increase radiation exposure to personnel performing the test.

The proposed revision requiring verification after each entry (except during periods of multiple entries where it is tested at least every 72 hours) will present the following resolutions:

(1) The interlock surveillance will be added to the air lock surveillance requirements by adding a new section B. Thus, the two surveillances will be performed simultaneously, ensuring that the interlock is operable whenever the air lock is required to be operable.

(2) The surveillances will be performed with the unit in cold shutdown and prior to entering operational conditions 1, 2, or 3. The above surveillance requirement is in the Brunswick pre-startup checklist and in the drywell closure checklist. After the surveillance requirement is satisfactorily completed, access to the drywell is secured. This will ensure air lock and interlock operability in operational conditions 1, 2, or 3 and until another drywell entry is made. Whenever the drywell is entered, the surveillance requirement must be repeated prior to drywell closure.

(3) With the surveillance being performed simultaneously in cold shutdown, an additional drywell entry is not necessary. This will, therefore, reduce personnel exposure to radiation and prevent an additional safety hazard.

(4) The increased surveillance on the interlock will result in an increased level of confidence in the interlock's operability. Additionally, the Specification is being reformatted to be consistent with NUREG-0123, the Standard Technical Specifications for General Electric Boiling Water Reactors.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: (i) A purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature; and (ii) a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications.

The proposed change pertaining to the reformatting of the Specification is purely an administrative change as in example (i). The proposed revision requiring verification after air lock entry

(except during periods of multiple entries where it will be tested at least every 72 hours) constitutes additional controls not presently included in the Technical Specifications, and is, therefore, encompassed by example (ii). In addition, the change regarding the inoperable door interlock is also an additional control not presently included and, therefore, is compassed by example (ii). Thus, the proposed changes discussed in this request are either administrative changes or constitute additional controls not presently included in the Specification and, therefore, conform to examples for which no significant hazards considerations exist.

Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards considerations exist, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power and Light Company, Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: July 1, 1985.

Description of amendment request: The proposed amendment would revise the K(z) curves of the Technical Specificiations Figure 3.10-3 to preclude potential power penalties later in core life.

Basis for proposed no significant hazards consideration determination: The cycle 10 core reload incorporated flux reduction attributes to satisfy PTS requirements for the reactor vessel. Because of this the previous K(z) curve could not be supported and a new curve was conservably calculated for cycle 10 until the conservatism could be later removed by detailed reanalyses of the large and small break LOCA.

The proposed K(z) curve in conjunction with an F_q limit of 2.32 provides reasonable assurance of compliance with the limits of 10 CFR 50.46. Exxon Nuclear large break loss of coolant accident (LOCA) calculations for HBR2 predict a peak cladding temperature of 2042 °F for a center peaked power shape with a maximum F_q of 2.32. The proposed K(z) axial distribution is idential to the previously accepted K(z) curve which was based on calculations performed by Westinghouse (prior to cycle 10). Recent large break LOCA calculations submitted to the NRC by Exxon Nuclear for 14 x 14 and 15 x 15 fuel rod arrays demonstrated that the predicted Exxon Nuclear fueld peak cladding temperature was within ±50 °F of that for other fuel types similar to the Westinghouse 15 × 15 design.

However, the small break LOCA part of the K(z) curve will be based on the previously accepted Westinghouse analysis (WFLASH). Carolina Power & Light Company is participating in the WOG effort to resolve TMI Items II.K.3.30 and II.K.3.31 using the NOTRUMP Generic Analysis. This portion of the curve is primarily dependent on the system response and the linear heat rate and, therefore, the analysis is applicable.

Since: (1) The peak cladding temperature for Exxon Nuclear fuel should be within 50 °F of the Westinghouse fuel peak cladding temperature, (2) for Exxon Nuclear fuel the peak cladding temperature is 2042 °F for a center peaked power distribution at an F_q of 2.32, and (3) the previous small break LOCA analysis is applicable; we believe there is reasonable assurance that the 10 CFR 40.46 limit on peak cladding temperature of 2200 °F will be met by Exxon Nuclear fuel with the proposed K(z) curve.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (vi) of an amendment likely to involve no significant hazards consideration relates to changes which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan."

The proposed change to the Technical Specification is directly related to this example in that the limits of 10 CFR 50.46 will continue to be satisfied with the change and that the change is supported by refined analyses. Therefore, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Commonwealth Edison Company, Docket No. 50-373, La Salle County Station Unit 1, La Salle County, Illinois

Date of amendment request: July 15, 1985.

Description of amendment request: The proposed amendment to operating License NPF-11 would revise the La Salle Unit 1 Technical Specifications to reflect the alternative logic modification of the automatic depressurization system (ADS) as required by License Condition 2.C.(30))(1)(b). This requirement is described in Supplement 5 to the La Salle Safety Evaluation Report which indicated that the proposed modifications would be acceptable, following: (1) Approval by the NRC staff of the detailed logic implementation, (2) the submittal of a plant specific analysis to justify the bypass timer setting, (3) the submittal of Technical Specifications for the use of the bypass timer and manual inhibit switch, (4) modification of plant emergency procedures to address the use of the inhibit switch, and (5) completion of the modifications prior to startup after the first refueling.

The above items are addressed in this proposed amendment and this modification will be incorporated at the first refueling outrage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequenses of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendments will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the revised ADS logic does not affect automatic depressurization for events where high drywell pressure occurs. This modification automates the function of reactor vessel blowdown for events where high drywell pressure does

not occur. Under these conditions, manual operation of the ADS system is called for by the emergency operating procedures and was assumed in Chapter 15 of the Final Safety Analysis Report.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because automatic depressurization is analyzed and required for events where high pressure coolant sources are unavailable and reactor vessel level is low. This change only automates what were previously manual operator actions.

(3) Involve a significant reduction in the margin of safety because the upgraded logic provides additional margin of safety for events where high drywell pressure does not occur while still providing the same level of protection for events where high drywell pressure does occur.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, D.C. 20036.

NRC Branch Chief: W.R. Butler.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: July 10, 1985 as amended August 1, 1985.

Description of amendment request: The requested license amendment would modify the plant Technical Specification by incorporating requirements which restrict the volume of flammable liquids in the control room to no greater than one pint. If it becomes necessary to introduce quantities of flammable liquids in excess of one pint written permission is obtained from the Supervising Control Operator or Shift Supervisor and a dedicated fire watch is assigned to the activity to ensure that the flammable liquied would not threaten the safe shutdown capability.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples of actions not likely to involve signficant hazards considerations is example (ii) which is a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications.

The Staff has reviewed the licensee's amendment request to add requirements for limiting the volume of flammable liquids in the control room to no greater than one pint and concluded that it falls within the envelope of example (ii) because the proposed amendment would result in an additional administrative limitation or control not presently included in the technical specifications.

Based on the above, the staff therefore proposes to determine that this amendment request involves a no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Branch Chief: John A. Zwolinski.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut, and Northeast Nuclear Energy Company, et al., Docket Nos. 50–245 and 50–336, Millstone Nuclear Power Station, Unit Nos. 1 and 2, New London County, Connecticut

Date of amendment request: July 9, 1985.

Description of amendment request: The proposed amendments to the Operating Licenses would add subparagraph 6.2.2.g to the Technical Specifications. These proposed changes provide that administrative procedures be developed and implemented to limit the working hours of unit staff who perform safety-related functions. These proposed procedures will follow the general guidance of the NRC Policy Statement on working hours as stated in Generic Letter No. 82–12.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for making a no significant hazards consideration determination (48 FR 14870). Example (ii) of this guidance states that a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement, would not likely constitute a significant hazard. The proposed changes fall within the envelope of item (ii), since they increase the level of assurance that safety related functions will be performed properly by virture of limiting the working hours and thus reducing possible fatigue of unit staff who perform these functions.

Accordingly, the staff proposed to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room locations: Russell Library, 123 Broad Street, Middletown, Connecticut 06457 (Haddam Neck) and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut (Millstone Units 1 and 2).

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chiefs: John A. Zwolinski (Haddam Neck and Millstone Unit 1) and Edward J. Butcher, Acting (Millstone Unit 1) and Edward J. Butcher, Acting (Millstone Unit 2).

Consolidated Edison Company of New York, Docket Nos. 50–003 and 50–247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of amendment request: June 18, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications for Indian Point, Units 1 and 2 to incorporate administrative changes to the Facility Organization. The proposed amendment would also revise the Indian Point Nuclear Generating Unit No. 2 Technical Specifications to: (1) Limit overtime for critical shift job positions, (2) change the composition of the Station Nuclear Safety Committee (SNSC), (3) change the audit frequency of the Emergency Preparedness Program and Safeguards Contingency Plan, (4) provide for the reporting of relief and safety valve challenges (5) conform the provisions regarding the Monthly Operating Report to those of the Standard Technical Specifications and (6) clarify the record retention requirements.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations, 10 CFR 50.92 (48 FR 14870), the proposed revisions to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident previously evaluated, or involve a significant reduction in margin of safety. The proposed changes would reflect: (1) Organizational change (2) overtime limits for critical job positions (3) Station Nuclear Safety Committee (SNSC) membership changes (4) more

frequent auditing of the Emergency Plan and Security Plan (5) reporting requirement for relief and Pressurizer Safety Valve challenges and (6) record retention clarification. The licensee's submittal contains evaluations containing the following conclusions. The organization changes will not reduce the effectiveness of the facility organization nor would the changes decrease the required qualification of personnel. The overtime limits for critical positions constitutes an additional limitation and control not presently included in the Technical Specification but, implemented for some time through administrative controls. The changes to the SNSC membership will not reduce the effectiveness of the committee nor would the changes decrease the qualifications of the members. The change in frequency of the Emergency and Security Plan audits is to conform to the regulations of 10 CFR 50.54(t) and 10 CFR 73.40(d) and is conservative. The reporting of relief and safety valve challenges constitutes an additional limitation and restriction not presently included in the Technical Specifications and conforms the specification to the Standard Technical Specification. The clarification of record retention requirements is purely administrative in nature and achieves consistency in the technical specifications.

The staff expects to agree with the licensee's conclusions. Therefore, the staff proposes to determine that the requested action would involve no significant hazards considerations.

Local Public Document Room location: White Plains Public Library, 100 Maritine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: July 31, 1985.

Description of amendment request: The proposed amendment would revise the Indian Point 2 Technical Specifications to permit a one-time extension of the surveillance interval limits for various systems and components so the surveillance tests for the applicable systems and components can be performed during the 1986 refueling outage. Issuance of the proposed Technical Specifications would avoid a plant shutdown of approximately five weeks to perform the surveillance tests. The licensee proposes to perform the affected surveillance tests during the upcoming refueling maintenance outage presently scheduled to commence in the first quarter of 1986.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations 10 CFR 50.92 (48 FR 14871), the proposed one-time revision to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any previously evaluated, or involve a significant reduction in margin of safety. The licensee's submittal contains an evaluation of the effects of permitting a one-time revision to the Technical Specifications. The results of the evaluation indicated that the quality of the systems and components and their ability to perform will be maintained during the extension period to that level currently provided by the Technical Sepcifications for a maximum surveillance interval. It is expected that our final evaluation will agree with the license's conclusions.

Therefore, the staff proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 6, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications to delete Specifications 5.3.A.2 and 5.3.A.4 which specifically describe the reactor core design for the initial core. Additionally, the proposed amendment would revise the references of Technical Specification 5.3 to reflect the proper sections of the updated Final Safety Evaluation Report (FSAR) and to delete the Fuel Densification Report, which is now referenced in the updated FSAR.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations 10 CFR 50.92 (48 FR 14871), the proposed revisions to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any previously evaluated, or involve a significant reduction in margin of safety. The licensee's submittal contains an evaluation concluding that the deletion of Technical Specifications 5.3.A.2 and 5.3.A.4 would have no effect on the present or future with regard to reactor core design because the Specifications contain historical information only. The staff expects to agree with the licensee's conclusions. The revisions to the Specification 5.3 references are purely administrative to achieve consistency between the updated FSAR and the Technical Specifications.

Therefore the staff proposes to determine that the amendment does not involve a significant hazards determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 6, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specification 3.8.A.1 to include a provision for utilizing a temporary closure plate in place of the equipment door during refueling. The proposed change is being requested to improve the efficiency of the refueling work. The temporary closure door will provide penetrations for temporary services which will enable many maintenance activities to be performed while maintaining integrity during core alterations of fuel movement.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations, 10 CFR 50.92 (48 FR 14871), the proposed revisions to the Technical Specifications will not involve

a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident previously evaluated or involve a significant reduction in margin of safety. The licensee's submittal contains an evaluation of the effects of utilizing a temporary closure plate in place of the equipment door during refueling. The evaluation concludes that the closure plate will perform all required functions, i.e., provide additional margin for a fuel handling accident by restricting direct communication with the environment and provide a seismic envelope to restrict the potential escape of radioactivity resulting from seismic events during refueling. It is expected that our final evaluation will agree with the licensee's conclusions.

Therefore the staff proposed to determine that the amendment does not involve a significant hazards determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: July 30, 1985.

Description of amendment request: Proposed amendment to License DPR-20 to delete Technical Specification requirement for High Pressure Safety Injection (HPSI) Flow monitoring instruments.

Basis for proposed no significant hazards consideration determination: The HPSI flow instruments, one in each of the four injection lines to each reactor coolant loop, are monitoring instruments only and provide no actuation function. Their inoperability does not affect the operability of the HPSI. These instruments only provide confirmation of flow which can be determined by other means. Therefore, deletion of the requirement for operability of these instruments would not affect the probability or consequences of an accident previously analyzed. These instruments are not used in any way to provide a safety margin for reactor operation, accidents, or transients. Therefore, no reduction in a safety margin results from their deletion. Operation of the plant for normal operation or in response to transients or accidents is unchanged and therefore a new or different kind of accident from those previously evaluated is not created. The results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. In this case, the subject flow instruments are not included in the Standard Technical Specifications which are identified in Chapter 16 of the Standard Review Plan. Also, these instruments are not required in any of the other Combustion Engineering Plants. Therefore, the staff proposes to determine that the proposed change would not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: John A. Zwolinski.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: June 25, 1985.

Description of amendment request: This submittal modifies a pending request for amendment dated December 19, 1983 with regard to Technical Specification 4.1.6 which concerned plant shutdown in case of site flooding. The December 19, 1983 request was noticed in the **Federal Register** on March 22, 1984 (49 FR 10733). This proposed amendment would add a requirement that specifies a lower flood level than previously proposed at which the plant must be shut down.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change that constitutes an additional restriction or control not presently included in the Technical Specifications.

The above proposed change resulted from the Systematic Evaluation Program (SEP) review of the La Crosse Boiling Water Reactor. The basis for this change is contained in the La Crosse Integrated Plant Safety Assessment Report NUREG-0827. The change would add a requirement that specifies the flood level at which the plant must be shut down; thus, it introduces an additional restriction or control which does not currently exist. The staff proposes to conclude that the proposed change would be encompassed within example (ii) and, therefore, would involve a no significant hazards consideration determination.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for licensee: O.S. Heistand, Jr., Esquire, Morgan, Lewis & Brockius, 1800 M Street, NW., Washington, D.C.. 20036.

NRC Branch Chief: John A. Zwolinski.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 7, 1984, as amended April 9, 1985.

Description of amendment request: The proposed amendments would change the Technical Specifications to add limiting conditions for operation, surveillance requirements and bases for the Standby Shutdown System (SSS) and associated components.

Specifically, Technical Specification 3.7.14 would require that the SSS be operable in Modes 1, 2, and 3. Table 3.7-8 would identify minimum SSS instruments to be those which sense reactor coolant pressure, pressurizer level, steam generator level, incore temperature and standby makeup pump flow, and would also identify the readout location (Standby Shutdown Facility Control Panel) and minimum channels (one) required to be operable. Table 3.7-8 would designate the minimum equipment to be: (1) The diesel generator and associated switchgear; (2) the diesel starting 24-volt battery bank and charger; (3) standby makeup pump and water supply; (4) 250/125 volt battery bank, associated charger, and associated switchgear; (5) steam turbine driven auxiliary feedwater pump; and (6) solenoid "c" to valve SA 48 ABC. Table 3.7-8 would also identify the location of this equipment. An appropriate action statement in the event that less than the minimum SSS equipment in Table 3.7-8 should be OPERABLE and surveillance specifications for each of these minimum SSS equipment would be added by the proposed amendment.

Specification Table 4.7-2 would require channel checks (except for standby makeup pump flow which would not be applicable) each month and channel calibrations each refueling outage for instruments used to determine reactor coolant pressure, pressurizer level, steam generator level, incore temperature and standby makeup pump flow.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of these examples, (ii), involving no significant hazards considerations is "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." The current Technical Specifications do not include operability nor surveillance requirements for the Standby Shutdown System. Therefore the proposed amendment matches the example. Accordingly, the Commission proposes to determine that the change does not involve significant hazards considerations.

Local Public Document Room Location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 10, 1984.

Description of amendment request: The amendments would modify Technical Specification 6.2.2.f with respect to the specified objectives on normal working hours of unit staff who perform safety-related functions. The modifications would substitute a 12-hour day with alternating 48-hour and 36-hour work week in place of the 8-hour day, 40-hour week. For those occasions which require substantial amounts of overtime or during extended periods of shutdown for refueling, major maintenance or major plant modifications, the specified guidelines on the maximum number of working hours recommended on a temporary basis for any 48-hour period would be increased 4 hours (i.e., from no more than 24 hours to no more than 28 hours). The corresponding guideline of not more than 16 hours any 24-hour period and not more than 72 hours for any 7-day period would not be changed by the proposed amendments.

Basis for proposed no significant hazards consideration determination: The licensee states that the change from an 8 to a 12-hour shift has been found to be more efficient, to reduce shift turnover from 3 to 2 per day, and has the advantage of worker transfer continuity (i.e., an individual worker transfers the duties to the person from whom he or she had taken over the duties 12 hours earlier). The licensee finds this continuity enhances familiarity with the ongoing operations for the shift workers, results in enhanced safety and improved work quality, and enhances the effective management of shift turnovers. This observation by the licensee is consistent with our experience with other operating nuclear power plants utilizing a 12-hour shift. The change to allow an individual to work 28 hours in a 48-hour period provides flexibility for those occasions when an individual works 16 hours, takes a 12-hour break, and returns for a normal 12-hour shift (i.e., the change allows this individual to compete that normal shift).

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the Commission has reviewed the licensee's request for the above amendments and finds that the proposed changes deal only with the establishment of administrative objectives for working hours of unit staff. Because the changes do not affect any equipment, operating procedure, or safety analysis, the Commission has determined that should this request be implemented, it would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to find that the amendments would not involve a significant hazards consideration.

Local Public Document Room Location: Atkins Library, University of Norh Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina, 28242.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 17, 1985.

Description of amendment request: The proposed changes would eliminate ambiguities in two surveillance requirements in the Technical Specifications for Radwaste Treatment Systems by more clearly indicating that the requirements for dose projections are intended only with respect to untreated releases. Specifically, Surveillance Specification 4.11.1.3.1 would be changed to reflect that dose projections are not required for liquid effluents which have been processed by the Liquid Radwaste Treatment System prior to being discharged. Similarly, the proposed amendment would clarify Surveillance Specification 4.11.2.4 to reflect that dose projections are not required for gaseous effluents which have been processed by the Gaseous Radwaste Treatment System prior to being released.

Basic for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions which involve no significant hazards consideration include (i) a purely administrative change to the technical specification. The clarification sought by the proposed amendments in consistent with the Commission's original intent to require dose projection due to liquid or gaseous releases only when untreated effluents are to be discharged, and with the intent of the Commission's model Radiological Effluent Techncial Specifications (RETS) for PWRs, NUREG-0472, Revision 2, February 1, 1980. Thus, this proposed action is purely administrative and fits the example. The Commission, therefore, proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 9, 1985.

Description of amendment request: The proposed amendments would revise a Technical Specification surveillance requirement which is part of an augmented inservice inspection program for snubbers. The change would affect

the second of three sampling plan options available for functional tests of snubbers. This second sampling plan is defined by Specification 4.7.8.e(2) and requires that a representative sample of snubbers be tested each refueling in accordance with Specification Figure 4.7-1. Figure 4.7-1 provides the acceptance criteria method for the functional test results and donates a "reject" regional and a "continue testing" region. If at any time the plotted test results fall within this 'reject" region, then all snubbers are to be functionally tested. Surveillance requirement 4.7.8.e(2) and its accompanying Figure 4.7-1 would be changed to delete the "reject' region on Figure 4.7-1, to substitute an expanded "continue testing" region, and to clarify the manner in which test results are to be plotted on Figure 4.7-1. The test results should be plotted sequentially in the order of sample assignment (i.e., each snubber should be plotted by its order in the random sample assignment, not by the order of testing). References to the "reject" region in the text of Specification 4.7.8.e(2) and bases ¾.7.8 would be deleted. Bases ¾.7.8 would also be supplemented by a footnote to note that if testing continues to between 100-200 snubbers (or 1-2 weeks) and still the "accept" region for Figure 4.7-1 has not been reached, then the actual percent of population quality (the ratio of total number of failed snubbers to the cumulative number of snubbers tested) should be used to prepare for extended or 100% testing.

Basis for proposed no significantt hazards considertion determination: McGuire Technical Specification 3.7.8 requires that all safety related snubbers be operable for specified operating modes and would not be changed by the proposed amendment. Only the surveillance requirement by which each snubber is to be demonstrated operable, in part by functional testing of a representative sample of snubbers each refueling, would be changed, and then only with respect to the second of three available sample plans designated by Specification 4.7.8.e.

Under Specification 4.7.8.e(2), a representative sample of snubbers, beginning with an initial selection of at least 37 snubbers, is functionally tested in accordance with a graph (Specification Figure 4.7-1) of "C", the total number of snubbers found not meeting the acceptance requirements of Specification 4.7.8f (i.e., failure), versus "N", the cumulative number of snubbers tested. The existing graph denotes three separate regions designated "accept," "continue testing" and "reject." The "accept" and "continue testing" regions are separated by a curve, $C=0.055N-2.007$; the "continue testing' and "reject" regions are presently separated by a curve, $C=0.055N+2.007$. To apply the graph, test results are plotted on Figure 4.7-1. Under the existing Technical Specifications, if at any time the point plotted falls in the "reject" region all snubbers are to be functinonally tested. If at any time the point plotted falls in the "accept" region, testing of snubbers may be terminated. When the point plotted lies in the "continue testing" region, additional snubbers are to be tested until the point falls in the "accept" region or the "reject" region, or all the required snubbers have been tested. Deletion of the "reject" region, as proposed, effectively changes that region of the graph to a "continue testing" region. Therefore, snubbers would continue to be tested until the plotted point falls in the "accept" region or until all the required snubbers have been tested.

Statistical studies within the licensee's submittal of April 9, 1985, and within a draft document by a task force of the Operations and Maintenance Group (OM-4) of the ASME Committee, "Examination and Performance Testing of Nuclear Power Plant Dynamic Restraints (Snubbers)" (ANSI/ASME OM4-1985) demonstrate that the proposed deletion of the "reject" region would not have a significant adverse effect on the effectiveness of the sampling plan. The Commission's preliminary review of these documents supports this conclusion. This revised plotting sequence is a more appropriate method for implementing the sampling plan.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and has determined that should this request be implemented, it would not; (1) Involve a significant increase in the probability of an accident previously evaluated or (2) create the possibility of a new or different kind of accident from any accident previously evaluated. This conclusion is reached because snubbers are required to be operable to ensure that structural integrity (of both the reactor coolant system and all other safety-related systems) is maintained during and following a seismic or other event initiating dynamic loads and can have no effect on cause mechanisms, and because only surveillance requirements are affected and not the limiting condition for operation. Although the proposed amendment do not involve changes in surveillance frequency nor operating conditions, they do involve changes in surveillance methods and acceptance criteria. However, the statistical studies indicate that while the probability of false acceptance of a bad population under the proposed amendments is real, it is negligible. Consequently, the staff has also determined that the proposed amendments, if implemented, would not (3) involve a significant reduction in a margin of safety or a significant increase in the consequences of an accident previously evaluated. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte, (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: May 20, 1985.

Description of amendment request: This amendment would modify the Technical Specifications (TSs) to delete the requirements that a summary technical report of the secondary containment intergrated leak rate test be submitted within three months of the conduct of that test and that a report of the primary coolant leakage into the drywell be submitted every five years.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is Example (i), an amendment involving a purely administrative change to Technical Specifications. TSs exist for both maintaining secondary containment integrity and maintaining limits on reactor coolant leakage into the drywell. Neither the Hatch Unit 2 or the BWR 4 Standard Technical Specifications contain requirements for submittal of these reports and the

deletion of these reports is a change to achieve consistency in the TSs. Further, there is no definition or requirement in the Hatch Unit 1 TSs of what should be in a five-year report on primary coolant leakage into the drywell. These reporting requirements are administrative in nature and their removal is a purely administrative change. Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: July 26, 1985.

Description of amendment request: The amendment revises the TSs for Hatch Unit 1 to add a specification and table addressing component cyclic and transient limits and to correct the table number in TS 6.10.2.e to reference the newly added table.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 fR 14870). One of the exampels (ii) of actions involving no significant hazards considerations relates to a change which constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. Another example (i) relates to a purely administrative change to the Technical Specifications. The proposed addition of the specification on cyclic and transient limits constitutes an additional limitation and fits example (ii) above. The proposed correction of the table number fits example (i) above. The Commission therefore proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corportion, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: August 2, 1985.

Description of amendment request: The amendment revises the TSs for Hatch Unit 2 to correct and clarify the hydrogen recombiner heater testing requirements of TS 4.6.6.2.b.4 by changing the word "phase" to "element" and changing the test value of 100×10^6 ohms to 1.0×10^6 ohms.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (i) of actions involving no significant hazards considerations relates to a purely administrative change to Technical Specifications. This change clarifies the fact that the vendor recommended heater to ground resistance reading of $1.0 \times 10_6$ ohms is unique to the heater elements. The present value of $100 \times 10_6$ ohms only applies to the resistance of cabling to ground, and as such, is not solely applicable to overall element integrity. This change is an administrative change similar to the example. The Commission therefore proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW. Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 19, 1985.

Description of amendment request: Requests approval of changes to the Appendix A Technical Specifications (TS) pertaining to the Post Accident Sampling System. These changes are to Section 6, Administrative Controls, and implicitly to the Table of Contents of the TS.

Basis for proposed no significant hazards consideration determination: On November 1, 1983, the staff issued Generic Letter (GL) 83-36, "NUREG-0737 Technical Specifications," which included guidance on technical specifications on the Post-Accident Sampling System (PASS), NUREG-0737 Item II.B.3. By letter dated June 19, 1985, the licensee has proposed changes to the TS which are new requirements pertaining to the PASS. These requested changes are to section 6, Administrative Controls, and implicitly to the Table of Contents identifying the new subsection of the TS. The proposed changes are to incorporate the guidance given in GL 83-36 into the TS.

The requested changes to the TS are an additional requirement not currently in the TS. Therefore, these requested changes are encompassed by the Commission's example (ii), provided in 48 FR 14870, of actions not likely to involve significant hazards considerations. Therefore, the staff proposes to determine that the requested action involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW. Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: July 22, 1985.

Description of amendment request: Requests approval of a change to the Appendix A Technical Specifications (TS) which is a new requirement pertaining to limiting overtime of station personnel. This change is to Section 6.2, Organization, Administrative Controls, of the TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the TS. On January 10, 1983, the staff issued Generic Letter 83-02, "NUREG-0737 Technical Specifications," which included guidance on TS on NUREG-0737 Item I.A.1.3, Limit Overtime. The licensee (GPU Nuclear Corporation) responded

to GL 83-02 but did not submit TS to limit overtime. The staff reviewed the licensee's justification for not submitting TS to limit overtime and concluded that it did not meet the staff's interpretation of the Commission's policy in this area. The staff by letter dated May 30, 1985, requested that the licensee submit TS to limit overtime.

The licensee has proposed changes to the TS to incorporate the guidance in GL 83-02 on NUREG-0737 Item I.A.1.3 into the TS. The proposed change to the TS is an additional requirement not currently in the TS. Therefore, this proposed change is encompassed by the Commission's example (ii) and the staff proposes to determine that the requested action involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 31, 1985.

Description of amendment request: On June 4, 1984, the NRC issued a Safety Evaluation Report which supported exemptions to certain requirements of 10 CFR Part 50, Appendix R, Fire Protection Requirements, for Three Mile Island Unit 1. This requested Technical Specification change updates Table 3.18-1, Fire Detection Instruments, to include three locations where fire detection instrumentation has been added as a result of NRC acceptance of the exemption requests.

Basis for proposed no significant hazards consideration determination: The proposed amendment is in the same category as Example (ii) of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870) in that the change constitutes an additional control not presently included in the Technical Specifications. The addition of the fire detection instrumentation in the three locations will provide increased assurance that a fire will be detected at an early stage before significant damage has occurred. Therefore, the amendment is considered not to involve significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: May 8, 1985, as supplemented May 29, 1985.

Description of amendment request: The proposed amendments would permit operation after approval of changes to the plant's Technical Specifications (TS) that would assure compliance with Appendix I, 10 CFR Part 50, and 10 CFR 50.36a and 50.34a. These proposed TS are intended to ensure that releases of radioactive material to unrestricted areas during normal operation remain as low as is reasonably achievable. Specifically, the proposed TS define limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and interlaboratory comparison program. These proposed TS would also incorporate into the TS the bases that support the operation and surveillance requirements.

Basis for proposed no significant hazards consideration determination: This proposed amendment falls into two categories for which the Commission (48 FR 14870) has provided examples of amendments not likely to involve significant hazards considerations. The Commission's examples include: (ii) A change that constitutes an additional restriction or control not presently in the TS and (vii) a change to make a license conform to changes in regulations. The new waste management requirements constitute additional limitations not currently in the TS (example (ii)). In addition, this proposed amendment has been put forward in response to the revised Appendix I to 10 CFR Part 50, making it a change in the TS to conform to changes in regulations (example (vii)). Therefore, the Commission proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: Edward J. Butcher, Acting.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: June 14, 1985 as supplemented August 7, 1985.

Description of amendment request: This proposed amendments provides Technical Specifications changes needed to support Cycle 9 operation of the Maine Yankee plant. This proposed amendment would: (1) Modify the Technical Specifications to reflect Cycle 9 power distributions, insertion limits, and peaking factors; (2) reflect the required fuel centerline design limit for each fuel type; (3) reflect replacement of part strength Control Element Assemblies (CEAs) with full strength CEAs; and (4) describe maximum reactor inlet temperature used in modified safety analyses.

Basis for proposed no significant hazards consideration determination: As discussed in *Maine Yankee Cycle 9 Core Performance Analysis* dated April 1985 (YAEC-1479), the fresh fuel assemblies used in Cycle 9 design are being manufactured by Combustion Engineering and are not significantly different than those previously used at Maine Yankee. This fuel design has been found acceptable to NRC in previous reload cores at Maine Yankee and at other facilities. The acceptance criteria for the Technical Specifications associated with the Cycle 9 design are the same as the acceptance criteria for the current Technical Specifications. The analytical methods used to demonstrate conformance of the Cycle 9 design have been previously found acceptable by the NRC except for minor modifications in methods employed for control element assembly (CEA) ejection and steam line break analyses. The methods used to analyze these events have been previously submitted to the NRC. The staff has recently approved the use of the modified method for CEA ejection analysis. The review of the steam line break methods analysis is near completion and its final approval will be required prior to the final issuance of the Cycle 9 Technical Specifications. The same methods have been previously applied by Yankee Atomic Electric Company on the Yankee plant in Rowe, Massachusetts.

Additional changes for Cycle 9 include the replacement of part-strength CEAs with full strength CEAs in the

non-scrammable locations in CEA bank 5 and an increase in the maximum allowable core inlet temperature from 550 °F to 552 °F. Both of these changes are evaluated in detail in the *Maine Yankee Cycle 9 Core Performance Analysis* dated April 1985.

As shown in the analysis, the changes associated with Cycle 9 do not affect the probability of an accident previously evaluated in the Maine Yankee Final Safety Analysis Report (FSAR). The effect of Cycle 9 operation on the consequences of accidents previously evaluated in the Maine Yankee FSAR is presented in the *Maine Yankee Cycle 9 Core Performance Analysis.* As shown in that analysis, the consequences of accidents previously evaluated have not significantly increased and continue to be well within applicable acceptance criteria.

The changes associated with Cycle 9 have been evaluated by the licensee and the staff agrees with the licensee's conclusion that the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The margin of safety of the Cycle 9 design is evaluated in the *Maine Yankee Cycle 9 Core Performance Analysis.* The thermal, thermal-hydraulic and physics characteristics of Cycle 9 are not significantly different from previous reload cores and thus the Cycle 9 design does not involve a significant reduction in a margin of safety.

In summary, the *Maine Yankee Cycle 9 Core Performance Analysis* does 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 previously evaluated; or (3) Involve a significant reduction in a margin of safety. Therefore we propose to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: Edward J. Butcher, Acting.

Mississippi Power & Light Company, Middle South Energy, Inc., Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: July 12, 1985, as amended August 12, 1985.

Description of amendment request: The amendment would make five changes to the Technical Specifications as follows: (1) Figure 6.2.2-1, "Unit Organization" would be revised by replacing the Radiation Control Supervisor with two new supervisors—Radiation Control Supervisor, Operations, and Radiation Control Supervisor, Technical Support. (2) Table 3.8.4.2-1 "Primary Containment Penetration Conductor Overcurrent Protective Devices" would be revised by adding two circuit breakers for equipment needed to improve a ventilation system for a reactor water sample station inside containment. (3) Technical Specification 4.1.3.3, "Control Rod Scram Accumulators" would be revised by eliminating the upper limit of the setpoint on the low pressure alarm. (4) Table 3.3.7.9-1 "Fire Detection Instrumentation would be revised by adding four fire protection zones in the control building and their associated surveillance requirements. (5) Technical Specification 4.8.1.1.2, "Electrical Power Systems—AC Sources," would be revised by adding surveillance requirements for the automatic bypass of the diesel generator ground overcurrent trip upon receipt of an ECCS actuation signal.

Basis for proposed no significant hazards consideration: Change (1) is proposed to provide increased overview of radiological activities. The responsibilities of the current Radiation Control Supervisor would be divided between two new supervisors. The Radiation Control Supervisor, Operations would be responsible for radiological aspects of plant maintenance and operations activities. The Radiation Control Supervisor, Technical Support would be responsible for health physics support activities including dosimetry, radwaste, emergency planning, and radiation protection equipment. Both new supervisors would be qualified in and with requirements specified in the Final Safety Analysis Report, section 13. Because this change would not affect plant equipment design, safety criteria or safety analyses, would not change reponsibilities for supervision of radiation control, and would increase the overview of radiological aspects of plant operation and maintenance by using two qualified supervisors in place of one, this change does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated, nor does it involve a significant reduction in a margin of safety.

Change (2) is proposed as the result of a design change to decrease airborne radioactive contamination at a reactor water sample station inside containment. A heater and fan would be added to the ventilation system at the sample station to improve filter efficiency. Circuit breakers would be included in the electrical circuits for the fan and the heater as overcurrent protection for the conductors which penetrate the containment. The breakers are designed and would be installed in accord with NRC regulatory requirements and industry codes and standards. Because the change merely adds two circuit breakers of a type already in use in the facility and which will be designed and installed in accordance with applicable regulatory requirements, and the change does not affect safety criteria or analyses, change (2) does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated, nor does it involve a significant reduction in a margin of safety.

Change (3) is proposed to eliminate actuation of the low pressure alarm for the scram accumulators because of instrument drift in the conservative direction (higher actual pressure). The present setpoint is 1520+30−0 psig. The purpose of the low pressure set point is to ensure the minimum pressure in the accumulator necessary to scram the control rods.

Operation to date has resulted in spurious alarms due to drift of more than +30 psi between surveillance tests. The change would eliminate any upper limit on the setpoint, resulting in an alarm only if pressure was less than the setpoint value. Because safety equipment design, safety criteria or safety analyses are not affected, change (3) does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated. Since the safety function to actuate an alarm if accumulator pressure decreased below 1520 psig would not be changed, change (3) does not involve a significant reduction in a margin of safety.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. Changes (4) and (5) are similar to this example. Change (4) would add surveillance requirements to the Technical

Specifications for fire detection instruments in Unit 2 areas of the control building which contain safe shutdown electrical cables for Unit 1. Change (5) would add surveillance requirements for a safety related bypass of an operational related trip used to protect the diesel generator from ground overcurrent.

Accordingly, for the reasons cited above, the Commission proposes to determine that these five changes do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Elinor G. Adensam.

Mississippi Power & Light Company, South Mississippi Electric Power Association, Middle South Energy, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 12, 1985.

Description of amendment request: The amendment would make three changes in the Technical Specifications: (1) Change the names of two valves listed in Table 3.3.7.4-1 "Remote Shutdown Systems Controls" and four valves listed in Table 3.6.4-1, "Containment and Drywell Isolation Valves"; (2) designate a different valve in the residual heat removal (RHR) to reactor head spray line as reactor coolant system pressure isolation valve (Table 3.4.3.2-1) and as containment isolation valve (Table 3.6.4-1) and make associated changes in the listing of primary containment penetration conductor overcurrent protective devices (Table 3.8.4.1-1), and motor-operated valve thermal overload protection (Table 3.8.4.2-1), and; (3) add specifications in Table 3.3.3-1, "Emergency Core Cooling System (ECCS) Actuation Instrumentation" to incorporate interlock instrumentation which is designed to prevent inadvertent overpressurization of low design pressure emergency core cooling systems by the reactor coolant systems, and make associated changes in Table 3.3.3-3 "ECCS Response Times", Table 4.3.3.1-1, "ECCS Acutation Instrumentation Surveillance Requirements", Surveillance Requirement 4.4.3.2.2 "Reactor Coolant System Operational Leakage", Table 3.4.3.2-2 "Reactor Coolant System Interface Valves Pressure Monitors-Alarm", and Table 3.4.3.2-3 "Reactor Coolant System Interface Valves Pressure Interlocks".

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples (i) is a purely administrative change to Technical Specifications. Change (1) is similar to this example in that it is a change in nomenclature of valves to be consistent with plant nomenclature. Change (2) the designation of valve E12-F394 to serve as the inboard containment isolation valve, is an operational enhancement which would allow local leak rate testing of the inboard isolation valve without removing the drywell head and insulation. This change would reduce radiation exposure of personnel since the leak rate testing could be accomplished in a shorter time period. The previously designated valve, E51-F066, would be deleted from the list of containment isolation valves. Use of valve E12-F394 as the isolation valve also eliminates valve E12-F344 as a potential leakage path from the drywell so that valve E12-F344 would also be deleted from the list of containment and drywell isolation valves. Valve E12-F394 and the associated power and control circuits in the RHR to reactor head spray line where designed and installed in accordance with applicable industry and regulatory codes and standards and the GGNS quality assurance program. Therefore, the change is consistent with the licensing basis and the safety analyses. Because change (2) does not affect the isolation safety function, safety criteria or safety analysis and it would decrease personnel radiation exposure, this change does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated, nor does it involve a significant reduction in a margin of safety. Change (3), the addition of Technical Specifications for interlock instrumentation on pressure isolation valves, is needed to implement a design change required by a license condition. The present compensatory requirement for leak tests of LPCS and LPCI check valves would be deleted. The design change would result in an increase of 51 °F in calculated peak cladding temperature to 2149 °F during a postulated loss of coolant accident because of a longer time required for LPCS and LPCI injection valves to open. The calculated peak cladding temperature of 2149 ° is still below the limiting 2200 °F required by 10 CFR 50.46, so the safety margin is not affected. The design change will be performed in accordance with appropriate regulatory and industry codes and standards, the GGNS quality assurance program, and applicable requirements of the GGNS FSAR. Therefore, the design change would be consistent with the licensing basis. Because change (3) will add requirements not presently included in the Technical Specifications which more than offset the removal of the compensatory leak test requirement, and because the change would result in the performance of the ECCS safety function without affecting the safety margin, this change does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated, nor does it involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell, and Reynolds, 1200 17th Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Elinor G. Adensam.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 15, 1985, as supplemented by submittal dated July 11, 1985.

Description of amendment request: The original amendment request of May 15, 1985 was initially noticed on July 17, 1985 (50 FR 29012), and was submitted in response to NRC Generic Letter (GL) 84-15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," dated July 2, 1984. In this Generic Letter, the NRC staff identified cold fast starts of diesel generators as contributing to premature diesel engine degredation due to unnecessary wear. The NRC has concluded that the frequency of diesel generator fast start tests from ambient conditions should be reduced. Accordingly, the licensee, in the May 15, 1985 submittal, proposed to reduce the number of diesel generator tests required by Technical Specifications when the other diesel

generator is determined to be inoperable. The current Technical Specifications require a diesel generator to be tested immediately and daily thereafter when the other diesel generator is determined to be inoperable. The original amendment request would have retained the requirement for an immediate test but deleted the requirement for subsequent daily test starts. After discussions with the NRC staff, the licensee, by letter dated July 11, 1985, submitted a revision which would retain the requirement for an immediate diesel generator test and add a requirement for subsequent tests every three days thereafter.

Basis for proposed no significant hazards consideration determination: The licensee submittal of May 15, 1985 provided an evaluation of the initially proposed change and a basis for a proposed no significant hazards consideration determination. The revision submitted by letter dated July 11, 1985 represents a more stringent limitation than that initially proposed and is encompassed by the May 15, 1985 evaluation. The licensee has stated that the proposed change does not delete diesel generator operability requirements when one diesel generator is determined to be inoperable. Diesel generator fast start operability is still present to mitigate the consequence of a large loss of coolant accident coincident with a loss of offsite power. Diesel generator operabillity will still be demonstrated by monthly routine tests and immediately and every three days after one diesel generator is determined to be inoperable. The NRC staff has determined that excessive diesel generator testing contributes to premature engine degradation and that an overall improvement in reliability and availability can be gained by eliminating excessive fast starts. The licensee has stated that the proposed change that reduces the frequency of diesel generator testing is consistent with the objectives expressed in GL 84-15 and may therefore result in enhanced reliability.

Based on the above, the staff concludes that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because, although some diesel generator tests would be eliminated, operability is still demonstrated by other required surveillance tests. The reduced number of fast starts may, in fact, increase the probability of diesel generator availability in the event of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation and no physical modifications are required to be performed to the plant.

(3) Involve a significant reduction in the margin of safety. It is anticipated that any reduction in the margin of safety would be insignificant since the purpose of the proposed change is to conform to the NRC guidelines of GL 84-15. The recommendations in GL84-15 were promulgated to increase diesel generator reliability and thereby cause an increase in the overall margin of safety in the plant.

Based on the above evaluation, the staff finds that the criteria for a no significant hazards consideration determination, as set forth in 10 CFR 50.92(c), are met. The staff has, therefore, made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Branch Chief: Domenic B. Vassallo.

Pennsylvania Power & Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 24, 1985.

Description of amendment request: Effective January 1, 1984, the requirements contained in 10 CFR 50.72 and 10 CFR 50.73 replaced all existing requirements for licensees to report "Reportable Occurrences" as defined in individual plant Technical Specifications. The licensee has proposed to delete Action b in Section 3.3.7.9, "Fire Detection Instrumentation" of the Technical Specifications. Action b of Section 3.3.7.9 requires that the licensee:

> Restore the minimum number of instrument(s) to OPERABLE status within 14 days or, in lieu of any other report required by specification 6.9.1, prepare and submit a Special Report to the Commission pursuant to Specification 6.9.2 within 30 days outlining the action taken, the cause of the inoperability and the plans and schedule for restoring the instrument(s) to OPERABLE status.

This Technical Specification requires the licensee to restore instruments within 14 days or submit a special report. Based on the January 1, 1984 NRC rule change the reporting requirement is no longer applicable and neither are the references to 6.9.1 or 6.9.2 applicable since the appropriate sections pertaining to reporting requirements have already been deleted in accordance with this rule change. The requirement to restore the instruments is also no longer applicable since the Technical Specification as presently written does not require the licensee to restore the instruments within a specified length of time if a special report is submitted. The deletion of action b in its entirety poses no additional safety hazard since a fire watch must be established to inspect the zone(s) containing the inoperable instrument(s) within one hour. This requirement is specified in Action a of section 3.3.7.9. The deletion of Action b is merely the deletion of a reporting requirement because without a reporting requirement the restoration of inoperable instruments has no basis since it was the Licensee's option not to restore the instrumentation within a specified time but instead file a report. This proposed change is consistent with the January 1, 1984 NRC rule change.

Basis for Proposed No Significant Hazards Consideration Determination: The licensee in his letter dated June 24, 1985, stated that the proposed change does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in margin of safety. The NRC staff agrees with the licensee's evaluation in this regard and proposes to find that the change to the Technical Specifications does not involve a significant hazards consideration. The Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration, example (vii) is a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The proposed change is encompassed by this example and therefore the NRC staff proposes to find that this change does not involve a significant hazards consideration.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: W. Butler.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: April 26, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to delete the requirement for demonstrating operability of the emergency diesel generators when the following systems are declared inoperable: Core Spray; Low Pressure Coolant Injection (LPCI) mode of the Residual Heat Removal (RHR) System, and Containment Cooling. The proposed amendment would also remove the diesel generators from the Limiting Conditions for Operation (LCO) for these systems when these systems are declared inoperable. In addition, the proposed revisions would change the diesel generator testing frequency from "once every 8 hours" to "once every 24 hours" when reserve power is unavailable from one or both off-site sources or, when one of the diesel generators is declared inoperable. The proposed amendment also contains several editorial changes.

Basis for proposed no significant hazards consideration determination: The proposed amendment was submitted in response to NRC Generic Letter (GL) 84-15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," dated July 2, 1984. In this generic letter, the NRC staff identified cold fast starts of diesel generator sets as contributing to premature diesel engine degradation due to unnecessary wear. The NRC has concluded that the frequency of diesel generator fast start tests from ambient conditions should be reduced. Specifically, GL 84-15 states the NRC position that requirements for testing diesel generators while emergency core cooling equipment is inoperable be deleted from Technical Specifications. Accordingly, the licensee proposed to delete from the FitzPatrick TS, requirements for diesel generator testing when it is determined that a core spray subsystem, residual heat removal pump, low pressure coolant injection subsystem, or containment cooling subsystem is inoperable.

The change in diesel generator testing frequency from once in 8 hours to once in 24 hours when reserve power is unavailable from one or both offsite sources or, when one of the diesel generators is declared inoperable, has been proposed by the licensee to further reduce the number of cold fast starts. Testing every 8 hours under these circumstances would not result in increased availability of the diesels. The FitzPatrick diesels have been shown to have a high reliability factor (two diesels have a factor of 1.0 and the other two diesels have a factor of 0.99). These factors have been determined in acordance with Regulatory Guide 1.108 "Periodic Testing of Diesel Generator units used as On-site Electric Power System of Nuclear Power Plants." Repeated testing at frequent intervals would have a detrimental effect on the engines, resulting in possible decreased availability.

Based on the above, the staff concludes that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because, although some diesel generator tests would be eliminated, operability is still demonstrated by other required surveillance tests. The reduced number of fast starts may, in fact, increase diesel generator availability in the event of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes introduce no new mode of plant operation or plant physical modifications.

(3) Involve a significant reduction in the margin of safety because the purpose of the proposed changes is to conform to the guidelines of GL 85-15, the recommendations of which were promulgated to increase diesel generator reliability and thereby cause an increase in the overall margin of safety.

Based on the above evaluation, the staff finds that the criteria for a no significant hazards consideration determination, as set forth in 10 CFR 50.92(c), are met. The staff has, therefore, made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Domenic B. Vassallo.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: April 7, 1981, as supplemented and revised November 14, 1983, and April 9, 1985.

Description of amendment request: This amendment would make changes to the Technical Specifications by adding to the list of required snubbers, providing surveillance requirements including frequency and acceptance criteria, and providing limiting conditions for operation for the facility should snubbers be inoperable. These changes were proposed to incorporate the provisions of the model Technical Specifications transmitted to all power reactor licensees in a letter dated November 20, 1980.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: ". . . (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; for example, a more stringent surveillance requirement." The changes proposed in the application for amendment are encompassed by this example in that the proposed change would add Limiting Conditions for Operation and surveillance requirements on existing and newly installed snubbers, and is thus similar to the example described above.

Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards considerations.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Southern California Edison Company, et al., Docket No. 50-362, San Onofre Nuclear Generating Station, Unit 3, San Diego County, California

Date of amendment request: May 9, 1985 (reference PCN-163).

Description of amendment: The proposed changes would revise San Onofre Unit 3 Technical Specifications 3.1.2.7, 3.1.2.8, and Bases 3/4.1.2. Technical Specifications 3.1.2.7 and 3.1.2.8 require borated water source operability and specify volume, temperature and boron concentration requirements which assure that sufficient negative reactivity control is available during each mode of facility operation. These technical specifications define the minimum boric acid tank water volume and temperature required as a function of the boric acid concentration. The proposed change increases the boric acid storage tank water volume specified by Technical Specification 3.1.2.7, consistent with the revised safety analysis associated with plant refueling and cycle 2 operation. In addition, the proposed change decreases the boric acid storage tank water volume/concentration specified in Technical Specification 3.1.2.8, but nevertheless maintains the reactivity control required for cycle 2 operation, as is demonstrated by the cycle 2 safety analysis.

Bases for Proposed no Significant Hazards Consideration Determination: The proposed changes to Technical Specifications 3.1.2.7 and 3.1.2.8 are similar to Example (iii) of 48 FR 14870, in that they result from a nuclear reactor core reloading where no significant changes have been made to the boration source acceptance criteria of the technical specifications, or to the analytical methodology used to demonstrate conformance to these criteria.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: May 17, 1985.

Description of amendment request: The purpose of the proposed amendment request is for deletion of the requirements for resistance testing of certain fuses whose function is to provide containment penetration conductor overcurrent protection, and deletion of the list of containment penetration conductor overcurrent protective devices (circuit breakers and fuses) from the technical specifications.

Basis for proposed no significant hazards consideration determination: The technical specifications currently require that, among other things, all containment penetration conductor overcurrent protection fuses shall be demonstrated operable at least once per 18 months by selecting and functionally testing a representative sample (10%) of each type of fuse on a rotating basis. The license amendment application addresses the fact that resistance checking of fuses only generates data that is not indicative of performance, and that routine removal of fuses for testing can result in damaging of the fuse holder and contact points. Based on these considerations, and the fact that the licensee proposes to establish a fuse inspection and maintenance program in lieu of field testing by resistance, the deletion of the requirements for resistance checking of these fuses will not involve a significant increase in the probability of fuse failure. Since the proposed deletion of field testing by resistance will not impact fuse integrity, will not affect the method of plant operation, and will not affect equipment important to safe operation, the proposed amendment does not create the possibility of a new and different accident from any previously evaluated. Since the resistance checking of fuses only generates data that is not indicative of performance, and the fact that resistance checking will be replaced by an inspection and maintenance program, the deletion of the requirements for resistance checking of these fuses will not significantly reduce any margins of safety.

The technical specifications also list the containment penetration conductor overcurrent protective devices (circuit breakers and fuses). The license amendment application also addresses the fact that the deletion of this list from the technical specifications shall in no way degrade compliance with the operability of the containment penetration conductor overcurrent protective devices since it is proposed that the list of these devices will be maintained in the appropriate plant procedures. However, maintaining the list in the procedures instead of in the technical specifications will allow the licensee to have the flexibility in the future to change the list as needed without requesting a technical specification change. Examples of such changes are the addition or deletion of circuits (and breakers) or the changing of a circuit to require a larger or a smaller breaker, as a result of a design change in the plant. On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. This part of the amendment request is similar to the example of a purely administrative change to the technical specifications. The list of containment electrical penetration protective devices will be administratively maintained at the plant rather than in the technical specifications, and this will in no way degrade compliance with the operability requirements of these devices.

Based on the foregoing, the requested amendment does not present a significant hazard.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: B.J. Youngblood.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: July 12, 1985.

Description of amendment requests: This amendment would delete the surveillance requirements on the Boron Injection Tank Level Instruments in Table 4.1 of the Technical Specifications. These surveillance requirements were removed from the Technical Specifications in Amendment Nos. 95 and 94 (dated February 24, 1984) to Operating Licenses Nos. DPR-32 and DPR-37, respectively, but were inadvertently included in Technical Specification Amendment Nos. 97 and 96 on Table 4.1-1 (dated June 19, 1984). This amendment would remove the surveillance requirement from the text previously deleted by Amendment Nos. 95 and 94.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing examples (48 FR

14870). One of the examples of actions not likely to involve a significant hazards consideration (Example i) states: "A purely administrative change to technical specifications: for example . . . correction of an error, or a change in nomenclature." The proposed change is similar to the example in that it is a correction of an error. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Washington Public Power Supply System, Docket No. 50-397, WNP-2 Richland, Washington

Date of amendment request: May 16, 1985.

Description of amendment request: This proposed amendment would revise the Technical Specifications for the Washington Public Power Supply System, Nuclear Plant No. 2 (WNP 2). The proposed revision, if approved, will change the Surveillance Requirement 4.8.1.1.2 and modify the minimum allowable voltage band on auto starting of Diesel Generators DG-1 and DG-2 making it consistent with the output breaker closure permissive setpoint.

As presently stated, the WNP-2 Technical Specification potentially allows the establishment of a condition that could preclude operation of the Diesel Generators unless additional operator action is taken. Design of the Division 1 and 2 generator output breakers will not allow closure of the breaker until the voltage is within 94% of rated voltage. The rated voltage is 4160 VAC and 94% of this value is 3910 VAC. The Technical Specifications, as currently written, require that the voltage must be 4160±420 VAC which is the range 3740 to 4580 VAC. When the voltage is in the lower part of this range, 3470 to 3910 VAC, it is within the current specification but too low to allow closure of the breaker. The minimum permissible voltage should be 3910 VAC. Thus, the voltage range on starting should be specified 4160+420, −250 VAC for DG-1 and DG-2. No change is necessary for DG-3.

The Supply System has reviewed this proposed change per 10 CFR 50.59 and determined that no unreviewed safety questions will result from this amendment. The staff concurs in that determination.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The example involving no significant hazards consideration include "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement." The proposed Technical Specifications amendment will impose a more stringent surveillance requirement and eliminate a potential possibility that the Diesel Generators 1 and 2 will fail to provide power when required. Because the amendment will result in an improvement of plant safety and because the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds Esquire, Bishop, Cook, Liberman, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Walter R. Butler.

Washington Public Power Supply System, Docket No. 50-397, WNP-2 Richland, Washington

Date of amendment request: July 9, 1985.

Description of amendment request: This proposed amendment would revise the Technical Specifications for the Washington Public Power Supply System, Nuclear Plant No. 2 (WNP-2). The proposed revision, if approved, would amend Administrative Controls, section 6.2.3, of the Technical Specifications to alter and make more flexible the composition of the Nuclear Safety Assurance Group (NSAG).

The Technical Specification 6.2.3.2 as presently written reads,

> The NSAG shall be composed of a least five, dedicated, full-time engineers, a minimum of three located on site and two at the home office. Each shall have a bachelor's degree in engineering or related science and at least 2 years professional level experience in his field, at least 1 year of which experience shall be in the nuclear field.

The Supply System proposes to modify the first sentence so as to *allow* one or two members of the NSAG to be located at the home office without *requiring* such location for precisely two of the group. In addition, this amendmend will correct a typographical error in a previously granted amendment, Amendment No. 11.

The Supply System has reviewed this change per 10 CFR 50.59 and determined that no unreviewed safety questions will result from this amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The example involving no significant hazard consideration include (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature. Although not precisely in accord with the specific examples cited, the change in the requirement for the location of each member of the NSAG is a purely administration detail consistent with the intent of the Commission's guidance, and the Technical Specifications and it is without safety significance. The error correction is precisely a cited example. Therefore the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists. Accordingly the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds Esquire, Bishop, Cook, Liberman, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Walter R. Butler.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: July 11, 1985.

Description of amendment request: License amendment would provide consistency between 10 CFR Part 50 Appendix J and Kewaunee Technical Specifications (TS) in regard to containment air lock testing and provide the air lock between-the-seal pressure in this TS.

Basis for proposed no signficant hazard consideration determination: The Commission has provided guidance for the application of the standard in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards consideration. An example of an action involving no significant hazards consideration is a change that relates to (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. That portion of the change which added a between-the-seals pressure to the TS served to make the TS as consistent with 10 CFR Part 50 Appendix J section III.D.2.(b)(iii). Therefore, the change provided for consistency in the TS a encompassed by example (i).

The remaining portion of the TS change, maintaining containment integrity after air lock doors are opened, involved changing the TS to agree with the requirements of 10 CFR Part 50 Appendix J in regard to requiring leak testing within three days of being opened. Therefore, the change provided for consistency in the TS as encompassed by example (i).

Since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exists, the staff has made a proposed determinatin that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the folllowing amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.21(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of application for amendment: March 24, 1985.

Brief description of amendment: The amendment deleted all the radiological parts of Appendix B to the Facility Operating License (Environmental Technical Specifications).

Date of issuance: August 9, 1985.

Effective date: August 9, 1985.

Amendment No.: 68.

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20969 at 20970).

The Commission's related evaluation of the amendment is contained in a letter dated August 9, 1985.

No significant hazards consideration comments received. No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of applications for amendment: October 16, 1984 and November 9, 1984 as modified February 8, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to reflect changes in the reporting requirements outlined in 10 CFR 50.72 and 50.73 and the guidance provided in our Generic Letter 83-43. It also modifies the administrative section of the Technical Specifications to recognize changes in title, plant organization, and the Operating Review Committee membership and responsibilities.

Date of issuance: August 14, 1985.

Effective date: August 14, 1985.

Amendment No.: 88.

Facility Operating License No. DPR-35. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 23, 1985 (50 FR 3048 and 50 FR 3049) Subsequent to the initial notice in the **Federal Register,** the Boston Edison Company, by letter dated February 8, 1985, provided Technical Specification pages which more closely follow the wording of the Standard Technical Specifications. These modifications do not change the substance of the amendment. An additional change was proposed in the letter, relative to review of the Fire Protection Plan, which is not included in this amendment and will be resubmitted by Boston Edision. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, North Street, Plymouth, Masachusetts 02360.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: April 9, 1985.

Brief description of amendment: The amendments change the Technical Specifications (TS) to permit loading of up to four fuel bundles around each source range monitor, if needed, in order to obtain the required minimum count rate.

Date of issuance: August 6, 1985.

Effective date: August 6, 1985.

Amendment Nos.: 89 and 114.

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20971).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: May 18, 1983.

Brief description of amendment: The amendment revises the Technical Specifications to delete section 6.14, "Environmental Qualification," and to remove the reference to section 6.14 from the records section of the technical specification. The current requirements for environmental qualification are contained in 10 CFR 50.49.

Date of issuance: August 12, 1985.

Effective date: August 12, 1985.

Amendment No. 64.

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20973). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: September 5, 1984.

Brief description of amendments: The amendments revise the Technical Specifications to add leak rate limits and test requirements for the automatic depressurization system.

Date of issuance: August 5, 1985.

Effecitve date: August 5, 1985.

Amendments Nos.: 111 and 50.

Facility Operating Licenses Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 21, 1984 (49 FR 45951).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: November 19, 1984.

Brief description of amendments: The amendments modify the Technical Specification Limiting Conditions for Operation and Surveillance Requirements relating to snubbers.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendments Nos.: 112 and 51.

Facility Operating Licenses Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7987).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 29, 1982 supplemented by letters dated April 18, 1983, November 29, 1983 and February 12, 1985.

Brief description of amendments: This amendment made editorial changes to accurately describe reactor trip system instrumentation. By letter dated February 12, 1985, the licensee withdrew other proposed changes to update organization charts and position titles, duties, and committee assignments of plant personnel. The latter changes are the subject of separate proposed license amendments; see 50 FR 7991 issed February 27, 1985.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendments Nos.: 85 and 71.

Facilities Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 22, 1983 (48 FR 28580).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: December 17, 1984, supplemented by letter dated June 4, 1985.

Brief description of amendments: The amendment changes the Technical Specifications to update the offsite organization chart, and organization and responsibilities of the Plant Nuclear Safety Review Committee (PNSRC) and the Nuclear Safety and Design Review Committee (NSDRC), to update the reporting requirements addressed by the recent revision to 10 CFR 50.73, to revise the containment isolation value listing, to correct an error in one reference to the battery electrolyte temperature for surveillance, and to make a number of editorial changes. Proposed changes by the licensee to delete the offsite committee's review of the meeting minutes of the onsite committee and to add a provision to allow committee changes without prior NRC review and approval are still under discussion with the licensee.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendment Nos.: 87 and 73.

Facilities Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7991).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: May 10, 1985, supplemented by letter dated June 20, 1985.

Brief description of amendments: The amendments revise the Technical

Specifications relating to the electrical power systems and in response to the NRC Generic Letter No. 83-28, add surveillance requirements to periodically test the undervoltage trip attachments and shunt trip attachments. The changes to the electrical power system more precisely identify the required battery banks, define the full electrolyte level as up to the bottom of the maximum level indication mark, define shutdown for battery service tests to be MODES 5 and 6, for Unit 1 eliminate a surveillance pertaining to battery recharging time to be consistent with the Unit 2 requirements, eliminate the battery service test if a performance discharge test is performed, delete a footnote which designates when AC power sources are turned off or on, and as a result of a design change in the critical reactor instrumentation distribution design, deleted references to tie breakers and standby circuits to connect battery trains.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendments Nos.: 86 and 72.

Facilities Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 3, 1985 (50 FR 27506).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Mississippi Power & Light Company, Middle South Energy, Inc., Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 15, 1985.

Brief description of amendment: The amendment modifies the Technical Specifications to implement a reorganization of the Personnel Department.

Date of issuance: August 7, 1985.

Effective date: August 7, 1985.

Amendment No. 3.

Facility Operating License No. NPF-29. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 3, 1985 (50 FR 27506).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Northeast Nuclear Energy Company, et al., Docket Nos. 50-245 and 50-336, Millstone Nuclear Power Station, Unit No. 1 and Unit No. 2, New London County, Connecticut

Date of application for amendment: May 18, 1983.

Brief description of amendment: The amendment revised the Technical Specifications to delete section 6.13, "Environmental Qualification"; to renumber the following sections in the Technical Specifications; and to remove a reference to the deleted section from the Records section of the respective plant technical specifications. The current requirements for environmental qualification are contained in 10 CFR 50.49.

Date of issuance: August 12, 1985.

Effective date: August 12, 1985.

Amendments Nos. 105 and 103.

Provisional Operating License No. DPR-21 and Facility Operating License No. DPR-65: These amendments revised the Technical Specifications for Millstone Unit 1 and Unit 2.

Date of initial notices in **Federal Register:** May 21, 1985 (50 FR 20984) and June 4, 1985 (50 FR 23548).

The Commission's related evaluation of the amendments is contained in Safety Evaluations dated August 12, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: March 15, 1985.

Brief description of amendment: The amendments remove the Training Supervisor from the Facility Organization Charts, Figure 6.2.2, of the Millstone 1 and 2 technical specifications. The Training Supervisor now reports to the corporate Director of Nuclear Training. This change is the result of the implementation of a corporate Nuclear Training Department and is part of a consolidation of nuclear training responsibility under the corporate Director of Nuclear Training.

Date of issuance: August 6, 1985.

Effective date: August 6, 1985.

Amendment No.: 104 and 102.

Provisional Operating License No. DPR-21 and Facility Operating License No. DPR-65. These amendments revised the Appendix A Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16007).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: March 28, March 29 (3) and April 4, 1985.

Brief description of amendment: These amendments change the Technical Specifications to: (1) Delete a reference to a Station Emergency Procedure with minor changes in wording; (2) delete specific footnotes for Cycle 5 refueling and operations; (3) add a footnote to delete a requirement for containment atmosphere particulate and gaseous radiation monitors to be in operation during Type "A" integrated leak rate testing; (4) revise a surveillance requirement to make Diesel Generator Testing consistent with requirements of Generic Letter 83-30; and (5) revise a surveillance requirement to delete the physical description of trisodium phosphate dodecahydrate.

Date of issuance: August 2, 1985.

Effective date: August 2, 1985.

Amendment No.: 101.

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1985 (FR 50 20969 at 20984) (3 notices) and June 4, 1985 (50 FR 23543 at 23549) (2 notices).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: February 22, 1985.

Brief description of amendment: The amendment changes the Technical Specifications to revise the function and membership of the Safety Review Committee and clarify the responsibility of the Plant Operating Review Committee.

Date of issuance: August 9, 1985.

Effective date: August 9, 1985.

Amendment No.: 94.

Facility Operating License No. DPR-59. Amendment revised the Technical Specifications.

Date of intital notice in **Federal Register:** April 23, 1985 (50 FR 16010).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: October 31, 1984.

Brief description of amendment: The amendment modifies the function and membership of the Safety Review Committee (SRC) of the Power Authority of the State of New York for Indian Point 3.

Date of issuance: August 8, 1985.

Effective date: August 8, 1985.

Amendment No.: 60.

Facilities Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of intital notice in **Federal Register:** December 31, 1984 (49 FR 25371).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, Diego County, California

Date of application for amendment: December 13, 1984, as supplemented January 16, 1985 and revised April 10, 1985.

Brief description of amendment: This amendment: (1) Modifies portions of the Radiological Effluent Technical Specifications that were issued by Amendment 79 to the license, (2) updates former Section 5.8 of the enviromnental Technical Specifications (TS) and redesignates this section as Section 6.19 of the Appendix A TS, and (3) deletes the remaining portion of the Appendix B TS.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendment No.: 90.

Provisional Operating License No. DPR-13: Amendment revised the Technical Specifications and the license.

Date of intital notice in **Federal Register:** May 21, 1985 (50 FR 20990).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: San Clemente Public Library, 242 Avenida Del Mar, San Clemente, California 92672.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: December 13, 1984.

Brief description of amendment: The amendments change the Technical Specifications to delete certain review requirements of the Plant Operations Review Committee.

Date of issuance: August 9, 1985.

Effective date: 90 days from the date of issuance.

Amendment Nos.: 120, 115 and 91.

Facility Operating License Nos. DRP-33, DRP-52 and DRP-68. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1985 (50 FR 12164).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 30, 1985.

Brief description of amendment: Revises Administrative Controls Technical Specifications.

Date of issuance: August 5, 1985.

Effective date: August 5, 1985.

Amendment No. 65.

Facility Operating License No. DRP-43: Amendment revised the Technical Specifications.

Date of intitial notice in **Federal Register:** July 3, 1985 (50 FR 27511).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1985.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Wisconsin, Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any rquired hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need to be prepared for these amendments. If the Commission has prepared and environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By September 27, 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. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determnation that the amendment involves no significant hazards consideratio, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) (342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit No. 1, Maricopa County, Arizona

Date of application for amendment: July 12, 1985.

Brief descriptionof amendment: This amendment authorized a one time only change in Technical Specification 3.4.5.2, Action Statement b, to allow an additional 72 hours in hot standby before proceeding to cold shutdown. This additional time was requested to determine the pathway of leakage under conditions of temperature and pressure more conducive to detection.

Date of Issuance: August 5, 1985.

Effective Date: July 12, 1985.

Amendment No.: I.

Facility Operating License No.: NPF-41.

Amendment revised the Technical Specifications.

Press release issued requesting comments as to proposed no significant hazards Consideration No.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated August 5, 1985.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Indiana and Michigan Electric Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: July 18, 1985 and July 19, 1985, as supplemented by letter dated July 3, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to reflect revised heatup and cooldown, and low temperature (cold) overpressure protection through twelve effective full power years of reactor operation.

Date of issuance: August 9, 1985.

Effective date: August 9, 1985.

Amendment No.: 88.

Facility Operating License No. DPR-58. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. FRN 50 30319 dated July 25, 1985.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated August 9, 1985.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Bethesda, Maryland, this 22nd day of August 1985.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Acting Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 85-20592 Filed 8-27-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 373]

Commonwealth Edison Co.; Consideration of Issuance of Amendments to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing (La Salle County Station, Unit 1); Correction

AGENCY: Nuclear Regulatory Commission.

ACTION. Correction.

SUMMARY: This document corrects the data that the License may file a request for a hearing with respect to the 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.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-20143 appearing on page 33875 in the issue of Wednesday, August 21, 1985, make the following correction:

Page 33876, middle column, second full paragraph, change the comment expiration date to September 20, 1985.

Approved: August 23, 1985.

Andrew Bates,

Acting Secretary.

[FR Doc. 85-20589 filed 8-27-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14691; 812-6172]

Merrill Lynch Multi-State Tax-Exempt Series Trust; Notice of Application for Exemptive Order Relating to Contingent Deferred Sales Charge

August 22, 1985.

Notice is hereby giving that Merrill Lynch Multi-State Tax-Exempt Series Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on August 7, 1985, requesting an order of the Commission pursuant to section 6(c) of the Act, exempting Applicant (which currently has one portfolio, Merrill Lynch New York Municipal Bond Fund ("Fund")) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the Trust to assess a contingent deferred sales charge ("CDSC") on certain redemptions of the Fund's shares, as described below, and to permit the Trust to waive the CDSC in certain cases. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below, and to the Act for the text of the applicable statutory provisions.

According to the application, Applicant is organized as a Massachusetts business trust. Fund Asset Management, Inc., a wholly-owned subsidiary of Merrill Lynch Asset Management, Inc., is the adviser to the Fund, while Merrill Lynch Funds Distributor, Inc., also a wholly-owned subsidiary of Merrill Lynch Asset Management, Inc., is the principal underwriter for the Fund ("Distributor").

Applicant proposes to offer the Fund's shares without an initial sales charge so that investors will have the entire amount of their purchase payments fully invested when made. However, Applicant also proposes to pay to the Distributor of the Fund's shares a CDSC from the proceeds of certain redemptions of it shares. Applicant states that in no event could the amount of such charges, in the aggregate, exceed 4% of the aggregate purchase made by an investor.

Applicant represents that the CDSC will not be imposed on the redemptions of Fund shares that were purchased more than four years prior to redemption or which were derived from the reinvestment of distributions. Also, with respect to shares purchased during the preceding four years, no CDSC will be imposed on amounts representing capital appreciation. Applicant states that for purposes of determining whether a CDSC will be imposed, it will be assumed that a redemption, applies first to shares purchased more than four years prior to the redemption, then to shares derived from the reinvestment of distributions, and, finally, to shares purchased less than four years prior to the redemption. Where a CDSC is imposed, the amount of the charge will depend upon the number of years elapsed since the investor made the purchase payment from which an amount is being redeemed. The first year after purchase, the charge will be four percent of the amount redeemed. Thereafter, the charge will decrease one percent annually until the expiration of five years, at which time no charge will be imposed. Applicant states that, in determining the rate of any applicable CDSC, it will be assumed that a redemption is made of Fund shares held by the investor for the longest period of time within the applicable four-year period.

Applicant proposes to finance the Fund's distribution expenses pursuant to a plan adopted under Rule 12b-1 under the Act ("Plan"). Under the proposed Plan, the Fund will pay an annual fee to the Distributor in order to defray certain costs incurred in connection with the offering of the Fund's shares. Applicant's distribution fee will be calculated on the basis of .50% per annum of the average daily net assets of the Fund.

As noted above, Applicant proposes to waive the CDSC on any redemption following the death or disability of a

shareholder. An individual will be considered disabled for this purpose if he meets the definition thereof set forth in section 72(m)(7) of the Code. Applicant states that the waiver is applicable where the decedent or disabled person is either an individual shareholder or owns the shares with his or her spouse as a joint tenant with right of survivorship, and where the redemption is made within one year of the death or initial determination of disability.

Applicant also proposes to waive the CDSC when a total or partial redemption is made in connection with certain distributions from IRA's or other qualified retirement plans. It is proposed that the charge be waived for any redemption in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keogh Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59-½. The charge would also be waived on any redemption which results from the tax-free return of an excess contribution pursuant to section 408(d)(4) of the Code, or from the death or disability of the employee.

Applicant submits that the exemptions it has requested are appropriate and in the public interest, consistent with the protection of investors and the purposes fairly intended by the Act. Applicant further submits that waiver of the contingent deferred sales charge under the above-described circumstances will not harm Applicant or its remaining shareholders or purchasers. Additionally, Applicant represents that it will fully disclose the waiver provision in the Fund's prospectus. Applicant therefore, requests that the Commission issue an order under section 6(c) as requested. Applicant further requests that, to the extent it organizes further series utilizing a contingent deferred sales charge similar to that of the Fund, such future series be covered by the requested order.

Notice is further given that any interested person wishing to request a hearing on the Application may, not later than September 16, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the Application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20530 Filed 8-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22343; File No. SR-Phlx-85-24]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to Foreign Currency

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 9, 1985 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX") proposes the following amendments to its rules:

1025(a)-(e) No change.

1025(f) An individual who is subject to the regulatory jurisdiction of this Exchange shall not, from any place of business located in the United States effect on an exchange in a foreign country any transaction in foreign currency option contracts. This rule shall not prohibit any transaction permissible under Section 4c of the Commodity Exchange Act and the regulations thereunder.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

This rule change is being proposed in conjunction with the application of the Options Clearing Corporation ("OCC") to amend its rules to implement an agreement between PHLX, OCC and the London Stock Exchange ("LSE"). This agreement provides for the trading of fungible currency option contracts by PHLX and LSE, to be commonly cleared by and settled through OCC. The instant rule proposal requires that individuals within PHLX's regulatory jurisdiction not effect from any place of business located in this country, a transaction on a foreign exchange in foreign currency options. In proposing this rule, the PHLX states its intention that its agreement with LSE and OCC does not alter its membership's obligations with respect to Section 4c of the Commodity Exchange Act.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received by the PHLX concerning the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 18, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20532 Filed 8-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22349; File No. SR-ODD-85-1]

Self-Regulatory Organizations; Trans Canada Options, Inc., the Toronto Stock Exchange, the Montreal Exchange, and the Vancouver Stock Exchange; Order Granting Approvals to Proposed Amendments to Option Disclosure Document

On August 1, 1985, Trans Canada Options Inc., ("TCO"), the Toronto, Montreal and Vancouver Stock Exchanges ("Exchanges") submitted amended copies of an options disclosure document to the Commission pursuant to Rule 9b-1 of the Securities Exchange Act of 1934 ("Act"). The disclosure document discusses the risks and uses of Canadian exchange-traded put and call options available to United States investors. On October 2, 1984, the Commission approved the use and distribution of a disclosure document which discusses the risks and uses of options on equity securities.[1] In connection with the Exchanges' intention to expand the classes of options available to United States investors, the disclosure document is now being amended to include a discussion of the risks and uses of Canadian exchange-traded index and bond options. Currently, TCO is offering options on three separate series of Government of Canada bonds traded on two of the Exchanges. In addition, two of the Exchanges trade options on stock indexes.

Rule 9b-1 provides that an options market must file five preliminary copies of an options disclosure document with the Commission at least 60 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors. This provision is intended to permit the Commission either to accelerate or extend the time period before definitive copies of a disclosure document may be distributed to the public.

The Commission has reviewed the amended disclosure document, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the disclosure document as of the date of this order.[2]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 21, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20531 Filed 8-27-85; 8:45 am]

BILLING CODE 8010-01

[1] Securities Exchange Act Release No. 21365 (October 2, 1984), 49 FR 39400 (October 5, 1984).

[2] Rule 9b-1 provides that the use of an options disclosure document shall not be permitted unless the options class to which the document relates is the subject of an effective registration statement on Form S-20 under the Securities Act of 1933. On April 17, 1985, the Commission, pursuant to delegated authority, declared effective Post-Effective Amendment No. 5 to TCO's Form S-20 registration statement covering the options described in the Listed Canadian Options Disclosure Document. *See* File No. 2-69458.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2194, Amdt. #1]

Pennsylvania; Declaration of Disaster Loan Area

The above numbered Declaration (50 FR 30555) is hereby amended to include the East Deer Township and Borough of Tarentum in Allegheny County. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on September 19, 1985, and for economic injury until the close of business on April 19, 1986.

Dated: August 21, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

James C. Sanders,

Administrator.

[FR Doc. 85-20459 Filed 8-27-85; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Amendment of Notice Regarding Public Hearings

The purpose of this notice is to amend the notice of August 7, 1985 (50 FR 31943) concerning hearings pursuant to the general review of the U.S. Generalized System of Preferences and the acceptance for review of requests for waiver of competitive need limits.

Section I(1) of the August 7 notice stated that the deadline for submission of rebuttal briefs is December 15, 1985. As December 15 falls on a Sunday, rebuttal briefs will be accepted through December 16, 1985.

Section I(2)(C) of the August 7 notice incorrectly stated that determinations relating to section 504(d) of the Trade Act of 1974, as amended, would be announced no later than January 4, 1987 and take effect on July 1, 1987. The notice should have stated that any changes in GSP eligibility relating to determinations under section 504(d) will be announced on or about April 1, 1986 and take effect on July 1, 1986.

Section II of the August 7 notice incorrectly identified case numbers GR-W-267 (TSUS 771-45) and GR-W-272 (TSUS 772.3195) as having been accepted for review. Neither case has been accepted for review.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85-20494 Filed 8-27-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application for an All-Cargo Air Service Certificate

In accordance with Part 291 (14 CFR Part 291) of the Department's Economic Regulations, notice is hereby given that the Department of Transportation has received an application, Docket 43270, from Direct Air Aviation Services, Inc., 712 South Victory Boulevard, Burbank, California, 91502 for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of § 291.12(c) of Part 291, interested persons may file an answer to this application within twenty-one (21) days after publication of this notice in the **Federal Register.** An executed original and six copies of such answer shall be addressed to Docket 43270, Documentary Services Division, Room 4107, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Department's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Dated: August 23, 1985.

Paul L. Gretch,

Director, Office of Aviation Operations.

[FR Doc 85-20534 Filed 8-27-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Department Circular; Public Debt Series No. 28-85]

Treasury Notes of November 15, 1990; Series M-1990

Washington, August 21, 1985.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,250,000,000 of United States securities, designated Treasury Notes of November 15, 1990, Series M-1990 (CUSIP No. 912827 SR 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may also be issued at the average price of Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 3, 1985, and will accrue interest from that date, payable on a semiannual basis on May 15, 1986, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations govening United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a latter date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, August 28, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 27, 1985, and received no later than Tuesday, September 3, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commerical banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amont offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the prive equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of

price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, September 3, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 29, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, September 3, 1985. When payment has been submitted with the tender and the purchase price of the Notes alloted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be regisered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to 'The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying numaber as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitve form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-20520 Filed 8-27-85 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 26-85]

Treasury Notes, Series Y-1987

Washington, August 22, 1985

The Secretary announced on August 21, 1985, that the interest rate on the notes designated Series Y-1987, described in Department Circular—Public Debt Series—No. 26-85 dated August 15, 1985, will be 8⅞ percent. Interest on the notes will be payable at the rate of 8⅞ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-20536 Filed 8-27-85; 8:45 am]

BILLING CODE 4810-40-M

Iran-U.S. Claims Tribunal; Amendment of June 7, 1982 Directive License to the Federal Reserve Bank of New York, Relating to the Payment of Awards Rendered

August 21, 1985.

The Department of the Treasury today issued an amendment to the June 7, 1982 Directive License to the Federal Reserve Bank of New York (the "Fed") relating to the payment of awards rendered by the Iran-United States Claims Tribunal (the "Tribunal"). The Directive License, which was published at 47 FR 25243 (June 10, 1982), instructed the Fed to deduct two percent from amounts received in satisfaction of awards rendered by the Tribunal in favor of U.S. claimants, to pay the two percent to the Treasury to the credit of miscellaneous receipts, and to pay the balance of amounts so received to the claiments designated by the awards.

On July 31, 1985, Congress passed, and on August 16, 1985, the President signed, the Foreign Relations Authorization Act for Fiscal Years 1986 and 1987, Pub. L. 99-13, title V of which deals with claims against Iran. Section 502 of this legislation directs the New York Fed to deduct one and one-half percent from the first $5 million awarded on each claim, and one percent from any amount over $5 million, as reimbursement to the United States Government for expenses incurred in connection with the arbitration of claims of U.S. nationals against Iran before the Tribunal and the maintenance of the

Security Account established pursuant to the Declarations of the Government of the Democratic and Popular Republic of Algeria of January 19, 1981. The Treasury Department has amended the Directive License to make it consistant with this legislation.

By its terms, section 502 is effective as of June 7, 1982, the date of the Directive License. Consequently, the Treasury Department will be refunding to those claimants that have received awards paid from the Security Account the difference between the two percent already deducted and the one and one-half/one percent fee specified in section 502 of Pub. L. 99-93. There is no need for claimants to file any request for a refund. The Treasury Department will be making these refunds automatically and expeditiously.

TO: Federal Reserve Bank of New York, Fiscal Agent of the United States

The June 7, 1982 Directive License (47 FR 25243, June 10, 1082), providing for deductions from awards rendered by the Iran-U.S. Claims Tribunal and payment of awards to U.S. claimants is hereby amended as follows:

1. In the Preamble, delete "the authority of the Independent Office Appropriations Act (31 U.S.C. 483(a))".

2. Delete numbered Paragraphs 1, 2 and 3 and insert in lieu thereof:

As amounts are received from the Security Account provided for in the Declaration of the Government of the Democratic and Popular Republic of Algeria of January 19, 1981, for the execution of arbitral awards, including interest thereon, by the Iran United States Claims Tribunal (the "Tribunal") in favor of United States claimants, to pay the balance of such amounts, immediately following deduction pursuant to section 502 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. 99-93 ("Section 502"), to the U.S. Claimants designated by the awards as recipients, without further deduction or alteration of the amounts.

3. Add at the end of the Directive License:

In making the deductions specified in section 502, FRBNY shall apply the formula set forth in Section 502 to the aggregate amount awarded under each enumerated claim before the Tribunal. Where the Tribunal renders more than one award in one enumerated claim, FRBNY shall aggregate those awards in calculating the deduction under section 502. Where the Tribunal renders one award covering more than one enumerated claim without specifying the amount awarded in each enumerated claim, FRBNY shall calculate the fee based on the total amount awarded. Where, however, the Tribunal renders an award covering more than one enumerated claim and specifies the amounts awarded with respect to each of the enumerated claims covered by the award, such amounts shall not be aggregated and FRBNY shall calculate the fee separately for each such amount.

Treasury Department.

Dated: August 21, 1985.

John M. Walker, Jr.,

Assistant Secretary, (Enforcement and Operations).

[FR Doc. 85-20556 Filed 8-27-85; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the **Federal Register** notifying the public that such a submission has been made. USIA is requesting approval of an information collection requiring the submission of concept papers by the public for conducting a program of instruction for Afghan citizens in the development of independent media services.

DATE: Comments must be received by September 20, 1985.

Copies: Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485-8676. And OMB review: Michael Weinstein, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-4814.

SUPPLEMENTARY INFORMATION: Title: "Request for Concept Papers—Afghan Media Project." The Congress, in the 1985 Supplemental Appropriations Act, has authorized funds for use by USIA in promoting an independent media service for the people of Afghanistan, and the training of Afghans in the media and media-related professions. The Congress also requires a report by USIA within 60 days of enactment regarding the obligation of funds for this program.

Dated: August 22, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85-21493 Filed 8-27-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a revision and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before October 28, 1985.

Dated: August 23, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Revision

1. Department of Veterans Benefits
2. Request for Verification of Employment
3. VA Form 26-8497
4. On occasion
5. Businesses or other for-profit
6. 275,000 responses
7. 45,833 hours
8. Not applicable

[FR Doc. 85-20564 Filed 8-27-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 167
Wednesday, August 28, 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

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:00 p.m. on Friday, August 23, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available for the payment of insured deposits made in The Bank of Bronson, Bronson, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Friday, August 23, 1985.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 23, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-20630 Filed 8-26-85; 12:08 pm]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, September 3, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20602 Filed 8-26-85; 8:45 am]

BILLING CODE 6210-01-M

3

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-37]

TIME AND DATE: 2:00 p.m., Wednesday, September 11, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
5. Investigation No. 701-TA-257 (Preliminary) (Groundfish from Canada)—briefing and vote.
6. Investigations Nos. 731-TA-278/281 (Preliminary) (Certain cast-iron pipe fittings from Brazil, Korea, and Taiwan)—Briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20603 Filed 8-26-85; 9:01 am]

BILLING CODE 7020-02-M

4

LEGAL SERVICES CORPORATION

(Board of Directors)

Tentative Meeting Schedule

SUMMARY: This notice sets fourth revisions in the tentative schedule of meetings of the Board of Directors of the Legal Services Corporation through December 1985 published in the **Federal Register** April 5, 1985. This schedule is tentative and subject to change. Formal notice as required by the Government in the Sunshine Act (5 U.S.C. 552b) will be published in the **Federal Register** no less than seven days prior to a meeting.

September 5-6
Washington, D.C.
October 10-11
Gilford, New Hampshire
November 7-8
El Paso, Texas
December 12-13
Santa Ana, California

FOR FURTHER INFORMATION CONTACT: Dennis Daugherty, Acting Secretary, Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20005. (202/272-4040).

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is a District of Columbia nonprofit corporation created and funded by Congress pursuant to the Legal Services Corporation Act as amended, 42 U.S.C. 2996. The Board of Directors has established three standing committees. The three standing committees are those on Audit and Appropriations, Operations and Regulations, and Provisions for the Delivery of Legal Services. Meetings of committees of the board will usually be scheduled during the time periods set aside for Board business on this tentative schedule, but additional meetings may be scheduled as necessary. This schedule is a tentative one and is subject to change. It is being published for the convenience of the public and not pursuant to statutory requirement.

Date issued: August 23, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-20631 Filed 8-26-85; 12:14 pm]

BILLING CODE 6820-35-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 26, September 2, 9, and 16, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 26

No Commission Meetings

Week of September 2—Tentative

Tuesday, September 3

2:00 p.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)

Wednesday, September 4

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Continuation of 7/23 Discussion on Threat Level and Physical Security (Closed—Ex. 1)

Thursday, September 5

10:00 a.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 6

9:30 a.m.
Oral Presentations on Timing of DOE's Preliminary Determination on Suitability of Sites for Development as Repositories (Public Meeting)

Week of September 9—Tentative

Tuesday, September 10

10:00 a.m.
Discussion and Oral Presentations on Uranium Mill Tailings Regulations (Public Meeting) (tentative)

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, September 11

1:30 p.m.
Discussion of Proposed Station Blackout Rule (Public Meeting)

3:00 p.m.
Discussion of Plant Issues with Regional Administrators (Public Meeting)

Thursday, September 12

2:00 p.m.
Staff Briefing on TVA (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 13

10:30 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

Week of September 16—Tentative

Tuesday, September 17

2:00 p.m.
Status of Progress on Environmental Qualification of Electrical Equipment (Public Meeting)

Wednesday, September 18

9:00 a.m.
Continuation of 7/24 Briefing on Davis-Besse (Public Meeting)

10:30 a.m.
Status of Interpretation of Appendix R—Fire Protection (Public Meeting)

Thursday, September 19

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Dated: August 22, 1985.

Julia Corrado,

Office of the Secretary.

[FR Doc. 85-20695 Filed 8-26-85; 3:43 pm]

BILLING CODE 7590-01-M

6

POSTAL SERVICE

(Board of Governors)

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Thursday, September 5, 1985, in Washington, D.C., and at 8:30 a.m., on Friday, September 6, 1985, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington D.C. As indicated in the following paragraph, the September 5 meeting is closed to public observation. The September 6 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245-3734.

By telephone vote on August 23 and 26, 1985, a majority of the Members contacted and voting, the Board voted to take up at a meeting closed to the public on September 5, 1985, the following item:

(1) Discussion of personnel matters.

The Board of Governors determined that, pursuant to section 552b(c)(6) of Title 5, United States Code, and section 7.3(f) of Title 39, Code of Federal Regulations, the discussion of personnel matters is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determined that the public interest does not require the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of Title 39, code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(6) of Title 5, United States Code, and section 7.3(f) of Title 39, Code of Federal Regulations.

Agenda

Thursday Session—September 5, 1985—1:00 p.m. (Closed)

1. Discussion of personnel matters.

Friday Session—September 6, 1985—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 5-6, 1985.
2. Remarks of the Postmaster General.
3. USPS Tentative Budget Program.
   (Mr. Cummings, Senior Assistant Postmaster General, Finance Group, will present the Postal Service's tentative budget program for fiscal year 1986.)
4. Board of Governors Operating Budget, FY 86.
   (Mr. Harris, Secretary for the Board, will present a proposed operating budget for the Board of Governors for fiscal year 1986.)
5. Postal Rate Commission Budget.
   (Under the Postal Reorganization Act, the Postal Rate Commission periodically prepares and submits to the Postal Service a budget of the Commission's expenses. The budget is to be considered approved as submitted if the Governors of the Postal Service do not act to adjust it by unanimous written decision. This matter is included on the agenda to give the Governors an opportunity to act on the Commission's budget.)
6. Consideration of Proposed Board Resolutions:
   a. Borrowing in FY 85.
   b. Cooperation with the Postal Rate Commission.
   c. FY 86 Preferred Mail Rates.
7. Update on International Mail.

(Mr. Duka, Assistant Postmaster General, International Postal Affairs Department, will report on international mail operations.)

8. Capital investments:
   a. Computerized On-Site Data Entry Systems (CODES).
   b. Aurora, Illinois (New Main Post Office and Vehicle Maintenance Facility.)
   c. Five- and Seven-ton Cargo Vans.
9. Report of the Regional Postmaster General.
   (Mr. Horgan, Regional Postmaster General, will report on postal conditions in the Eastern Region.)
10. Briefing on the Safety Program.
   (Mr. Howard, Director, Office of Safety and Health, will report on the Postal Service's Safety Program.)
11. Consideration of Tentative Agenda for the September 30-October 1, 1985, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 85-20674 Filed 8-26-85; 2:44 p.m.]

BILLING CODE 7710-12-M

federal register

Wednesday
August 28, 1985

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 611
Foreign Fishing; Final Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 41049-5104]

Foreign Fishing

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

ACTION: Final rule.

SUMMARY: NMFS revises the general regulations governing foreign fishing within the fishery conservation zone (FCZ), 50 CFR Part 611, Subparts A and B. This action is necessary because the regulations no longer reflect current and projected operations of the fisheries; enforcement efforts are detecting an increasing number of sophisticated and severe violations of the regulations; and amendments have made the regulations disjointed, contradictory, and increasingly difficult to use. The revision will bring the regulations in line with current practices in the fisheries, reduce illegal fishing and associated losses of resources and revenue, and simplify and improve the utility of the regulations.

EFFECTIVE DATE: October 28, 1985, with the following exceptions, which will become effective January 1, 1986:

In § 611.5(c)(1)(ii) and (iii) and (c)(2)(ii), and (iii), the requirement for deployed gear to have "a light visible for two miles in good visibility, and a radio buoy;"

All of § 611.6(b) [the old § 611.6(e) remains in effect until superseded by this regulation];

All of § 611.6(d)(3) [The old § 611.6(c)(3) remains in effect until superseded by this regulation]; and

All of § 611.9 [The old § 611.9 (a) through (d), (h) and (i) and Appendix III to § 611.9 remain in effect until superseded by this regulation].

ADDRESS: Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: LCDR William D. Chappell, USCG, or Alfred J. Bilik, at 202-634-7432.

SUPPLEMENTARY INFORMATION: NMFS revises Subparts A and B of the foreign fishing regulations issued under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.)* (Magnuson Act). The revision updates the regulations to reflect changes in the Magnuson Act, including the requirements for 100 percent observer coverage aboard foreign fishing vessels (FFV's); meets enforcement needs for preventing or curtailing sophisticated violations of the regulations; reflects the shift in foreign activity from directed fishing towards joint ventures with U.S. fishing vessels; conforms more closely to foreign fishing operations; clarifies existing regulations and practices; and eliminates redundancies.

This revision reorganizes almost every section of the two affected subparts. Some sections are moved and others consolidated or deleted. One section is added. Along with substantive changes, the reorganization makes the regulations more usable by putting related provisions together and making headings more descriptive. Subparts A and B serve as the foundation upon which to build management measures contained in the subsequent subparts. Redundant requirements contained in those subparts are deleted or revised by a companion technical amendment. A distribution table is included to enable cross-referencing from the current regulations.

Background

Proposed rules were published at 49 FR 50498 on December 28, 1984. This action incorporates final regulations on 1985 poundage fees published at 50 FR 460 on January 4, 1985, and 1985 permit fees published at 50 FR 8335 on March 1, 1985. It also incorporates final regulations on a supplementary observer program published at 50 FR 8131, on February 28, 1985. Interim regulations requiring payment of financial assurances under certain conditions were published at 49 FR 14356 on April 11, 1984, and are included. These interim rules are published here in final form.

Public Law 97-453 amended the Magnuson Act to allow recreational fishing by foreign vessels which are not operated for profit within the FCZ. This action defines recreational fishing for the purposes of this part, and adds a section which exempts foreign recreational fishing from Federal permit procedures and other foreign fishing regulations. Foreign recreational fishing vessels must conform with other Federal regulations and with State regulations governing recreational fishing as though they were domestic vessels.

NMFS has observed an increase in the number of serious, systematic violations of these regulations over the last several years. The presumed motives for these violations are to catch quantities of fish in excess of the allocations without having the fishery closed, and to avoid paying poundage fees, which have increased more than 250 percent since 1980, on the excess catch.

In calendar year 1983 enforcement personnel documented 54 infractions of the reporting requirements and 87 infractions of recordkeeping requirements. Violations of these regulations resulted in the seizure of six FFV's. In calendar year 1984, enforcement personnel documented 103 infractions of the reporting requirements, and 56 infractions of the recordkeeping requirements. These categories of infractions are most often associated with "under logging" violations. The violations consist of falsely representing the amount of catch by failing to log the catch, logging more valuable species as less valuable ones, or using an incorrect product recovery rate to compare the product in the vessel's holds to the amount of whole fish reported caught, thus making the catch seem smaller than it actually was; transferring fish to another vessel and recording nothing or only part of it; or some combination of the above. These violations may involve conspiracy among several vessels and companies and falsification of or failure to make required reports. In one case involving numerous vessels over a two-year period more than 4,000 metric tons of catch went unrecorded, resulting in a loss to the United States of almost $100,000 in poundage fees.

These regulations are designed to prevent or reduce the potential damage of these systematic "underlogging" violations. In doing so the regulations specify responsible parties, tighten and specify new reporting requirements, and make logkeeping requirements more explicit. These regulations have the additional benefit of making the job easier for enforcement personnel by consolidating and standardizing information requirements which will reduce boarding time per vessel and allow more boardings for any given length of time.

Since the last complete revision of these regulations, the foreign fishing activity in the FCZ has shifted significantly from directed fishing for allocations to joint ventures assisting U.S. fishing vessels by processing and transporting their catch. In 1984, joint ventures in the FCZ accounted for a catch of 665,000 metric tons, a tenfold increase from 1980 and equivalent to 48 percent of the foreign catch. Because joint ventures are becoming the predominant foreign fishing activity within the FCZ, and have already become so in the Northwest Atlantic fishery and the Pacific Coast groundfish fishery, these rules address joint ventures specifically. Specific conditions and restrictions for joint venture permits are codified in the regulations. Other procedures which have become industry practice by mutual agreement between fishing vessel operators and NMFS are also codified to provide clear and firm

guidance to foreign joint venture fishermen and to provide for the enforcement of these practices.

These rules also clarify Agency practice and procedures for restricting certain foreign fishing permits for the national defense or security when such interests could be significantly impaired unless the permits were so restricted.

The rules conform with present FFV operations as much as possible, consistent with management requirements. The required information is similar if not identical to records currently kept by FFV's. This has minimized recordkeeping on the part of foreign fishing vessel owners and operators without compromising the information requirements needed to ensure complete and accurate reporting of catch.

NMFS revised these regulations to be more readable and to be more useful to foreign fishermen and enforcement personnel. They are generally written in the active voice, and specify the person or level which NMFS expects to complete the requirement. The regulations consolidate and expand the appendices at the end of Subpart A for the convenience of the user. Unnecessary provisions within the regulations and provisions of specific fisheries which are redundant due to their incorporation as general regulations and references to the subparts revised in these regulations are deleted by a companion technical amendment.

The definition of "fishing" in § 611.2 has been changed from the proposed definition by reinserting the phrase used in the current regulations, "fish over which the United States exercises exclusive fishery management authority." The U.S. asserts jurisdiction over support activities conducted in the FCZ only if the supported harvest activity involves fish under U.S. management authority. Because transfers of fish in the FCZ—though the fish may have been taken elsewhere—have occasionally created enforcement problems, § 611.3(a)(1)(ii) has been added. That paragraph states a rebuttable presumption that fish on board a vessel conducting fish transfer operations in the FCZ are fish over which the U.S. exercises exclusive fishery management authority. Thus vessels involved in transfer activities in the FCZ are required to have a permit issued under § 611.3, unless they can prove the fish were taken outside the FCZ. A definition of "fish over which the United States exercises exclusive fishery management authority" has also been added to § 611.2.

Changes from the current 50 CFR Part 611 are discussed below. NMFS has made editorial changes reflecting spelling, punctuation, and nomenclature throughout the regulations which are not identified specifically.

Comments

NMFS received comments from 20 individuals and organizations. The following summarizes the comments received and NMFS' response to these comments.

Comments 1: Most commenters requested that the revised regulations not be implemented until January 1, 1986, the next fishing year for most fisheries and the beginning of the next permit year. One commenter requested that the final regulations be published not later than September 1985 (a minimum of two months prior to their implementation). The reasons for requesting delayed effectiveness included:

1. The time required for fishermen to become familiar with the revisions;
2. The time necessary to prepare and learn to use the new types of logbooks;
3. The time required to obtain new pilot ladders where FFV's are not already equipped with one meeting the standards;
4. The time required to obtain and install required communications equipment and modify equipment for new radio frequencies; and
5. An allowance for incorporating any changes to the regulations necessitated by revisions to the Magnuson Act, due for re-authorization this year.

Response: The comments are adopted in part. The majority of these regulations are effective 60 days after publication to allow sufficient time for translation and transmittal to the foreign fishing fleets. The provisions which require revised recordkeeping, specific equipment, or equipment modifications are effective January 1, 1986. The action was not delayed to await the re-authorization of the Magnuson Act because of the desire to make the regulations, especially the ones affecting observers and reports, effective as soon as possible for safety and enforcement reasons, and because the changes in the Magnuson Act during re-authorization are not expected to substantially change the methods of regulating foreign fishing. Publishing the regulations now also allows foreign fishermen adequate time to prepare logbooks and install equipment before they are required in the next permit year.

Comment 2: It is not altogether clear what latitude the Regions have in deviating from Subpart A. We hope that, as in the past, we may refine requirements to meet the needs of our particular fisheries.

Response: The regulations of Subpart A are meant to be the minimum requirements for FFV's fishing within the FCZ. Subparts C through G are meant to be used by the NMFS Regions and the Regional Fishery Management Councils to implement Preliminary Management Plans and Fishery Management Plans and modify Subpart A to reflect the needs of each particular fishery. These modifications may change or be more or less restrictive than Subpart A, as necessary to manage the fishery.

Comment 3: Are vessels which have been exempted from certain reporting requirements under Subpart D, § 611.61(e)(2) required to submit the new reports?

Response: Vessels which report under the requirements of Subpart D § 611.61(e)(2) will continue to report under the same exemptions. Technical amendments implementing the changes to Subpart A in the other subparts are limited to revising the references, deleting redundant requirements now included in Subpart A, and moving fishery-specific provisions to the appropriate subpart.

Section 611.2

Comment 4: The definition of the term "Exclusive Economic Zone" (EEZ) should be deleted since the term EEZ is not used in the Magnuson Act or elsewhere in the text of the foreign fishing regulations.

Response: The definition of the term EEZ is retained to allow for cross-referencing to the Governing International Fishery Agreements (GIFA's), which nations must have prior to obtaining fishing permits for their vessels, and which contain the general conditions governing fishing off the United States.

Comment 5: The term "joint venture" is broadly and adequately defined in the first sentence of the definition. The second sentence, while it does in fact reflect present circumstances, is superfluous to the definition.

Response: NMFS agrees the first sentence alone gives an adequate definition. However, the second sentence is retained as an example of the most common type of joint venture.

Comment 6: The definition of "prohibited species" in § 611.2 should match that of § 611.11(c).

Response: The definition is revised to include species caught or received in excess of an allocation or authorization as prohibited species.

Comment 7: The definition of "processing" should be revised to clearly allow a vessel to process fish for itself.

Response: The definition is revised.

Comment 8: The definition of "recreational fishing" was the subject of two comments. The first suggested that the term "FFV" be changed to "foreign vessel." The second suggested that the definition, as stated, might mean that the activities of scientific research vessels would fall under the definition of recreational fishing.

Response: The proposal to substitute the term "foreign vessel" for "FFV" is accepted. Scientific research is not fishing according to the definition of fishing in these regulations; moreover, scientific research is now specifically excluded from the definition.

Comment 9: Several commenters expressed concern that harassment of observers was difficult to define or determine, particularly because of differences in cultures. One commenter recommended a definition for sexual harassment to clarify what constitutes that form of harassment.

Response: The definition is substantially adopted. The key word in the definition is "unwelcome", which is simply communicated and clear to all cultures.

Section 611.3

Comment 10: Several comments on § 611.3(b) expressed concern that owners and operators would be held responsible for unauthorized criminal acts committed by their employees. Commenters suggested several remedies, from removal of the paragraph to limiting owners and operators to strictly civil responsibility.

Response: NMFS does not intend nor does U.S. law allow for holding employers criminally responsible for unauthorized criminal acts of their employees. However, owners and operators continue to be civilly responsible for their FFV's while in the FCZ, as required by the Magnuson Act and the GIFA signed by their nation and the United States, which controls foreign access to the FCZ for fishing. The paragraph is revised to clearly limit owners and operators to civil responsibility for actions of their agents and employees. Owners and operators remain responsible for their own actions, which may result in criminal prosecution under the Magnuson Act.

Comment 11: The definition of "activity code 4" is unclear. It should be amended to include the language now found in the regulations because activity codes 1 through 3 do not specifically refer to receipt of U.S.-harvested fish and may cause uncertainty in the future.

Response: The activity codes are unchanged; however, the definitions of processing, scouting, and support now contain specific references to assisting U.S. fishing vessels.

Comment 12: The language at the end of the first sentence of § 611.3(c) that reads "as modified by regulations of this part, and by the conditions and restrictions attached to the permit" should be deleted. This language is unclear, and does not indicate what is modified.

Response: Paragraphs (c) and (e)(vi) have been revised by adding references to what "conditions and restrictions" and "additional restrictions" might contain. The language makes it clear that a permit may be modified.

Comment 13: Section 611.3(d) should be eliminated. Frequently there is a need to substitute different vessels at the last minute, and the requirement of filing a new application for the substituted vessel would be burdensome.

Response: Requiring substitute vessels to go through the normal application process is not new; only the requirement to pay the application fee is new. The change reflects the fact that it costs as much to process a substitute application as an original application. The Regional Fishery Management Councils generally require only notification of substitute vessel applications rather than a complete review. Paragraphs (d)(1) and (d)(4) have been revised to more clearly reflect this process. NMFS expects this process to take less than a week for routine substitutions.

Comment 14: A new paragraph should be added under § 611.3(e)(1) which would require the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) to determine that the FFV applying for a permit has no history of violating provisions of fishery management plans.

Response: The comment is not adopted. While violation history may be considered in the permit approval process, decisions concerning individual permit approvals/disapprovals have customarily been made under the provisions of 15 CFR Part 904 as a form of sanction (see § 611.3(i)). These decisions are generally made in response to the violations, rather than later during the permit approval process.

Comment 15: Paragraph (e)(1)(ii) of § 611.3 should be revised to reflect the scope of the Secretary's authority in imposing financial assurances.

Response: The paragraph is revised to clarify that § 611.22 governs the determination and imposition of all fees, surcharges and financial assurances.

Comment 16: If the blank forms referred to in § 611.3(e)(2) are not available, may the previous year's forms be modified as an interim measure? Additional restrictions to permits should also be distributed in time to be able to transmit them to the FFV's by the opening of the fishing season.

Response: Paragraph (e)(2) is modified to authorize the Assistant Administrator to allow for use of old permit forms at his discretion. NMFS anticipates continued problems with timely distribution of additional restrictions due to the short time period available to evaluate applications and the extensive reviews required by the Councils and the NMFS regions. Telex or facsimile copies of the additional restrictions are acceptable as attachments to the permit form.

Comment 17: In § 611.3(e)(3)(ii) "authorized fisheries" should read "permitted fisheries" to reduce confusion with "authorized species" in joint ventures. A new paragraph (v) should be added which requires a permit to contain such specific permitting information as is required by the regulations of a fishery management plan regulating the authorized fishery or a fishery for prohibited species which are taken as bycatch in the authorized fishery.

Response: "Authorized fisheries" is changed to "permitted fisheries" in § 611.3(e)(3)(ii). A new § 611.3(e)(3)(v) is unnecessary since regulations for the specific fishery or additional restrictions appended to the permit could cover any additional required information.

Comment 18: The second sentence of § 611.3(i) should be amended to clarify that due process is required before imposing sanctions on permits.

Response: Section 611.3(i) is revised to clearly identify that 15 CFR Part 904 is used in permit suspension and revocation.

Comment 19: Several commenters objected to the shortening of the comment period and deletion of the hearing provisions regarding permit modifications contained in the old § 611.3(i). They felt these actions would be a violation of due process, and impossible to meet, given translation and transmittal time constraints. One commenter felt the provision could be construed as an erosion of the procedural rights of permit holders under 15 CFR 904.300, Subpart D.

Response: The current procedures are retained in part. Publication in the **Federal Register** and a 30-day comment period are retained for written comments on proposed additional restrictions for permit holders, other

interested parties, and the public. The opportunity for an informal hearing is not retained, because neither the Administrative Procedure Act nor the Magnuson Act requires such a hearing for permit modifications, and the provision has never been used.

Comment 20: Does the 15-day deadline on submitting changes to application information required by § 611.3(k) begin on the date of the change, or the day immediately after the event occurred? Please clarify what NMFS deems to be a change in ownership. For example, if a vessel is jointly owned by several owners, would sale of a minority owner's interest to the remaining owners constitute a "change in ownership" within the meaning of § 611.3(k)?

Response: The calculation of the 15 calendar-day requirement does begin with the day after the change, as suggested. Paragraph (k)(1) has been revised to reflect the change. In determining ownership, NMFS is primarily interested in those individuals or companies who are actually controlling the FFV. NMFS considers the owner of an FFV to be the person (or company) owning more than 50 percent of the vessel or, in the case of several owners with no person owning more than 50 percent, the person owning the largest percentage of the vessel. Charterers and operating companies controlling the vessel are considered equal in liability to owners for the purpose of reporting changes in charters and operations agreements.

Section 611.4

Comment 21: The proposed § 611.4 imposes serious communications burdens upon FFV's especially those operating in the FCZ off Alaska. It would drastically increase the number and type of telegraph and radio communications as compared with present requirements. Because of problems entirely beyond the control of foreign fishing vessels, it is not possible to meet these requirements. Some of the problems follow:

a. Coast Guard communications facilities in Alaska are inadequate to handle the increased radio traffic and stringent time requirements required by the proposed regulations.

b. The radio operators of many small fishing vessels have not obtained radio licenses for such international communications as communications between commercial facilities in the United States and foreign fishing vessels.

c. Many small fishing vessels are equipped with only limited communications facilities which would be inadequate to reach the Kodiak Communications Facility from some portions of the operating areas if the proposed regulations are implemented as drafted.

d. Due to environmental conditions off Alaska, especially in the summer and during daylight, communications with the Coast Guard communications facility in Kodiak are difficult.

e. At certain times, the very volume of communications to the Kodiak Coast Guard Communications Facility has made it impossible to transmit on a timely basis. While foreign fishing vessels are attempting to transmit these messages, they cannot conduct other radio communications of importance to their fishing operations, such as receiving weather forecasts, home office facsimile communications, or essential operating communications with other foreign vessels.

f. Emergency communications involving ship safety, such as sudden shifts of weather and sea conditions, rightfully have priority over routine operational communications. During these times, radio frequency 500 KHZ becomes unavailable to other foreign fishing vessels for many hours at a time.

g. Most fishing vessels have only a single radio operator onboard. This further reduces their ability to transmit required messages at all times. If the new regulations are implemented, the workload for compliance will increase so substantially that it will be virtually impossible for these radio operators to conduct other necessary radio communications beyond those specifically required by § 611.4.

h. The number and quantity of messages required by the existing regulations have increased year by year. Current reporting requirements include action reports, weekly observer reports, reports on observer embarkation and debarkation, and other reports. Since 1983, a weekly report on PSC catch has been added to the weekly observer report. The implementation of 100 percent observer coverage has also substantially increased the radio transmission requirements.

i. As the number and quantity of messages have increased year by year, the number of misreceived and mistransmitted radio messages by U.S. communication facilities have also increased, requiring foreign vessels to retransmit messages.

Response: The final regulations represent the minimum reporting requirements which NMFS considers necessary to manage the foreign fisheries in an environment where some foreign fishermen have consistently used the previous reporting requirements to avoid boardings and audits of their records disclosing amounts of fish they have on board. NMFS has also tried to minimize the impact of these regulations on fishing operations by relaxing some restrictions included in the proposed rules.

Regarding the problems with communications off Alaska, the facilities at Coast Guard Communications Station Kodiak are adequate for the use for which they were intended, namely, to handle emergency communications with all vessels and Coast Guard and NMFS routine communications with foreign fishing vessels regarding observers and other enforcement and management matters. Communications Station Kodiak is not now and has never been considered to be the sole avenue of communications between FFV's and the Coast Guard and NMFS in Alaska in competition with commercial facilities there and elsewhere. The Coast Guard and NMFS prefer that reports be made via commercial facilities wherever possible, particularly due to the environmental conditions and high traffic load. However, to reduce the traffic through Kodiak, § 611.4(b) is revised to allow the alternate use of other Coast Guard Communications facilities when necessary.

There are currently at least seven commercial stations in the U.S. and Canada that are capable of conducting communications with foreign vessels and retransmitting information to NMFS and the Coast Guard using either 500 KHZ or Telex. There are additional facilities in the FFV's home countries and elsewhere.

NMFS understands increased license, personnel, and radio equipment requirements, if necessary, represent an increase in the cost of doing business in the U.S. FCZ. NMFS considers such cost necessary to adequately manage the foreign fisheries. NMFS has tried to minimize the impacts by reducing time constraints in some cases and allowing for combined reports wherever possible. However, NMFS considers FFV's fishing independently within the U.S. FCZ to be conducting an international voyage, and capable of communicating with commercial U.S. communications facilities as well as U.S. government facilities. The legislatively mandated 100 percent observer coverage, with the attendant increase in message traffic, report transmittal, and port calls, makes these requirements even more necessary.

Comment 22: The reporting requirements of § 611.4 should not apply to the Northwest Atlantic Fishery, since

existing regulations in § 611.50 have already established extremely severe restrictions for that fishery which have made efficient fishing operations difficult.

Response: The reporting requirements, as presented in this final rule, are appropriate for the Northwest Atlantic Fishery. They are tailored to accommodate joint ventures, which represent the large majority of foreign fishing effort in that fishery. Joint ventures are not limited to the "fishing windows" restricting directed fishing; therefore new recordkeeping and reporting areas needed to be established. The new requirements reflect the additional restrictions currently attached to joint venture permits.

Comment 23: Foreign fishing vessel operators have no control over the delivery of messages, as required by § 611.4(b), once they are transmitted off the FFV. The requirement to assure delivery of BEGIN and CEASE messages should be dropped. Reports should be considered delivered when they are transmitted to any U.S. communications facility.

Response: The Coast Guard and NMFS have determined time of delivery to be when the message is receipted for by a Coast Guard communications facility or when delivered to the appropriate Coast Guard or NMFS office via Telex. Since Coast Guard and NMFS offices have 24-hour automatic Telex receivers, the time of transmittal of the Telex is essentially the time of delivery. Commercial radio facilities, which forward messages via Telex or other means, advertise and may guarantee time of delivery of messages once delivered to their facility. The FFV operator has the responsibility to transmit reports, by whatever means, so that they are delivered on time. NMFS realizes that a report may be misplaced and not forwarded by a servicing communications facility in a timely manner, or that it might be garbled in retransmission. In these rare circumstances NMFS will consider the situation as mitigating circumstances in determining any appropriate legal action.

Comment 24: The requirement to use Telex or radiotelegraphy is burdensome and may require vessels to install radiotelegraphy equipment and add a radio operator to the crew.

Response: FFV operators are not required to transmit reports via Telex or radiotelegraphy unless their vessel is equipped to do so. However, voice reports to the Coast Guard or NMFS must be in English (see § 611.4(b)). Voice reports are not encouraged because of their susceptibility to garbles in transmission. Reports may be transmitted to the designated representative by voice for retransmittal via Telex.

Comment 25: It is unclear in § 611.4 (b) and (g) who are the actual recipients of the reports. You should develop a table to show where each report should go.

Response: The second and third sentences of § 611.4(b) and Table 2 to Appendix A have been revised and a new Table added to Appendix A to clarify the addresses of reports.

Comment 26: The use of Telex as prescribed in § 611.4(b) is neither appropriate nor practical in many cases. The Telex message must be sent from the FFV to a radio communication station in the home country, and from there to the individual company which operates that vessel. There may be additional need for inquiry between the FFV and the company before the messages can then be transmitted to the United States. It will take at least two days to accomplish the transmission, more when weekends are involved, and even more if the particular companies are located far from large cities.

Response: The above method, although cumbersome, is certainly adequate for the transmittal of weekly reports, which are due four or more days after the end of the week. It seems that FFV operators who are authorized by their company to transmit information directly to the Coast Guard could also be authorized to transmit to a radio communication station in the home country for retransmittal to the Coast Guard and NMFS via Telex. If the FFV operator wanted to send the information in code, such as the results of a transfer, it could be encoded on the FFV, transmitted to a shore station for forwarding to the company representative or the nation's designated representative, who could then decode it and retransmit it to the Coast Guard and NMFS via Telex. Because transmittal and receipt of Telex messages are essentially instantaneous, such a system avoids a possible ten-hour delay in transmittal of the message through Coast Guard Communications Station Kodiak, as mentioned in the comments.

Comment 27: Activity reports required under § 611.4(c) should include a confirmation code at the end to ensure accurate transmission of the message.

Response: The comment is accepted and incorporated as part of the instructions on completing vessel activity reports in Appendix B to Subpart A. While it will increase the length of messages, it will reduce the time required for transmission, especially for radiotelegraph messages, by reducing the number of errors requiring the retransmittal of a message.

Comment 28: Several commenters requested the deletion of the 48-hour advance delivery requirement for BEGIN and CEASE reports under § 611.4(c) and a return to the 24-hour advance delivery requirement for a variety of reasons related to FFV operations and equipment.

Response: The circumstances generating the proposal for a 48-hour advance report no longer exist; BEGIN and CEASE reports are still required within 24 hours of transmittal. The advent of full observer coverage has stopped a practice by some FFV's of avoiding boardings by shifting out of an area whenever an enforcement unit appeared in the area. Observer coverage has reduced their opportunity to underlog their catch, and routine reports by observers have more accurately established the positions for subsequent boardings prior to those FFV's departures from the FCZ.

Comment 29: An arrival message ten days in advance of an FFV's entry into the FCZ, included in previous drafts of the proposed regulations, would help to ensure that an observer would be available, and would avoid unnecessary expense in travel money if the ship was either delayed or canceled. The required effort plans would not alleviate the need for this type of message.

Response: The effort plan required by § 611.8(b) requires notification of any variation over five days. This, plus informal notification of arrivals by designated representatives, should provide sufficient advance notice of FFV arrivals to place observers on them expeditiously. If it does not, NMFS will reconsider the requirement for an arrival message specifying only the day and place of entry of the FFC into the FCZ.

Comment 30: Section 611.4 should indicate what vessel reports are required for fishing vessels entering the FCZ from the high seas to participate in joint ventures in internal waters or for fishing vessels engaging in fishing immediately after joint venture activities in the FCZ or internal waters. The section does not clearly state when the message must be sent.

Response: The DEPART report described at § 611.4(c)(2) has been revised to include joint ventures in internal waters as a reason for a temporary departure from the FCZ and to clarify when it must be sent. An FFV which begins a joint venture in internal waters without first fishing in the FCZ would not be required to send any reports. An FFV subsequently beginning fishing in the FCZ must submit a BEGIN

report as though the FFV were first entering the FCZ.

Comment 31: Change § 611.4(c)(4) to allow an FFV to shift fishing areas even though a consolidated SHIFT report for fishing along a boundary area has already been submitted for that day.

Response: The comment is incorporated in § 611.4(c)(4). The intent of the revision is to allow some flexibility in reporting for FFV's fishing along fishing area boundaries, not to limit their ability to shift fishing areas.

Comment 32: If the JV OPS messages of § 611.4(c)(5) are not received, is directed foreign fishing assumed, even though the FFV is not permitted for directed fishing?

Response: NMFS considers an FFV which has not submitted a START JV OPS report to be engaged in, processing for, or supporting directed foreign fishing, as allowed by its permit. An FFV which will be used exclusively in a joint venture must still submit JV OPS messages prior to and after conducting those operations, as well as the other reports. This information is critical to the management of the fisheries in determining daily catch rates for particular species, especially those incidental catch species with very low quotas.

Comment 33: Both CHANGE reports required under § 611.4(c)(10) and CANCEL reports required under § 611.4(c)(11) require transmission and delivery prior to the date and time of the event in the original message. This requirement is impractical and should be eliminated. Even if the communications channels were adequate to handle this traffic, often changes in plans must be made at the very last minute, and there is no reasonable opportunity to notify U.S. authorities in advance. The CHANGE report should be made applicable to all reports within § 611.4.

Response: CHANGE reports have been revised to allow for submission of reports under the same time constraints as the original report. CANCEL reports have been revised to require only transmittal of the report prior to the date and time of the reported event. Changes to reports after the event may be considered a violation, to prevent FFV operators from submitting revised reports just prior to boardings in an attempt to justify illegally caught fish on board. If legitimate errors in reports are discovered, FFV operators should still submit CHANGE reports to preclude more serious violations. NMFS will consider mitigating circumstances, such as errors in transmission or addition, in the submission of late reports. Section 611.4(f) has been revised to provide a method of correcting weekly reports.

Comment 34: The time limit for transmitting the OFFLOADED report under § 611.4(c)(7) should be increased from 12 hours to 24 hours after the transfer or to 12 hours after the end of the day (GMT), since communication congestion with the Coast Guard in Kodiak and static problems frequently prevent more timely reporting. The OFFLOADED report should be simplified to transmit only the following six product lines of fish products transferred: (1) Canned product, (2) fish meal, (3) fish oil, (4) frozen surimi, (5) frozen otoshimi, and (6) products other than items (1) to (5) above; because the specific fish products produced by a vessel are proprietary information and the burden of transmitting large amounts of telegraphic information would be eased. The RECEIVED report is redundant and should be deleted to reduce message traffic.

Response: The comments, if implemented, would defeat the purpose of the required reports, which is to put both the offloading and receiving vessels on record in a timely manner as to what was transferred. Under previously existing regulations, FFV's could offload the round weight equivalent of more product than was claimed in the vessel's records. The support vessel would accept the product and either underlog it or log its actual weight, but in either case go elsewhere or depart the FCZ before enforcement units could verify the catches. Twelve hours is sufficient time for an FFV's crew to determine the product transferred and send in a message, since good seamanship as well as good business practices dictate that the FFV operator know what is in his vessel's holds. If the information is considered proprietary, the FFV operator has the opportunity to use methods other than radiotelegraph through Kodiak. The six product lines suggested in the comment are inadequate, particularly because they do not break down the various types of dressed and filleted fish, which have widely varying product recovery rates, making comparisons of actual weight and products on board with the appropriate messages impossible. The RECEIVED report performs the function of verification of the OFFLOADED message and prevents the excuse that one or the other vessel erroneously recorded the transfer.

Comment 35: Section 611.4(c)(6) should be amended to allow for greater leeway in reporting the position of a transfer and to allow the report to be transmitted after the transfer takes place, due to problems in accurately determining where the transfer will take place, based on drift of the vessels, sea conditions, and the harvestability of particular species.

Response: TRANSFER reports require only that the report be transmitted prior to beginning the operation. There is no specified time frame as to how far in advance the FFV operator must make the report. FFV operators control fishing operations and may advance or retard transfer operations and the attendant messages at their discretion. FFV drift may be stopped by anchoring in shallow water and can sometimes be slowed by use of engines. High seas will prohibit transfers. To avoid the complications of weather and sea conditions, the paragraph is revised to define a transfer operation as beginning when the first product is moved from one FFV to another. This will allow the vessels to meet and make all preparations for a transfer prior to sending a report. NMFS requires the support vessel to submit the TRANSFER report because it routinely has more powerful and extensive communications facilities.

Comment 36: The time and position requirements for submitting CHANGE reports and the criteria for determining a violation of activity reports are too stringent and impractical from an operational standpoint.

Response: NMFS considers it incumbent on foreign fishermen to accurately report their activities. The criteria specified in § 611.4(c)(10) and § 611.4(d) are currently used in determining whether a particular FFV activity report was submitted in violation of § 611.4. The current regulations allow no leeway in either time or position of activity reports. All independently operating foreign fishing vessels use either satellite navigation or LORAN C electronic navigation system, or both, with position accuracies to within one-half nautical mile or one-quarter nautical mile respectively. FFV's may easily navigate to a position within a circle 10 nautical miles in diameter. Experienced navigators can generally estimate the speed of advance of their vessel in steady sailing and time of arrival at a specific point to within one hour several days in advance. Because the advance notice required by the BEGIN and CEASE messages now remains at 24 hours, FFV operators can easily arrive at a specific position within four hours before or after an estimated time of arrival. Because navigators are inherently cautious and tend to underestimate their vessel's speed of advance to allow for weather, etc., the most common occurrence will be an early arrival at a position given in a

BEGIN report. This situation could normally be remedied by slowing the speed of advance to arrive within the time constraints or loitering in the area for a few hours. Accurate estimates of time should not be a problem for other reports due to the short distances involved. NMFS will consider circumstances beyond the control of the FFV operator, such as unexpected storms or major mechanical breakdowns, in determining the seriousness of a violation.

Comment 37: The requirement of reporting the disposition of U.S.-harvested fish received in a joint venture operation should be deleted from the RECREP report required by § 611.4(f)(3). This deletion would simplify the weekly report and relieve the work of radio operators.

Response: The requirement has been modified. The amount of catch discarded by FFV's in joint ventures in the Pacific Coast groundfish fishery is necessary for management of that fishery and will be retained in Subpart E. The disposition of any fish return to U.S. fishermen is needed to ensure that fish are not counted against a foreign nation's allocation or authorized joint venture amount.

Comment 38: Are fish caught by U.S. harvesting vessels in a joint venture but discarded prior to receipt by the FFV considered a part of the joint venture processing (JVP) amount authorized to the joint venture?

Response: NMFS considers those discards as part of domestic annual harvest (DAH) but not part of JVP or any amount authorized a joint venture. Only domestic regulations could regulate the discards by U.S. vessels.

Comment 39: FFV operators submitting weekly receipt reports for FFV's in joint ventures off Alaska are required by their permit restrictions to submit them by Wednesday following the end of the reporting weeks, as opposed to Friday for other vessels off Alaska. This is difficult due to transmission difficulties.

Response: NMFS considers weekly catch and receipt reports critical in managing the fisheries off Alaska, particularly with regard to keeping track of the incidental and prohibited species received in joint ventures, due to the very small amounts allowed. The Wednesday deadline must remain and is added to § 611.4(g).

Comment 40: A table listing the type of report (vessel activity report, weekly catch report, etc.) and final destination (NMFS Regional Director, NMFS Center Director, or Coast Guard commander) would be helpful.

Response: Appendix A has been amended by revising Table 2 and adding an additional Table 4 to indicate disposition of reports and other submissions to the U.S. government.

Section 611.5

Comment 41: As written, this section would allow vessels not actually fishing to display improper navigation lights. We recommend deleting "engaged in fishing" from the first sentence.

Response: This proposal is adopted, requiring FFV's to display proper navigation lights while operating within the jurisdiction of these regulations.

Comment 42: Several commenters suggested changes to § 611.5(c) to clarify the requirements. One requested that "vessel identification" be defined. Another suggested that a provision might be needed to indicate that lights on deployed gear be lit and functioning to comply with the regulations. The term "net codends" was recommended to be changed to "trawl codends" to conform with accepted terminology. Net (or thrawl) codends were recommended to be described positively as continuously attached gear to remove any doubts as to their status.

Response: The comments are generally accepted. "Vessel indentification" is referenced to its description in § 611.3(a). "Net codends" are now termed "trawl codends" and considered to be continuously attached gear and exempt from marking requirements. Lights on deployed gear which are unlit or not functioning properly (such as being underwater) will not be visible for two miles and are therefore in violation, making further elaboration in the regulations unnecessary.

Comment 43: Section § 611.5(c) (1) and (2) should be modified to delete the requirements of identifying gear with a pole and flag and a radar reflector, to allow instead marking of longline gear with a large, clearly painted buoy, a light, and a radio buoy.

Response: The comment is adopted. More restrictive gear identification requirements may be required for specific fisheries in Subparts C through G of this part.

Comment 44: Section 611.5(c)(3) should be reworded to state that abandoned or seized private property must be disposed of in accordance with applicable Federal Regulations, to prevent any inference that private property would be disposed of without due process.

Response: The comment is adopted.

Section 611.6

Comment 45: The inclusion of the phrase "or any person aboard any FFV subject to this part" in § 611.6(a)(1) should be modified. As written, it would require even the least experienced seaman aboard a vessel to comply with instructions and signals to stop the vessel and to maneuver it to a specified location. This could be dangerous. The regulation should be reworded to make it clear that only those persons aboard the vessel who are qualified and authorized to maneuver it are required to do so.

Response: The regulation remains as proposed. The commenter assumes that enforcement personnel will give inappropriate instructions to junior members of an FFV's crew. NMFS and Coast Guard policy for all communications with an FFV and in boardings is to deal directly with the FFV's master and fishing manager whenever possible. It is also NMFS and Coast Guard policy and the practice of FFV's to have one of the ship's officers or other responsible person accompany the boarding party for all inspections. In the worst case, when enforcement personnel instruct a person to do something which that person is unqualified or unauthorized by the FFV operator to do, the person may "immediately comply with instructions" by explaining the situation and relaying the instructions to the appropriate person. The regulation now requires that persons other than the FFV operator facilitate the boarding, rather than act uncooperatively, as has been the case in some instances.

Comment 46: We recommend deleting "assigned an IRCS" from § 611.6(b)(1) since many smaller catcher vessels are not assigned an IRCS, and thus would not be required to fulfill the requirement for a radio.

Response: The regulations have been revised to reflect the comment.

Comment 47: The radiotelephone requirements in § 611.6(b)(2) should be deleted, because certain foreign fishing vessels may not be able to comply with the requirement for radiotelephone frequencies due to national regulations.

Response: The regulations remain as proposed. The specific frequencies required are international ship-to-shore frequencies, calling, or distress frequencies required of vessels with those installations. Working frequencies in Appendix A are ship-to-shore international-use frequencies. Because routine communications should not be conducted on calling or distress frequencies, it is mandatory that all

FFV's have working frequencies available consistent with their equipment requirements. If listed frequencies are not available due to national regulations, the FFV operator must identify acceptable alternate frequencies.

Comment 48: Catcher vessels operating in the vicinity of motherships (processing vessels) in mothership fishing operations should be exempted from the requirements of § 611.6(b)(1) that they be equipped with certain radiotelephone equipment and that they monitor channel 16. The motherships monitor these channels on behalf of the related catcher vessels and transmit all required messages to the catcher vessels. Therefore there is no need for this requirement to apply to these catcher vessels.

Response: A new paragraph (b)(4) has been added to § 611.6 to exempt auxiliary vessels such as kawasaki boats and other small tenders from radio requirements. Larger catcher boats must have a VHF-FM radio and continuously monitor channel 16, but are exempt from the long-range radio required by § 611.6(b)(3). The VHF-FM radio is required primarily for communications between the FFV and enforcement vessels during boarding operations and for on-scene communications with an enforcement aircraft. Because the larger catcher vessels operate out of sight of the mothership and sometimes out of VHF-FM range, a VHF-FM installation must be on each catcher vessel. Because communications are anticipated to be very short range (five to ten nautical miles), the VHF-FM radio does not have to be elaborate.

Comment 49: The radiotelegraphy requirements in § 611.6(b) are not feasible since many vessels no longer use this equipment. The requirements should be deleted or modified to allow appropriate officials to waive certain requirements or allow substitution of other communications systems.

Response: The comment is adopted in part, to allow for variations in communications needs among the fisheries. A new § 611.6(b)(5) allows the Regional Director, in consultation with the appropriate Coast Guard commander, to exempt certain FFV's from the radio requirements. The regulations contained within Subparts C through G of this part may also modify these requirements.

Comment 50: Paragraph (c)(2) of § 611.6 does not enforce all of the communications procedures required by paragraph (c)(1) of the section. Paragraph (c)(2) should be revised to include all the communications procedures.

Response: The comment is not adopted. Paragraph (c)(1) is permissive, in that it includes a listing of possible communication methods which may be infinite when "other appropriate means" are considered. Paragraph (c)(2) specifies those methods which an FFV operator must know and be ready to respond to. An enforcement unit using methods in addition to those required simply reinforces the instructions for the FFV to stop or maneuver and provides additional evidence if the FFV does not respond.

Comment 51: The regulation referenced in § 611.6(c)(2) is inappropriate because it would make failure to understand a command or instantaneously comply with a command to stop a criminal offense. There is a large difference between refusing a boarding (criminal offense) and failure to facilitate a boarding (civil violation).

Response: The reference is deleted. Depending on the circumstances involved, not responding to instructions to stop for a boarding may be determined to be either a criminal or a civil violation.

Comment 52: Section 611.6(d)(2) should be modified to add the following language before the semicolon: "unless immediate stopping of a vessel would impair the safety of that vessel." Often it would be very dangerous to stop immediately if, for example, the vessel were then engaged in actual trawling operations.

Response: The comment is adopted and similar language is added to the paragraph.

Comment 53: The requirements for providing a safe boarding ladder should be modified so that national standards which are essentially equivalent to SOLAS standards can be used to certify a boarding ladder. We request explicit acknowledgement that Japan Industrial Standard (JIS) ladders would be an adequate substitute for those that meet SOLAS standards.

Response: Section 611.6(d)(3) is amended to allow a substantially equivalent national standard to be substituted for SOLAS boarding ladder standards. The Assistant Administrator and the Coast Guard have determined that the construction requirements of Japan Industrial Standard (JIS) pilot ladders are substantially equivalent to the SOLAS pilot ladder requirements, and that properly constructed, maintained, and deployed JIS pilot ladders will be considered safe pilot ladders for purposes of the requirements of the foreign fishing regulations.

Comment 54: Synthetic fiber side ropes should be allowed to be substituted for manila side ropes in pilot ladders. These synthetic materials are less likely to deteriorate in the constantly damp conditions aboard small FFV's.

Response: The comment is adopted and § 611.6(d)(3)(iv) is amended to allow the use of equivalent, synthetic fiber side ropes.

Comment 55: Section 611.6(e)(1) was the subject of two opposed comments.

(a) Section 611.6(e)(1) should be revised to use "prepared or stored" as clearer than "kept" and to include personal quarters and areas within personal quarters as specific areas to which authorized officers are allowed access.

(b) The requirements of § 611.6(e) appear to exceed the permissible limits of administrative searches under the Fourth Amendment of the United States Constitution. The regulation should be rewritten to set out explicit restraints upon these warrantless searches.

Response: NMFS adopts comment (a) and rejects comment (b). NMFS considers the provisions of the Magnuson Act to be sufficiently broad to allow for the type of administrative search described in the regulation. The construction and usage of fishing vessels is such that living quarters, especially officers' staterooms, are often used as offices or for storage of records. Personal quarters so used are within the permissible scope of administrative searches of fishing vessels.

Comment 56: Those records which FFV operators must provide to authorized officers should be specified in greater detail.

Response: The comment is adopted and additional examples of records are added to § 611.6(e)(2). The change may avert problems in the future.

Comment 57: The requirements of § 611.6(f) may result in unsafe conditions by placing strict requirements on the storage of equipment and materials within the ship's holds. The regulation should be modified to allow non-fish products to be stored wherever necessary to maintain the stability of the vessel.

Response: The regulation is amended to allow for stowage of non-fish products under fish or fish products for safety reasons.

Section 611.7

Comment 58: The prohibitions of § 611.7 reference violations of various combinations of the Magnuson Act, this part, any other regulation or permit issued under the Magnuson Act, etc.

These references should be as consistent as possible.

Response: The prohibitions have been revised to reflect that they are applicable to violations of the Magnuson Act, the applicable GIFA, 50 CFR Part 611 (this part), or any permit issued under this part. Reference to "other regulations under the Magnuson Act" is deleted because there are no other Magnuson Act regulations directly affecting foreign fishing.

Comment 59: Section 611.7(a)(6) needs clarification. We assume that it was intended to apply to investigations and searches conducted on board vessels. If not, this provision could be interpreted to deem it a violation if a defendant in an enforcement action were to raise legitimate objections to what they believe to be illegal, unconstitutional or improper investigative demands made by the government side in the course of contesting an enforcement proceeding.

Response: The wording of the paragraph is revised to reflect that it is a violation to interfere with any Magnuson Act investigation, wherever conducted. If the subject of the boarding, investigation, or search feels it was conducted illegally, the subject may seek judicial relief, but may not interfere with an ongoing boarding or other enforcement action.

Comment 60: Section 611.7(a)(12) should be modified to recognize that harmless or innocent errors in completing permit applications and permit forms will be made, and should be tolerated.

Response: NMFS recognizes that inadvertent errors will be made, and will consider the seriousness of the error, any steps taken by the nation or the owner to correct the problem, and any other mitigating circumstances prior to initiating any penalty actions. Nevertheless, the FFV owner and operator remain liable for their actions or inactions.

Comment 61: Sections 611.7(a) (15) through (17) are overly broad and constitute an overreaction to a number of isolated incidents over the years. We are concerned that the authority of the observers has been and will be extensively expanded, while many of the observers are improperly trained and frequently their behavior is far from ideal and even clearly inappropriate. Before attempting to charge foreign vessels with violations of the specific prohibitions, NMFS should first prepare and disclose appropriate standards of conduct for observers so that observers will neither abuse their authority nor attempt to step beyond the bounds of their authority. Proper standards and adequate training of observers are absolutely essential.

Response: The regulations remain unchanged. These paragraphs are long-needed clarifications to the former regulations prohibiting crew members from interfering with the observers' sampling procedures. In the Alaska and Pacific Coast fisheries alone, observers have documented in extensive reports and affidavits 112 separate cases of interference with observer sampling methods in the last two years. NMFS feels that these are deliberate attempts to bias the observers' sampling data which are used to determine when a particular nation has reached its quota of a species or species group in an area. Over the years, NMFS has provided information to the national representatives or the fishing associations regarding these situations and very little has been accomplished to rectify the problem.

NMFS agrees that adequate training of observers is essential. NMFS also feels that the current training system is adequate and getting better. Observers are hired primarily because of their biological- or fisheries-related background. They then go through an intensive two-and-a-half-week course before being sent out to sea. The approved standards of conduct, sampling techniques, foreign customs, and fishing regulations for FFV's are clearly presented in the observer training manual and in training. Although NMFS has given foreign representatives every opportunity to report on the actions of fishery observers, we have received very few reports of inappropriate behavior.

Comment 62: In § 611.7(a)(15), the phrase "contrary to the observer's instructions" should be deleted or revised to make it clear that the assumption is that the observer will sample the catch unless the observer has notified the master or other person in charge of the operation that he or she will not sample the catch.

Response: The comment is adopted. Section 611.8(c)(8) has also been revised to reflect this.

Comment 63: The prohibition in § 611.7(a)(17) regarding sexual harassment should be deleted because the application of this regulation may be influenced by the subjectivity of the observer. This is particularly true for violations by foreign personnel, because the regulation does not adequately recognize cultural differences.

Response: As stated in the proposed regulations, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made on a case-by-case basis. In such cases, as in all violations, the defense will have ample opportunity to present its view of the circumstances. Differing customs will be taken into consideration. The types of offenses that NMFS anticipates prosecuting are those serious actions which are offensive in all of the cultures involved. These regulations are patterned after existing regulations which have withstood litigation. An authorized officer or observer should be treated with respect as a representative of the U.S. government.

Comment 64: The requirements of § 611.7(a)(20) are unclear. There is a danger that this provision could be invoked against a foreign fishing vessel owner or operator when there is a legitimate dispute concerning the right of the Government to require that a particular record or report be submitted to it.

Reponse: If an FFV owner or operator considers the requirement to have or submit particular records to be illegal, he may seek judicial relief (see the response to comments on § 611.7(a)(6)).

Comment 65: A prohibition should be added to ensure that foreign vessels engaged in recreational fishing comply with FMP regulations and the laws of the states in which they fish.

Response: The amendment to the Magnuson Act allowing foreign recreational fishing inside State waters conditions that fishing on compliance with State laws and regulations. Noncompliance would bring the vessel within the prohibitions of section 307(2)(A); and additional prohibition here is unnecessary.

Comment 66: Section 611.7(a)(27) should be deleted, as it is a catch-all which is subject to potential abuse by an overzealous enforcement officer. When read literally with other prohibitions, this paragraph is unclear, such as the "attempt to" . . . "fail to provide assistance to an observer".

Response: The paragraph is retained. This prohibition is necessary to prevent persons caught committing a violation from claiming that no violation existed because it was never consumated. Because violations of this paragraph must document intent as opposed to fact, NMFS will initiate actions only when the situation is well documented. Mitigating circumstances will also be considered.

Section 611.8

Comment 67: Several comments addressed observer policy and training. While these subjects are generally

outside the scope of this action, the specific questions raised will be discussed here. The comments have been forwarded to appropriate NMFS headquarters personnel and to the Regional and Center Directors involved.

One commenter requested a statement from NMFS that the policy of the U.S. Government is that observers perform their duties in an expeditious way and in such a manner as not to hinder the operations of the foreign vessel or cause spoilage of its catch. Another commenter requested that observers be required to report suspected violations to a responsible officer of the FFV.

Response: Observers are instructed to minimize their intrusion in the FFV's operations. However, varying sampling techniques and other requirements may be more or less intrusive on fishing operations. Depending on the assignment, the observer may have little latitude in the procedures he or she must follow.

Observers are instructed to discuss any suspected or obvious violations observed with the master of the FFV. They are also required to report this information upon their return to port, if not sooner, depending on the gravity of the violation. Because the observer is not an authorized officer, all discussions are cautionary and the FFV operator may not understand that a violation report could result. Observers will assist the FFV operator in interpreting the foreign fishing regulations or be able to get clarification from higher U.S. authorities; but, because they are not authorized officers, they may not have a complete knowledge of the regulations.

Comment 68: Several commenters objected to the language regarding the assignment of "one or more" observers to any foreign fishing vessel.

Response: The language published as a final rule implementing the supplementary observer program (50 FR 8134, February 28, 1985) is retained.

The wording in the proposed regulations was intended for clarification purposes. NMFS observer programs have placed multiple observers aboard vessels in the past, both before and since the Magnuson Act was implemented. The legality of placing more than one observer aboard FFV's was challenged in 1983 when two observers were placed aboard joint-venture processing vessels fishing in the Shelikof Straits fishery. The NOAA General Counsel determined that "NMFS may require the stationing of more than one observer aboard a single foreign fishing vessel, if necessary and appropriate, to carry out the purposes of the Magnuson Act."

NMFS does not routinely place more than one observer aboard an FFV unless it is a large processing vessel operating with a catching vessel fleet, it is operating in a fishery of critical interest with regard to catches (e.g. the Shelikof Straits fishery), it is transporting an observer to another FFV, or it is hosting an observer trainee. In the latter two cases, the cost of the observers is included in the program overhead and not charged to a specific vessel.

Comment 69: Several commenters requested that § 611.8(b)(2) include provisions which would allow the Regional or Center Director to waive observer requirements.

Response: The language published as a final rule implementing the supplementary observer program is retained. Section 611.8(a) includes a reference to section 201(i)(2) of the Magnuson Act, which specifies those conditions under which the Regional Director may waive the observer requirement. The last sentence of § 611.8(b)(2) includes a statement that the Regional or Center Director may waive the observer requirement. Section 201(i)(2) of the Magnuson Act allows waiver of the observer requirement if:

(1) In a situation where a fleet of harvesting vessels transfers its catch to a processing vessel with an observer aboard, management objectives will be achieved by observers placed on only part of the harvesting fleet;

(2) It is impractical to assign an observer to the FFV because of brevity of the FFV's operating period;

(3) The FFV's facilities of quartering an observer are inadequate or unsafe; or

(4) An observer is not available for reasons beyond the control of the Secretary (Regional or Center Director). Regional and Center Directors will waive the observer requirements only under the most extenuating circumstances.

Comment 70: Several commenters requested clarification of the "upon demand" and "free access" provisions of paragraphs (c)(3) through (c)(5) concerning communication, navigation, and other FFV facilities and spaces to indicate that observer authority is limited to the duly authorized and appropriate duties of the observers and to require instructions given by qualified officers or other personnel of the FFV prior to use of equipment. Their concerns were to ensure that observers use their authority for official duties only, and to protect the safety of the observer and sensitive electronic equipment and machinery on the FFV.

Response: NMFS recognizes the concerns of foreign fishermen that observers may overstep their authority or damage equipment. FFV owners and operators are encouraged to report any such instances to the appropriate Regional or Center Director. However, NMFS has received very few reports of such incidents in the past and considers observer training adequate to preclude them from happening except in very isolated cases. In particular, observers are instructed not to use an FFV's equipment until instructed in its use. The regulations remain as proposed due to the large number of past instances were observers have been denied the use of, or access to, equipment and vessel spaces necessary to the accomplishment of the observer's duties. FFV operators and crews who have fully cooperated with observers in the past will be unaffected by these regulations, because instructions to observers will not be liberalized. Observers are a valuable asset to an FFV operator in the case of an emergency. The observer can communicate quickly and clearly over the radiotelephone, helping to provide an early resolution to any problem.

Comment 71: Two comments requested that the proposed requirements of § 611.8(d)(1) be relaxed to allow observer transfers at night.

Response: The comments are accepted in part. While NMFS agrees that transfers of observers via small boat or raft have been carried out without incident at night in the past, the practice is too hazardous to continue. Nighttime transfers are especially hazardous of Alaska, where weather is severe. While NMFS considers that all transfers at night should be avoided because a person falling overboard would be difficult to find and rescue, transfers between vessels nested together via gangway, rope ladder, or basket are allowed.

Section 611.9

Comment 72: One commenter requested that NMFS authorize the use of alternative formats for the daily fishing log, daily consolidated log and daily joint venture log (Appendices I, J and K). The commenter requested that NMFS specifically allow formats for each logbook that may vary depending on the type of fishery, such as longlining, independent trawling, mothership operations, and individual company operations, provided that all of the requirements of each log are met. The commenter also recommended several editorial changes to make the required logs easier to use by foreign fishermen.

Response: The comments are substantially adopted. A new paragraph is added to § 611.9 and the rest of the section is amended to allow the

appropriate Regional Director to accept alternative log formats for each fishery from each nation.

Comment 73: Several commenters felt that the requirements of § 611.9(a) to maintain the last three year's logs onboard was burdensome, particularly due to lack of space on the FFV.

Response: The requirement to maintain the logs from the three previous years is retained. However, this regulation will be effective only for those records produced or maintained after December 31, 1985. Therefore, it will not be until 1989 that records for the last three years (i.e., three previous years plus the current year) will be required to be aboard FFV's. The records should take up approximately one desk drawer of storage space at that point.

Comment 74: Several commenters were concerned that, as drafted, § 611.9(a)(4) requires the owner-operator to supply any information NMFS may request, limited only to information related to fulfillment of the purpose of the Magnuson Act. This is very broad authority and they felt it shoud be limited to reasonable information related to the enforcement, conservation and management of the resources. As drafted, they felt it could be subject to abuse, particularly for obtaining proprietary commercial information which could work to the detriment of foreign fishermen with respect to competition in their own country and internationally.

Response: The regulation has been revised to limit the Assistant Administrator to information requested for purposes of fishery conservation, management, and enforcement.

Comment 75: The transfer log requirements of § 611.9(c) should be revised to include transfers outside the FCZ to allow for reconciliation with the product on board. It should include "any fish or fishery product including quantities transferred or offloaded outside the FCZ."

Response: The comment is adopted.

Comment 76: Section 611.9(d)(2) should be modified to allow those FFV's equipped with processing facilities, but which do not utilize these facilities and deliver their catch to processing vessels, to be exempt from logkeeping requirements other than SECTION ONE—EFFORT of the daily fishing log.

Response: Appropriate changes have been made to effect the proposed change.

Comment 77: Section 611.9(e)(1)(i) should be modified so that that section must be completed "beginning with the first day the vessel started fishing operations in the FCZ" rather than "beginning with the first day the vessel entered the FCZ."

Response: The regulations have been modified to reflect the comment.

Comment 78: Section 611.9(e)(1)(vii) should be modified to require the operator's signature rather than the master's signature. Both fleet commanders and fishing managers are actually in charge of foreign fishing vessels and are responsible for the fishing operations. The master may not be the appropriate person in many cases.

Response: Section 611.9(e)(1)(vii) is modified to allow either the master or the operator to sign the log, provided the title is given following the signature.

Comment 79: Please clarify the terms "when the trawl or set was completed", "the time the gear was set", "the position of the set", "the course of the set", and "the duration of the set", as required by the daily fishing log at § 611.9(e)(2).

Response: To reduce redundancy and aid in the utility of the regulations, the exact descriptions are in paragraph B of Appendix I to Subpart A. The terms have been revised to be more specific.

Comment 80: FFV's should log their trawls consecutively from the first set of the calendar year.

Response: This comment is adopted for both the daily fishing log and the daily joint venture log, and appropriate changes have been made.

Comment 81: Log requirements §§ 611.9 (e)(3)(iv), (g)(3)(iv) and (i)(3)(iv) for catches of marine mammals should be adjusted to list the condition of the animals as they are released as well as when they are caught.

Response: The regulations are amended to record the condition of the marine mammal when released. The condition codes used also indicate the animal's status when caught.

Comment 82: The regulations should require incidental species catch to be logged in the catch section of the logs to the nearest 0.01 mt, since in certain fisheries there is a very limited allowable catch of incidental species.

Response: The imposition of these more restrictive log requirements is more appropriately included within the regulations for the various fisheries in Subparts C through G.

Comment 83: Weekly Telex reports require information by fishing area which is not easily derived from the logs. It would assist foreign fishermen in complying with the regulations, as well as enhancing enforcement, if space were made available in the logs for this information.

Response: This comment correctly points out the need for an additional section in the logs for daily catch by area. The regulations have been amended and a section has been added to Appendices I, J, and K to reflect this.

Comment 84: Section 611.9(e)(5)(ii) should stipulate how often the product recovery rate is to be computed.

Response: The regulation requires a daily product recovery rate (PRR). Appendices are revised to reflect this. While PRR's are not necessarily required to be computed daily, the daily PRR logged will be verified by observers and boarding parties and used in verifying the product aboard the FFV.

Comment 85: Section 611.9(g)(3) should be amended to delete the requirement of recording the daily disposition of prohibited species from each catcher vessel, as all prohibited species are always discarded as early as possible. Alternatively, that section could be clarified to require that the daily disposition be included in column "D", the cumulative disposition column.

Response: The section is amended to correspond closely to the same portion of the daily fishing log.

Comment 86: In a mothership trawl operation or in joint venture operations it should be permissible to maintain fishing logs by entering the fishing area and date where and when a codend was received by the mothership, instead of the fishing area and date the fish was caught by the catcher vessels.

Response: Mothership operators are required to log the date and location when and where the fish were caught by the catcher vessel. Otherwise it is impossible to correlate catch and effort data. Operators of FFV's engaged in joint ventures with U.S. harvesting vessels, on the other hand, are required to log only the date and location of the transfer of the codend, because these regulations do not control domestic fishing vessels.

Comment 87: Several commenters were concerned that the catch data by trawl and codend receipt in the daily fishing log and joint venture logs, respectively, would be only an estimate and incompatible with observer data and production data. One commenter felt that catch estimates by species within four hours would lead to estimated catches by trawl or receipts by codend at variance from the actual amounts and species composition based on calculations once the fish are in the fish bins. There was also a lot of confusion as to what portion of the logs should be filled out within what time frame.

Response: To alleviate the problem of estimating catches, a new column is added to the daily fishing log and daily

joint venture log, requiring an estimate of the total weight of the catch or codend receipt within two hours of the haul or receipt. This will provide sufficient time for the FFV operator to make an on-deck estimate. The final breakdown of each trawl, set, or receipt by species composition is now required 12 hours after the haul or receipt time, to allow for an accurate determination of the contents of each trawl set or codend.

Comment 88: Section 611.9(j)(2) should be amended by deleting the reference to "reasonable allowances for water added" in entries for product weights, and deleting the sentence limiting ice glazing allowances to 5 percent of the unit weight. Product recovery rates are normally determined before the fish product is glazed. Further, the glaze on processed products frequently exceeds five percent, depending on the kinds of products.

Response: The regulation remains unchanged. Boarding parties cannot take inventories and weight representative samples of product on board to determine the accuracy of an FFV's logs if that FFV's product weights and round weights are based on samples of product taken prior to glazing. The PRR will be different due to the glazing. PRR tests run by NMFS have found no fisheries product with more than five percent water, and NMFS does not understand why an FFV operator would have any excess water weight, since it would reduce the amount of salable product able to be stored aboard.

Section 611.10

Comment 89: Section 611.10(a) specifies that catching operations may be conducted "as specified by the regulations of the fishery in which the FFV is engaged *and as modified by the FFV's permit.*" This language appears to permit a disguised amendment of FMP implementing regulations through the permit process. There is no legal basis for such a subversion of the regular amendment process. This section should clarify that the above language is intended merely to permit minor modifications to relieve technical or operational problems.

Response: No change to the regulation is necessary. The permit restrictions the Assistant Administrator may make for conservation and management of the fishery, as described at § 611.3(l), often contain restrictions affecting catching, joint venture operations, and the other elements of fishing. Where necessary, these restrictions may include modifications other than for technical or operational problems.

Comment 90: Section 611.10 is unclear concerning a number of points. First, it is unclear whether joint venture vessels may conduct scouting, processing, or support activities. Second, a literal interpretation of the regulations suggests that fish processing in connection with a joint venture would require that the nation have a directed allocation and be engaged in catching operations. Finally, what role may support vessels from third countries play in transporting fish or supplies?

Response: Section 611.10 has been revised to eliminate the confusion surrounding the cases cited above. FFV's permitted in a joint venture may scout for, process for, and support U.S. harvesting vessels. No allocations to the nation are necessary. A properly permitted FFV from a third country may support the FFV (including transporting U.S.-harvested fish), but may not directly support U.S. harvesting vessels.

Section 611.11

Comment 91: One commenter objected to the prohibited species regulations, because they do not prohibit or command foreign fleets to avoid all take of prohibited species, as a violation of the Magnuson Act.

Response: The proposed and final regulations concerning foreign catches of prohibited species are essentially unchanged from those published in 1977 to implement the Magnuson Act. The only time an FFV may retain prohibited species even temporarily (except to allow sampling by an observer) is when a specific fishery permits an FFV engaged in a joint venture to return U.S.-harvested prohibited species back to the U.S. vessel. Specific measures within Subparts C through G minimize the catch of prohibited species by FFV's, as well as subsequent mortality due to handling.

Comment 92: Section 611.11 should list the prohibited species which must be logged.

Response: Prohibited species are specified by fishery in Subparts C through G.

Comment 93: A second sentence should be inserted in § 611.11(b) requiring the release of prohibited species in longline fisheries by cutting the line at the hook without removing the prohibited species from the water.

Response: The procedures are specified in Subparts D and F for the billfish and sharks fisheries. Because those regulations are unchanged by this action, no change to § 611.11 is necessary.

Comment 94: We recommend removing the words "immediately with a minimum of injury" from § 611.11(b) since almost all fish which are returned to the sea are killed by the pressures induced by the trawl nets.

Response: NMFS retains the phrase "immediately with a minimum of injury" with respect to discards of prohibited species. Because the intent of the regulation is to reduce prohibited species catch to an absolute minimum, NMFS is prepared to accept some loss in efficiency by FFV's due to the time required to sort and discard prohibited species expeditiously. This provides a strong incentive to those vessels not to fish in areas of high concentration of prohibited species. While most finfish are dead or dying when discarded, some species such as crabs have a good chance of survial if returned immediately. NMFS will continue to consider mitigating circumstances due to the type of operations being conducted by the FFV in evaluating any reports of violation of this regulation.

Section 611.12

Comment 95: Section § 611.12(c) should be revised to limit dumping of fishing gear and other articles to that material which interferes with fishing by the vessel (debris in the trawling grounds) as opposed to that which interferes with vessels (a navigation problem). Turtles should be protected from entanglement.

Response: NMFS considers dumping of material which interferes with the navigation of a fishing vessel essentially equivalent to interfering with fishing by that vessel. The term "fish" as used in these regulations includes marine turtles, ensuring that they are protected under these regulations. No change is necessary to the regulations.

Section 611.13

Comment 96: Foreign governments or their representatives, not NMFS, should be responsible for initiating reconsideration of discrepancies between catch reports submitted by observers and foreign fishing vessels.

Response: Section 611.13(d) is revised to indicate that if NMFS estimates of catch or other values made during the season differ from a nation's estimate, it is the designated representative's responsibility to initiate efforts to resolve the differences with NMFS.

Comment 97: One commenter made several recommendations regarding the applicability of these regulations to foreign fishing vessels recreationally fishing. The commenter pointed out that foreign recreational fishing vessels would still be required to make reports and keep records like any other FFV. Their status regarding State license

requirements and other State or Federal law was also unclear.

Response: Foreign recreational fishing vessels were considered as being exempt from all the foreign fishing regulations other than §§ 611.1, 611.2, 611.6(a), 611.7 (as applicable), and 611.15. NMFS has revised §§ 611.1, 611.2, and 611.15 to more clearly describe what regulations apply to a foreign recreational fishing vessel. Foreign recreational fishing vessels must allow boardings to determine their status as recreational fishing vessels under these regulations, but other provisions do not apply. Foreign recreational fishing vessels are considered equivalent to U.S. recreational fishing vessels and must comply with the same licensing and other regulatory requirements required of U.S. vessels.

Section 611.16

Comment 98: We recommend an additional paragraph be added to indicate that fishing vessel operators should be aware that specific fishing gear prohibitions apply to Federal marine sanctuaries and coral habitats of particular concern (HAPC).

Response: Section 611.16 is meant to serve as a reference to laws which may impact fishment but generally have no relation to fishing. The concerns expressed above can be better addressed it they are included elsewhere in this part. The Regional Fishery Management Councils are authorized by Title III of the Marine Sanctuaries, Protection and Research Act, newly amended by Pub. L. 98-498, and the Magnuson Act to draft regulations governing fishing within Marine Sanctuaries and Coral HAPC's. In this case the appropriate changes could be made to Subpart D, § 611.30 of this part.

Appendices and Subpart B

Comment 99: Foreign fishing "windows" off the east coast should be eliminated because 100 percent observer coverage and refinements in the reporting requirements have removed the need to keep the FFV's in a limited area to facilitate enforcement. Moreover, the requirement is a burdensome and costly impediment to foreign fishing operations.

Response: The regulations concerning fishing windows are moved to Subpart C by the companion technical amendment to this document. Because they are incorporated into the Interim Groundfish Fishery Management Plan, an amendment to that plan would be necessary to revise the regulations.

Comment 100: Figure 2 of Appendix C should delineate areas closed to longlining (Area 11) and locations of marine sanctuaries and coral habitats of particular concern.

Response: The Appendix was meant only to describe fishing areas for reporting purposes. The locations of marine sanctuaries and coral habitats of particular concern, as well as specific closed areas, would be better addressed in the regulations for the specific fisheries (see comment on § 611.16).

Comment 101: Catch disposition should not be included in the weekly catch reports. If such a requirement is deemed necessary by the regions, they may formulate a local requirement.

Response: The comment is adopted. Only fish returned to a U.S. harvesting vessel by an FFV in a joint venture must be reported separately, to ensure that those fish are not counted against the amount the FFV is authorized to retain.

Financial Assurances

This rule makes final, as a necessary part of this action, an interim rule published on April 11, 1984, at 49 FR 14356. NOAA requested public comments on the interim rule until May 29, 1984, and made the rule effective on May 11, 1984. The interim rule allowed the Secretary to require payments of financial assurances before issuing foreign fishing permits and provided that the Secretary may restrict the effective periods of foreign fishing permits to periods less than the balance of the calendar year from the date of issuance. To date, no financial assurances have been required since the interim rule took effect.

Comments were received from four sources. The relevant issues raised in these comments are addressed below.

Comment 102: The rule requiring financial assurances infringes on existing extradition treaties and national policies, would intrude on the sovereignty of a nation by requiring local enforcement of a U.S. judgment, and violates the constitutional rights of foreign nationals.

Response: The interim rule does not affect existing extradition treaties or policies, a nation's sovereignty, or constitutional rights of foreign nationals. It does affect the eligibility of a foreign national or all vessels of a foreign nation to receive permits and engage in fishing in the FCZ of the United States. It is a mechanism whereby a nation may provide the opportunity for its vessel owners to reenter the U.S. fisheries after assuring the U.S. government that judgments or penalties against vessels of that country will be settled or charges answered. On the other hand, if a nation elects not to establish required assurances, the text of § 611.22(e) provides the Secretary sufficient latitude to consider issuing permits for vessels of owners or operators who cooperate in enforcement of the U.S. fishery laws while denying permits for vessels of owners or operators who do not comply. The Magnuson Act makes clear that a vessel owner or operator does not have a constitutional or indefinite right to receive a permit. Requiring financial assurances is not a form of permit sanction under section 204(b)(12) of the Act. Rather, it is the establishment of a necessary condition under section 204(b)(7). This rule does not force a nation to extradite a national or place the United States in a position of interfering with a nation's sovereignty in order to receive a permit but only to guarantee that enforcement responsibilities will be met.

Comment 103: One comment considered financial assurances unnecessary, because a U.S. judgment could be enforced in the courts of that country.

Response: Section 611.22(e)(4) takes this possibility into account.

Comment 104: The interim rule is in conflict with, and encompasses enforcement provisions which range beyond, the terms of GIFA's. It is an unauthorized unilateral amendment of the GIFAs by the Secretary of Commerce.

Response: This comment is a restatement of a comment made on the proposed rule upon which the interim rule is based. NOAA addressed that comment at 49 FR 14356. Each country which is a party to a GIFA agrees to take the necessary measures to assist in the enforcement of U.S. fishery laws and to ensure that its people and vessels adhere to authorizations of the permits. Requiring financial assurances when serious enforcement concerns are evident is easily consistent with the agreement made by the country with the United States. NOAA does not view this as an amendment of existing GIFAs.

Comment 105: NOAA should certify the vessels of certain countries which meet the criteria for requiring financial assurances, and by this means identify the vessels of the remaining countries as vessels not subject to financial assurance requirements.

Response: NOAA does not see merit in this suggestion. A certification process merely introduces additional procedures to implement the certification when criteria already exist under this interim rule to identify the areas or countries of serious enforcement concerns. The specific exemption suggested by the commenting country to exempt its vessels could

unnecessarily restrict the United States in settling a current and long-standing enforcement problem with that same country involving penalties assessed against a number of unpermitted fishing vessels. This would make the rule ineffective.

Comment 106: A nation and the innocent vessel owners or operators of that nation should not be accountable for establishing assurances.

Response: The interim rule seeks to correct several continuing enforcement problems. Clearly, when a nation submits an application on behalf of a foreign owner or operator whose compliance record fits the criteria described in § 611.22(e) (1), (3), or (4), that nation presumably has the option of requiring the vessel owner or operator to provide the assurance before submitting an application. This may be done without placing an undue burden on innocent vessel owners or operators or the nation itself. If, however, that vessel owner or operator declines to provide the assurances and declines to have his vessel(s) fish in the FCZ, or if his vessels conduct unauthorized fishing described in § 611.22(e)(2), the Secretary may require an assurance to be provided by the nation or all the owners or operators of vessels which may not have engaged in illegal fishing. This is the situation addressed in the second paragraph of NOAA's reply to the sixth comment in 49 FR 14356. In that reply, NOAA contends that a nation is responsible for all vessels which may fish with or without permits in U.S. waters. Furthermore, each nation must appoint an agent to accept legal process against all vessels of that nation which fish under the exclusive management authority of the United States. If the nation believes it unfair to have assurances provided by owners or operators of vessels which were not involved in the actions precipitating the imposition of a financial assurance requirement, NOAA believes that most nations have alternate means for ensuring that the guilty vessel owners or operators do not jeopardize operations of other vessel owners or operators. It is not NOAA's intent to force a nation to abrogate existing extradition treaties or policies or to affect a nation's sovereignty, but only to consider the application of financial assurances after all other means, including the civil procedures of 15 CFR 904, have been exhausted.

Comment 107: Financial assurances are unnecessary because the United States has other remedies against vessels violating the Magnuson Act, including (a) Issuance of a citation; (b) assessment of a civil penalty; (c) judicial forfeiture of the vessel and its catch; and (d) criminal prosecution of the owner or operator.

Response: If these remedies were adequate to deter unpermitted vessels from fishing in the FCZ, NOAA would not have proposed the financial assurances provisions: (a) A citation (or written warning) is clearly an insufficient deterent against unpermitted fishing, which is one of the most serious violations of the Magnuson Act. (b) A civil penalty cannot be collected against a company with no assets in the United States, unless a court in the foreign country will enforce a U.S. judgment. Civil penalties assessed against a number of nationals of one of the commenting countries have remained uncollected for several years. (c) Judicial forfeiture of vessel and catch is possible only when the vessel is seized. Most violations by unpermitted vessels are detected by overflights; by the time an enforcement vessel reaches the scene, the fishing vessel has left the FCZ. (d) Criminal prosecutions are likewise dependent on jurisdictions over the person of the owner or operator.

Comment 108: The interim rule does not specify the legal process by which assurances would be required.

Response: Assurances would be required if the Secretary determined it necessary under the criteria listed in § 611.22(e). The assurances (such as a letter of credit) would be drawn against when an official of the Department of Commerce certified that a civil penalty assessed according to the provisions of 15 CFR Part 904 was final and unpaid; or that a summons in a Federal criminal case has remained unanswered; or that a criminal penalty was final and unpaid.

Comment 109: Criteria should be included to determine if assurances should be required by the Secretary and to determine the level of such assurances.

Response: Criteria are included in § 611.22(e) to determine whether the Secretary may require financial assurance and, absent convincing arguments to the contrary, NOAA believes they are appropriate to determine when an assurance might be required. Moreover, the amounts of assessed penalties and costs to the U.S. Government represent reasonable guidelines for establishing levels at which assurances would be required.

Section-by-Section Analysis

A section-by-section analysis of the changes to these regulations was provided in the proposed rule. Changes to the proposed rule were discussed above. You may obtain a section-by-section analysis of the changes from the old to the new regulations from NMFS at the address listed above.

A disposition of the old Subparts A and B is described in the Distribution Table located at the end of this preamble. Compare the specific paragraphs affected for the exact changes.

Classification

The Assistant Administrator for Fisheries determined that this rule is necessary for the conservation and management of the foreign fisheries and that it is consistent with the Magnuson Act and other applicable law.

Because this action makes changes only to the methods of regulating foreign fishing and not their actual operation, it is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary of this determination was published at 49 FR 50498 on December 28, 1984.

NMFS prepared a regulatory impact review which concludes that this rule will have the economic effects summarized at 49 FR 50498 on December 28, 1984. You may obtain a copy of this review from NMFS at the address listed above.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. A summary of the reasons was published at 49 FR 50498 on December 28, 1984.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0089 for foreign fishing vessel permit applications and OMB Control Number 0648-0075 for foreign fishing vessel reports.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Recordkeeping and reporting requirements.

Dated: August 20, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Services.

DISTRIBUTION TABLE

Old section	New section
Subpart A—General	
§ 611.1	§ 611.1.
§ 611.2 Definitions included unless otherwise noted	§ 611.2 Definitions undesignated and alphabetized.
§ 611.2(a) "Act"	*Magnuson Act.*
§ 611.2(f) "Billfish"	Unnecessary.
§ 611.2(g) "Continental Shelf"	Unnecessary.
§ 611.2(j) "Directed fishery"	611.2 *Directed fishing.*
§ 611.2(l) "Existing International Fishery Agreement"	Unnecessary.
§ 611.2(n) "Fish over which the United States exercises exclusive management authority"	Unnecessary.
§ 611.2(q) "Fishery resource"	Unnecessary.
§ 611.2(r)(1)	§ 611.2 *Fishing* or *to fish* includes, scouting, processing and support.
§ 611.2(r)(2)	§ 611.2 *Scouting.*
§ 611.2(r)(3)(i)	§ 611.2 *Processing.*
§ 611.2(r)(3)(ii)	§ 611.2 *Support.*
§ 611.2(r)(3)(iii)	§ 611.2 *Support.*
§ 611.2(y) "Incidental catch"	Unnecessary.
§ 611.2(ff) "Vessel day"	Unnecessary.
§ 611.3(a)	§ 611.3(a)(1).
§ 611.3(b)	§ 611.3(a)(2).
§ 611.3(c)	§ 611.3(e).
§ 611.3(d)	§ 611.3(e)(1).
§ 611.3(e)	§ 611.3(d).
§ 611.3(f) introductory language	Unnecessary.
§ 611.3(f)(1)	§ 611.3(e)(2).
§ 611.3(f)(2) first sentence	§ 611.3(e)(1).
§ 611.3(f)(2) second sentence	§ 611.3(f).
§ 611.3(f)(2) third sentence	§ 611.3(g).
§ 611.3(f)(2) fourth and fifth sentences	§ 611.3(e)(4).
§ 611.3(f)(2) sixth sentence	Unnecessary.
§ 611.3(f)(3) introductory language	§ 611.3(h).
§ 611.3(f)(3)(i)	§ 611.3(e)(3).
§ 611.3(f)(3)(ii)	§ 611.3(h).
§ 611.3(f)(4) modifications included as part of completed form	§ 611.3(e)(3)(iv).
§ 611.3(f)(5) except "or modification"	§ 611.3(e)(2).
§ 611.3(f)(5) "(or modification)" only	§ 611.3(k)(5).
§ 611.3(g)	§ 611.3(i).
§ 611.3(h)	§ 611.3(a)(3).
§ 611.3(i) introductory language	§ 611.3(l)(1).
§ 611.3(i)(1)	Unnecessary.
§ 611.3(i)(2) first sentence	§ 611.3(l)(1).
§ 611.3(i)(2) second sentence	§ 611.3(l)(2).
§ 611.3(i)(2)(i)	§ 611.3(l)(3).
§ 611.3(i)(2)(ii)(A)	§ 611.3(l)(3).
§ 611.3(i)(2)(ii)(B)	Unnecessary.
§ 611.3(i)(2)(iii)	§ 611.3(l)(3).
§ 611.3(i)(2)(iv)	Unnecessary.
§ 611.3(i)(2)(v)	Unnecessary.
§ 611.3(i)(2)(vi)	§ 611.3(l)(5).
§ 611.3(i)(2)(vii)	§ 611.3(l)(2).
§ 611.3(i)(3) first sentence	§ 611.3(k)(1).
§ 611.3(i)(3) last two sentences	§ 611.3(k)(2).
§ 611.3(i)(4)	§ 611.3(k)(3).
§ 611.3(i)(5)	§ 611.3(k)(4).
§ 611.4(a) introductory language	§ 611.4(a).
§ 611.4(a)(1)	§ 611.4(c)(1).
§ 611.4(a)(2)	§ 611.4(c)(2).
§ 611.4(a)(3)	§ 611.4(c)(3).
§ 611.4(a)(4)	§ 611.4(c)(4).
§ 611.4(a)(5)	§ 611.4(c)(9).
§ 611.4(b)	§ 611.4(b).
§ 611.4(c) "*transmitted*" and "*delivered*" explained	§ 611.4(b).
§ 611.4(c) first sentence	§ 611.4(c)(1) and § 611.4(c)(9).
§ 611.4(c) second sentence except phrase beginning, "except . . ."	§ 611.4 (c)(2) through (c)(8).
§ 611.4(c) phrase beginning "except . . ."	§ 611.4(c)(4).

DISTRIBUTION TABLE—Continued

Old section	New section
§ 611.4(d) first sentence	§ 611.4(c) introductory paragraph.
§ 611.4(d) second and third sentences	§ 611.4 (c)(1) through (c)(ii) specify requirements.
§ 611.4(d) example	Appendix B.1.
§ 611.4(e) first paragraph	§ 611.4(e).
§ 611.4(e) example	Appendix B.12.
§ 611.5(a)(1)	§ 611.5(a)(1).
§ 611.5(a)(2)	§ 611.5(a)(2).
§ 611.5(b)	§ 611.5(a)(3).
§ 611.5(c)	§ 611.5(d).
§ 611.5(d)	§ 611.5(b).
§ 611.5(e)	§ 611.5(c)(1).
§ 611.6(a)	§ 611.6(a)(1).
§ 611.6(b) introductory paragraph	§ 611.6(c)(1).
§ 611.6(b)(1)	§ 611.6(c)(1)(iv).
§ 611.6(b)(2)	§ 611.6(c)(1)(iii).
§ 611.6(b)(3)	§ 611.6(c)(1)(ii).
§ 611.6(4)	§ 611.6(c)(1)(i).
§ 611.6(c)	§ 611.6(d).
§ 611.6(d)	Unnecessary.
§ 611.6(e)	§ 611.6(b)(2).
§ 611.6(f)	§ 611.6(a)(2).
§ 611.7(a) introductory language	§ 611.7(a).
§ 611.7(a)(1)	§ 611.7(a)(26).
§ 611.7(a)(2)	§ 611.7(a)(10).
§ 611.7(a)(3)	§ 611.7(a)(11).
§ 611.7(a)(4)	§ 611.7(a)(2).
§ 611.7(a)(5)	§ 611.7(a)(3).
§ 611.7(a)(6)	§ 611.7(a)(4).
§ 611.7(a)(7)	§ 611.7(a)(1).
§ 611.7(a)(8)	§ 611.7(a)(5).
§ 611.7(b)	§ 611.7(b).
§ 611.7(c)	§ 611.7(c).
§ 611.8(a) first sentence	§ 611.8(a).
§ 611.8(a) second sentence	§ 611.8(c) introductory wording.
§ 611.8(b)	§ 611.8(b).
§ 611.8(c)(1)	§ 611.8(c)(1).
§ 611.8(c)(2)	§ 611.8(c)(2).
§ 611.8(c)(3)	§ 611.8(c)(3).
§ 611.8(c)(4)	§ 611.8(c)(4).
§ 611.8(c)(5)	§ 611.8(c)(9).
§ 611.8(d)	§ 611.7(a)(14).
§ 611.8(e)	§ 611.8(d)(2).
§ 611.8(f)	§ 611.8(e).
§ 611.8(g)	§ 611.8(f).
§ 611.8(h)	§ 611.8(g).
§ 611.8(i)	§ 611.8(h).
§ 611.8(j)	§ 611.8(i).
§ 611.8(k)	§ 611.8(j).
§ 611.9(a)	§ 611.9(a) introductory paragraph.
§ 611.9(b)	§ 611.9(c).
§ 611.9(c)	§ 611.9(b).
§ 611.9(d)	§ 611.9(d) See also § 611.9 (f) through (h).
§ 611.9(d)(1) first sentence except "in English."	§ 611.9(d)(1).
§ 611.9(d)(1) "in English"	§ 611.9(a)(1).
§ 611.9(d)(1) second sentence	§ 611.9(e)(4) (iii).
§ 611.9(d)(1) third sentence	§ 611.9(a)(2).
§ 611.9(d)(1) fourth sentence	§ 611.9(d)(1).
§ 611.9(d)(2) introductory language	§ 611.9(e).
§ 611.9(d)(2)(i)	§ 611.9(e)(1) (iii) and (iv).
§ 611.9(d)(2)(ii)	§ 611.9(e)(1)(v).
§ 611.9(d)(2)(iii)	§ 611.9(e)(1)(ii).
§ 611.9(d)(2)(iv)	§ 611.9(e)(4)(i).
§ 611.9(d)(2)(v)	§ 611.9(e)(2)(ii).
§ 611.9(d)(2)(vi)	§ 611.9(e)(4)(ii).
§ 611.9(d)(2)(vii)	§ 611.9(e)(4)(ii).
§ 611.9(d)(2)(viii)	§ 611.9(e)(4)(ii).
§ 611.9(d)(3) first sentence	§ 611.9(e) introductory paragraph.
§ 611.9(d)(3) second sentence	§ 611.9(j).
§ 611.9(d)(3) third sentence	§ 611.9(e)(3)(ii).
§ 611.9(d)(4)	Unnecessary.
§ 611.9(g)(1) "Each foreign nation shall submit through the designated representative"	§ 611.4(f)(1).
§ 611.9(g)(1) rest of paragraph	§ 611.4(f)(4)(i).
§ 611.9(g)(2)	§ 611.4(f)(4)(i) and Appendix H.
§ 611.9(g)(3)	§ 611.4(f)(4)(ii).
§ 611.9(g)(4)	§ 611.4(g) and Appendix H.
§ 611.9(g)(5)	Unnecessary.
§ 611.9(h)	§ 611.9(a)(4).
§ 611.9(i) introductory	Unnecessary.

DISTRIBUTION TABLE—Continued

Old section	New section
§ 611.9(i)(1)	§ 611.9(a) introductory paragraph.
§ 611.9(i)(2)	§ 611.9(a)(1).
§ 611.9 Appendix I	Appendix D.
§ 611.9 Appendix II	Appendix C.
§ 611.9 Appendix III	Appendices I, J, and K.
§ 611.9 Appendix IV	Appendix F.
§ 611.9 Appendix V	Appendix G.
§ 611.9 Appendix VI	Appendix H.
§ 611.10(a)	§ 611.2 *Processing* and *Support.*
§ 611.10(b)	§ 611.10 (c) and (d).
§ 611.10(c)	§ 611.10 (c) and (d).
§ 611.11(a)	§ 611.12 (a)(1).
§ 611.11(b)	§ 611.12 (a)(2).
§ 611.11(c)	§ 611.12 (b) introductory paragraph.
§ 611.11(d)	Unnecessary.
§ 611.12	Unused in the subpart.
§ 611.13(a)	§ 611.11(a).
§ 611.13(b)	§ 611.11(b).
§ 611.13(c)	§ 611.11(d).
§ 611.14(a)	§ 611.10(a).
§ 611.14(b)	§ 611.11(c).
§ 611.15(a) introductory paragraph	§ 611.13(a) introductory paragraph.
§ 611.15(a)(1)	§ 611.13(a)(1).
§ 611.15(a)(2)	§ 611.13(a)(1).
§ 611.15(a)(3)	§ 611.13(a)(2).
§ 611.15(a)(4)	§ 611.13(a)(2).
§ 611.15(a)(5)	Unused.
§ 611.15(a)(6)	§ 611.13(a)(3).
§ 611.15(a)(7)	§ 611.13(a)(3).
§ 611.15(a)(8)	§ 611.13(a)(4).
§ 611.15(b)	§ 611.13(d).
§ 611.15(c) introductory language	§ 611.13(c) heading.
§ 611.15(c)(1)	Obsolete.
§ 611.15(c)(2) first sentence	§ 611.13(c)(1).
§ 611.15(c)(2) rest of paragraph	§ 611.13(c)(2).
§ 611.15(d)	§ 611.13(e).
§ 611.16(a) except "including abandoned fishing gear"	§ 611.13(c)(1)
§ 611.16(a) "including abandoned fishing gear"	§ 611.12(c)(2).
§ 611.16(b) introductory paragraph	§ 611.12(c)(3).
§ 611.16(b)(1)	§ 611.12(b)(1).
§ 611.16(b)(2)	§ 611.12(b)(2).
§ 611.16(b)(3)	§ 611.12(b)(3).
§ 611.16(b)(4)	§ 611.12(b)(4).
§ 611.16(c)	§ 611.12(c)(2).
§ 611.17(a)	§ 611.14(a).
§ 611.17(b)	§ 611.14(b).
§ 611.18	§ 611.16.
Subpart B—Surpluses	
§ 611.20	§ 611.20.
§ 611.21(a)	§ 611.21(a).
§ 611.21(b)(1)	§ 611.8(b).
§ 611.21(b)(2)	§ 611.8(b)(1).
§ 611.21(b)(3)	Obsolete.
§ 611.22(a) introductory language	Unnecessary.
§ 611.22(a)(1)(i)	§ 611.22(a).
§ 611.22(a)(1)(ii)	Obsolete.
§ 611.22(a)(1)(iii)	Obsolete.
§ 611.22(a)(2)(i)	§ 611.22(b)(1).
§ 611.22(a)(2)(ii)	§ 611.22(b)(2).
§ 611.22(a)(2)(iii)	§ 611.22(b)(3).
§ 611.22(b)	§ 611.22(c).
§ 611.22(c)	§ 611.22(d).
§ 611.22(d)	§ 611.22(e).
§ 611.22 Table I	§ 611.22 Table I.

For the reasons set out in the preamble, Part 611 of Title 50, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801, et seq.

2. Part 611 is amended by revising subparts A and B to read as follows:

PART 611—FOREIGN FISHING

Subpart A—General

Sec.
611.1 Purpose and scope.
611.2 Definitions.
611.3 Vessel permits.
611.4 Vessel reports.
611.5 Vessel and gear identification.
611.6 Facilitation of enforcement.
611.7 Prohibitions.
611.8 Observers.
611.9 Recordkeeping.
611.10 Fishing operations.
611.11 Prohibited species.
611.12 Gear avoidance and disposal.
611.13 Fishery closure procedures.
611.14 Scientific research.
611.15 Recreational fishing.
611.16 Relation to other laws.
Appendix A to Subpart A—Addresses, areas of responsibility and communications
Appendix B to Subpart A—Vessel activity reports
Appendix C to Subpart A—Fishing areas
Appendix D to Subpart A—Species codes
Appendix E to Subpart A—Fishery product codes
Appendix F to Subpart A—Weekly catch report
Appendix G to Subpart A—Weekly joint venture receipts report
Appendix H to Subpart A—Weekly marine mammal report
Appendix I to Subpart A—Daily fishing log
Appendix J to Subpart A—Daily consolidated log
Appendix K to Subpart A—Daily joint venture log

Subpart B—Surpluses

611.20 Total allowable level of foreign fishing (TALFF).
611.21 Allocations.
611.22 Fee schedule.

* * * * *

Subpart A—General

§ 611.1 Purpose and scope.

(a) This part governs all foreign fishing over which the United States exercises exclusive fishery management authority under the Magnuson Fishery Conservation and Management Act. Foreign vessels which are not operated for profit and are conducting recreational fishing only must comply with the provisions of this section, § 611.2, § 611.6(a)(1), applicable portions of § 611.7, and § 611.15.

(b) For additional provisions governing the Japanese harvest of salmonids, see the International Convention for the High Seas Fisheries of the North Pacific Ocean (TIAS 2786, as amended in 1962, TIAS 5385 and in 1978, TIAS 9242).

(c) Other U.S. laws and regulations apply to foreign vessels fishing in the U.S. FCZ, such as the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, and 50 CFR Part 216).

§ 611.2 Definitions.

In addition to the definitions contained in the Magnuson Act, and unless the context requires otherwise, in this Part 611, the terms used have the following meaning (some definitions in the Magnuson Act have been repeated here to aid fishermen in understanding the regulations):

Agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner and/or operator of a vessel operating under a permit and of any other vessel of that nation fishing subject to the jurisdiction of the United States. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with such process.

Allocated species means any species or species group allocated to a foreign nation under § 611.21 for catching by vessels of that nation.

Anadromous species means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters, including but not limited to—

King salmon *(Oncorhynchus tshawytscha)*
Pink salmon *(Oncorhynchus gorbuscha)*
Chum salmon *(Oncorhynchus keta)*
Sockeye salmon *(Oncorhynchus nerka)*
Silver salmon *(Oncorhynchus kisutch)*
Rainbow (Steelhead) trout *(Salmo gairdneri)*
Atlantic salmon *(Salmo salar)*
Striped bass *(Morone saxatilis)*

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA) or a designee.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating to enforce the Magnuson Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Authorized species means any species or species group which a foreign vessel is authorized to retain in a joint venture by a permit issued under activity code 4 as described by § 611.3(c).

Center Director means the Director of one of the four NMFS Fisheries Centers described in Table 1 of Appendix A to this subpart or a designee.

Coast Guard Commander means one of the commanding officers of the Coast Guard units specified in Table 1 of Appendix A to this subpart or a designee.

Continental shelf fishery resources (CSFR) means the following plus any species added by the Secretary under section 3(4) of the Magnuson Act:

Coelenterata

Bamboo coral (*Acanella* spp.)
Black coral (*Antipathes* spp.)
Gold coral (*Callagorgia* spp.)
Precious red coral (*Corallium* spp.)
Bamboo coral (*Keratoisis* spp.)
Gold coral (*Parazoanthus* spp.)

Crustacea

Tanner crab (*Chionoecetes tanneri*)
Tanner crab (*Chionoecetes opilio*)
Tanner crab (*Chionoecetes angulatus*)
Tanner crab (*Chionoecetes bairdi*)
King crab (*Paralithodes camtschatica*)
King crab (*Paralithodes platypus*)
King crab (*Paralithodes brevipes*)
Lobster (*Homarus americanus*)
Dungeness crab (*Cancer magister*)
California king crab (*Paralithodes californiensis*)
California king crab (*Paralithodes rathbuni*)
Golden king crab (*Lithodes aequispinus*)
Northern stone crab (*Lithodes maja*)
Stone crab (*Menippe mercenaria*)
Deep-sea red crab (*Geryon quinquedens*)

Mollusks

Red abalone (*Haliotis rufescens*)
Pink abalone (*Haliotis corrugata*)
Japanese abalone (*Haliotis kamtschatkana*)
Queen conch (*Strombus gigas*)
Surf clam (*Spisula solidissima*)
Ocean quahog (*Arctica islandica*)

Sponges

Glove sponge (*Spongia cheiris*)
Sheepswool sponge (*Hippiospongia lachne*)
Grass sponge (*Spongia graminea*)
Yellow sponge (*Spongia barbera*)

Council means any of the Regional Fishery Management Councils established under the Magnuson Act.

Designated representative means the person appointed by a foreign nation and maintained within the United States who is responsible for transmitting information to and submitting reports from vessels of that nation and establishing observer transfer arrangements for vessels in both directed and joint venture activities.

Directed fishing means any fishing by the vessels of a foreign nation for allocations of fish granted that nation under § 611.21.

Discard or *discarded* means to release or return fish to the sea, whether or not such fish are brought fully aboard a fishing vessel.

Exclusive economic zone (EEZ), with respect to U.S. fisheries, is deemed to

have the same meaning as the fishery conservation zone (FCZ).

Fish (when used as a noun) includes finfish, elasmobranches, mollusks, crustaceans, and all other forms of marine animal or plant life, except marine mammals, birds, and highly migratory species.

Fish (when used as a verb) means to engage in "fishing," as defined below.

Fish over which the United States exercises exclusive fishery management authority means—

(a) All fish within the fishery conservation zone;

(b) All anadromous species beyond the fishery conservation zone, except when they are within any foreign nation's territorial sea or fishery conservation zone (or equivalent), to the extent that such sea or zone is recognized by the United States; and

(c) All Continental shelf fishery resources beyond the fishery conservation zone.

Fishery means—

(a) One or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics, or method of catch; or

(b) Any fishing for such stocks.

Fishery conservation zone (FCZ) means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing or *to fish* means any activity, other than scientific research, which does, is intended to, or can reasonably be expected to result in catching or removing from the water fish over which the United States exercises exclusive fishery management authority. Fishing also includes the acts of scouting, processing and support.

Fishing vessel means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for, fishing.

Foreign fishing means fishing by a foreign fishing vessel.

Foreign fishing vessel (FFV) means any fishing vessel other than a vessel of the United States, except those foreign vessels engaged in recreational fishing, as defined in this section.

Gear conflict means any incident at sea involving one or more fishing vessels (a) in which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and (b) which results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

Governing International Fishery Agreement (GIFA) means an agreement between the United States and a foreign nation or nations under Section 201(c) of the Magnuson Act.

Greenwich mean time (GMT) means the local mean time at Greenwich, England. All times in this part are GMT unless otherwise specified.

Highly migratory species means the species of tuna which in the course of their life cycle spawn and migrate over great distances of the ocean, including, but not limited to—

Albacore *(Thunnus alalunga)*
Bigeye tuna *(Thunnus obsesus)*
Bluefin tuna *(Thunnus thynnus)*
Skipjack tuna *(Euthynnus pelamis)*
Southern bluefin tuna *(Thunnus maccoyii)*
Yellowfin tuna *(Thunnus albacares)*

International radio call sign (IRCS) means the unique radio identifier assigned a vessel by the appropriate authority of the flag state.

Joint venture means any operation by a foreign vessel assisting fishing by U.S. fishing vessels, including catching, scouting, processing and/or support. (A joint venture generally entails a foreign vessel processing fish received from U.S. fishing vessels and conducting associated support activities.)

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

NMFS means National Marine Fisheries Service, NOAA.

NOAA means the National Oceanic and Atmospheric Administration, Department of Commerce.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Optimum yield (OY) means the amount of fish—

(a) Which will provide the greatest overall benefit to the United States, with particular reference to food production and recreational opportunities; and

(b) Which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

Owner, with respect to any vessel, means any person who owns that vessel or any charterer, whether bareboat, time, or voyage; and any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

Processing means any operation by an FFV to receive fish from foreign or U.S. fishing vessels and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the FFV's behalf or to assist other foreign or U.S. fishing vessels.

Product recovery rate (PRR) means a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

Prohibited species, with respect to any vessel, means any species of fish which that vessel is not specifically allocated or authorized to retain, including fish caught or received in excess of any allocation or authorization.

Recreational fishing means any fishing from a foreign vessel not operated for profit and not operated for the purpose of scientific research. It may not involve the sale, barter, or trade of part or all of the catch (see § 611.15).

Regional Director means the Director of one of the five NMFS regions described in Table 1 of Appendix A to this subpart or a designee.

Round weight means the weight of the whole fish.

Scouting means any operation by a vessel exploring (on the behalf of an FFV or U.S. fishing vessel) for the presence of fish by visual, acoustic, or other means which do not involve the catching of fish.

Secretary means the Secretary of Commerce or a designee.

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

Support means any operation by a vessel assisting fishing by foreign or U.S. fishing vessels, including—

(a) Transferring or transporting fish or fish products; or

(b) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the

United States within any fishery for which a fishery management plan prepared under Title III of the Magnuson Act or a preliminary fishery management plan prepared under section 201(h) of the Magnuson Act has been implemented.

U.S. observer or *observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract, or certified as a supplementary observer by NMFS.

Vessel of the United States or *U.S. vessel* means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*), and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 and used exclusively for pleasure.

§ 611.3 Vessel permits.

(a) *General.* (1)(i) Each FFV fishing under the Magnuson Act must have on board a completed permit form for a permit issued under this section, unless it is engaged only in recreational fishing.

(ii) It is a rebuttable presumption that fish or fish products on board a vessel conducting fish transfer operations within the FCZ or within the boundaries of any State are fish over which the United States exercises exclusive fishery management authority, so that an FFV engaged in such transfer activity at sea is "fishing under the Magnuson Act."

(2) The Secretary of State may issue annual registration permits for FFV's fishing under the International Convention for the High Seas Fisheries of the North Pacific Ocean (TIAS 2786; amended in 1962, TIAS 5385; and in 1978, TIAS 9242) upon application from the foreign nations.

(3) Permits issued under this section do not authorize FFV's or persons to harass, capture, or kill marine mammals. No marine mammal may be taken in the course of fishing unless that vessel has on board a marine mammal certificate of inclusion issued under a general permit under the Marine Mammal Protection Act. Application procedures for permits to take marine mammals incidential to commercial fishing operations are contained in 50 CFR 216.24.

(b) *Responsibility of owners and operators.* The owners and operators of each FFV are jointly and severally responsible for compliance with the Magnuson Act, the applicable GIFA, this part, and any permit issued under the Magnuson Act and this part. The owners and operators of each FFV bear civil responsibility for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or even forbidden by the employer or principal, and regardless of knowledge concerning the occurrence.

(c) *Activity codes.* Permits to fish under a GIFA may be issued by the Assistant Administrator for the activities described below, but the permits may be modified by regulations of this part, and by the conditions and restrictions attached to the permit (see paragraphs (e)(v) and (l) of this section). The Assistant Administrator may issue a permit for one of the activity codes 1, 2, or 3. The Assistant Administrator will issue a permit with the additional activity code 4 for FFV's authorized to assist U.S. fishing vessels in a joint venture. The activity codes are described as follows:

Activity code 1—Catching, scouting, processing and support.

Activity code 2—Processing, scouting and support.

Activity code 3—Support.

Activity code 4—Assisting U.S. fishing vessels as allowed by the other assigned code (joint venture).

(d) *Application.* (1) Applications for FFV permits must be submitted by each foreign nation to the Department of State. Application forms are available from OES/OFA, Department of State, Washington, D.C. 20520. The applicant should allow 90 days for review and comment by the public, involved governmental agencies, and appropriate Fishery Management Councils, and for processing before the anticipated date to begin fishing. The permit application fee must be paid at the time of application according to § 611.22.

(2) Applicants must provide complete and accurate information requested on the permit application form.

(3) Applicants for FFV's that will support U.S. vessels in joint ventures (activity code 4) must provide the additional information specified by the permit application form.

(4) Each foreign nation may substitute one FFV for another by submitting a new vessel information form and a short explanation of the reason for the substitution to the Department of State. Each substitution is considered a new application and a new application fee must be paid. NMFS will promptly process an application for a vessel replacing a permitted FFV that is disabled or decommissioned, once the Department of State has notified the appropriate Council(s) of the substituted application.

(e) Issuance. (1) Permits may be issued to an FFV by the Assistant Administrator through the Department of State after—

(i) The Assistant Administrator determines that the fishing described in the application will meet the requirements of the Magnuson Act and approves the permit application;

(ii) The foreign nation has paid the fees, including any surcharge fees; and provided any assurances required by the Secretary in accordance with the provisions of § 611.22;

(iii) The foreign nation has appcinted an agent;

(iv) The foreign nation has identified a designated representative; and

(v) The general "conditions and restrictions" of receiving permits, as required by section 204(b)(7) of the Magnuson Act, and any "additional restrictions" attached to the permit for the conservation and management of fishery resources or to prevent significant impairment of the national defense or security interests, have been accepted by the nation issuing the FFV's documents.

(2) The Assistant Administrator will distribute blank permit forms to the designated representative while the application is being processed. The designated representative must ensure that each FFV receives a permit form and must accurately transmit the permit form and the contents of the permit to the FFV when it is issued. The Assistant Administrator may authorize the modification and use of the previous year's permit forms to be used on an interim basis in place of the current year's permit forms if the current forms were not made available to the designated representatives for timely distribution. The FFV owner or operator must accurately complete the permit form prior to fishing in the FCZ.

(3) A completed permit form must contain—

(i) The name and IRCS of the FFV and its permit number;

(ii) The permitted fisheries and activity codes;

(iii) The date of issuance and expiration date, if other than December 31; and

(iv) All conditions and restrictions, and any additional restrictions and technical modifications appended to the permit.

(4) Permits are not issued for boats which are launched from larger vessels. Any enforcement action which results from the activities of a launched boat will be taken against the permitted vessel.

(f) *Duration.* A permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended or the

nation issuing the FFV's documents does not accept amendments to the permit made by the Assistant Adminstrator in accordance with the procedures of paragraph (l). The permit will be valid for no longer than the calendar year in which it was issued.

(g) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the FFV to which it is issued.

(h) *Display.* Each FFV operator must have a properly completed permit form available on board the FFV when engaged in fishing activities and must produce it at the request of an authorized officer or observer.

(i) *Suspension and revocation.* NMFS may apply sanctions to an FFV's permit by revoking, suspending, or imposing additional permit restrictions on the permit under Title 15 CFR Part 904 if the vessel is involved in the commission of any violation of the Magnuson Act, the GIFA, or this part; if an agent and a designated representative are not maintained in the United States; if a civil penalty or criminal fine imposed under the Magnuson Act has become overdue; or as otherwise specified in the Magnuson Act.

(j) *Fees.* Permit application fees are described at § 611.22.

(k) *Change in application information.* (1) The foreign nation must report in writing any change in the information supplied under paragraph (d) of this section to the Assistant Administrator within 15 calendar days after the date of the change. Failure to report a change in the ownership from that described in the current application within the specified time frame voids the permit, and all penalties involved will accrue to the previous owner.

(2) The Assistant Administrator may make technical modifications or changes in the permit application requested or reported by a nation, such as a change in radio call sign, processing equipment, or tonnage, which will be effective immediately.

(3) If, in the opinion of the Assistant Administrator, a permit change requested by a nation could significantly affect the status of any fishery resource, such request will be processed as an application for a new permit under this section.

(4) The Assistant Administrator will notify the designated representative of any revision which must be made on the permit form as the result of a permit change.

(5) The vessel owner or operator must record the modification on the permit form.

(l) *Permit amendments.* (1) The Assistant Administrator may amend a permit by adding "additional restrictions" for the conservation and management of fishery resources covered by the permit, or for the national defense or security if the Assistant Administrator determines that such interests would be significantly impaired without such restrictions. Compliance with the added "additional restrictions" is a condition of the permit. Violations of added "additional restrictions" will be treated as violations of this part.

(2) The Assistant Administrator may make proposed "additional restrictions" effective immediately, if necessary, to prevent substantial harm to a fishery resource of the United States, to allow for the continuation of ongoing fishing operations, or to allow for fishing to begin at the normal time for opening of the fishery.

(3) The Assistant Administrator will send proposed "additional restrictions" to each nation whose vessels are affected (via the Secretary of State), to the appropriate Councils, and to the Commandant of the Coast Guard. The Assistant Administrator will, at the same time, publish a notice of any significant proposed "additional restrictions" in the **Federal Register**. The notice will include a summary of the reasons underlying the proposal, and the reasons that any proposed "additional restrictions" are made effective immediately.

(4) The nation whose vessels are involved, the owners of the affected vessels, their representatives, the agencies specified in paragraph (i)(3) of this section, and the public may submit written comments on the proposed "additional restrictions" within 30 days after publication in the **Federal Register.**

(5) The Assistant Administrator will make a final decision regarding the proposed "additional restrictions" as soon as practicable after the end of the comment period. The Assistant Administrator will provide the final "additional restrictions" to the nation whose vessels are affected (via the Secretary of State) according to the procedures of paragraph (e) of this section. The Assistant Administrator will include with the final "additional restrictions" to the nation, a response to comments submitted.

(6) "Additional restrictions" may be modified by following the procedures of paragraphs (l)(2) through (l)(5) of this section.

(Approved by the Office of Management and Budget under OMB control number 0648-0089)

§ 611.4 Vessel reports.

(a) The operator of each FFV must report the FFV's activities within the FCZ to the Coast Guard and NMFS as specified in this section.

(b) All reports required by this section must be in English and in the formats specified in the appendices. Reports should be delivered by private or commercial communications facilities to the appropriate Coast Guard commander, who will relay them to NMFS. Weekly reports may also be delivered directly to the appropriate NMFS Region or Center (Tables 1 and 2 of Appendix A to this subpart). (The required reports may be delivered to the closest Coast Guard communication station as indicated in Table 3 of Appendix A or other Coast Guard communication station *only if* adequate private or commercial communications facilities have not been successfully contacted.) Radio reports must be made via radiotelegraphy or Telex where available. In this section, a message is considered *transmitted* when its receipt is acknowledged by a communications facility and considered *delivered* upon its receipt by the offices of the appropriate Coast Guard commander, NMFS Regional Office, or NMFS Center identified in Appendix A. Reports required by this section may be submitted by the vessel's designated representative; however, the operator of the FFV is responsible for the correct and timely filing of all required reports.

(c) *Activity reports.* The operator of each FFV must report the FFV's movements and activities before or upon the event as specified in this paragraph and as illustrated in Appendix B to this subpart (EXCEPTION: § 611.81(d)). Each FFV report must contain the following information: The message identifier "VESREP" to indicate it is a vessel activity report, FFV name, international radio call sign (IRCS), date (month and day based on GMT), time (hour and minute GMT), position (latitude and longitude to the nearest degree and minute) where required, area (use fishing area code from Appendix C to this subpart) where required, the appropriate action code, confirmation codes where required, and the other information specified in paragraphs (c)(1) through (c)(11) of this section.

(1) *BEGIN.* Each operator must specify the date, time, position and area the FFV will actually BEGIN fishing in the FCZ and the species (by species code from Appendix D to this subpart), product (by product code from Appendix E to this subpart), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on

board when entering the FCZ (action code BEGIN). The message must be *delivered* at least 24 hours before the vessel begins to fish.

(2) *DEPART.* Each operator must specify the date, time, position, and area the FFV will DEPART the FCZ to embark or debark an observer, to visit a U.S. port, to conduct a joint centure in internal waters, or to otherwise temporarily leave an authorized fishing area but not depart the seaward limit of the FCZ (action code DEPART). The message must be *transmitted* before the FFV departs the present fishing area and *delivered* within 24 hours of its transmittal.

(3) *RETURN.* Each operator must specify the date, time, position, and area the FFV will RETURN to the FCZ following a temporary departure, and the species (by species code from Appendix D to this subpart), product (by product code from Appendix E to this subpart), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on board which were received in a joint venture in internal waters (action code RETURN). The message must be *transmitted* before returning to the FCZ and *delivered* within 24 hours of its transmittal.

(4) *SHIFT.* Each operator must report each SHIFT in fishing area (as shown in Appendix C to this subpart) by specifying the date, time, and position the FFV will start fishing, and the new area (action code SHIFT). The message must be *transmitted* before leaving the original area and *delivered* within 24 hours of its transmittal. If a foreign vessel operates within 20 nautical miles of a fishing area boundary, its operator may submit in one message the shift reports for all fishing area shifts occurring during one fishing day (0001–2400 GMT). This message must be transmitted prior to the last shift expected to be made in the day and *delivered* within 24 hours of its transmittal.

(5) *JV OPS.* Each operator must specify the date, time, position, and area at which the FFV will START joint venture operations (action code START JV OPS) or END joint venture operations (action code END JV OPS). These reports must be made in addition to other activity reports made under this section. Each message must be *transmitted* before the event and *delivered* within 24 hours of its transmittal.

(6) *TRANSFER.* The operator of each FFV which anticipates a support operation in which the FFV will receive fish or fisheries product must specify the date, time, position, and area the FFV will conduct the TRANSFER and the name and IRCS of the other FFV involved (action code TRANSFER). The message must be *transmitted* prior to the transfer and *delivered* within 24 hours of its transmittal. The movement of raw fish from a catching vessel or U.S. fishing vessel to a processing vessel and the return of nets or codends is not considered a transfer.

(7) *OFFLOADED.* Each operator must specify the date, time, position and area the FFV OFFLOADED fish or fisheries products TO another FFV in a transfer, the other FFV's name, IRCS, species (by species code from Appendix D to this subpart) and quantity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) offloaded (action code OFFLOADED TO). The message must be *transmitted* within 12 hours after the transfer is completed and *delivered* within 24 hours of its transmittal and before the FFV ceases fishing in the FCA.

(8) *RECEIVED.* Each operator must specify the date, time, position, and area the vessel RECEIVED fish or fisheries products FROM another FFV in a transfer, the other FFV's name, IRCS, species (by species code from Appendix D to this subpart) and quantity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) received (action code RECEIVED FROM). The message must be *transmitted* within 12 hours after the transfer is completed and *delivered* within 24 hours of its transmittal and before the FFV ceases fishing in the FCZ.

(9) *CEASE.* Each operator must specify the date, time, position, and area the FFV will CEASE fishing in order to leave the FCZ (action code CEASE). The message must be *delivered* at least 24 hours before the FFV's departure.

(10) *CHANGE.* Each operator must report any CHANGE TO the FFV's operations if the position or time of an event specified in an activity report will vary more than five nautical miles or four hours from that previously reported, by sending a revised message inserting the word "CHANGE" in front of the previous report, repeating the name, IRCS, date, and time of the previous report, adding the word "TO" and the complete revised text of the new report (action code CHANGE TO). Changes to reports specifying an early beginning of fishing by an FFV or other changes to reports of paragraphs (c)(1) through (c)(9) must be transmitted and delivered as if the CHANGE report was the original message.

(11) *CANCEL.* Each operator wishing to CANCEL a previous report may do so by sending a revised message, and inserting the word "CANCEL" in front of the previous report's vessel name, IRCS, date, time and action code canceled (action code CANCEL). The message must be transmitted and delivered prior to the date and time of the event in the original message.

(d) The operator of an FFV will be in violation of paragraphs (c)(1) through (c)(9) of this section if the FFV does not pass within five nautical miles of the position given in the report within four hours of the time given in the report.

(e) The notices required by this section may be provided for individual or groups of FFV's (on a vessel-by-vessel basis) by fleet commanders or other authorized persons. An FFV operator may retransmit reports on the behalf of another FFV, if authorized by that FFV's operator. This does not relieve the individual vessel operator of the responsibility of filing required reports. In these cases, the message format in Appendix B of this subpart should be modified so that each line of text under "VESREP" is a separate vessel report.

(f) *Weekly reports.* (1) The operator of each FFV in the FCZ must submit appropriate weekly reports through the nation's designated representative. The report must arrive at the address and time specified in paragraph (g) of this section. The reports may be sent by Telex, but a completed copy of the report form (see Appendices F, G, and H to the subpart) must be mailed or hand delivered to confirm the Telex. Designated representatives may include more than one vessel report in a Telex message, if the information is submitted on a vessel-by-vessel basis. Requests for corrections to previous reports must be submitted through the nation's designated representative and mailed or hand-delivered, together with a written explanation of the reasons for the errors. The appropriate Regional or Center Director may accept or reject any correction and initiate any appropriate civil penalty actions.

(2) *Weekly catch report (CATREP).* (i) The operator of each FFV must submit a weekly catch report stating any catch (activity code 1) in round weight of each species or species group allocated to that nation by area and days fished in each area for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged (see Subpart C through G of this part). Foreign vessels delivering unsorted, unprocessed fish to a processing vessel are not required to submit CATREP's, if

that processing vessel (activity code 2) submits consolidated CATREP's for all fish received during each weekly period. No report is required for FFV's which do not catch or receive foreign-caught fish during the reporting period.

(ii) Appendix F to this subpart contains the instructions and form to submit a CATREP.

(3) *Weekly receipts report (RECREP).* (i) The operator of each FFV must submit a weekly report stating any receipts of U.S.-harvested fish in a joint venture (activity code 4) for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged (see Subparts C through G of this part), for each fishing area by authorized or prohibited species or species group; days fish received; round weight retained or returned to the U.S. fishing vessel; number of codends received; and number of vessels transferring codends. The report must also include the names of U.S. fishing vessels transferring codends during the week. No report is required for FFV's which do not receive any U.S.-harvested fish during the reporting period.

(ii) Appendix G to this subpart contains the instructions and form to submit a RECREP.

(4) *Marine mammal report (MAMREP).* (i) The operator of each FFV must submit a weekly report stating any incidental catch or receipt of marine mammals (activity codes 1 or 2 and/or 4), the geographical position caught, the condition of the animal, number caught (if more than one of the same species and condition), and nationality of the catching vessel for the period Sunday through Saturday, GMT, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part). Foreign catching vessels delivering unsorted, inprocessed fish to processing vessel are not required to submit MAMREP's provided that the processing or factory vessel (activity code 2) submits consolidated MAMREP's for all fish received during each weekly period. FFV's receiving U.S.-harvested fish in a joint venture (activity code 4) must submit consolidated reports for U.S. vessels operating in the joint venture. No report is requirled for FFV's which do not catch or receive marine mammals during the reporting period.

(ii) Appendix H to this subpart contains the instructions and form to submit a MAMREP.

(g) *Submission instructions for weekly reports.* The designated representative for each FFV must submit weekly reports in the prescribed format to the appropriate Regional or Center Director of NMFS by 1900 GMT on the Wednesday following the end of the reporting period. For fisheries off Alaska, weekly reports, other than weekly receipts reports (RECREP's), must be received by 1900 GMT on the Friday following the end of the reporting period. For fisheries off Alaska, weekly receipts reports (RECREP's) must be received by 19 GMT on the Wednesday following the end of the reporting period. However, by agreement with the appropriate Director, the designated representative may submit weekly reports to some other facility of NMFS (See Table 2 to Appendix A to this subpart).

(Approved by the Office of Management and Budget under OMB control number 0648-0075)

§ 611.5 Vessel and gear identification.

(a) *Vessel identification.* (1) The operator of each FFV assigned an international radio call sign (IRCS) must display that call sign amidships on both the port and starboard sides of the deckhouse or hull, so that it is visible from an enforcement vessel, and on an appropriate weather deck so it is visible from the air.

(2) The operator of each FFV not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix. (For example, JCZM-1, JCZM-2, etc. would be displayed on small trawlers not assigned an IRCS operating with a mother ship whose IRCS is JCZM; JANP-1 would be displayed by a pair trawler not assigned an IRCS operating with a trawler whose IRCS is JANP.)

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the FFV in block roman alphabet letters and arabic numerals at least one meter in height for FFV's over 20 meters in length, and at least one-half meter in height for all other FFV's.

(b) *Navigational lights and shapes.* Each FFV must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the FFV is engaged (as described at 33 CFR Part 81).

(c) *Gear identification.* (1) The operator of each FFV must ensure that all deployed fishing gear which is not physically and continuously attached to an FFV: (i) is clearly marked at the surface with a buoy displaying the vessel identification of the FFV (see paragraph (a) of this section) to which the gear belongs, (ii) has attached a light visible for two miles at night in good visibility, and (iii) has a radio buoy.

Trawl codends passed from one vessel to another are considered continuously attached gear and are not required to be marked.

(2) The operator of each FFV must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with: (i) a buoy displaying the vessel identification of the FFV to which the gear belongs (see paragraph (a) of this section, (ii) a light visible for two miles at night in good visibility, and (iii) a radio buoy.

Additional requirements may be specified in Subparts C through G for the fishery in which the vessel is engaged.

(3) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in accordance with applicable Federal regulations by any authorized officer.

(d) *Maintenance.* The operator of each FFV must—

(1) Keep the vessel and gear identification clearly legible and in good repair;

(2) Ensure that nothing on the FFV obstructs the view of the markings from an enforcement vessel or aircraft; and

(3) Ensure that the proper navigational lights and shapes are displayed for the FFV's activity and are properly functioning.

§ 611.6 Facilitation of enforcement.

(a) *General.* (1) The owner, operator, or any person aboard any FFV subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the FFV; to move the FFV to a specified location; and to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, and fish and fish products on board for purposes of enforcing the Magnuson Act and this part.

(2) The operator of each FFV must provide vessel position or other information when requested by NMFS or the Coast Guard within the time specified in the request.

(b) *Communications equipment.* (1) Each FFV must be equipped with a VHF-FM radiotelephone station located so that it may be operated from the wheelhouse. Each operator must maintain a continous listening watch on channel 16 (156.8 mHz).

(2) Each FFV must be equipped with a radiotelegraph station capable of communicating via 500 kHz radiotelegraph and at least one working frequency between 405 kHz and 535

kHz, and a radiotelephone station capable of communicating via 2182 kHz radiotelephony and at least one set of working frequencies identified in Table 3 to Appendix A of this subpart appropriate to the fishery in which the FFV is operating. Each operator must monitor and be ready to communicate via 500 kHz radiotelegraph and 2182 kHz radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

(3) FFV's that are not equipped with processing facilities and that deliver all catches to a foreign processing vessel are exempt from the requirements of paragraph (b)(2) of this section.

(4) FFV's with no IRCS which do not catch fish and are used as auxiliary vessels to handle codends, nets, equipment, or passengers for a processing vessel are exempt from the requirements of paragraph (b)(1) and (b)(2) of this section.

(5) The appropriate Regional Director, with the agreement of the appropriate Coast Guard commander, may, upon request by a foreign nation, accept alternatives to the radio requirements of this section to certain FFV's or types or FFV operating in a fishery, provided they are adequate for the communications needs of the fishery.

(c) *Communications procedures.* (1) Upon being approached by a Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of any FFV subject to this part must be alert for communications conveying enforcement instructions. The enforcement unit may communicate by channel 16 VHF-FM radiotelephone, 2182 kHz radiotelephone, 500 kHZ radiotelegraph, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signal, placard, loudhailer, or other appropriate means. The following signals extracted from the International Code of Signals are among those which may be used.

(i) "AA, AA, AA, etc." which is the call for an unknown station. The signaled vessel should respond by identifying itself or by illuminating the vessel identification required by § 611.5 of this part;

(ii) "RY-CY" meaning "You should proceed at slow speed, a boat is coming to you";

(iii) "SQ3" meaning "You should stop or heave to; I am going to board you"; and

(iv) "L" meaning "You should stop your vessel instantly."

(2) Failure of an FFV's operator to stop the vessel when directed to do so by an authorized officer using VHF-FM radiotelphone (channel 16), 2182 kHz radiotelephone (where required), 500 kHz radiotelegraph (where required), message block from an aircraft, flashing light signal, flaghoist, or loudhailer constitutes a violation of this part.

(3) The operator of or any person aboard an FFV who does not understand a signal from an enforcement unit and who is unable to obtain clarification by radiotelephone or other means must consider the signal to be a command to stop the FFV instantly.

(d) *Boarding.* The operator of an FFV signaled for boarding must—

(1) Monitor 2182 kHz radiotelephone and 500 kHz radiotelegraph (if equipped) and channel 16 (156.8 mHz) VHF-FM radiotelephone;

(2) Stop immediately and lay to or maneuver in such a way as to maintain the safety of the FFV and facilitate boarding by the authorized officer and the boarding party or an observer;

(3) Provide the authorized officer, boarding party, or observer a safe pilot ladder. The operator must ensure the pilot ladder is securely attached to the FFV and meets the construction requirements of Regulation 17, Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (TIAS 9700 and 1978 Protocol, TIAS 10009), or a substantially equivalent national standard approved by letter from the Assistant Administrator, with agreement with the Coast Guard. Safe pilot ladder standards are summarized below:

(i) The ladder must be of a single length of not more than 9 meters (30 feet), capable of reaching the water from the point of access to the FFV, accounting for all conditions of loading and trim of the FFV and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship is more than 9 meters (30 feet), access must be by means of an accommodation ladder or other safe and convenient means.

(ii) The steps of the pilot ladder must be—

(A) Of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;

(B) Not less than 480 millimeters (19 inches) long, 115 millimeters (4½ inches) wide, and 25 millimeters (1 inch) in depth, excluding any non-slip device; and

(C) Equally spaced not less than 300 millimeters (12 inches) nor more than 380 millimeters (15 inches) apart and secured in such a manner that they will remain horizontal.

(iii) No pilot ladder may have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder.

(iv) The side ropes of the ladder must consist of two uncovered manila ropes not less than 60 millimeters (2¼ inches) in circumference on each side (or synthetic ropes of equivalent size and equivalent or greater strength). Each rope must be continuous with no joints below top step.

(v) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.80 meters (5 feet 10 inches) long must be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten must be on the fifth step from the bottom of the ladder and the interval between any batten and the next must not exceed 9 steps.

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted at the point of boarding or leaving the FFV not less than 0.70 meter (2 feet 3 inches) nor more than 0.80 meter (2 feet 7 inches) apart, not less than 40 millimeters (2½ inches) in diameter, and must extend not less than 1.20 meters (3 feet 11 inches) above the top of the bulwark.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope, safety line and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and the boarding party and to facilitate the boarding and inspection.

(e) *Access and records.* (1) The owner and operator of each FFV must provide authorized officers access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to, personal quarters and areas within personal quarters.

(2) The owner and operator of each FFV must provide to authorized officers all records and documents pertaining to the fishing activities of the vessel, including but not limited to, production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(f) *Product storage.* The operator of each permitted FFV storing fish or fish products in a storage space must ensure that all non-fish product items are neither stowed beneath nor covered by fish products, unless required to maintain the stability and safety of the vessel. These items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-product items. These items may be in the space when necessary for safety of the vessel or crew or for storage of the product. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure safety of crew and to prevent shifting of cargo within the space.

(Approved by the Office of Management and Budget under OMB control number 0648-0075)

§ 611.7 Prohibitions.

(a) It is unlawful for any person to do the following:

(1) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(2) Refuse to allow an authorized officer to board an FFV for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, the applicable GIFA, this part, or any other permit issued under this part;

(3) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (a)(2) of this section;

(4) Resist a lawful arrest for any act prohibited by the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(5) Interfere with, delay, or prevent by any means the apprehension or arrest of another person with the knowledge that such other person has committed any act prohibited by the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(6) Interfere with, obstruct, delay, oppose, impede, intimidate, or prevent by any means any boarding, investigation or search, wherever conducted, in the process of enforcing the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(7) Engage in any fishing activity for which the FFV does not have a permit as required under § 611.3;

(8) Engage in any fishing activity within the FCZ without a U.S. observer aboard the FFV, unless the requirement has been waived by the appropriate Regional Director;

(9) Retain or attempt to retain, within the FCZ, directly or indirectly, any U.S.-harvested fish, unless the FFV has a permit for activity code 4 which authorizes the receipt of that species of U.S.-harvested fish;

(10) Use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued under this part;

(11) Violate any provision of the applicable GIFA;

(12) Falsely or incorrectly complete (including by omission) a permit application or permit form as specified in §§ 611.3 (d) and (k);

(13) Fail to report to the Assistant Administrator within 15 days any change in the information contained in the permit application for a FFV, as specified in § 611.3(k);

(14) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard an FFV under this part;

(15) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch prior to sampling, unless the observer has stated that sampling will not occur; or tampering with, destroying, or discarding an observer's collected samples, equipment, records, photographic film, papers, or effects without the express consent of the observer;

(16) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties;

(17) Harass an authorized officer or observer (including sexual harassment) by conduct which has the purpose or effect of unreasonably interfering with the observer's work performance, or which creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis;

(18) Fail to provide the required assistance to an observer as described at §§ 611.8 (c) and (d);

(19) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of the FFV or its gear as required by this part.

(20) Falsify or fail to make, keep, maintain, or submit any record or report required by this part;

(21) Fail to return to the sea or fail to otherwise treat prohibited species as required by this part;

(22) Fail to report or falsely report any gear conflict;

(23) Fail to report or falsely report any loss, jettisoning, or abandonment of fishing gear or other article into the FCZ which might interfere with fishing, obstruct fishing gear or vessels, or cause damage to any fishery resource or marine mammals;

(24) Continue activity codes 1 through 4 after those activity codes have been canceled under § 611.13;

(25) Violate any provisions of Subparts C through G of this part;

(26) Violate any provision of this part, the Magnuson Act, the applicable GIFA, any notice issued under this part or any permit issued under this part; or

(27) Attempt to do any of the foregoing.

(b) It is unlawful for any FFV, and for the owner or operator of any FFV except an FFV engaged only in recreational fishing, to fish—

(1) Within the boundaries of any State, unless the fishing is authorized by the Governor of that State as permitted by section 306(c) of the Magnuson Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that State; or

(2) Within the FCZ, or for any anadromous species or continental shelf fishery resources beyond the FCZ, unless the fishing is authorized by, and conducted in accordance with, a valid permit issued under § 611.3 or by the Secretary of State under the International Convention for the High Seas Fisheries of the North Pacific Ocean.

§ 611.8 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson Act, the appropriate Regional or Center Director (See Table 2 to Appendix A to this subpart) may assign U.S. observers to FFV's. Except as provided for in section 201(i)(2) of the Magnuson Act, no FFV may conduct fishing operations within the FCZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wishing to fish within the FCZ will submit to the appropriate Regional Director or Center Director; and also to the Chief, Office of

Enforcement, National Marine Fisheries Service, Washington, D.C. 20235, ATTN: F/M5 (see Table 4 to Appendix A to this subpart), a schedule of fishing effort 30 days prior to the beginning of each quarter. A quarter is a time period of three consecutive months beginning January 1, April 1, July 1, and October 1 of each year. The schedule will contain the name and IRCS of each FFV intending to fish within the FCZ during the upcoming quarter, and each FFV's expected date of arrival and expected date of departure.

(1) The appropriate Regional or Center Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the FCZ for FFV's listed in the effort plan required by this section.

(2) If an arrival date of an FFV will vary more than five days from the date listed in the quarterly schedule, the appropriate Regional or Center Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph is not given, the FFV may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional or Center Director.

(c) *Assistance to observers.* To assist the observer in the accomplishment of his or her assigned duties, the owner and operator of an FFV to which an observer is assigned must—

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the FFV which are equivalent to those provided to the officers of that vessel;

(2) Cause the FFV to proceed to such places and at such times as may be designated by the appropriate Regional or Center Director for the purpose of embarking and debarking the observer;

(3) Allow the observer to use the FFV's communications equipment and personnel upon demand for the transmission and receipt of messages;

(4) Allow the observer access to and use of the FFV's navigation equipment and personnel upon demand to determine the vessel's position;

(5) Allow the observer free and unobstructed access to the FFV's bridge, trawl, or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process weigh, or store fish or fish products at any time;

(6) Allow the observer to inspect and copy the FFV's daily log, communications log, transfer log, and any other log, document, notice, or record required by these regulations;

(7) Provide the observer copies of any records required by these regulations upon demand;

(8) Notify the observer at least 15 minutes before fish are brought aboard or fish or fish products are transferred from the FFV to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified; and

(9) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(d) *Observer transfers.* (1) The operator of the FFV must ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours as weather and sea conditions allow, and with the agreement of the observer involved. The FFV operator must provide the observer three hours advance notice of at-sea transfers, so that the observer may collect personal belongings, equipment, and scientific samples.

(2) The FFV's involved must provide a safe pilot ladder and conduct the transfer according to the procedures of § 611.6(d) to ensure the safety of the observer during the transfer.

(3) An experienced crew member must assist the observer in the small boat or raft in which the transfer is made.

(e) *Supplementary observers.* In the event funds are not available from Congressional appropriations of fees collected to assign an observer to a foreign fishing vessel, the appropriate Regional or Center Director will assign a supplementary observer to that vessel. The costs of supplementary observers will be paid for by the owners and operators of foreign fishing vessels as provided for in paragraph (h) of this section.

(f) *Supplementary observer authority and duties.* (1) A supplementary observer aboard a foreign fishing vessel has the same authority and must be treated in all respects as an observer who is employed by NMFS either directly or under contract.

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional or Center Director.

(3) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(g) *Supplementary observer payment.*—(1) *Method of payment.* The owners and operators of foreign fishing vessels must pay directly to the contractor the costs of supplementary observer coverage. Payment must be made to the contractor supplying supplementary observer coverage either by letter of credit or certified check drawn on a Federally chartered bank in U.S. dollars, or other financial institution acceptable to the contractor. The letter of credit used to pay supplementary observer fees to contractors must be separate and distinct from the letter of credit required by § 611.22(b)(2)(ii) of these regulations. Billing schedules will be specified by the terms of the contract between NOAA and the contractors beginning in FY 1986. During FY 1985, the billing schedule will be determined by the Assistant Administrator to ensure sufficient funding for the program. Billings for supplementary observer coverage will be approved by the appropriate Regional or Center Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. Each country will have only one designated representative to receive observer bills for all vessels of that country except as provided for by the Assistant Administrator. All bills must be paid within ten working days of the billing date. Failure to pay an observer bill will constitute grounds to revoke fishing permits. All fees collected under this section will be considered interim in nature and subject to reconciliation at the end of the fiscal year in accordance with paragraph (g)(4) of this section and § 611.22(b)(3) of these regulations.

(2) *Contractor costs.* The costs charged for supplementary observer coverage to the owners and operators of foreign fishing vessels may not exceed the costs charged to NMFS for the same or similar services, except that contractors may charge to the owners and operators of foreign fishing vessels and additional fee to cover the administrative costs of the program not ordinarily part of contract costs charged to NMFS. The costs charged foreign fishermen for supplementary observers may include, but are not limited to the following:

(i) Salary and benefits, including overtime, for supplementary observers;

(ii) The costs of post-certification training required by paragraph (i) (2) of this section;

(iii) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels including the cost of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from where the trip began. For the purposes of these regulations, the appropriate Regional or Center Director

will designate posts of duty for supplementary observers;

(iv) The costs of travel, transportation, and per diem associated with the debriefing following deployment of a supplementary observer by NMFS officials; and

(v) The administrative and overhead costs incurred by the contractor and, if appropriate, a reasonable profit.

(3) *NMFS costs.* The owners and operators of foreign fishing vessels must also pay to NMFS as part of the surcharge required by Section 201(i)(4) of the Magnuson, the following costs:

(i) The costs of certifying applicants for the position of supplementary observer;

(ii) The costs of any equipment, including safety equipment, sampling equipment, operations manuals, or other texts necessary to perform the duties of a supplementary observer. The equipment will be specified by the appropriate Regional or Center Director according to the requirements of the fishery to which the supplementary observer will be deployed;

(iii)The costs associated with communications with supplementary observers for transmission of data and routine messages;

(iv) For the purposes of monitoring the supplementary observer program, the costs for the management and analysis of data;

(v) The costs for data editing and entry;

(vi) Any costs incurred by NMFS to train, deploy or debrief a supplementary observer; and

(vii) The cost for U.S. Customs inspection for supplementary observers disembarking after deployment.

(4) *Reconciliation.* Fees collected by the contractor in excess of the actual costs of supplementary observer coverage will be refunded to the owners and operators of foreign fishing vessels, or kept on deposit to defray the costs of future supplementary observer coverage. Refunds will be made within 60 days after final costs are determined and approved by NMFS.

(h) *Supplementary observer contractors.*—(1) *Contractor eligibility.* Supplementary observers will be obtained by NMFS from persons or firms having established contracts to provide NMFS with observers. In the event no such contract is in place, NMFS will use established, competitive contracting procedures to select persons or firms to provide supplementary observers. The services supplied by the supplementary observer contractors will be as described within the contract and as specified below.

(2) Supplementary observer contractors must submit for the approval of the Assistant Administrator the following:

(i) A copy of any contract, including all attachments, amendments, and enclosures thereto, between the contractor and the owners and operators of foreign fishing vessels for whom the contractor will provide supplementary observer services;

(ii) All application information for persons whom the contractor desires to employ as certified supplementary observers;

(iii) Billing schedules and billings to the owners and operators of foreign fishing vessels for further transmission to the designated representative of the appropriate foreign nation; and

(iv) All data on costs.

(i) *Supplementary observers—certification, training.*

(1) *Certification.* The appropriate Regional or Center Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

(i) The candidate is a citizen or national of the United States.

(ii) The candidate has education or experience equivalent to the education or experience required of persons used as observers by NMFS as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer is to be deployed. Documentation of U.S. citizenship or nationality, and education or experience will be provided from personal qualification statements on file with NMFS contractors who provide supplementary observer services, and will not require the submission of additional information to NMFS.

(2) *Training.* Prior to deployment to foreign fishing vessels, certified supplementary observers must also meet the following conditions:

(i) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional or Center Director as equivalent to that received by persons used as observers by the NMFS as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer is to be deployed.

(ii) Each certified supplementary observer must agree in writing to abide by standards of conduct as set forth in Department of Commerce Administrative Order 202–735 (as provided by the contractor).

(j) *Supplementary observer certification suspension or revocation.*

(1) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(i) A supplementary observer fails to perform the duties specified as provided for by paragraph (g)(2) of this section.

(ii) A supplementary observer fails to abide by the standards of conduct described by Department of Commerce Administrative Order 202–735.

(2) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following:

(i) Boarding inspection reports by authorized officers of the U.S. Coast Guard or NMFS, or other credible information, that indicate a supplementary observer has failed to abide by the established standards of conduct; or

(ii) An analysis by the NMFS of the data collected by a supplementary observer indicating improper or incorrect data collection or recording. The failure to properly collect or record data is sufficient to justify decertification of supplementary observers; no intent to defraud need be demonstrated.

(3) The Assistant Administrator will notify the supplementary observer in writing of the Assistant Administrator's intent to suspend or revoke certification, and the reasons therefor, and provide the supplementary observer a reasonable opportunity to respond. If the Assistant Administrator determines that there are disputed questions of material fact, then the Assistant Administrator may in this respect appoint an examiner to make an informal fact-finding inquiry and prepare a report and recommendations.

(Approved by the Office of Management and Budget under OMB control number 0648–0075)

§ 611.9 Recordkeeping.

(a) *General.* The owner and operator of each FFV must maintain timely and accurate records required by this section as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part).

(1) The owner and operator of each FFV must maintain all required records in English, based on Greenwich mean time (GMT) unless otherwise specified in the regulation, and make them immediately available for inspection upon the request of an authorized officer or observer.

(2) The owner and operator of each FFV must retain all required records on board the FFV whenever it is in the FCZ

for three years after the end of the permit period.

(3) The owner and operator of each FFV must retain the required records and make them available for inspection upon the request of an authorized officer at any time during the three years after the end of the permit period, whether or not such records are on board the vessel.

(4) The owner and operator of each FFV must provide to the Assistant Administrator, in the form and at the times prescribed, any other information requested that the Assistant Administrator determines is necessary to fulfill the fishery conservation, management and enforcement purposes of the Magnuson Act.

(b) *Communications log.* The owner and operator of each FFV must record, in a separate communications log at the time of transmittal, the time and content of each notification made under § 611.4.

(c) *Transfer log.* Except for the transfer of unsorted, unprocessed fish via codend from a catching vessel to a processing vessel (activity code 2 or 4), the owner and operator of each FFV must record, in a separate transfer log, each transfer or receipt of any fish or fishery product, including quantities transferred or offloaded outside the FCZ. The operator must record in the log within twelve hours of the completion of the transfer:

(1) The time and date (GMT) and location (in geographic coordinates) the transfer began and was completed;

(2) The product weight, by species and product (use species and product codes from Appendices D and E of this subpart), of all fish transferred to the nearest hundredth of a metric ton (0.01 mt); and

(3) The name, IRCS, and permit number of both the FFV offloading the fish and the FFV receiving the fish.

(d) *Daily fishing log.* (1) The owner or operator of each FFV authorized to catch fish (activity code 1) must maintain a daily fishing log of the effort, catch and production of the FFV, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). The operator must maintain on a daily and cumulative basis for the permit period a separate log for each fishery (see Table 2 to Appendix A to this subpart) in which the FFV is engaged according to this section and in the format specified in Appendix I to this subpart or other format authorized under paragraph (k) of this section. Daily effort entries are required for each day the vessel conducts fishing operations within the FCZ. Daily entries are not required whenever the FFV is in port or engaged in a joint venture in the internal waters of a State. Each page of log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

(2) The owner or operator of each FFV authorized to catch fish (activity code 1) and which delivers all catches to a processing vessel, must maintain only SECTION ONE-EFFORT, of the daily fishing log, provided the processing vessel maintains a daily consolidated fishing log as described in paragraphs (f) and (g) of this section.

(e) *Daily fishing log—contents.* The daily fishing log must contain the following information, as modified by paragraph (d)(2) of this section and the fishery in which the FFV is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix I to this subpart or other format authorized under paragraph (k) of this section.

(1) SECTION ONE-EFFORT must contain on a daily basis—

(i) A consecutive page number beginning with the first day the vessel started fishing operations within the FCZ and continuing throughout the log;

(ii) The date (based on (GMT):

(iii) The FFV's name;

(iv) The FFV's IRCS;

(v) The FFV's U.S. permit number;

(vi) The FFV's noon (1200 (GMT) position in geographic coordinates; and

(vii) The master or operator's signature or title.

(2) SECTION ONE-EFFORT must contain for each trawl or set, as appropriate to the gear type employed—

(i) The consecutive trawl or set number, beginning with the first set of the calendar year;

(ii) The fishing area in which the trawl or set was completed;

(iii) The gear type;

(iv) The time the gear was set;

(v) The position of the set;

(vi) The course of the set;

(vii) The sea depth;

(viii) The depth of the set;

(ix) The duration of the set;

(x) The hauling time;

(xi) The position of the haul;

(xii) The number of pots or longline units (where applicable);

(xiii) The average number of hooks per longline unit (where applicable);

(xiv) The trawl speed (where applicable);

(xv) The mesh size of the trawl's codend (where applicable); and

(xvi) The estimated total weight of the catch for the trawl of set, to at least the nearest metric ton round weight.

(3) SECTION TWO-CATCH must contain for each trawl or set—

(i) The consecutive set or trawl number from SECTION ONE;

(ii) The catch of each allocated species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iii) The prohibited species catch to at least the nearest tenth of a metric ton (0.1 mt) round weight or by number, as required by the regulations for the fishery in which the FFV is engaged; and

(iv) The species code of each marine mammal caught and its condition when released.

(4) SECTION TWO-CATCH must contain on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups caught;

(ii) For each allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily catch by fishing area; the daily catch for all fishing areas; and the cumulative total catch;

(iii) For the total catch of allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, daily total catch by fishing area, daily total catch for all fishing areas, and cumulative total catch; and

(iv) The catch by fishing area, daily total, and cumulative total of each prohibited species.

(5) SECTION THREE-PRODUCTION must contain on a daily basis for each allocated species caught and product produced—

(i) The product by species code and product type;

(ii) The daily product recovery rate of each species and product;

(iii) The daily total product produced by species to at least the nearest hundredth of a metric ton (0.1 mt);

(iv) The cumulative total of each product to at least the nearest hundredth of a metric ton (0.01 mt);

(v) The cumulative amount of product transferred;

(vi) The balance of product remaining aboard the FFV;

(vii) The total daily amount, cumulative amount, transferred product and balance of frozen product aboard the FFV to the nearest hundreth of a metric ton (0.01 mt); and

(viii) Transferred amount and balance of fishmeal and fish oil aboard to at least the nearest hundredth of a metric ton (0.01 mt).

(f) *Daily consolidated fishing log.* The owner or operator of each FFV which receives unsorted, unprocessed fish from foreign catching vessels (activity

code 2) for processing must maintain a daily consolidated fishing log of the effort, catch and production of its associated foreign catching vessels and the processing vessel, as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). This log is separate and in addition to any log required by paragraphs (d) and (e) of this section. The owner or operator must maintain a separate log for each fishery in which the FFV is engaged (see Table 2 of Appendix A to this subpart) on a daily and cumulative basis for the permit period according to this section and in the format specified specified in Appendix J to this subpart or other format authorized by paragraph (k) of this section. Each page of the log may contain entries pertaining to only one day's fishing operations.

(g) *Daily consolidated fishing log—contents.* Daily consolidated fishing logs must contain the following information, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix J to this subpart of other format authorized under paragraph (k) of this section.

(1) SECTION ONE-EFFORT must contain on a daily basis that information required in paragraph (e)(1) of this section.

(2) SECTION TWO-CATCH must contain for each foreign catching vessel on a daily basis and by area—

(i) The name and IRCS of the foreign catching vessel;

(ii) The fishing area number from which the fish were caught (Where the foreign catching vessel caught fish in more than one area, a daily entry for each area must be made);

(iii) The receipts of each allocated species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iv) The receipts of each prohibited species and species group to at least the nearest tenth of a metric ton (0.1 mt) round weight, or by number, as required by the fishery in which the FFV is engaged; and

(v) The species code of each marine mammal received and its condition when released.

(3) SECTION TWO-CATCH must contain on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups received;

(ii) For each allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily receipts by fishing area; the daily catch for all fishing areas; and the cumulative total catch;

(iii) For the total receipts of allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, daily total receipts by fishing area, daily total receipts for all fishing areas, and cumulative total receipts; and

(iv) The receipts by fishing area, daily total and cumulative total of each prohibited species.

(4) SECTION THREE-PRODUCTION must contain on a daily basis for each allocated species received and product produced that information required in paragraph (e)(5) of this section.

(h) *Daily joint venture log.* The operator of each FFV which receives U.S.-harvested fish from U.S. fishing vessels in a joint venture (activity code 4) must maintain a daily joint venture log of the effort, catch and production of its associated U.S. fishing vessels and the processing vessel as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). This log is separate and in addition to any log required by paragraphs (d) and (f) of this section. The operator must maintain a separate log for each fishery in which the FFV is engaged on a daily and cumulative basis according to this section and in the format specified in Appendix K to this subpart or other format authorized under paragraph (k) of this section. Receipts of fish caught outside the FCZ must be included. Each page of the log may contain entries pertaining to only one day's fishing operations.

(i) *Daily joint venture log—contents.* Daily joint venture logs must contain the following information, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix K of this subpart or other format authorized under paragraph (k) of this section.

(1) SECTION ONE-EFFORT must contain on a daily basis that information required in paragraph (e)(1) of this section.

(2) SECTION ONE-EFFORT must contain for each receipt of a codend—

(i) The consecutive codend number, beginning with the first codend received for the calendar year;

(ii) The name of the U.S. fishing vessel the codend was received from;

(iii) The fishing area where the codend was received;

(iv) The time the codend was received;

(v) The position the codend was received; and

(vi) The estimated weight of the codend to at least the nearest metric ton round weight.

(3) SECTION TWO-CATCH must contain for each codend received—

(i) The consecutive codend number from SECTION ONE;

(ii) The receipts of each authorized species or species group and its disposition, either processed for human consumption, used for fishmeal, discarded, or returned to the U.S. fishing vessel, to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iii) The estimated receipts of each prohibited species or species group and its disposition, either discarded or returned to the U.S. fishing vessel if authorized in the fishery in which the U.S. vessel is engaged, to at least the nearest tenth of a metric ton (0.1 mt) round weight; and

(iv) The species code of each marine mammal received and its condition when released.

(4) SECTION TWO-CATCH must contain on a daily basis—

(i) The species codes of all authorized or prohibited species or species groups received;

(ii) The daily disposition, as described in paragraph (i)(3)(ii) of this section, daily total, and cumulative total receipts of each authorized species or species groups;

(iii) The daily disposition, daily total and cumulative total receipts of all authorized species or species groups; and

(iv) The daily and cumulative total receipts of prohibited species groups and their disposition as described in paragraph (i)(3)(iii).

(5) SECTION THREE—PRODUCTION must contain on a daily basis for each authorized species or species group received and product produced that information required in paragraph (e)(5) of this section.

(j) *Daily log maintenance.* The logs required by paragraphs (e) through (i) of this section must be maintained separately for each fishery in Subparts C through G (see Table 2 to Appendix A to this subpart).

(1) The effort section (all of SECTION ONE) of the daily logs must be updated within two hours of the hauling or receipt time. The catch or receipt by trawl or set (SECTION TWO) must be entered within 12 hours of the hauling or receipt time. The daily and cumulative total catch or receipts (SECTION TWO) and the production portion (SECTION THREE) of the log must be updated within 12 hours of the end of the day on which the catch was taken. The date of

catch is the day and time (GMT) the gear is hauled.

(2) Entries for total daily and cumulative catch or receipt weights (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for daily and cumulative weights of discarded or returned fish (disposition "D" or "R") must be based on the most accurate method available to the vessel, either actual count, scale round weight, or estimated deck weights. Entries for product weights must be based on the number of production units (pans, boxes, blocks, trays, cans, or bags) and the average weight of the production unit, with reasonable allowances for water added. Allowances for water added cannot exceed five percent of the unit weight. Product weights cannot be based on the commercial or arbitrary wholesale weight of the product, but must be based on the total actual weight of the product as determined by representative samples.

(3) The owner or operator must make all entries in indelible ink with corrections to be accomplished by lining out and rewriting rather than erasure.

(k) *Alternative log formats.* As an alternative to the use of the specific formats described in Appendices I, J, and K to this subpart, a nation may submit a proposed log format for FFV's of that nation for a general type of fishery operation in a fishery (i.e. joint venture operations) to the appropriate Regional Director and the Coast Guard commander (see Appendix A to this subpart). With the agreement of the Coast Guard commander, the Regional Director may authorize the use of that log format for vessels of the requesting nation.

(Approved by the Office of Management and Budget under OMB control number 0648-0075)

§ 611.10 Fishing operations.

(a) *Catching.* Each FFV authorized for activity code 1 may catch fish. An FFV may retain its catch of any species or species group for which there is an unfilled national allocation. All fish caught will be counted against the national allocation, even if the fish are discarded, unless exempted by the regulations of the fishery in which the FFV is engaged (see Subparts C through G of this part). Catching operations may be conducted as specified by the regulations of the fishery in which the FFV is engaged and as modified by the FFV's permit.

(b) *Scouting.* Each FFV authorized for activity code 1 or 2 may scout for fish. Scouting may only be conducted whenever and wherever catching operations for FFV's of that nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under activity code 4, and under such other circumstances as may be designated in these regulations or the permit.

(c) *Processing.* Each FFV with activity code 1 or 2 may process fish. Processing may only be conducted whenever and wherever catching operations for FFV's of that nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under activity code 4, and under such other circumstances as may be designated in these regulations or the permit.

(d) *Support.* Each FFV with activity code 1, 2, or 3 may support other permitted FFV's. Support operations may be conducted whenever and wherever catching or processing for the FFV's being supported are permitted, and under such other circumstances as may be designated in these regulations or the permit.

(e) *Joint ventures.* Each FFV with activity code 4 in addition to activity codes 1 or 2 may also conduct operations with U.S. fishing vessels. These joint venture operations with U.S. fishing vessels may be conducted throughout the FCZ, and under such other circumstances as may be designated in these regulations or the permit. FFV's with activity code 4 may continue operations assisting U.S. fishing vessels despite closures under § 611.13(a).

(f) Each FFV authorized by the Governor of a State under Section 306(c) of the Magnuson Act may engage in processing and support of U.S. fishing vessels within the internal waters of that State, in compliance with terms and conditions set by the authorizing Governor.

§ 611.11 Prohibited species.

(a) The owner or operator of each FFV must minimize its catch or receipt of prohibited species.

(b) After allowing for sampling by an observer (if any), the owner or operator of each FFV must sort its catch of fish received as soon as possible and return all prohibited species and species parts to the sea inmediately with a minimum of injury, regardless of condition, unless a different procedure is specified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). All prohibited species must be recorded in the daily fishing log and other fishing logs as specified by the regulations for the fishery in which the FFV is engaged.

(c) All species of fish which an FFV has not been specifically allocated or authorized under this part to retain, including fish caught or received in excess of any allocation or authorization, are prohibited species.

(d) It is a rebuttable presumption that any prohibited species or species part found on board an FFV was caught and retained in violation of this secton.

§ 611.12 Gear avoidance and disposal.

(a) *Vessel and gear avoidance.* (1) FFV's arriving on fishing grounds where fishing vessels are already fishing or have set their gear for that purpose must ascertain the position and extent of gear already placed in the sea and must not place themselves or their fishing gear so as to interfere with or obstruct fishing operations already in progress. Vessels using mobile gear must avoid fixed fishing gear.

(2) The opeator of each FFV must maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing as required by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part).

(b) *Gear conflicts.* The operator of each FFV which is involved in a conflict or which retrieves the gear of another vessel must immediately notify the appropriate Coast Guard commander identified in Appendix A to this subpart and request disposal instructions. Each report must include:

(1) The name of the reporting vessel;

(2) A description of the incident and articles retrieved including the amount, type of gear, condition, and identification markings;

(3) The location of the incident; and

(4) The date and time of the incident.

(c) *Disposal of fishing gear and other articles.* (1) The operator of an FFV in the FCZ may not dump overboard, jettison or otherwise discard any article or substance which may interfere with other fishing vessels or gear, or which may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate Goast Guard commander or other authorized officer. These articles and substances include but are not limited to fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in an FFV's gear.

(2) The operator of an FFV may not abandon fishing gear into the FCZ.

(3) If these articles or substances are encountered, or in the event of accidental or emergency placement into the FCZ, the vessel operator must immediately report the incident to the appraopriate Coast Guard Commander indicated in Appendix A to this subpart, and give the information required in paragraph (b) of this section.

(Approved by the Office of Management and Budget under OMB control number 0648-0075)

§ 611.13 Fishery closure procedures.

(a) Activity codes 1 and 2 for a fishery are automatically canceled in the following cases unless otherwise specified by Subparts C through G to this part when—

(1) The optimum yield for any allocated species or species group has been reached in that fishery;

(2) The total allowable level of foreign fishing or catch allowance for any allocated species or species group has been reached in that fishery;

(3) The foreign nation's allocation for any allocated species or species group has been reached; or

(4) The letter of credit required in § 611.22(b)(2) is not established and maintained.

(b) Activity code 4 is automatically canceled when—

(1) The optimum yield for a species with a joint venture processing (JVP) amount is reached;

(2) The JVP amount for a species or species group is reached; or,

(3) The letter of credit required in § 611.22(b)(2) is not established and maintained.

(c) *Notification.* (1) The Regional Director is authorized to close a fishery on behalf of the Assistant Administrator. The Regional Director will notify each FFV's designated representative of closures.

(2) If possible, notice will be given 48 hours before the closure. However, each nation and the owners and operators of all FFV's of that nation are responsible for ending fishing operations when an allocation is reached.

(d) *Catch reconciliation.* Vessel activity reports, U.S. surveillance observations, observer reports, and foreign catch and effort reports will be used to make the determination listed in paragraphs (a) and (b) of this section. If NMFS estimates of catch or other values made during the season differ from those reported by the foreign fleets, efforts may be initiated by the designated representative of each nation to resolve such differences with NMFS. If, however, differences still persist after such efforts have been made, NMFS estimates will be the basis for decisions and will prevail.

(e) *Duration.* Any closure under this section will remain in effect until an applicable new or increased allocation or JVP becomes available or the letter of credit required by § 611.22(b)(2) is reestablished.

§ 611.14 Scientific research.

(a) The term "scientific research" contained in paragraph (r) of § 611.2 may include certain fishing activities such as the catching, taking, or harvesting of fish in commerical quantities, or the use of gear capable of catching, taking, or harvesting fish in commerial quantities, or fishing in areas, at times, for species, and with gear, any of which may not be otherwise authorized, if such activities are carried out in full cooperation with the United States.

(b) For the purpose of gathering additional management information, the Center Director may authorize limited "scientific research" as described in paragraph (a) of this section under terms and conditions to be specified by the Center Director.

§ 611.15 Recreational fishing.

(a) Foreign vessels conducting recreational fishing must comply only with this section, § 611.1, § 611.2, § 611.6(a)(1), and § 611.7 (as applicable). Such vessels may conduct recreational fishing within the FCZ and within the boundaries of a State. Any fish caught may not be sold, bartered, or traded.

(b) The owners or operator and any other person on board any foreign vessel conducting recreational fishing must comply with any federal laws or regulations applicable to the domestic fishery while in the FCZ and any State laws or regulations applicable while in State waters.

§ 611.16 Relation to other laws.

(a) Persons affected by these rules should be aware that other Federal and State statutes may apply to their activities.

(b) Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to enforcement action under the International Convention for the Protection of Submarine Cables, and to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) and other laws which implement that Convention. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid, or when out of order, or broken.

Appendix A to Subpart A—Addresses, Areas of Responsibility and Communications

TABLE 1.—ADDRESSES

NMFS regional directors	NMFS center directors	U.S. Coast Guard commanders
Director, Northeast Region, National Marine Fisheries Service, NOAA, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930, Telex No.: 940007, Telephone: (617) 281-3600.	Director, Northeast Fisheries Center, National Marine Fisheries Service, NOAA, Woods Hole, Massachusetts 02543, Telephone: (617) 548-5123.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York, N.Y. 10004, Telex No.: 126831, Telephone: (212) 668-7877.
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702, Telephone: (813) 893-3141.	Director, Southeast Fisheries Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, Florida 33149, Telephone: (305) 361-4284.	As above.
Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Seattle, Washington 98115, Telex No.: 9104442786, Telephone: (206) 526-6150.	Director, Northwest and Alaska Fisheries Ctr, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Bldg. 4, Seattle, Washington 98115, Telex No.: 329422, Telephone: (206) 526-4000.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, California 94501, Telex No.: 172343, Telephone: (415) 437-3700.
Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99801, Telex No.: 09945-377, Telephone: (907) 586-7221.	Director, Northwest and Alaska Fisheries Ctr, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Bldg. 4, Seattle, Washington 98115, Telex No.: 329422, Telephone: (206) 526-4000.	Commander, Seventeenth Coast Guard District, P.O. Box 3-5000, Juneau, Alaska 99801, Telex No.: 45305, Telephone: (907) 586-7200, After hours: (907) 586-7340.

TABLE 1.—ADDRESSES—Continued

NMFS regional directors	NMFS center directors	U.S. Coast Guard commanders
Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731, Telephone: (213) 548-2575.	Director, Southwest Fisheries Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, California 92038, Telephone: (619) 453-2820.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Boulevard, Honolulu, Hawaii 96813, Telex No.: 392401, Telephone: (808) 546-7597.

TABLE 2.—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES

Area of responsibility	Fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean north of Cape Hatteras	Northwest Atlantic Ocean Fishery, including the Hake Fishery.	Director, Northeast Region Director, Northeast Center	Commander, Atlantic Area.
Atlantic Ocean south of Cape Hatteras	Atlantic Billfish and Sharks Fishery Royal Red Shrimp Fishery	Director, Southeast Region	Commander, Atlantic Area.
Gulf of Mexico Caribbean Sea		Director, Southeast Center	
Pacific Ocean off the States of California, Oregon, and Washington.	Pacific Coast Groundfish Fishery	Director, Northwest Region Director, Northwest and Alaska Center	Commander, Pacific Area.
North Pacific Ocean and Bering Sea off Alaska.	Gulf of Alaska Groundfish Fishery	Director, Alaska Region	Commander, Seventeenth Coast Guard District.
	Bering Sea and Aleutian Islands Groundfish Fishery. Snail Fishery	Directory, Northwest and Alaska Centers	
Pacific Ocean off Hawaii and other U.S. insular possessions in the Central and Western Pacific.	Seamount Groundfish Fishery	Director, Southwest Region	Commander, Fourteenth.
	Pacific Billfish, Oceanic Sharks, Wahoo, and Mahimahi Fishery. Precious Coral Fishery	Director, Southwest Center	Coast Guard District.

TABLE 3.—U.S. COAST GUARD COMMUNICATIONS STATIONS AND FREQUENCIES

U.S. Coast Guard Communications Station	IRCS	Radiotelegraphy			Radiotelephone	
		kHz	mHz	Time[1]	Channel[2]	GMT time
Boston	NMF	500		All	B	All.
Portsmouth	NMN	500	8, 12	All	A	0200-1200.
			16	HJ	B, C	All.
					D	1200-0200 (On request).
Miami	NMA	500		All	B	All.
San Juan	NMR	500	8, 12	All	None	
			16	HJ		
New Orleans	NMG	500		All	A	0200-1200.
					B, C	All.
					D	1200-0200.
					E	(On request).
San Francisco	NMC	500	8	All	A, B, C	All.
			6	HN	D	0200-2400.
			16	HJ	E	(On request).
Honolulu	NMO	500	8, 12	All	A, B, C	All.
			22	HJ	D, E	(On request).
Guam	NRV	500		All	None	
			8, 12	HN		
Kodiak	NOJ	500		All	B	All.
					A, C, D, and E	(On Request).

[1] HJ means 2 hours after sunrise until 2 hours before sunset, local time. HN means 2 hours before sunset until 2 hours after sunrise, local time.
[2] Carrier frequencies of duplex, high-frequency single-sideband channels are:

Letter	Shore transmit	Ship transmit
A	4428.7	4134.3
B	6506.4	6200.0
C	8765.4	8241.5
D	13113.2	12342.4
E	17307.3	16534.4

TABLE 4. ADDRESSES FOR REPORTS AND SUBMITTALS

Fishery	Permit applications § 611.3(d)	Activity reports § 611.4(c)	Weekly reports § 611.4(f)	Effort plan § 611.8(b)	Gear conflicts § 611.12(b)	Permit fees, poundage fees, surcharges, and observer fees § 611.22
Northwest Atlantic Ocean Fishery, including the Hake Fishery.	DOS	CG Atlantic Area, NMFS-NER.	NMFS-NER NMFS-NER	NMFS-NER, Attn: Observer Program, NMFS-F/M5.	CG Atlantic Area	NMFS-F/M12.
Atlantic Billfish and Sharks Fishery	DOS	CG Atlantic Area	NMFS-SER	NMFS-SER NMFS-F/M5	CG Atlantic Area	NMFS-F/M12.
Royal Red Shrimp Fishery		NMFS-SER				
Pacific Coast Groundfish Fishery	DOS	CG Pacific Area, NMFS-NWR.	NMFS-NWC	NMFS-NWC NMFS-F/M5	CG Pacific Area	NMFS-F/M12.
Gulf of Alaska Groundfish Fishery	DOS	CG Dist. 17	NMFS-AKR	NMFS-NWC NMFS-F/M5	CG Dist. 17	NMFS-F/M12.
Bering Sea and Aleutian Islands Groundfish Fishery		NMFS-AKR				

TABLE 4. ADDRESSES FOR REPORTS AND SUBMITTALS—Continued

Fishery	Permit applications § 611.3(d)	Activity reports § 611.4(c)	Weekly reports § 611.4(f)	Effort plan § 611.8(b)	Gear conflicts § 611.12(b)	Permit fees, poundage fees, surcharges, and observer fees § 611.22
Snail Fishery						
Seamount Groundfish Fishery	DOS	CG Dist. 14	NMFS-SWR	NMFS-SWR	CG Dist. 14	NMFS-F/M12.
Pacific Billfish, Oceanic Sharks, Wahoo and Mahimahi Fishery.		NMFS-SWR		NMFS-F/M5		
Precious Coral Fishery						

ABBREVIATIONS:
DOS—Department of State, OES/OFA, Washington, D.C. 20520.
NMFS:
—F/M5—Chief, Office of Enforcement, National Marine Fisheries Service, 3300 Whitehaven St., Washington, D.C. 20235, ATTN: F/M5.
—F/M12—Chief, Fees, Permits, and Regulations Division, National Marine Fisheries Service, 3300 Whitehaven St., NW., Washington, D.C. 20235, ATTN: F/M12.
—NER—Director, Northeast Region (see Table 1).
—SER—Director, Southeast Region (see Table 1).
—NWR—Director, Northwest Region (see Table 1).
—NWC—Director, Northwest and Alaska Fisheries Center (see Table 1).
—AKR—Director, Alaska Region (see Table 1).
—SWR—Director, Southwest Region (see Table 1).
CG Atlantic Area—Commander, Atlantic Area (see Table 1).
CG Pacific Area—Commander, Pacific Area (see Table 1).
CG Dist. 17—Commander, Seventeenth Coast Guard District (see Table 1).
CG Dist. 14—Commander, Fourteenth Coast Guard District (see Table 1).

Appendix B to Subpart A—Vessel Activity Reports

1. Activity Report Format

A. "From" line: Name of the FFV and its IRCS.

B. "To" line: Include appropriate Coast Guard commander and NMFS region as addressees.

C. Date: Expressed numerically as month and day, based on GMT (two digits each), followed by letter "D" and a confirmation code (A 2 digit sum of the 4 digits in the date. A sum of less than 10 must be preceded by a 0).

D. Time: Expressed in GMT followed by the letter "Z" (or other time zone description required by the fishery) and a confirmation code (2 digit sum of 4 digit time).

E. Latitude: To the nearest minute (4 digits) followed by the letter "N" and confirmation code (2 digit sum of 4 digit latitude number).

F. Longitude: To the nearest minute (4 or 5 digits) followed by the letter "E" or "W" (as appropriate for longitude) and confirmation code (2 digit sum of digits in longitude).

G. Area Codes: See Appendix C.

H. Species Codes: See Appendix D.

I. Product: Fish or fisheries product expressed in metric tons (to at least the nearest tenth or hundredth of a metric ton, as appropriate).

J. Fishery Product Code: From Appendix E, followed by a confirmation code (2 digit sum of the digits in the Species Code (if appropriate to the product) and the digits in the Product).

K. The general format of messages appears as follows (CC means confirmation code):

From: (FFV name, IRCS)
To: (Coast Guard Commander, City, State)
(NMFS Region, City, State)

VESREP

(FFV name)/(IRCS)/(DATE)D(CC)/(TIME)Z(CC)/(LATITUDE)N(CC)/(LONGITUDE) (E or W) (CC)/(AREA CODE)/(ACTION CODE)//

L. The general format for a report concerning Product would appear as follows (CC means confirmation code).

(SPECIES CODE)/(PRODUCT) (PRODUCT CODE) (CC)//(SPECIES CODE)/(PRODUCT) (PRODUCT CODE) (CC)// etc.

2. *BEGIN report.* Begin reports must be delivered to the appropriate Coast Guard commander no later than 24 hours before fishing.

Example: The stern trawler NAVIS, LTUX, will begin fishing on March 11 at 1320 GMT, at position 59°30' N. latitude, 142°30' W. longitude, in the Yakutat fishing area (code 64) of the Gulf of Alaska. There are 105.5 metric tons of headed and gutted (use product code HG from Appendix E to this subpart) Alaska pollock (use species code 701 from Appendix D to this subpart), 53.0 metric tons headed and gutted (code HG) Pacific cod (code 702) and 35.0 metric tons of fish meal (code M) on board. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0311D05/1320Z06/5930N17/14230W10/BEGIN//
PRODUCT ABOARD/701/105.5HG19//702/53.0HG17//35.0M08//

If no product was aboard the PRODUCT ABOARD line could be omitted.

3. *DEPART report.* Depart reports must be transmitted before departure and delivered within 24 hours of transmittal.

Example: The stern trawler NAVIS, LTUX, will depart the FCZ at position 45°15' N. latitude, 124°20' W. longitude on July 11 at 1800 GMT in the Columbia fishing area (code 71) in the Northeast Pacific Ocean, to make a port call. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON

VESREP

NAVIS/LTUX/0711D09/1800Z09/4515N15/12420W09/71/DEPART//

4. *RETURN report.* Return reports must be transmitted before the returning to the grounds and delivered within 24 hours of transmittal.

Example: The stern trawler NAVIS, LTUX, will return from a port call to the FCZ on July 14 at 2230 GMT at position 44°45' N. latitude, 124°33' W. longitude in the Columbia area (code 71). The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON

VESREP

NAVIS/LTUX/0714D12/2230Z07/4445N17/12433W13/71/RETURN//

5. *SHIFT report.* Shift reports must be transmitted before leaving the original fishing area and delivered within 24 hours of transmittal. If an FFV is fishing within 20 nautical miles either side of a boundary the message must be transmitted before the last shift in fishing areas expected for that day, include all the day's shifts, and be delivered within 24 hours of its transmittal.

A. Example of standard SHIFT report. The longline vessel CABLE, EXRC, fishing in the Atlantic billfish and sharks fishery is shifting areas to Atlantic area 16. The vessel will begin fishing in area 16 on December 3 at 1000 GMT at position 36°35' N. latitude, 73°25' W. longitude. The required message would be transmitted as follows:

From: F/V CABLE, EXRC
To: COAST GUARD ATLANTIC AREA, NEW YORK, NEW YORK
NORTHEAST REGION, NMFS, GLOUCESTER, MASSACHUSETTS

VESREP

CABLE/EXRC/1203D06/1000Z01/3635N17/7325W17/16/SHIFT//

B. Example of SHIFT report when the FFV fishes on a boundary. The stern trawler NAVIS, LTUX, is fishing in area 22 in the Northwest Atlantic Ocean fishery. The vessel will begin fishing in area 23 on October 15 at 1115 GMT at position 39°01' N. latitude, 73°10' W. longitude. At 1720 GMT the vessel again

SHIFTS to area 22 at position 38°59′ N. latitude, 73°07′ W. longitude. The vessel will remain within 20 nautical miles of the boundary. The required report would be transmitted as follows before the last EXPECTED SHIFT of the day:

From: F/V NAVIS, LTUX
To: COAST GUARD ATLANTIC AREA, NEW YORK, NEW YORK
NORTHEAST REGION, NMFS, GLOUCESTER, MASSACHUSETTS

VESREP

NAVIS/LTUX/1015D07/1115Z08/3901N113/7310W11/23/SHIFT//
NAVIS/LTUX/1015D07/1720Z10/3859N25/7307W17/22/SHIFT//

6. *JV OPS reports.* Reports of starting or ending joint venture receipts and operations must be transmitted before the event and delivered within 24 hours of their transmittal. They are in addition to the requirements of other activity reports.

Example: The stern trawler NAVIS, LTUX, will begin joint venture receipts or processing on July 9, 1983, at 1320 GMT at position 43°40′ N. latitude, 124°30′ W. longitude in the Columbia area (code 71): The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON

VESREP

NAVIS/LTUX/0709D16/1320Z06/4340N11/12430W10/71/START JV OPS//

7. *TRANSFER reports.* Transfer reports must be transmitted prior to the transfer and delivered within 24 hours of transmittal.

Example: The refrigerated transport vessel SOPOV, LJUJ, will conduct a transfer with the stern trawler NAVIS, LTUX, on July 22 at 1900 GMT in position 58°30′ N. latitude, 175°10′ W. longitude in Bering Sea area 52 (code 52). The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

SOPOV/LJUJ/0722D11/1900Z10/5830N16/17510W14/52//
TRANSFER/NAVIS/LTUX//

8. *OFFLOADED report.* Offloaded-to reports must be transmitted within 12 hours of the completion of the transfer and delivered before the FFV ceases fishing in the FCZ and within 24 hours of transmittal.

Example. The stern trawler NAVIS, LTUX, completed transfer operations with: the refrigerated transport vessel SOPOV, LJUJ, at 0900 GMT on July 24 at position 58°30′ N. latitude, 175°10′ W. longitude, in Bering Sea Area 52 (code 52). NAVIS transferred 130.10 metric tons of headed and gutted (code HG) Alaska pollock (code 701), 15.75 metric tons of headed and gutted (code HG) Pacific cod (code 702), 5.63 metric tons of pollock roe (codes 701 and R respectively) and 5.10 metric tons of fish meal (code M). The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0724D13/0900Z09/5830N16/17510W14/52//
OFFLOADED TO/SOPOV/LJUJ//
701/130.10HG13//702/15.75HG27//701/5.63R22//5.10M06//

9. *RECEIVED report.* Received-from reports must be transmitted within 12 hours of the completion of the transfer and delivered before the FFV ceases fishing in the FCZ and within 24 hours of transmittal. More than one operation may be reported in one report, provided the above time constraints are met for all operations.

Example: The refrigerated transport vessel SOPOV, LJUJ, completed transfer operations with the stern trawler, NAVIS, LTUX, at 0900 GMT on July 24 at position 58°30′ N. latitude, 175°10′ W. longitude, in Bering Sea Area 52 (code 52). NAVIS transferrred 130.00 metric tons of headed and gutted (code HG) Alaska pollock (code 701), 15.75 metric tons of headed and gutted (code HG) Pacific cod (code 702), 5.63 metric tons of pollock roe (codes 701 and R respectively) and 5.10 metric tons of fish meal (code M). The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA,
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

SOPOV/LJUJ/0724D13/0900Z09/5830N16/17510W14/52//
Received from/NAVIS/LTUX//
701/130.00HG12//702/15.75HG22/701/5.63R19//5.1M06//

10. *CEASE report.* Cease reports must be delivered 24 hours before ceasing fishing and departing the FCZ.

Example: The stern trawler NAVIS, LTUX, will cease fishing on July 8 at 1215 GMT at position 57°30′ N. latitude, 168°30′ W. longitude in Bering Sea Area 51 (code 51.) The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA,
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0708D15/1215Z09/5730N15/16830W18/51/CEASE//

11. *CHANGE report.* Change reports must be transmitted and delivered as though they were the original message.

Example: The stern trawler NAVIS, LTUX, was to have begun fishing on March 11 at 1320 GMT at position 59°30′ N. latitude, 142°30′ W. longitude in the Yakutat fishing area of the Gulf of Alaska. Bad weather delayed arrival on the fishing grounds until 1800 GMT on March 12. Since the delay is longer than four hours, a CHANGE report must be sent. Because the message is considered as though it were an original BEGIN report the message must be delivered 24 hours in advance, or before 1800 GMT on March 11. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA,
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

CHANGE/NAVIS/LTUX/0311D05/1320Z06/TO//
NAVIS/LTUX/0312D06/1800Z09/5930N17/14230W10/64/BEGIN//

12. *CANCEL report.* Cancel reports must be transmitted and delivered prior to the time and date of the event in the original message.

Example: The stern trawler NAVIS, LTUX, was to have begun fishing on March 11 at 1320 GMT at position 59°30′ N. latitude, 142°30′ W. longitude in the Yakutat fishing area of the Gulf of Alaska and had sent the appropriate BEGIN message. The vessel has had mechanical problems and must return home before entering the FCZ. The required CANCEL message would be transmitted as follows:

From: F/VNAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA,
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

CANCEL/NAVIS/LTUX/0311D05/1320Z06/BEGIN//

13. *Group reports.* A fleet commander or other authorized person may send in reports for several vessels. An FFV operator submitting a report on behalf of another FFV is assumed to have the authorization to do so.

Example: The refrigerated transport vessel SOPOV, LJUJ, with a fleet commander on board, wishes to report for three stern trawlers in the fleet. The stern trawler NAVIS, LTUX, will begin fishing at 59°30′ N. latitude, 142°30′ W. longitude, in Yakutat fishing area (code 64) on March 11 at 1320 GMT. The stern trawler FISKVOL, LBEV, will temporarily depart the fishing grounds at 58°05′ N. latitude, 149°50′ W. longitude in the Kodiak fishing area (code 63) on March 12 at 1200 GMT to embark an observer. The stern trawler ALEXANDROV, LXDV, will cease fishing at 54°40′ N. latitude, 157°15′ W. longitude in the Chirikof fishing area (code 62) on March 13 at 0800 GMT to return to its home port. The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0311D05/1320Z06/5930N17/14230W10/64/BEGIN//
FISKVOL/LBEV/0312D06/1200Z03/5805N18/14950W19/63/DEPART//

ALEXANDROV/LXDV/0313D07/0800Z08/5440N13/15715W19/62/CEASE//

Since the illustrated group report contains notice of the beginning of fishing at 1320 GMT on March 11, the message must be delivered to the 17th Coast Guard District Commander not later than 1320 GMT, March 10.

Appendix C to Subpart A—Fishing Areas

A. Northwest Atlantic Ocean and Hake Fisheries (Figures 1a and 1b.)

1. For the purposes of § 611.4(c) of this part, fishing areas in the Northwest Atlantic are the areas shown in Figure 1a and described below.

Area code, name, and description

21, Atlantic Area 21, Atlantic FCZ between 35°00′ N. latitude and 37°00′ N. latitude

22, Atlantic Area 22, Atlantic FCZ between 37°00′ N. latitude and 39°00′ N. latitude

23, Atlantic Area 23, Atlantic FCZ north of 39°00′ N. latitude and west of 71°40′ W. longitude

24, Atlantic Area 24, Atlantic FCZ enclosed by a line connecting the following points in the order listed—

Point No.	Latitude	Longitude
1	Shore	71°40′ W.
2	39 00′ N	71°40′ W.
3	39 00′ N	70°00′ W.
4	Cape Cod	70°00′ W.

25, Atlantic Area 25, Atlantic FCZ between 39°00′ N. latitude and 42°20′ N. latitude and east of 70°00′ W. longitude

26, Atlantic Area 26, Atlantic FCZ north and west of Cape Code and a line connecting the following points in the order listed—

Point No.	Latitude	Longitude
1	Cape Cod	70°00′ W.
2	42°20′ N	70°00′ W.
3	42°20′ N	The eastward limit of the EEZ.

2. For the purposes of § 611.4(f) and § 611.9, fishing areas in the Northwest Atlantic are the NMFS "Three digit statistical areas" described in Figure 2b.

BILLING CODE 3510-22-M

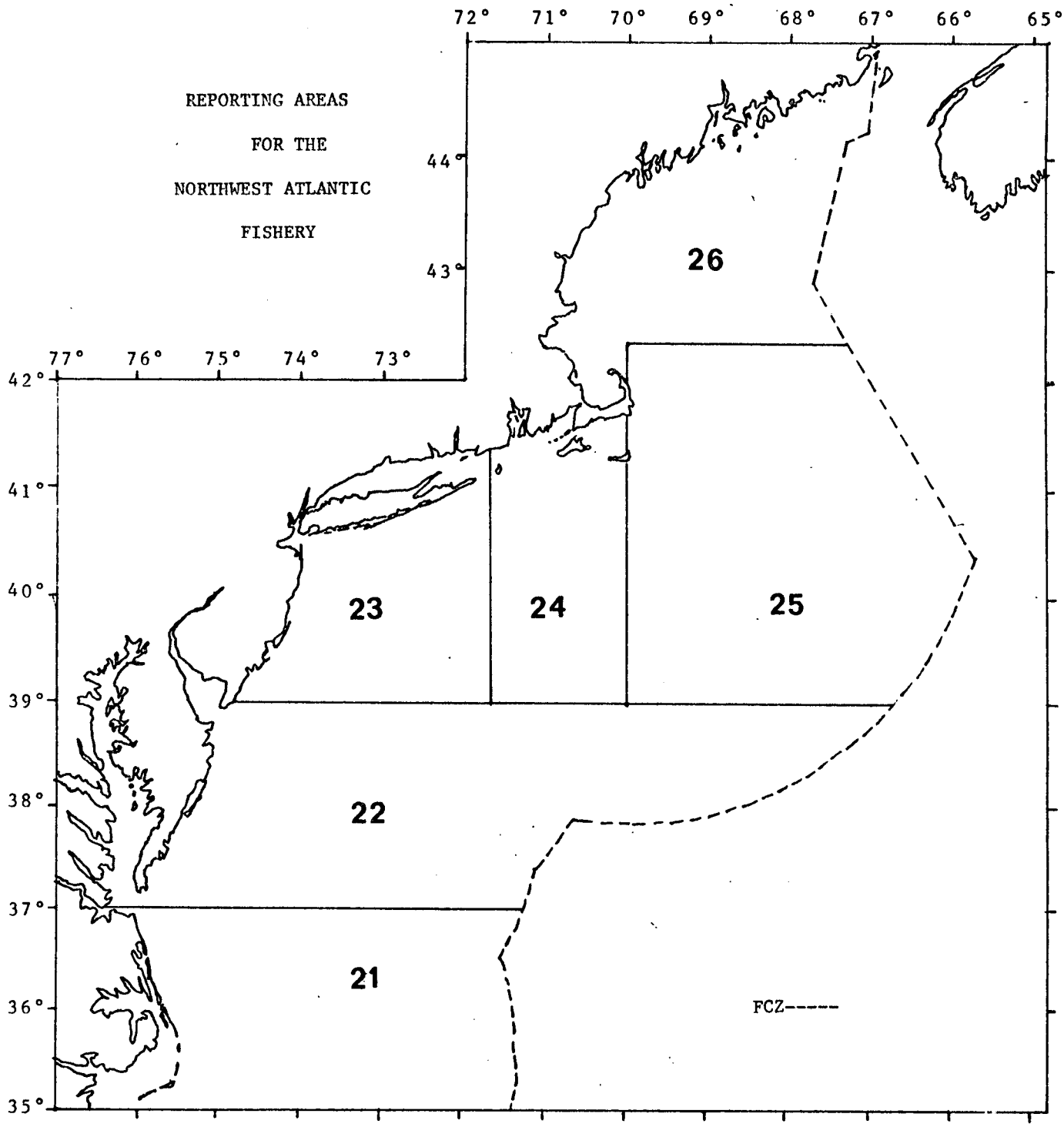

Figure 1a. to Appendix C: Fishing Areas for the Northwest Atlantic Ocean and Hake Fisheries for the purposes of 50 CFR 611.4(c) (Activity Reports).

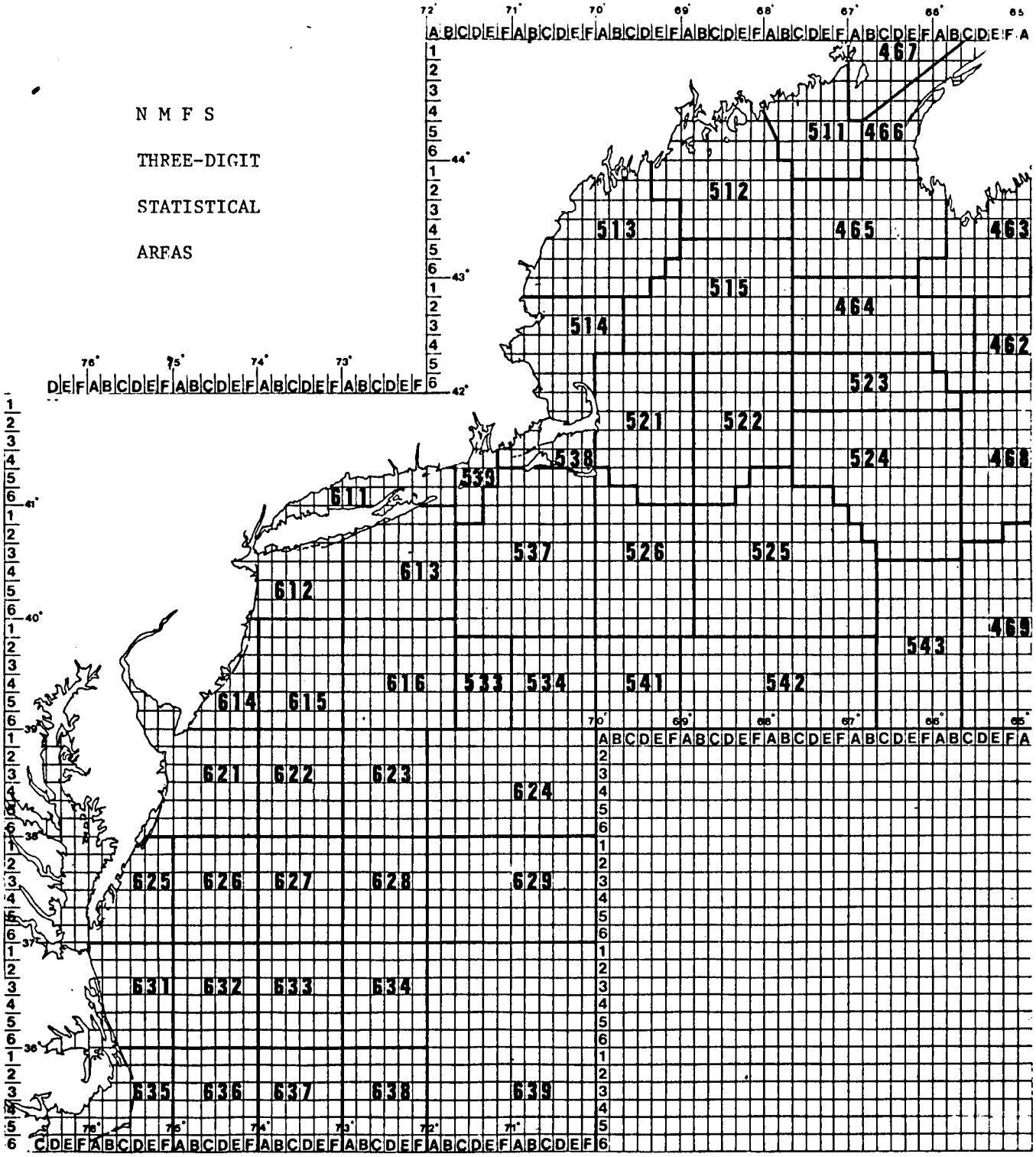

Figure 1b. to Appendix C: Fishing Areas for the Northwest Atlantic Ocean and Hake Fisheries for the purposes of 50 CFR 611.4(f) (Weekly reports) and 50 CFR 611.9 (Recordkeeping).

BILLING CODE 3510-22-C

B. Atlantic Billfish and Sharks and Royal Red Shrimp Fisheries (Figure 2.)

Area code, Name and description

11, Caribbean Area 11, Virgin Islands. The FCZ off Puerto Rico and the U.S

12, Gulf of Mexico, Area 12. The FCZ in the Gulf of Mexico west of 93°00′ W. longitude

13, Gulf of Mexico, Area 13. The FCZ in the Gulf of Mexico east of 93°00′ W. longitude and west of 88°00′ W. longitude

14, Gulf of Mexico, Area 14. The FCZ in the Gulf of Mexico east of of 88°00′ W. longitude and FCZ in the Atlantic Ocean south of 25°18′ N. latitude

15, Atlantic Area 15. The FCZ in the Atlantic Ocean north of 25°18′ N. latitude and south of 36°30′ N. latitude

16, Atlantic Area 16. The FCZ in the Atlantic Ocean north of 36°30′ N. latitude and south of 41°00′ N. latitude

17, Atlantic Area 17. The FCZ in the Atlantic Ocean north of 41°00′ N. latitude

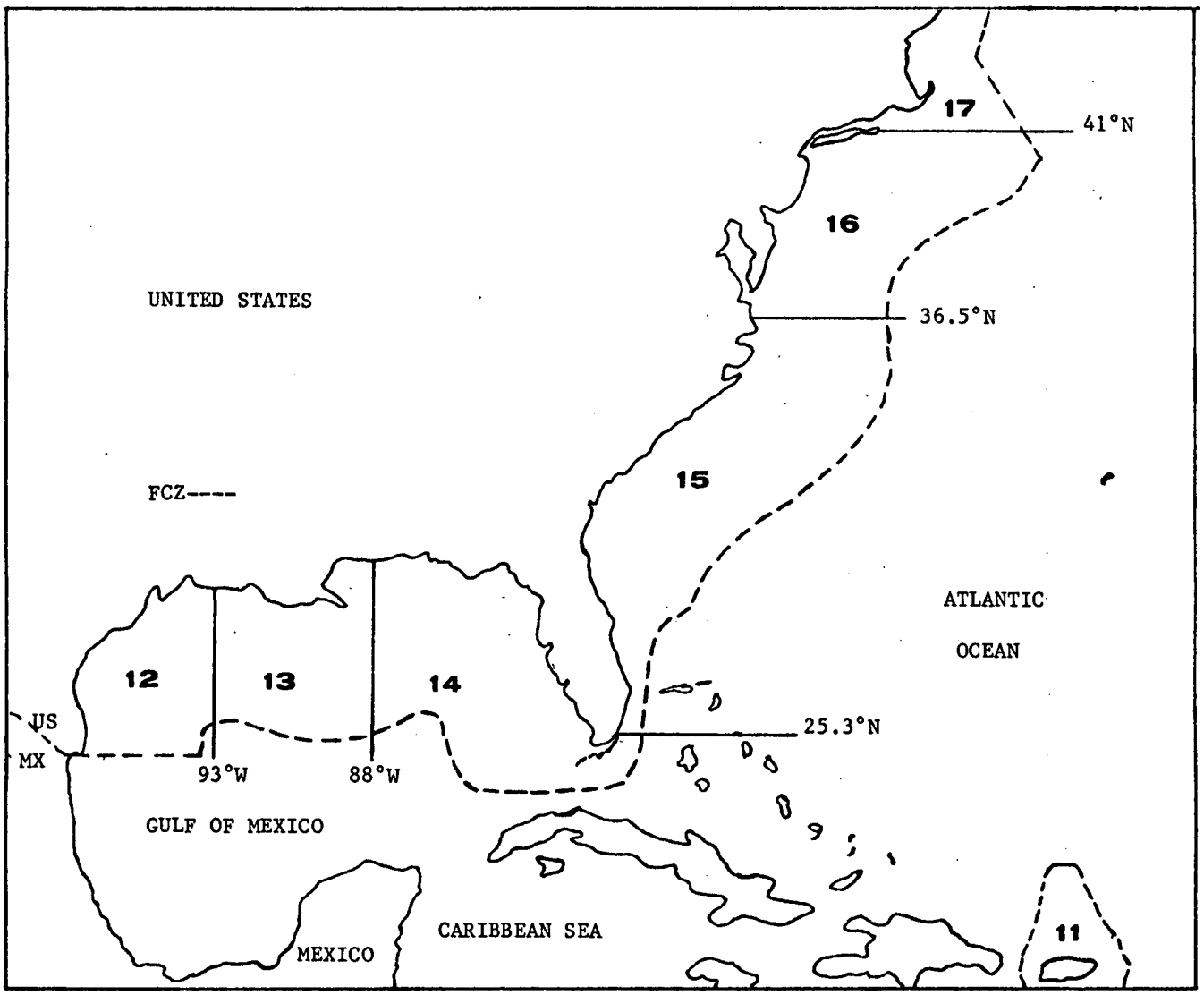

Figure 2. to Appendix C: Fishing Areas for the Atlantic Billfish and Sharks and Royal Red Shrimp Fisheries.

C. Pacific Coast Groundfish and Pacific Billfish and Sharks Fisheries (Figure 3.)

Area code, name and description

67, Vancouver. The FCZ of the North Pacific Ocean off Washington north of 47°30′ N. latitude

71, Columbia. The FCZ of the North Pacific Ocean off Washington and Oregon south of 47°30′ N. latitude and north of 43°00′ N. latitude

72, Eureka. The FCZ of the North Pacific Ocean off Oregon and California south of 43°00′ N. latitude and north of 40°30′ N. latitude

73, Monterey. The FCZ of the North Pacific Ocean off California south of 40°30′ N. latitude and north of 36°00′ N. latitude

74, Conception. The FCZ of the North Pacific Ocean off California south of 36°00′ N. latitude

BILLING CODE 3510-22-M

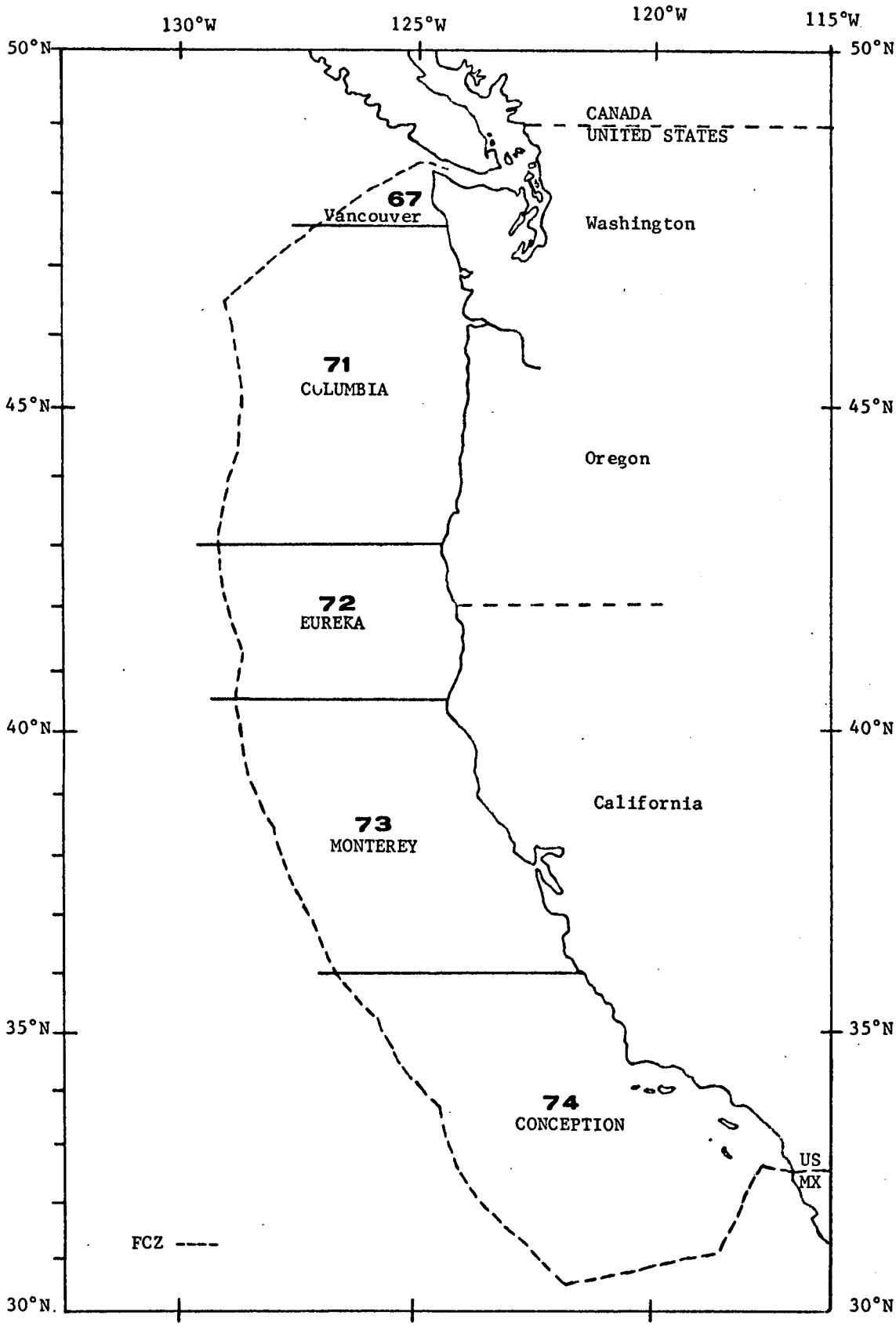

Figure 3. to Appendix C: Fishing Areas for the Pacific Coast Groundfish and the Pacific Billfish and Sharks Fisheries.

D. Seamount Groundfish, Pacific Billfish and Sharks, and Precious Coral Fisheries

Area code, name, and description

81, Hawaii and Midway Islands. The FCZ at the Pacific Ocean off the Hawaiian and Midway Islands

82, Guam and Northern Mariana Islands. The FCZ of the Western Pacific Ocean off Guam and the Northern Mariana Islands

83, American Samoa. The FCZ of the South Pacific Ocean off American Samoa

84, Johnston Atoll. The FCZ off Johnston Atoll

85, Howland and Baker Islands. The FCZ of the Pacific Ocean off Howland and Baker Islands

86, Kingman Reef and Palmyra Atoll. The FCZ of the North Pacific Ocean off Kingman Reef and Palmyra Atoll

87, Jarvis Island. The FCZ of the Pacific Ocean off Jarvis Island.

88, Wake Island. The FCZ of the North Pacific Ocean off Wake Island

E. Gulf of Alaska Groundfish Fishery (Figure 4.)

Area Code, name and description

61, Shumagin. The FCZ of the Gulf of Alaska east of 170°00′ W. longitude and west of 159°00′ W. longitude

62, Chirikof. The FCZ of the Gulf of Alaska east of 159°00′ W. longitude and west of 154°00′ W. longitude

63, Kodiak. The FCZ of the Gulf of Alaska east of 154°00′ W. longitude and west of 147°00′ W. longitude

64, Yakutat. The FCZ of the Gulf of Alaska east of 147°00′ W. longitude and west of 137°00′ W. longitude

65, Southeastern. The FCZ of the Gulf of Alaska east of 137°00° W. longitude and north of 54°30′ N. latitude

66, Charlotte. The FCZ of the North Pacific Ocean off Alaska south of 54°30′ N. latitude

F. Bering Sea and Aleutian Islands Groundfish and Snail Fisheries (Figure 4.)

Area code, name and description

50, Bering Sea Area 50. For the purposes of § 611.4(c) only, and for the period September 1 through April 30 GMT, an area described by rhumb lines connecting the following points in the order listed

Point No.	Latitude	Longitude
1	58°00′ N	175°00′ W.
2	58°00′ N	172°00′ W.
3	59°30′ N	172°00′ W.
4	59°30′ N	175°00′ W.
5	58°00′ N	175°00′ W.

51, Bering Sea Area 51. The FCZ of the Bering Sea north of the Aleutian Islands and east of 170°00″ W. longitude

52, Bering Sea Area 52. The FCZ of the Bering Sea north of the 55°00′ N. latitude, east of 180° longitude and west of 170°00′ W. longitude.

53, Bering Sea Area 53. The FCZ of the Bering Sea north of the 55°00′ N. latitude, east of the U.S.-Russian convention line of 1867, and west of 170°00′ W. longitude

54, Bering Sea Area 54. The FCZ of the Bering Sea and North Pacific Ocean off Alaska south of 55°00′ N. latitude, east of the U.S.-Russian Convention Line of 1867 and west of 170°00′ W. longitude

BILLING CODE 3510-22-M

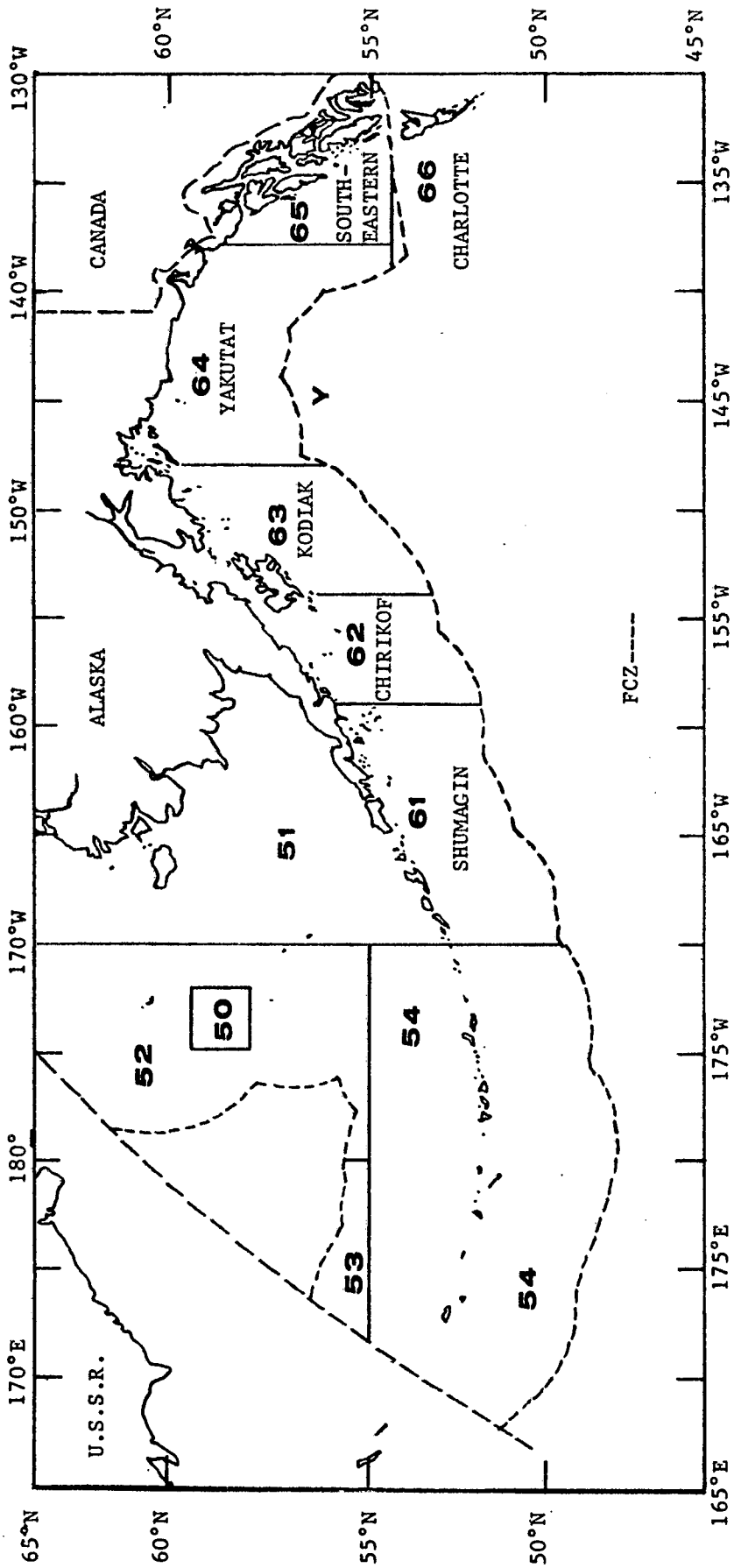

Figure 4. to Appendix C: Fishing Areas for the Gulf of Alaska Groundfish, Bering Sea and Aleutian Islands Groundfish, and Snail Fisheries.

Appendix D to Subpart A—Species Codes

Code	Common name [1]	Scientific name
	A. Atlantic Ocean and Gulf of Mexico Fishes	
	Finfish	
101	Cod, Atlantic	*Gadus morhua.*
102	Haddock	*Melanogrammus aeglefinus.*
103	Redfish	*Sebastes marinus.*
104	Hake, silver	*Merluccius bilinearis.*
105	Hake, red	*Urophycis chuss.*
106	Pollock	*Pollachius virens.*
116	Flounder, yellowtail	*Limanda ferruginea.*
176	Scup	*Stenotomus chrysops.*
182	Tilefish	*Lopholatilus chamaeleonticeps.*
202	Herring, Atlantic	*Harengus harengus.*
204	Mackerel, Atlantic	*Scomber scombrus.*
206	Great barracuda	*Sphyraena barracuda.*
212	Butterfish	*Peprilus triacanthus.*
216	Menhaden, Atlantic	*Brevoortia tyrannus.*
228	Bluefish	*Pomatomus saltatrix.*
237	Pompano dolphin	*Coryphaena equisetis.*
238	Dolphin (mahimahi)	*Corphaena hippurus.*
240	Mackerel, king	*Scomberomorus cavalla.*
252	Sailfish	*Istiophorus platypterus.*
254	Longbill spearfish	*Tetrapturus pfluegeri.*
255	Wahoo	*Acanthocybium solanderi.*
256	Marlin, white	*Tetrapturus albidus.*
260	Marlin, blue	*Makaira nigricans.*
264	Swordfish	*Xiphias gladius.*
309	Herring, river (includes alewife, blueback herring, and hickory shad).	*Alosa pseudoharengus, Alosa asetivalis,* and *Alosa mediocris.*
310	Shad, American	*Alosa sapidissima.*
314	Croaker, Atlantic	*Micropogonias undulatus.*
318	Salmon, Atlantic	*Salmo salar.*
332	Bass, black sea	*Centropristis striata.*
401	Striped bass	*Morone saxatilis.*
414	Spot	*Leiostomus xanthurus.*
418	Weakfish	*Cynoscion regalis.*
462	Porbeagle shark	*Lamna nasus.*
463	Longfin mako shark	*Isurus paucus.*
464	Shortfin mako shark	*Isurus oxyrinchus.*
465	Blue shark	*Prionace glauca.*
469	Sharks (NS)	Squaliformes.
499	Finfishes (NS) (includes dogfish and non-allocated squid).	Osteichthyes, squalidae, and sepioid and teuthoid squids.
	Invertebrates	
502	Squid, long-finned	*Loligo pealei.*
504	Squid, short-finned	*Illex illecebrosus.*
509	Squid (NS) (See code 499—other finfish).	Sepioid and teuthoid squids.
619	Crabs, marine (NS)	
622	Lobster, northern	*Homarus americanus.*
630	Royal red shrimp	*Hymenopanaeus robustus.*
697	Shrimp (NS)	
699	Invertebrates, marine (NS).	
	B. Pacific Ocean Fishes	
	Finfish	
129	Flatfishes (NS)	Pleuronectiformes.
200	Pelagic Armorhead	*Pentaceros richardsoni.*
201	Alfonsin	*Beryx splendens.*
207	Atka mackerel	*Pleurogrammus monopterygius.*
208	Jack mackerel	*Trachurus symmetricus.*
209	Pacific herring	*Clupea harengus pallasi.*
210	Salmonids (NS)	Salmonidae.
237	Pompano dolphin (mahimahi).	*Coryphaena equisetis.*
238	Dolphin (mahimahi)	*Coryphaena hippurus.*
252	Sailfish	*Istiophorus platypterus.*
253	Black marlin	*Makaira indica.*
255	Wahoo	*Acanthocybium solanderi.*
260	Marlin, blue	*Makaira nigricans.*
261	Striped marlin	*Tetrapturus audax.*
262	Shortbill spearfish	*Tetrapturus angustirostris.*
263	Requiem sharks (NS)	Carcharhinidae.
264	Broadbill swordfish	*Xiphias gladius.*
265	Thresher sharks (NS)	Alopiidae.
266	Mackerel sharks (NS)	Lamnidae.
267	Hammerhead sharks (NS).	Sphyrnidae.
469	Sharks (NS)	Squaliformes.
499	Other species (NS)	See Subparts E, F, and G.
500	Non-specified species (NS).	See Subpart G.
701	Pollock (walleye, Alaska)	*Theragra chalcogramma.*
702	Pacific cod	*Gadus macrocephalus.*
703	Sablefish (black cod)	*Anoplopoma fimbria.*
704	Pacific whiting (hake)	*Merluccius productus.*
720	Yellowfin sole	*Limanda aspera.*
722	Pacific halibut	*Hippoglossus stenolepis.*
737	Turbot (includes arrowtooth flounder, Greenland halibut and Kamchatka flounder).	(*Atheresthes stomias, Reinhardtius hippoglossoides,* and *Atheresthes evermanni*).
780	Pacific ocean perch [2]	*Sebastes alutus.*
800	Shortbelly rockfish	*Sebastes jordani.*
804	Idiot rockfish	*Sebastolobus* spp.
849	Rockfish (NS)	Scorpaenidae.
	Invertebrates	
505	Korean horsehair crab	*Erimacrus isenbeckii.*
507	Lyre crab	*Hyas lyratus.*
509	Squid (NS)	Sepioid and teuthoid squids.
527	Black coral (NS)	*Antipathes* spp.
529	Clams (NS)	
539	Scallops (NS)	Pectinidae.
673	Snail (NS)	Gastropoda.
675	King crab	*Paralithodes* spp.
676	Tanner crab (NS) (Snow)	*Chionoecetes* spp.
682	Corals (NS)	
690	Dungeness crab	*Cancer magister.*
697	Shrimp (NS)	
	C. Marine Mammals	
915	Whale, beluga	*Delphinapterus leucas.*
930	Whale, false killer	*Pseudorca crassidens.*
934	Dolphin, rough-toothed	*Steno bredanensis.*
936	Dolphin, Atlantic white-sided.	*Lagenorhynchus acutus.*
938	Dolphin, Pacific white-sided.	*Lagenorhynchus obliquidens.*
940	Dolphin, common	*Delphinus delphis.*
941	Dolphin, bottlenosed	*Tursiops truncatus.*
942	Dolphin, Risso's (grampus).	*Grampus griseus.*
943	Dolphin, spotted	*Stenella attenuata.*
944	Dolphin, spinner	*Stenella longirostis.*
946	Dolphin, northern right-whale.	*Lissodelphis borealis.*
947	Porpoise, harbor	*Phocoena phocoena.*
949	Porpoise, Dall's	*Phocoenoides dalli.*
955	Sea lion, northern	*Eumetopias jubatus.*
956	Sea lion, California	*Zalophus californianus.*
958	Seal, northern fur	*Callorhinus ursinus.*
966	Walrus	*Odobenus rosmarus.*
967	Seal, harbor	*Phoca vitulina.*
973	Seal, ribbon	*Phoca fasciata.*
976	Seal, gray	*Halichoerus grypus.*
981	Seal, northern elephant	*Mirounga angustirostris.*
986	Sea otter	*Enhydra lutris.*
992	Whale, pilot (NS)	*Globicephala* spp.
993	Whale, baleen (NS)	Mysticeti.
994	Whale, toothed (NS)	Odontoceti.
995	Seal (NS)	Other Phocidae.
996	Sea lion (NS)	Otaridae.
998	Porpoise (NS)	Other Phocoenidae.
998	Dolphin (NS)	Delphinidae.
	D. Other Species	
069	Sea turtle (NS)	

[1] (NS) means non-specific as to species. This code must be used for all species of this species group unless a more specific code exists.

[2] Pacific ocean perch in the Alaska fisheries (Subpart G) includes the additional species of red rockfish—Northern rockfish (*ebastes polyspinas*), Rougheye rockfish (*Sebastes aleutianus*), Shortraker rockfish (*Sebastes borealis*), and Sharpchin rockfish (*Sebastes zacentrus*).

Appendix E to Subpart A—Fishery Product Codes

Fishery product	Code
Canned meat	CN
Fillets, with skin/two per fish	F
Fillets, without skin/two per fish	FN
Fillet, one-piece (butterfly) with skin	FB
Fillet, one-piece (butterfly), without skin	FBN
Fish meal	M
Fish oil	FO
Flounder steaks—diagonal cut from midsection of fish.	S
Flounder pieces—punched or stamped from mid-section of fish.	ST
Gutted only	G
Gutted and gilled	GG
Headed only	H
Headed and gutted	HG
Headed, gutted, and tails removed	HGT
Heads, separate from remainder of fish	HDS
Intestinal organs separate from remainder of fish	IO
Other product (specify)	O
Otoshimi: Frozen minced fish product (Japan)	OS
Pectoral collars separate from remainder of fish	P
Roé separate from remainder of fish	R
Skate wings	SW
Squid or octopus, beak removed	BSO
Squid or octopus mantles	MSO
Squid or octopus tentacles	TSO
Surimi: Frozen minced fish product (Japan)	SU
Tara Shiniku: Frozen minced fish product (Japan)	TS
Tucza: heads, guts, fins, tail, and portions of belly flap removed (Poland).	TU
Whole fish	W

Appendix F to Subpart A—Weekly Catch Report

A. Report Form Entries

1. Page numbering: Number each page in sequence and the total number of pages in each submission. For example, the pages of a report for the catches of three vessels would be numbered "Page 1 of 3", Page 2 of 3", and "Page 3 of 3."

2. Vessel name: Enter the vessel name as shown on the permit, flush left, up to 20 characters.

3. IRCS: Enter the vessel's international radio call sign, up to eight characters.

4. Permit number: Enter the current permit number (without hyphens).

5. Week ending date: Enter the month and day on which the weekly reporting period ended. A reporting period begins on Sunday at 0001 hours GMT (except during the first week of each year when it begins on January 1) and ends on Saturday at 2400 hours, GMT (except during the last week of each year when it ends on December 31). Following month/day figure, insert the letter "D" and a confirmation code (2 digit sum of the 4 digits in month/day figure).

For example, for the report period ending on Saturday, April 9, 1983, enter: 0409D13.

6. Area code: Enter the code from Appendix C to this subpart, for each area in which the vessel fished during the reporting period.

7. Days fished: Enter the number of days during which fishing gear was placed in the water in each fishing area duing the reporting period.

8. Species: Enter the code from Appendix D to this subpart for each allocated species caught during the reporting period and the code for each prohibited species caught as required by the fishery in which the FFV is

engaged (see Subparts C through G of this part).

9. Catch: Enter the round weight, to the nearest tenth of a metric ton (0.1 mt) by species and area of allocated species caught or received from catching vessels during the reporting period, regardless of whether retained or discarded, and the catch of prohibited species as required by the fishery in which the FFV is engaged (see Subparts C through G of this part). Entries containing catch weights of fish used for human consumption or used for fish meal (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries containing catch weights of discarded fish (disposition "D") must be based on the most accurate method available, either scale round weights, estimated deck weights, or number, as required by the fishery. Following the catch figure, insert the letter "D" and a confirmation code (2 digit sum of the digits in the species code and catch figure).

10. Designated representative: Enter the name of the designated representative who is responsible for submitting reports for the foreign nation.

11. Date: Enter the date the report is submitted to the NMFS by the designated representative.

B. Telex Reports

1. To ensure receipt of the Weekly Catch Report on time, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message, provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identifier "CATREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Catch Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number/(Week ending date)D(confirmation code-CC)//
Area/Days fished//
Species/(Catch)P(CC)//Species/(Catch)P(CC)//etc.//
Area/Days fished//
Species/(Catch)P(CC)//Species/(Catch)P(CC)//etc.//

C. Example

1. The stern trawler NAVIS, LTUX, permit number LT-83-0001-A, entered the fishery conservation zone on Sunday, March 13, 1983, began fishing in the Yakutat area (code 64) of the Gulf of Alaska on March 15, and continued fishing in that area the morning of March 16. The afternoon of March 16 the vessel shifted to the Kodiak area (code 63), began fishing that evening, and continued fishing through Saturday, March 19, 1983. (Note that March 16 counts as a day fished in *both* area 64 and area 63). In the Yakutat area the vessel caught 121.6 tons of pollock (code 701), 17.8 tons of Pacific ocean perch (code 780), and 8.0 tons of Atka mackerel (code 207). In the Kodiak area the vessel caught 23.4 tons of pollock, 23.7 tons of Pacific ocean perch, 86.4 tons of Atka mackerel, and 0.4 tons of sablefish (code 703).

2. The text of the Telex report would appear as follows:

CATREP
NAVIS/LTUX/LT830001A/0319D13//
64/2//
701/121.6P18//780/17.8P31//207/8.0P17//
63/4//
701/23.4P17//780/23.7P27//207/86.4P27//703/0.4P14//

3. The completed form would appear as follows:

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY CATCH REPORT

Page _____ of _____

VESSEL NAME

/ /

PERMIT NUMBER

/ / / / / / / / / /

IRCS

/ / / / / / /

WEEK ENDING MONTH/DAY

/ / / / /

AREA CODES	DAYS FISHED	SPECIES CODES												

DESIGNATED REPRESENTATIVE _____ DATE _____

Figure 1. to Appendix F

BILLING CODE 3510-22-C

Appendix G to Subpart A—Weekly Joint Venture Receipts Report

A. Report From Entries

1. Page numbering, vessel name, IRCS, permit number, week ending date, area code, designated representative, and date must be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix F paragraphs A, 1–6, 10 and 11.

2. Vessels delivering (V): Enter the number of U.S. vessels which transferred codends in each area during the reporting period.

3. Codends received (T): Enter the number of codends received from U.S. vessels which were caught in that area.

4. Species: Enter the code from Appendix D to this subpart of each authorized or prohibited species or species group received during the reporting period.

5. Amounts received: Enter the round weight, to the nearest tenth of a metric ton (0.1 mt), by species and area, of species received from vessels of the U.S. during the reporting period and as required by the regulations of the fishery in which the FFV is engaged (see Subparts C through G of this part). After the amount, enter the letter "P" to indicate the final disposition of the receipts as: processed, frozen, eaten by the crew, or otherwise used for human consumption (disposition C), whether or not part of the catch went to fishmeal or oil; used for fishmeal (disposition M); or discarded (disposition D). Enter the letter "R" to indicate the receipts which were subsequently returned to the U.S. vessel (disposition R), when allowed by the fishery in which the FFV is engaged. Entries containing receipt weights (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for discards or returns (disposition "D" or "R") must be based on the most accurate method available to the vessel, either scale round weight, estimated deck weight, or number, as required by the fishery. After the code letter, enter a confirmation code (2 digit sum of the digits in species code and amounts received figure).

6. Participating vessels: Enter the names of U.S. vessels transferring codends to the FFV during the reporting period.

B. Telex Reports

1. To ensure receipt of the Weekly Joint Venture Receipts Report on time, Telex reports may be used. If a Telex report is submited, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message, provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identifier "RECREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Joint Venture Receipt Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number/(Week ending date)D(confirmation code)//Area//
Species/(Amount received) (Disposition "P" or "R") (confirmation code)/Species/(Amount received) (Disposition) (confirmation code)//etc.//
Number of vessels transferring codends//Codends transferred//Area//
Species/(Amount received) (Disposition) (confirmation code)//Species/(Amount received) (Disposition) (confirmation code)//etc.//
Number of vessels transferring codends//Codends transferred//
Name of participating vessel//Name of participating vessel//etc.//

C. Example

1. The stern trawler NAVIS, LTUX, operating under permit number LT–83–0001–A which authorizes the receipt of U.S. harvested Alaska pollock and other associated species in the Bering Sea and Aleutian Islands groundfish fishery, received 26 codends from the U.S. vessesl LUCKY, MARY J, EMILY J, and LINDA C in the Bering Sea area 52 from June 5 through June 8, 1983, containing the following species and amounts: Alaska pollock (code 701), 156.3 mt; rockfishes (code 849), 0.2 mt; Pacific cod (code 702), 27.0 mt; turbot (code 737), 5.0 mt; and other species (code 499 4.9 mt. The codends also contained 25 salmon, a prohibited species required to be logged by number in the Bering Sea and Aleutian Islands groundfish fishery (see § 611.92). On June 8, NAVIS shifted its area of operations and received 20 codends from the U.S. vessels, MARY J, EMILY J, and LINDA C in Bering Sea area 54 from June 8 through June 11. NAVIS received the following species and amounts: Alaska pollock (code 701), 75.4 mt; rockfishes (code 849), 3.1 mt; Pacific cod (code 702), 30.2 mt; turbot (code 737), 7.5 mt; and other species (code 499), 7.1 mt. The codends contained 15 salmon and 20 halibut, both prohibited species required to be logged by number in the fishery.

2. The text of the Telex report would appear as follows:

RECREP
NAVIS/LTUX/LT830001A/061D08//
52/4//
701/156.3P23//849/0.2P23//702/27.0P18//
737.5.0P22//499/4.9P35//
210/25P10//V4//T26//
54/4//
701/75.4P24//849/3.1P25//702/30.2P14//737/
7.5P29//499/7.1P30//
210/15P10//722/20P13//V3//T20//
LUCKY//MARY J//EMILY J//LINDA C//

The completed form would appear as follows:

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY JOINT VENTURE RECEIPTS REPORT

Page_____of_____

VESSEL NAME

/ /

PERMIT NUMBER / / / / / / / / / /

IRCS / / / / / / /

WEEK ENDING MONTH/DAY / / / / /

AREA CODE	DAYS FISH REC'D	VSLS DEL'D	CODENDS REC'D	SPECIES CODES								

PARTICIPATING VESSELS

_____ _____ _____
_____ _____ _____
_____ _____ _____
_____ _____ _____

DESIGNATED REPRESENTATIVE _____ DATE _____

Figure 1. to Appendix G

BILLING CODE 3510-22-C

Appendix H to Subpart A—Weekly Marine Mammal Report

A. Report Form Entries

1. Page numbering, vessel name, IRCS, permit number, designated representative, and date must be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix F, paragraphs A, 1–4, 10, and 11.

2. For each mammal caught enter—

a. Date caught. Enter the month and day e.g., for May 6, 1983, enter: 0506;

b. Latitude and longitude to the nearest degree;

c. Species code from Appendix D to this subpart;

d. Status code as follows: 1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured; and

e. Number of mammals caught where two or more of the same species and status were caught together.

f. Flag or nation of registry of vessel that caught the marine mammal.

B. Telex Reports

1. To ensure receipt of the Weekly Marine Mammal Report on time, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identified "MAMREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Marine Mammal Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number//
Date/Latitude/Longitude/Species/Condition/Number caught/Flag of vessel catching mammal//
Date/Latitude/Longitude/Species/Condition/Number caught/Flag of vessel catching mammal//

C. Example

1. The stern trawler NAVIS, LTUX, permit number LT–83–0001–A, began fishing in the Bering Sea Area 52 on April 27, 1983. No marine mammals were taken incidental to fishing activities until May 15 when two harbor seals (code 967) were taken at 56°10′ N. latitude, 171°25′ W. longitude. One was killed during retrieval of the trawl and the other was uninjured. On May 17, at 56°35′ N. latitude, 171°40′ W. longitude, a northern sea lion (code 955) was injured during capture by a U.S. vessel delivering its catch to the NAVIS.

2. The text of the Telex report would appear as follows:

MAMREP

NAVIS/LTUX/LT830001A//
0515/56N/171W/967/1/1/LT//
0515/56N/171W/967/4/1/LT//
0517/57N/172W/955/2/1/US//

3. The completed form would appear as follows:

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY MARINE MAMMAL REPORT

Page_____of_____

VESSEL NAME

/ /

PERMIT NUMBER / / / / / / / / / /

IRCS / / / / / / /

MONTH/DAY / / / / /

CONDITION CODES
1. KILLED DURING CAPTURE
2. INJURED DURING CAPTURE
3. DEAD BEFORE CAPTURE (DECOMPOSED)
4. UNINJURED

RECORD THE CATCH OF INDIVIDUAL ANIMALS UNLESS TWO OR MORE WERE TAKEN TOGETHER AND WERE IN THE SAME CONDITION

DATE (MM/DD)	LATITUDE (DEGREES)	LONGITUDE (DEGREE)	SPECIES CODE	STATUS CODE	NUMBER	FLAG

DESIGNATED REPRESENTATIVE _____ DATE _____

Figure 1. to Appendix H

BILLING CODE 3510-22-C

Appendix I to Subpart A—Daily Fishing Log

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

2. Each day's entries must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Format entries

1. Section One—Effort (to be completed within 2 hours after the beginning of the day or 2 hours after the hauling time, as appropriate):

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign or other vessel identification as required by 50 CFR 611.5(a)(2).

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude to the nearest 0.1 of a minute) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

(h) Trawl or set number: Enter consecutive numbers for each trawl or set made, beginning with the first trawl or set completed in the current calendar year.

(i) Fishing area number: Enter the code number (from Appendix C to this subpart) of the fishing area where each trawl or set was completed.

(j) Gear type: Enter the abbreviation for type of gear used as described below.

Gear type	Standard abbreviation
Bottom otter trawl (side)	OTB-1
Bottom otter trawl (stern)	OTB-2
Off-bottom otter trawl (see § 611.50(c)(5) for definition of this gear).	OTB-3
Midwater otter trawl (side)	OTM-1
Midwater otter trawl (stern)	OTM-2
Bottom pair trawl	PTB
Midwater pair trawl	PTM
Purse seine	PS
Gillnets (set)	GNS
Gillnets (drift)	GND
Gillnets (fixed)	GNF
Longlines (set)	LLS
Longlines (drift)	LLD
Traps or Pots	FIX
Danish seine	DS
Miscellaneous gears (other than above)	MLS

(k) Set time: Enter the time based on GMT at which each set or trawl began. For trawls, this is the time of the net first reaches the fishing level and the winches stop paying out cable. For longline, pot, and gillnet vessls, this is the time the first section of gear is placed in the water.

(l) Set position: Enter the geographic coordinates (latitude/longitude) where each trawl or set began. For trawls, this is the position at which the net reaches the fishing level and the winches stop paying out cable. For longline, pot, and gillnet vessels, this is the position where the first section of gear is placed in the water.

(m) Course of set: Enter the vessel's course (degrees true) at the set time at which each trawl or set began.

(n) Sea depth: Enter the average sea depth in meters.

(o) Depth of set: Enter the average depth in meters at which the gear was set or towed.

(p) Duration of set: Enter the elapsed time in minutes from the set time to the hauling time of each set or trawl.

(q) Hauling time: Enter the ending time based on GMT when each trawl or set was hauled. For trawls this is the time the net begins to be hauled up. For longline, pot, and gillnet vessels, this is the time that retrieval of the gear is complete.

(r) Hauling position: Enter the geographic coordinates (latitude/longitude) at which the set or trawl was hauled. For trawls this is the position at which the net begins to be hauled up. For longline, pot, and gillnet vessels this is the position of the last section or end of the gear.

(s) No. of pots or longline units: For longline or gillnet vessels only, enter the number of longline or gillnet units (specify the length in fathoms per unit). For pot vessels only, enter the number of pots set.

(t) No. of hooks per longline unit: For longline vessels only, enter the average number of hooks per unit of groundline.

(u) Trawl speed: For trawlers only, enter the average speed to the nearest tenth of a knot at which the gear was towed.

(v) Net mesh size: Enter the millimeter mesh size of the cod end (trawlers) or gillnet (measured when wet after stretching, from the inside of one knot to the inside of the opposing knot).

(w) Estimated haul weight: Enter the estimated total weight of the catch for the trawl or set to at least the nearest metric ton round weight.

2. Section Two—Catch (to be completed within 12 hours after the end of the trawl or set or within 12 hours after the end of the day, as appropriate):

(a) Species: Enter the species code for each species caught for which there is an applicable national allocation, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart.

(b) Set/trawl number: Enter the number corresponding with sets or trawls listed in Section One.

(c) Catch: Enter the catch by species and by trawl or set, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Enter zero (0) if there was no catch of a listed species.

(d) Daily disposition: For each species, specify the daily disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal; enter under "M" the weight of whole fish which are processed for fishmeal or oil; and enter under "D" the round weight of whole fish which are discarded. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(e) Area total: Enter the total daily catch by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(f) Daily total: Enter the total daily catch by species, to at least the nearest 0.1 mt round weight.

(g) Cumulative total: Enter the cumulative total catch by species, to at least the nearest 0.1 mt round weight.

(h) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(i) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of all prohibited species discarded from each set or trawl as required by the fishery in which the FFV is engaged (see Subparts C through G of this part). Enter the daily and cumulative total for each prohibited species.

(j) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals caught (if more than one of the same species and condition), and condition code (1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each species caught for which there is a national allocation.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including products delivered to a port by the fishing vessel) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily fishing log form is illustrated below.

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

DAILY FISHING LOG

SECTION ONE - EFFORT

PAGE NO	DATE Year Month Day	VESSEL NAME	IRCS	U.S. PERMIT NUMBER	NOON POSITION Latitude Longitude	NOON WEATHER	WIND DIRECTION · FORCE	WEATHER	BARO-METER	SEA CON-DITION	AIR WATER TEMPERATURE	MASTER OR OPERATOR

TRAWL OR SET NO.	FISHING AREA NO	GEAR TYPE	SET TIME (G.M.T.)	SET POSITION	COURSE OF SET	SEA DEPTH (METERS)	DEPTH OF SET (METERS)	DURATION OF SET (MINUTES)	HAULING TIME (G.M.T.)	HAULING POSITION	NO. OF POTS OR LONGLINE UNITS	NO. OF HOOKS PER LONGLINE UNIT	TRAWL SPEED	TRAWL MESH SIZE COD END	

U.S. INSPECTION	REMARKS:
OFFICER:	
DATE:	

Figure 1a. to Appendix I: Daily Fis

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION TWO - CATCH

SPECIES / VESSEL															PROHIBITED SPECIES				MARINE MAMMALS		
																			SPECIES CODE	NUMBER	STATUS CODE
															TOTAL CATCH						
															DAILY TOTAL	CUM. TOTAL					
DAILY DISPOSITION	C																				
	M																				
	D																				
AREA TOTAL																					
DAILY TOTAL																					
CUMULATIVE TOTAL																					

SECTION THREE - PRODUCTION

FROZEN PRODUCT																			MEAL AND OIL		
SPECIES / PRODUCT																		TOTAL FROZEN PRODUCT		MEAL	OIL
PRR %																			DAILY TOTAL		
DAILY TOTAL																			CUM. TOTAL		
CUMULATIVE TOTAL																			AMOUNT TRANSFERRED		
AMOUNT TRANSFERRED																			BALANCE		
BALANCE																					

Figure 1b. to Appendix J: Daily Fishing Log

BILLING CODE 3510-22-C

Appendix J to Subpart A—Daily Consolidated Log

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing operations. Only one day's entries may be made on each page of the log.

2. Each page must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Form Entries

1. Section One—Effort (to be completed within 2 hours of the beginning of the day):

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign.

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

2. Section Two—Catch (to be completed within 12 hours after the end of the day):

(a) Vessel/IRCS: Enter the name of the foreign catching vessel transferring codends to the foreign processing vessel and its IRCS or other required vessel identification.

(b) Species: Enter the species code for each species caught for which there is an applicable national allocation, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart.

(c) Fishing area: Enter the fishing area, using the code from Appendix C to this subpart, where the fish were caught. If a catching vessel catches fish in more than one area, a separate line entry must be made for each area.

(d) Catch: Enter the catch by species of each catching vessel in that area during the day, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Enter zero (0) if there was no catch of a listed species.

(e) Daily disposition: For each species, specify the daily disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal or oil; enter under "M" the round weight of whole fish which are processed for fishmeal or oil; enter under "D" the round weight of whole fish which are discarded. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(f) Area total: Enter the total daily catch by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(g) Daily total: Enter the total daily catch by species, to at least the nearest 0.1 mt round weight.

(h) Cumulative total: Enter the cumulative total catch by species, to at least the nearest 0.1 mt round weight.

(i) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(j) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of prohibited species received from each harvesting vessel as required by the fishery in which the FFV is engaged. Enter the daily and cumulative total for each prohibited species.

(k) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals received (if more than one of the same species and condition), condition code (1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each species caught for which there is a national allocation.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of catch product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including products delivered to a port by the fishing vessel) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(j) Meal and Oil:

(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily consolidated log form is illustrated below:

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

DAILY CONSOLIDATED LOG

SECTION ONE - EFFORT

PAGE NO.	DATE Year/Month/Day	VESSEL NAME	IRCS	U.S. PERMIT NUMBER	NOON POSITION Latitude	Longitude	NOON WEATHER	WIND DIRECTION/FORCE	WEATHER	BARO-METER	SEA CON-DITION	AIR/WATER TEMPERATURE	MASTER

SECTION TWO - CATCH

VESSEL / IRCS	SPECIES / AREA														PROHIBITED SPECIES				MARINE MAMMALS		
																			SPECIES CODE	NUMBER	STATUS CODE
															TOTAL CATCH						
															DAILY TOTAL	CUM. TOTAL					
DAILY DISPOSITION	C																				
	M																				
	D																				
AREA TOTAL																					
DAILY TOTAL																					
CUMULATIVE TOTAL																					

Figure 1a. to Appendix J: Daily Consolidated Log.

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION THREE - PRODUCTION

FROZEN PRODUCT																			MEAL AND OIL		
SPECIES / PRODUCT																		TOTAL FROZEN PRODUCT		MEAL	OIL
PRR %																			DAILY TOTAL		
DAILY TOTAL																			CUM. TOTAL		
CUMULATIVE TOTAL																			AMOUNT TRANS-FERRED		
AMOUNT TRANSFERRED																			BALANCE		
BALANCE																					

U.S. INSPECTION	REMARKS:
OFFICER:	
DATE:	

Figure 1b. to Appendix J: Daily Consolidated Log.

BILLING CODE 3510-22-C

Appendix K to Subpart A—Daily Joint Venture Log

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing.

2. Each day's entries must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Form Entries

1. Section one—Effort (to be completed within 2 hours after the beginning of the day or within 2 hours after the receipt time, as appropriate);

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign.

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

(h) Codend No.: Enter consecutive numbers for each codend received, beginning with the first codend received in the current calendar year.

(i) Vessel: Enter the name of the U.S. fishing vessel the codend was received from.

(j) Fishing area number: Enter the code number (from Appendix C to this subpart) of the fishing area where the codend was received.

(k) Receipt time: Enter the time based on GMT when the codend was received.

(l) Receipt position: Enter the geographic coordinates (latitude/longitude) where the codend was received.

(m) Codend weight: Enter the estimated total weight of the codends to at least the nearest metric ton round weight.

2. Section Two—Catch (to be completed within 12 hours after the codend was received or within 12 hours after the end of the day, as appropriate):

(a) Species: Enter the species code for each species received which the FFV is authorized to retain, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart. Use another column for the same species if there is more than one disposition of the receipt. (See paragraph (d) below).

(b) Codend No.: Enter the number corresponding with the receipts listed in Section One.

(c) Catch: Enter the receipts in each codend by species, disposition, and receipt, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Disposition is indicated by adding a letter code as described in paragraph (f) below. Enter zero (0) if there was no catch of a listed species.

(d) Daily Disposition: For each species, specify the disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of the fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal or oil; enter under "M" the round weight of whole fish which are processed for fishmeal or oil; enter under "D" the round weight of fish which are discarded; and enter "R" for the round weight of fish returned to the U.S. vessel, if allowed in the fishery. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(e) Area total: Enter the total daily receipts by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(f) Daily total: Enter the total daily receipts by species, to at least the nearest 0.1 mt round weight.

(g) Cumulative total: Enter the cumulative total receipts by species, to at least the nearest 0.1 mt round weight.

(h) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, D, and R) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, D, and R).

(i) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of all prohibited species received from each harvesting vessel, as required by the fishery in which the FFV is engaged. Enter the daily and cumulative total for each prohibited species.

(j) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals received (if more than one of the same species and condition), and condition code (1—killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident and harvesting vessel.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each authorized species which the FFV receives.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including products delivered to a port by the fishing vessel) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily joint venture log form is illustrated below:

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

DAILY JOINT VENTURE LOG

SECTION ONE - EFFORT

PAGE NO	DATE Year Month Day	VESSEL NAME	IRCS	U.S. PERMIT NUMBER	NOON POSITION Latitude Longitude	NOON WEATHER	WIND DIRECTION / FORCE	WEATHER	BARO-METER	SEA CON-DITION	AIR / WATER TEMPERATURE	MASTER

CODEND NO	U.S. VESSEL NAME	FISHING AREA NO	RECEIPT TIME (G.M.T.)	RECEIPT POSITION	ESTIMATED RECEIPT WEIGHT

REMARKS

U.S. INSPECTION

OFFICER: DATE:

REMARKS:

Figure 1a. to Appendix K: Daily Joint Venture Log.

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION TWO - CATCH

SPECIES / COD END NO.															PROHIBITED SPECIES				MARINE MAMMALS		
																			SPECIES CODE	NUMBER	STATUS CODE
														TOTAL CATCH							
													DAILY TOTAL	CUM. TOTAL							
DAILY DISPOSITION C																					
DAILY DISPOSITION M																					
DAILY DISPOSITION D																					
DAILY DISPOSITION R																					
AREA TOTAL																					
AREA TOTAL																					
AREA TOTAL																					
AREA TOTAL																					
DAILY TOTAL																					
CUMULATIVE TOTAL																					

Figure 1b. to Appendix K: Daily Joint Venture Log.

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION THREE - PRODUCTION

FROZEN PRODUCT																			MEAL AND OIL		
SPECIES / PRODUCT																		TOTAL FROZEN PRODUCT		MEAL	OIL
PRR %																			DAILY TOTAL		
DAILY TOTAL																			CUM. TOTAL		
CUMULATIVE TOTAL																			AMOUNT TRANS-FERRED		
AMOUNT TRANSFERRED																			BALANCE		
BALANCE																					

Figure 1c. to Appendix K: Daily Joint Venture Log.

BILLING CODE 3510-22-C

Subpart B—Surpluses

§ 611.20 Total allowable level of foreign fishing (TALFF).

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the optimum yield (OY) of such fishery which will not be caught by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFF's at the beginning of the relevant fishing year will be published as a notice in the **Federal Register.** Adjustments to those numbers will be published as notices in the **Federal Register** upon occasion or as directed by regulations implementing fishery management plans. For current apportionments, contact the appropriate Regional Director or the Office of Fisheries Management, F/M1, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235.

§ 611.21 Allocations.

The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of fish species and species groups. The Secretary of State officially notifies each foreign nation of its allocation. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels is upon the foreign nation and the owner or operator of the FFV.

§ 611.22 Fee schedule.

(a) *Permit application fees.* Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $101 per vessel, plus the surcharge, if required under paragraph (c) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA", must be sent to Division Chief, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Room 414, Washington, DC 20235. The permit fee payment must be accompanied by a list of the vessels for which payment is made.

(b) *Poundage fees.*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (c) of this section.

SPECIES AND POUNDAGE FEE

[Dollars per metric ton, unless otherwise noted]

Species	Poundage
Atlantic and Gulf Fisheries	
1. Butterfish	160
2. Hake, red	96
3. Hake, silver	102
4. Herring, river	46
5. Mackerel, Atlantic	49
6. Other finfish, Atlantic	69
7. Squid, *Illex*	57
8. Squid, *Loligo*	114
9. Atlantic Shark	110
10. Shrimp, royal red	(1)
Alaska Fisheries	
11. Pollock, Alaska	32
12. Cod, Pacific	73
13. Pacific ocean perch	100
14. Other rockfish (Alaska)	94
15. Mackerel, Atka	52
16. Squid, Pacific	59
17. Flatfish, Gulf of Alaska and Bering Sea and Aleutian Islands	34
18. Sablefish, Gulf of Alaska	159
Bering Sea and Aleutian Islands	64
19. Other species	39
20. Snails	66
Pacific Fisheries	
21. Whiting, Pacific	32
22. Sablefish	143
23. Pacific ocean perch	124
24. Other rockfish	119
25. Flounders	155
26. Mackerel, jack	55
27. Other species	154
Western Pacific Fisheries	
28. Coral	[2] 53
29. Seamount groundfish	103
30. Dolphin fish	1,428
31. Wahoo	571
32. Sharks, Pacific	286
33. Striped marlin	428
34. Pacific billfish	514
35. Pacific swordfish	514

[1] Reserved.
[2] Dollars per kilogram.

(2) *Method of payment of poundage fees, surcharges and observer fees.* If a nation chooses to accept an allocation, a revolving letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocations at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the surcharges and observer fees required by paragraphs (c) and (d) of this section. The L/C must—

(i) Be irrevocable;

(ii) Be with a bank subscribing to ICC Pub. 290;

(iii) Designate "Department of Commerce, NOAA" as beneficiary;

(iv) Allow partial withdrawals; and

(v) Be confirmed by a U.S. bank.

The customer must pay all commissions, Telex, and service charges. No fishing will be allowed until the letter of credit is established, and authorized written notice of its issuance is provided to the Assistant Administrator at the address in paragraph (a) of this section.

(3) *Assessment of poundage fees.* Poundage fees will be assessed quarterly for the actual catch during January through March, April through June, July through September, and October through December. The appropriate Regional Director will reconcile catch figures with each country following the procedures of §611.13(d). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the Regional Director will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Director during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(c) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraphs (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed to maintain capitalization of the fund. The Assistant Administrator has waived the surcharge for 1985 fees.

(d) *Observer fees.* The Assistant Administrator will notify the owners or operators of FFV's of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel must provide for repayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a letter of credit as prescribed in § 611.22(b)(2). During the fiscal year, payment will be withdrawn from the letter of credit as required to cover anticipated observer coverage for the upcoming fishery. The Assistant Administrator will reconcile any differences between the estimated cost and actual costs of observer coverage within 90 days after the end of the fiscal year.

(e) *Financial assurances.* A foreign nation, or the owners and operators of certain vessels of that foreign nation, may be required by the Secretary to

provide financial assurances. Such assurances may be required if—

(1) Civil and criminal penalties assessed against fishing vessels of the nation have not effectively deterred violations;

(2) Vessels of that nation have engaged in fishing in the FCZ without proper authorization to conduct such activities;

(3) The nation's vessel owners have refused to answer administrative charges or summons to appear in court; or

(4) Enforcement of Magnuson Act civil or criminal judgments in the courts of a foreign nation is unattainable.

The level of financial assurances will be guided by the level of penalties assessed and costs to the U.S. government.

[FR Doc. 85-20320 Filed 8-22-85; 2:41 pm]

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50 CFR Part 611

[Docket No. 41049-5104]

Foreign Fishing

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

ACTION: Final rule, technical amendment.

SUMMARY: NOAA issues this final rule implementing technical amendments to the final regulations for foreign fishing. These technical amendments revise references, delete redundant regulations, and make minor format changes to the foreign fishing regulations applying to specific foreign fisheries. The revisions are necessary to reflect changes in the general foreign fishing regulations (published elsewhere within this issue). The intended effect is to make the foreign fishing regulations internally consistent.

EFFECTIVE DATE: October 28, 1985, with exception of the revision to § 611.50(e)(1), which is effective January 1, 1986.

ADDRESS: Fees, Permits, and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202-634-6432.

SUPPLEMENTARY INFORMATION: This action makes technical amendments to Subparts C through G of Part 611 of Title 50 of the Code of Federal Regulations concerning foreign fishing. These amendments were discussed in a proposed rule published at 49 FR 50498 on December 28, 1984. The final rule is published elsewhere within this **Federal Register.** That final rule revises Subparts A and B and requires these technical amendments to Subparts C through G to maintain internal consistency within the foreign fishing regulations. The amendments made by this rule do not have any substantive impact on any information collections currently approved by the Office of Management and Budget.

Other Matters

This action is taken under the authority of 50 CFR Part 611 and the proposed rule published at 49 FR 50498 on December 28, 1984, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign regulations, Recordkeeping and reporting requirements.

Dated: August 20, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 611—[AMENDED]

1. The authority citations following all the sections for 50 CFR Part 611 are removed and the authority citation for 50 CFR Part 611 is revised to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

Subpart C—Atlantic Ocean

2. In Subpart C, § 611.50 is amended by revising paragraphs (b)(2)(i), and (e)(1), removing paragraphs (e)(1)(i) through (e)(1)(ix), and adding a new Figure 1 to follow paragraph (b)(2)(ii) to read as follows:

§ 611.50 Northeast Atlantic Ocean Fishery

* * * * *

(b) * * *

(2) *Activities allowed.* (i) Vessels subject to this action which fish with trawl gear may fish only within the trawling areas, during the seasons, and with the methods specified in Figure 1 and Table 1 of this section. Vessels subject to this action which fish with any other gear need not comply with the area, season, or method limitations specified in Figure 1 or Table 1 of this section.

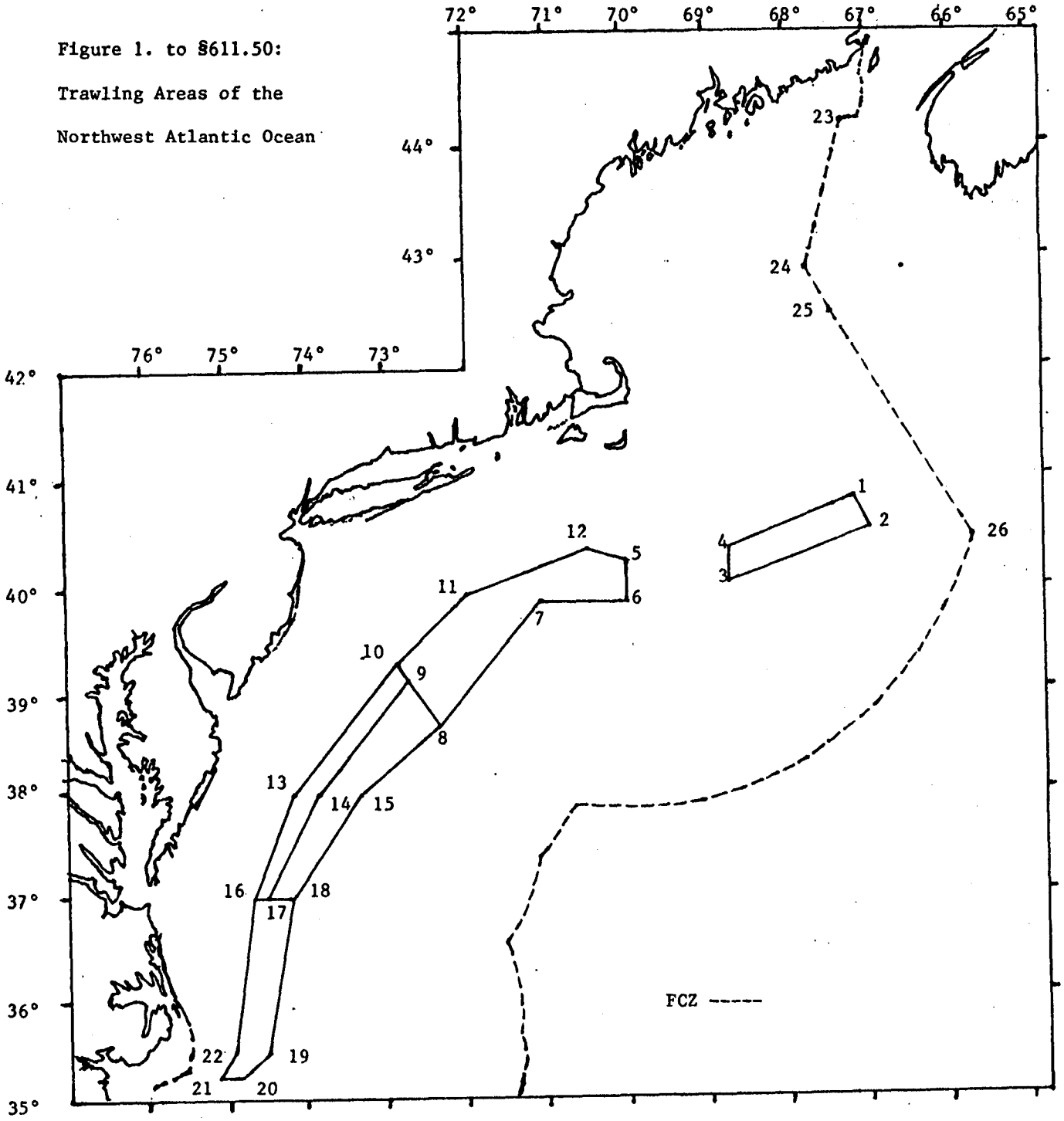
(ii) * * *

BILLING CODE 3510-22-M

Figure 1. to §611.50:

Trawling Areas of the

Northwest Atlantic Ocean



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1. 40°47′ N., 67°11′ W.
2. 40°30′ N., 67°00′ W.
3. 40°01′ N., 68°45′ W.
4. 40°20′ N., 68°45′ W.
5. 40°13′ N., 70°00′ W.
6. 39°50′ N., 70°00′ W.
7. 39°50′ N., 71°05′ W.
8. 38°40′ N., 72°30′ W.
9. 39°07′ N., 72°44′ W.
10. 39°16′ N., 72°50′ W.
11. 39°56′ N., 72°00′ W.
12. 40°20′ N., 70°30′ W.
13. 38°00′ N., 74°10′ W.
14. 38°00′ N., 73°53′ W.
15. 38°00′ N., 73°20′ W.
16. 37°00′ N., 74°40′ W.
17. 37°00′ N., 74°30′ W.
18. 37°00′ N., 74°10′ W.
19. 35°30′ N., 74°30′ W.
20. 35°13′ N., 74°50′ W.
21. 35°13′ N., 75°06′ W.
22. 35°30′ N., 74°55′ W.
23. 44°11′12″ N., 67°16′46″ W.
24. 42°53′14″ N., 67°44′35″ W.
25. 42°31′08″ N., 67°28′05″ W.
26. 40°27′05″ N., 65°41′59″ W.

* * * * *

(e) * * *

(1) *Fishing log.* The operator of each FFV which engages in fishing must maintain a record of all catches of allocated, authorized, or prohibited species to the nearest tenth of a metric ton (0.1 mt).

* * * * *

§ 611.50 [Amended]

3. In addition to the amendments set forth above, § 611.50 is amended as follows:

a. In § 611.50(b)(4)(ii), the words "all billfish" are removed and replaced by "all marlin, all spearfish, sailfish, swordfish."

b. In § 611.50(b)(5)(i), in the second sentence, the parenthetical phrase "(as defined in § 611.12(r)(1))" is removed and replaced by "other than scouting, processing, or support."

c. In § 611.50, Table I, footnote [1], the reference to "Figure 1 to Appendix II of § 611.9" is removed and replaced with "Figure 1 of this section," and in the last line of the footnote section of Table I, the reference to "§ 611.15" is removed and replaced with "§ 611.13."

Subpart D—Atlantic, Caribbean, and Gulf of Mexico

4. In Subpart D, § 611.60 is amended by adding paragraph (a)(3) to read:

§ 611.60 General provisions.

(a) * * *

(3) The term *billfish* or *billfishes* as used in this subpart means all species of marlin, spearfish, sailfish and swordfish.

* * * * *

§ 611.60 [Amended]

5. In addition to the amendment set forth above, in § 611.60(c)(2), the reference to "§ 611.13(c)" is removed and replaced with "§ 611.11(d)."

§ 611.61 [Amended]

6. Subpart D, § 611.61 is amended as follows:

a. In § 611.61(b)(1), the reference to "§ 611.15 (a)(1) through (a)(7)" is removed and replaced by "§ 611.13 (a)(1) through (a)(3)."

b. In § 611.61(c), the reference to "§ 611.13(b)" in the introductory text is removed and replaced by "§ 611.11(b)."

c. In § 611.61, (e)(2) the reference to "§ 611.9 (d) and (e)" is removed and replaced by "§ 611.9(d) and § 611.4(f)(2)," and the reference to "§ 611.9 (f) and (g)," is removed and replaced by "§ 611.4 (f)(3) and (f)(4)."

Subpart E—Northeast Pacific Ocean

7. In Subpart E, § 611.70 is amended by removing and reserving paragraphs (j)(1), (j)(2) and (j)(3) and revising paragraph (j)(8) to read as follows:

§ 611.70 Pacific coast groundfish fishery.

* * * * *

(j) *Reports and recordkeeping.* (1)–(3) [Reserved]

* * * * *

(8) *Weekly reports by FFV's.* Any weekly catch report (CATREP) submitted under § 611.4(f)(2) or weekly joint venture receipts report (RECREP) submitted under § 611.4(f)(3) must state if it pertains to a directed species other than Pacific whiting by following the word "CATREP" or "RECREP" with the name of the directed species. If more than one directed fishery is conducted in the same week, a separate CATREP or RECREP must be submitted for each species.

* * * * *

§ 611.70 [Amended]

8. In addition to the amendments set forth above, Subpart E, § 611.70 is amended to read as follows:

a. In § 611.70(j)(9), the reference to "§ 611.9" is removed and replaced by "§ 611.4."

b. In § 611.70(j)(9)(i), the reference to "§ 611.9(e)" is removed and replaced by "§ 611.9(f)(2)" and the words "§ 611.9(f) "Weekly Reports of U.S.-Harvested Fish" " are removed and replaced by "§ 611.4(f)(3) "Weekly Joint Venture Receipts Report." "

Subpart F—Western Pacific Ocean

9. In Subpart F, § 611.80 is amended by revising paragraphs (f)(1)(i) and (f)(1)(ii) to read as follows:

§ 611.80 Seamount groundfish fishery.

* * * * *

(f) * * *

(1) *Fishing log.* (i) Each FFV which conducts fishing operations must maintain and submit a fishing log which contains the data required by § 611.9 (d) and (e).

(ii) In addition to the catch of allocated species, the log must contain the approximate weight (in kilograms) by genus, of the incidental catch of the prohibited species corals designated by the definitions of Continental Shelf fisheries resources in § 611.2 of this part.

* * * * *

10. In Subpart F, § 611.81 is amended by revising paragraph (e)(3) to read as follows:

§ 611.81 Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery.

* * * * *

(e) * * *

(3) *Quarterly marine mammal report.* Each operator of an FFV which fishes under this section must submit, through the designated representative, the marine mammal report required by § 611.4(f)(4) on a quarterly basis in lieu of weekly reports.

* * * * *

11. In addition to the amendments set forth above, Subpart F, § 611.81 is amended to read as follows:

a. In § 611.81(c)(4), the reference to "§ 611.13(c)" is removed and replaced by "§ 611.11(d)."

b. In § 611.81 (d)(2) and (e)(1)(iii), the references to "Appendix II to § 611.9" are removed and are replaced by "Appendix C to Subpart A."

c. In § 611.81 (d)(3)(ii), the references to "Table I of § 611.4" is removed and replaced by "Appendix A to Subpart A."

d. In § 611.18(e), the references to "§ 611.9 (d), (e), and (g)" are removed and are replaced by "§ 611.4 (f)(2) and (f)(4) and § 611.9 (d) and (e)."

e. In § 611.81 (e)(2), the words "foreign nation whose vessels fish under this section shall submit" are removed and are replaced by "operator of an FFV which fishes under this section must submit."

§ 611.82 [Amended]

12. In Subpart F, § 611.82(i) is amended by removing in the second sentence the words "daily cumulative catch log" and inserting in their place "daily fishing log."

Subpart G—North Pacific Ocean and Bering Sea

13. In Subpart G, § 611.90 is amended by revising paragraph (e)(2), removing paragraph (f)(1), redesignating paragraph (f)(2) as (f)(1) and revising the newly redesignated paragraph (f)(1), redesignating paragraph (f)(3) as (f)(2), and removing in the second sentence of the newly redesignated paragraph (f)(2) the references to "§§ 611.9(b), 611.9(d)(1), and 611.9(d)(2)" and replacing this reference with "611.9 (b) and (c)" as follows:

§ 611.90 General provisions.

* * * * *

(e) * * *

(2) In the Gulf of Alaska groundfish fishery and the Bering Sea groundfish fishery, the owner and operator of each FFV must record and report, in addition to allocated and authorized species, the prohibited species salmonids (species code 210) and halibut (species code 722) which are discarded, in terms of the number of fish. In the Bering Sea groundfish fishery the owner and operator of each FFV must record and report additionally, the prohibited species herring (species code 209) which are discarded, to the nearest tenth of a metric ton (0.1 mt).

(f) *Initial Inspection.* (1) An FFV reporting fish or fish products aboard in a BEGIN report required by § 611.4(c)(1) may be inspected prior to fishing within the FCZ. If the FFV will be inspected, notice of an inspection will be sent to the FFV within 24 hours after the transmission of the BEGIN report. Each FFV that will be inspected must not harvest or process fish in the FCZ until the inspection is completed by an authorized officer. If notice of an inspection is not sent to the FFV within 24 hours after transmission of the BEGIN report, the FFV may begin to harvest or process fish.

* * * * *

§ 611.92 [Amended]

14. In Subpart G, § 611.92 is amended by removing the fourth sentence in paragraph (b)(1) and replacing it with "Taking of salmonids and halibut must be recorded and reported by number of fish according to § 611.90(e)(2)."

§ 611.93 [Amended]

15. In Subpart G, § 611.93 is amended to read as follows:

a. In § 611.93(a)(1), the words "See § 611.9, Appendix II, Figure 2" are removed and replaced with the words "See Appendix C to Subpart A, Figure 4."

b. In § 611.93(c)(2)(ii)(E)(1)(i), the terms "fishing area I" and "fishing areas II" in the first sentence are removed and replaced by "fishing area 51" and "fishing area 52" respectively and the last sentence beginning "Fishing areas I and II . . ." is removed and replaced by "Fishing areas 51 and 52 are described in Appendix C to Subpart A, paragraph C. and Figure 4".

c. In § 611.93(d)(1), the reference to "50 CFR 611.4" is removed and replaced with "§ 611.4(c)," and the last sentence, which reads "(See § 611.9, Appendix II, Figure 2)" is removed and replaced with "(See Appendix C to Subpart A, Figure 4)."

d. In § 611.93(d)(2)(i), the reference "§ 611.9" is removed and replaced by "§ 611.90(e)(2)."

e. In § 61.93(d)(2)(ii)(A) the reference to "§ 611.9(d)(1)" is removed and replaced by "§ 611.90(d)(1)."

f. In § 611.93(d)(2)(ii)(C) the reference to "611.9, Appendix IV, D." is removed and replaced by "§ 611.4(g)."

16. In addition to the amendments set forth above, 50 CFR Part 611, a. Subparts C, D, F and G are amended by removing the references to "50 CFR 611.9" or "§ 611.9" and inserting in their place, the reference "§§ 611.4 and 611.9" in the following places:

1. 50 CFR 611.50(e)
2. 50 CFR 611.61(e)(1)
3. 50 CFR 611.80(f)
4. 50 CFR 611.82(i)
5. 50 CFR 611.92 (c)(2)(i)(D) and (h)
6. 50 CFR 611.93 (d)(2)(i) and (d)(2)(ii)(A)

b. Subparts C and D are amended by removing the references to "Appendix I to § 611.9" and inserting in their place, the reference "Appendix D to Subpart A" in the following places:

1. 50 CFR 611.50(e)(2)(ii) A.7.
2. 50 CFR 611.61(e)(1)(i)(C)

c. Subparts C and D are amended by removing the references to "§ 611.11" and inserting in their place "§ 611.12" in the following places:

1. 50 CFR 611.50(d)(1)
2. 50 CFR 611.61(f)(1)

d. Subparts C through G are amended by removing the references to "§ 611.13" and inserting in their place "§ 611.11" in the following places:

1. 50 CFR 611.50(b)(6)
2. 50 CFR 611.60(c)(1)
3. 50 CFR 611.70(k)
4. 50 CFR 611.80(c)
5. 50 CFR 611.81(c)(2)
6. 50 CFR 611.82(e)
7. 50 CFR 611.92 (b)(1), (c)(1)(i) and (c)(2)(i)(D)

e. Subparts C, F, and G are amended by removing the references to "611.15" or "§ 611.15(b)" and inserting in their place "§ 611.13" in the following places:

1. 50 CFR 611.50(b)(5)(ii)
2. 50 CFR 611.81 (b)(5)(ii) and (b)(5)(iv)
3. 50 CFR 611.82(d)
4. 50 CFR 611.90(b)

f. Subpart G is amended by removing the references to "§ 611.9" and inserting in their place "§§ 611.9 and 611.90(e)(2)" in the following places:

1. 50 CFR 611.92, Table 1, Footnote 1
2. 50 CFR 611.93, Table 1, Footnote 1

g. Subpart G is amended by removing the references to "§ 611.15(c)" and inserting in their place "§ 611.13(c)" in the following places:

1. 50 CFR 611.92 (c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(ii), and (c)(2)(iii)
2. 50 CFR 611.93 (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv)

[FR Doc. 85-20321 Filed 8-22-85; 2:42 pm]
BILLING CODE 3510-22-M

federal register

Wednesday
August 28, 1985

Part III

Department of Education

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages; Notices

DEPARTMENT OF EDUCATION

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages; Proposed Annual Funding Priorities, Required Activities, and Restriction on Use of Funds

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education (the Secretary), under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, proposes annual funding priorities for nationally significant project grants. The Secretary proposes to reserve funds under this program for projects designed to enhance the professional status and improve the skills and qualifications of teachers, and to improve the quality of instruction in mathematics, science, computer learning, and foreign languages at the elementary and secondary school levels.

This notice supersedes the notice of proposed funding priorities published in the **Federal Register** on January 22, 1985 (50 FR 2848).

DATE: Comments must be received on or before September 27, 1985.

ADDRESS: Comments should be addressed to the Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4010, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Patricia Alexander, Office of the Secretary, at the above address. Telephone: (202) 472-1762.

SUPPLEMENTARY INFORMATION:

Program Information

The Education for Economic Security Act (EESA), Pub. L. 98-377, was enacted "to improve the quality of mathematics and science teaching and instruction in the United States."

Section 212 of Title II of the EESA addresses the importance of mathematics, science, computer, and foreign language competency by authorizing the Secretary to make grants to State and local educational agencies, institutions of higher education, and nonprofit organizations, including museums, libraries, educational television stations, and professional mathematics, science and engineering societies and associations, for projects designed to have nationwide impact in these critical areas.

Funding Priorities

To address the need to improve the quality of teaching and instruction in mathematics, science, computer learning, and foreign languages, the Secretary proposes to reserve funds under this program for projects that enhance the professionalism and improve the qualifications of teachers, and that improve instruction in mathematics, science, computer learning, and critical foreign languages.

The Secretary further proposes to limit these priorities to activities that affect elementary and secondary education.

The Secretary is particularly interested in projects of national significance that can be demonstrated successfully in an individual school or school district. Statewide or regional projects are also welcome.

1. Improving the Quality of Teaching

The Secretary expects to award ten to fifteen grants for projects that offer bold approaches to recruiting, in-service training, retraining, and retaining elementary and secondary teachers in the fields of mathematics, science, computer learning, and critical foreign languages.

The Secretary is particularly interested in projects that:

- Provide opportunities to upgrade and enhance the knowledge and skills of teachers currently in the classroom;
- Provide opportunities to recruit and train otherwise well-qualified individuals who lack teaching certification or pedagogical preparation in these subjects; or
- Establish procedures to recognize and reward outstanding teachers.

Activities

Project activities may include, but are not limited to:

- The development of innovative approaches to recruiting qualified content specialists from such sources as corporations, businesses, college faculties, government agencies, research facilities, college graduates who lack pedagogical training, and the increasing pool of retired professionals, through such means as sabbaticals, exchange programs, accelerated training programs, and alternative certification programs.
- The development of programs that recognize and reward outstanding teachers in mathematics, science, computer learning, and foreign languages by providing them with research opportunities, sabbaticals, advanced training in their fields, or other means of conferring increased status, new responsibility, and greater financial remuneration.
- The establishment of collaborative partnerships between State and local educational agencies, colleges and universities, museums, and other nonprofit organizations to develop innovative teacher training programs.

The above examples are meant to illustrate the types of activities the Secretary is interested in supporting. Applicants are encouraged to submit proposals that expand upon, combine, or consider ideas other than these examples.

It is expected that awards under this priority will range from $50,000 to $150,000 each. Applicants may apply for funding for a project that is up to 18 months in duration.

2. Improving the Quality of Instruction

The Secretary expects to award ten to fifteen grants for projects that develop approaches to strengthening and improving the content and coherence of the school curriculum in mathematics, science, computer learning, and critical foreign languages, and to upgrading and enhancing instructional materials (including textbooks, and computer software) in the four subject areas.

The Secretary is particularly interested in projects that:

- Determine the extent to which textbooks and other instructional materials include the most important and up-to-date knowledge available;
- Evaluate the curriculum, course content, and graduation requirements to determine whether they ensure that students will be knowledgeable in mathematics, science, computer learning, and foreign languages, and that high aptitude students have access to especially challenging courses; or
- Develop new instructional approaches that promise to improve teaching and increase learning. (Please note: The Secretary discourages the use of these funds for the development of instructional materials).

Activities

Project activities may include, but are not limited to:

- The establishment of partnerships between individual schools, State and local educational agencies, colleges and universities, musuems, libraries, and other nonprofit organizations to develop innovative approaches to upgrading instructional methods materials.
- The development of activities or programs by museums, libraries, and other eligible non-profit organizations that provide alternative or supplementary instruction to students and/or teachers in mathematics, science, computer learning, and foreign languages.

• The systematic review of textbooks and other instructional materials to identify specific weaknesses such as limited coverage of important topics, inadequate scholarship, poor writing, or a lack of challenging material.

• The development of guidelines to be used by teachers, parents and education groups in reviewing textbooks and other instructional materials.

• The development of guidelines or criteria that can be used by schools and school boards in reviewing and establishing curricula in mathematics, science, computer learning, and languages.

The above examples are meant to illustrate the types of activities the Secretary is interested in supporting. Applicants are encouraged to submit proposals that expand upon, combine, or consider ideas other than these examples.

It is expected that awards under this priority will range from $50,000 to $150,000 each. Applicants may apply for funding for a project that is up to 18 months in duration.

Competitive Preference

Section 212(b)(1) of the EESA requires the Secretary to give special consideration to local educational agencies (LEAs), or consortia of LEAs, proposing to establish or improve magnet school programs for gifted and talented students, and applicants proposing to provide special services to historically underserved and underrepresented populations in the fields of mathematics and science.

Therefore, the Secretary proposes to give a competitive preference of up to ten additional points to those applicants whose projects, under either of the proposed annual funding priorities, address one or both of the above areas of special consideration.

Required Activities

The Secretary proposes to require, as a condition for funding under both priorities, that applicants agree to:

(a) Where appropriate, develop models for improving the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages; and

(b) Provide a final case study of the project that is suitable for widespread distribution and possible utilization by individual schools, school districts, or education policy-makers.

Restriction on Use of Funds

Under 34 CFR Part 755, the Secretary may restrict the amount of grant funds used under this program to purchase equipment. For the purposes of this competition, the Secretary proposes that no more than ten percent of the grant funds may be used to purchase equipment.

However, this restriction does not apply to the acquisition of laboratory supplies (e.g., chemicals for chemistry labs), provided that the costs of these supplies are reasonable and are necessary to carry out the project's objectives and activities.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities, required activities, and restriction on the use of funds. Written comments and recommendations may be sent to the address listed at the beginning of this document. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4010, 400 Maryland Avenue, SW., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 3972)

(Catalog of Federal Domestic Assistance Number 84.168, Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages.)

Dated: August 27, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-19076 Filed 8-27-85; 8:45 am]

BILLING CODE 4000-01-M

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages; Application Notice for New Awards

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education (the Secretary), under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, announces a grant competition and invites applications for nationally significant projects designed to improve the quality of teaching and instruction in mathematics, science, computer learning, and critical foreign languages at the elementary and secondary school levels.

Closing Date for Transmittal of Applications

Applications for a grant must be mailed or hand delivered on or before October 29, 1985.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.168), 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Regional Office Building 3, Room 3633, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information

Section 212, Title II of the Education for Economic Security Act (EESA), Pub. L. 98-377 (20 U.S.C. 3972), authorizes the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages.

A notice of proposed annual funding priorities for this program is published in this issue of the **Federal Register.**

Eligible Applicants

Under § 755.2 of the regulations, the Secretary may award nationally significant project grants to State

educational agencies, local educational agencies, institutions of higher education, and nonprofit organizations, including museums, libraries, educational television stations, and professional science, mathematics, and engineering societies and associations.

Selection Criteria

(a) In evaluating applications, the Secretary uses the selection criteria contained in § 755.31 of the regulations. The maximum possible number of points for all the criteria is 85, and the value assigned for each criterion is as follows:

(1) Plan of operation. (15 points)

(2) Quality of key personnel. (10 points)

(3) Budget and cost effectiveness. (5 points)

(4) Evaluation plan. (5 points)

(5) Adequacy of resources. (5 points)

(6) Improvement of the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages. (20 points)

(7) National significance. (15 points)

(8) Applicant's commitment and capacity. (10 points)

(b) Furthermore, § 755.30 of the regulations authorizes the Secretary to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. The Secretary will distribute these additional points as follows:

Improvement of the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages. Ten (10) additional points will be added to this criterion for a possible total of 30 points.

National significance. Five (5) additional points will be added to this criterion for a possible total of 20 points.

Length of Awards

Projects supported under this program will be for a period of up to 18 months in duration.

Available Funds

It is estimated that a total of 20 to 30 awards will be made for $50,000 to $150,000 each. The Secretary encourages applicants to propose projects that show a thorough knowledge of previous work in the area of the project and its relationship to the proposed project, and that use existing materials to the fullest extent possible. Also, because of the limited available resources, the Secretary encourages applicants to propose projects that would use the funds awarded for this competition to supplement other sources of funding.

The above estimate assumes that applications of satisfactory quality will be received. This estimate does not bind the Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms

Application forms and program information packages may be obtained by writing to the Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4181, Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 15 pages in length and the total application not exceed 20 pages in length. The Secretary further urges that applicants not submit information that is not requested.

The Secretary requires an applicant to submit an original and two copies of its application to the Application Control Center. (The application form is approved by the Office of Management and Budget under control number 1880-0511.)

Applicable Regulations

The following regulations apply to this program:

(a) The regulations for the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages in 34 CFR Part 755, published June 24, 1985 (50 FR 25972).

(b) Any final annual priorities adopted by the Secretary. A notice of proposed annual funding priorities for the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages is published in this issue of the **Federal Register.** Applicants should prepare their applications based on the proposed funding priorities. If any substantive changes are made in the final funding priorities that would affect the content of applications, applicants will be given an opportunity to revise or resubmit their applications.

(c) The Education Department General Administrative Regulations (EDGAR) (34 CFR Part 74, 75, 77, and 78).

(d) The List of Critical Foreign Languages published on August 2, 1985 (50 FR 31412).

FOR FURTHER INFORMATION CONTACT:

For further information contact Patricia Alexander, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4010, Washington, DC 20202. Telephone Number: (202) 472-1762.

(20 U.S.C. 3972)

(Catalog, of Federal Domestic Assistance Number 84.168, the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages)

Dated: August 22, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-20495 Filed 8-27-85; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Wednesday
August 28, 1985

Part IV

Department of Energy

Office of Conservation and Renewable Energy

Industrial Energy Conservation Program; Exempt Corporations and Adequate Reporting Programs; Notices

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Docket No. CAS-RM-80-304]

Industrial Energy Conservation Program; Exempt Corporations and Adequate Reporting Programs

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Notice of Exempt Corporations and Adequate Reporting Programs.

SUMMARY: As an annual part of the Department of Energy's (DOE) Industrial Energy Conservation Program, DOE is exempting certain corporations from the requirement of filing corporate energy consumption reporting forms directly with DOE and is determining as adequate certain industrial reporting programs for third party sponsor reporting. This notice is required pursuant to section 376(g)(1) of the Energy Policy and Conservation Act (EPCA) and DOE's regulation set forth at 10 CFR Part 445, Subpart D. DOE compiled this list based on submissions filed by corporations and third party sponsors in accordance with 10 CFR 445.34 and 445.35. The deadline for these filings was February 28, 1985. These procedures, which allow identified corporations to be exempted from filing energy data directly with DOE, assist in maintaining the confidentiality of consumption information and reduce the reporting burden for corporations. Parentheses with the word "partial" follow any corporation which reports less than its total energy data in a particular 2-digit SIC code through the program sponsor under which it is listed. The corporation reports the rest of its efficiency data through another sponsor or directly to DOE. The exempt corporations and the respective sponsors of adequate reporting programs are listed alphabetically by industry in the appendix to this notice.

FOR FURTHER INFORMATION CONTACT:

William B. Williams, Office of Industrial Programs, CE-12, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2090

Joshua P. Smith, Office of General Counsel, GC-12, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9507

Issued in Washington, D.C., August 8, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

EXEMPT CORPORATIONS AND SPONSORS OF ADEQUATE REPORTING PROGRAMS

SIC 20—Food and Kindred Products

American Bakers Association

Campbell Soup Company (partial)
Campbell Taggart, Inc.
Consolidated Foods Corporation (partial)
Flowers Industries Inc.
G. Heileman Brewing Company, Inc. (partial)
ITT Continental Baking Company Inc. (partial)
Interstate Brands Corporation

American Feed Manufacturers Association

Bell Grain
Bell Mining
Cargill Inc.
Central Soya Company Inc. (partial)
Gold Kist Inc.
Land O'Lakes, Inc. (partial)
Moorman Manufacturing Company
Quincy Soy Bean Company
Ralston Purina Company (partial)

American Frozen Food Institute

Campbell Soup Company (partial)
J.R. Simplot Company

American Meat Institute

Beatrice Foods Company (partial)
Consolidated Foods Corporation (partial)
Farmland Industries Inc.
FDL Foods, Inc.
George A. Hormel & Company
IBP Inc.
Oscar Mayer & Company
Rath Packing Company
Swift and Company
Swift Independent Packing Company
Wilson Foods Corporation

Biscuit & Cracker Manufacturers Association

Keebler Company
Lance, Inc.
Nabisco Brands, Inc. (partial)
Sunshine Biscuits, Inc.

Chemical Manufacturers Association

National Distillers Products Company

Corn Refiners Association

A.E. Staley Manufacturing Company (partial)
American Maize-Products Company
CPC International Inc.
Grain Processing Corporation
Hubinger Company
National Starch & Chemical Corporation
Univar Corporation

Grocery Manufacturers of America, Inc.

A.E. Staley Manufacturing Company (partial)
American Home Products Corporation
Amstar Corporation
Anderson Clayton & Company
Archer Daniels Midland Company (partial)
Basic American Foods
Beatrice Foods Company (partial)
Borden Inc. (partial)
Carnation Company
Central Soya Company, Inc. (partial)
Chesebrough-Ponds Inc.
Coca-Cola Company
Consolidated Foods Corporation (partial)
General Foods Corporation
General Mills Inc.
H.J. Heinz Company (partial)
Hershey Foods Corporation
Kellogg Company
Kraft Inc.
Mars Inc.
Nabisco Brands, Inc. (partial)
Pepisco Inc.
Pet Inc.
Peter Paul Cadbury, Inc.
Pillsbury Company
Procter & Gamble Company
Quaker Oats Company
Ralston Purina Company (partial)
R.T. French Company
Thomas J. Lipton Inc.
Universal Foods Corporation

National Food Processors Association

Castle & Cooke Inc.
Curtice-Burns Inc.
Del Monte Corporation
Gerber Products Company
H.J. Heinz Company (partial)
Hunt Wesson (partial)
Sunkist Growers Inc.
Tri/Valley Growers Inc.

Pharmaceutical Manufacturers Association

Eli Lilly and Company

U.S. Beet Sugar Association

Amalgamated Sugar Company
American Crystal Sugar Company
Great Western Sugar Company
Holly Sugar Corporation
Michigan Sugar Company
Minn-Dak Farmers Cooperative
Monitor Sugar Company
Southern Minnesota Sugar Cooperative
Union Sugar Company

U.S. Brewers Association

Adolph Coors Company
Anheuser-Busch Inc. (partial)
Archer Daniels Midland Company (partial)
Froedtert Malt Corporation
Ladish Malting Company
Miller Brewing Company
Olympia Brewing Company
Pabst Brewing Company
The Stroh Companies Inc.

U.S. Cane Sugar Refiners Association

California & Hawaiian Sugar Company
Colonial Sugars Inc.
Georgia Sugar Refinery
Imperial Sugar Company
Refined Sugars Inc.
Revere Sugar Corporation
Savannah Foods & Industries Inc. (partial)
Supreme Sugar Company, Inc.

SIC 22—Textile Mill Products

American Textile Manufacturers Institute

Avondale Mills Inc.
Bibb Company
Burlington Industries Inc.
Clinton Mills Inc.
Coats & Clark Inc.
Colgate-Palmolive Company

Collins & Aikman Corporation
Cone Mills Corporation
Cranston Print Works Company
Crompton Company Inc.
Dan River Inc.
Dixie Yarns Inc.
Fieldcrest Mills Inc.
Goodyear Tire & Rubber Company
Graniteville Company
Greenwood Mills Inc.
J.P. Stevens & Company Inc.
Johnson & Johnson
Kimberly-Clark Corporation
M. Lowenstein & Sons Inc.
Milliken & Company
Northwest Industries Inc.
Reeves Brothers Inc.
Riegel Textile Corporation
Sayles Biltmore Bleacheries Inc.
Spartan Mills Inc.
Sperry and Hutchinson Company (partial)
Springs Industries Inc.
Standard-Coosa-Thatcher Company
Thomaston Mills Inc.
Ti-Caro Inc.
United Merchants & Manufacturers Inc.
West Point-Pepperell Inc.

Carpet & Rug Institute

Bigelow-Sanford Inc.
Mohasco Corporation
Shaw Industries Inc.
Standard Oil Company (Indiana)
World Carpets Inc.

SIC 24—Lumber and Wood Products

National Forest Products Association

Abitibi-Price Corporation
Boise Cascade Corporation
Champion International Corporation
Georgia-Pacific Corporation
Louisiana-Pacific Corporation
Masonite Corporation
Potlach Corporation
Weyerhaeuser Company
Willamette Industries Inc.

SIC 126—Paper and Allied Products

American Paper Institute

Abitibi-Price Southern Corporation
Alabama River Pulp Company Inc.
Appleton Papers Inc.
Arcata National Corporation
Bell Fibre Products Corporation
Blandin Paper Company
Boise Cascade Corporation
Bowater Incorporated
Caraustar Industries Company
Champion International Corporation
Chesapeake Corporation
Consolidated Packaging Corporation
Consolidated Papers Inc.
Continental Forest Industries Inc.
Crown Zellerbach Corporation
Deerfield Specialty Papers, Inc.
Dennison Manufacturing Company
Dexter Corporation
Eastex
Eddy Paper Company Limited
Erving Paper Mills Inc.
Federal Paper Board Company Inc.
Finch Pruyn & Company Inc.
Fort Howard Paper Company
Fraser Paper Limited
GAF Corporation
Garden State Paper Company Inc.
Georgia-Pacific Corporation
Gilman Paper Company
Great Northern Nekoosa Corporation
Green Bay Packaging Inc.
Gulf States Paper Corporation
Hammermill Paper Company
Hearst Corporation
International Paper Company
International Telephone & Telegraph Corporation
James River Corporation of Virginia
Jefferson Smurfit Corporation
Kimberly-Clark Corporation
Longview Fibre Company
Macmillan Bloedel Inc.
Marcal Paper Mills Inc.
Mead Corporation
Menasha Corporation
Mobil Oil Corporation (partial)
Mosinee Paper Corporation
Newark Group
Newton Falls Paper Mill Inc.
Olin Corporation
Owens-Illinois Inc.
PH Glatfelter Company
Penntech Papers Inc.
Pentair Industries Inc.
Philip Morris Inc.
Pope and Talbot Inc.
Potlach Corporation
Procter & Gamble Company
Rhinelander Paper Company
Scott Paper Company
Simpson Timber Company
Sonoco Products Company
Southeast Paper Manufacturing Company
Southwest Forest Industries
St. Joe Paper Company
Stone Container Corporation
Technographics Inc.
Temple-Inland Inc.
Tenneco Inc.
Times Mirror Company
Union Camp Corporation
Virginia Fibre Corporation
Wausau Paper Mills Company
Weston Paper & Manufacturing Company
Westvaco Corporation
Weyerhaeuser Company
Willamette Industries Inc.

Chemical Manufacturers Association

Minnesota Mining & Manufacturing Company
Mobil Chemical Company

Glass—Pressed and Blown (Battelle Institute)

Owens-Corning Fiberglas

SIC 28—Chemicals and Allied Products

Aluminum Association

Aluminum Company of America
Reynolds Metals Company

American Feed Manufacturers Association

Cargill Inc.

Chemical Manufacturers Association

Air Products & Chemicals Inc.
Airco Inc.
Akzona Inc.
Allied Corporation
American Can Company
American Cyanamid Company
American Hoechst Corporation
Arizona Chemical Company
Ashland Oil Inc.
Atlantic Richfield Company
Avtex Fibers Inc.
B.F. Goodrich Company
Badische Corporation
BASF Wyandotte Corporation
Baxter Travenol Laboratories, Inc.
Big Three Industries Inc.
Borden Inc.
Borg-Warner Corporation
Buffalo Color Corporation
Cabot Corporation
Carus Chemical Company Inc.
Celanese Corporation
Chemplex Corporation
Chemtech Industries Inc.
Chevron Chemical Company
CIBA-GEIGY Corporation
Columbia Nitrogen Corporation
Conoco Inc.
Crompton & Knowles Corporation
Corpus Christi Petrochemical Company
CPC International Inc.
Diamond Crystal Salt Company
Diamond Shamrock Corporation
Dow Chemical Company
Dow Corning Corporation
E.I. du Pont de Nemours & Company
Eastman Kodak Company
El Paso Products Company
Emery Industries
Essex Chemical Corporation
Ethyl Corporation
Exxon Corporation
Firestone Tire & Rubber Company
First Mississippi Corporation
FMC Corporation
Freeport Minerals Company
GAF Corporation
Georgia-Pacific Corporation
Goodyear Tire & Rubber Company
Great Lakes Chemical Corporation
Greyhound Corporation
Gulf Oil Corporation
Harshaw/Filtrol Partnership
Henkel Corporation
Hercules Inc.
ICI Americas Inc.
International Minerals & Chemicals Corporation (partial)
Inter North Inc.
Kaiser Aluminum & Chemical Corporation
Kay-Fries Inc.
Kerr-McGee Corporation
Koppers Company Inc.
LCP Chemicals & Plastics, Inc.
Lever Brothers Company
Lubrizol Corporation
Mallinckrodt Inc.
Merichem Company
Minnesota Mining & Manufacturing Company
Mobay Chemical Corporation
Mobil Oil Corporation
Monsanto Company
Morton Thiokol, Inc.
Nalco Chemical Company
National Distillers & Chemical Corporation
National Starch & Chemical Corporation
Neville Chemical Company
Occidental Chemical Corporation
Olin Corporation
Pennwalt Corporation
Pfizer, Inc.
Phillips Petroleum Company

Pilot Chemical Company
Polysar Gulf Coast, Inc.
PPG Industries, Inc.
PQ Corporation
Procter & Gamble Company
Reilly Tar & Chemical Corporation
Rohm and Haas Company
Shell Oil Company
Shepherd Chemical Company
Sherex Chemical Company Inc.
Sohio Chemical Company
Soltex Polymer Corporation
Standard Chlorine of Delaware, Inc.
Standard Oil Company (Indiana)
Stauffer Chemical Company
Sun Olin Chemical Company
Tenneco Inc.
Texaco Inc.
Texasgulf, Inc.
Union Carbide Corporation
Uniroyal Inc.
United States Borax & Chemical Corporation
United States Industrial Chemicals Corporation
United States Steel Corporation (partial)
Upjohn Company (partial)
Velsicol Chemical Corporation
Vertax Inc. (partial)
Virginia Chemicals Inc.
Vulcan Materials Company
W.R. Grace & Company
Westvaco Corporation
Witco Chemical Corporation

Fertilizer Institute

Atlas Powder Company
Beker Industries Corporation
CF Industries Inc.
Cominco America Inc.
Estech Inc.
Farmland Industries Inc. (partial)
First Mississippi Corporation
Gardinier Inc.
Green Valley Chemical Company
Hawkeye Chemical Company
International Minerals & Chemical Corporation (partial)
J.R. Simplot Company
Mississippi Chemical Corporation
Occidental Petroleum Corporation (partial)
Reichhold Chemicals Inc. (partial)
Terra Chemicals International Inc.
Union Oil Company of California
United States Steel Corporation (partial)
Williams Companies
Wycon Chemical Company

Pharmaceutical Manufacturers Association

Abbott Laboratories
American Home Products Corporation (partial)
Beecham Laboratories
Eli Lilly & Company
Hoffman-La Roche Inc.
Johnson & Johnson
Merck & Company Inc.
Organon Inc.
Schering-Plough Corporation
Squibb Corporation
Upjohn Company (partial)
Warner-Lambert Company

SIC 29—Petroleum and Coal Products

American Petroleum Institute

Agway Inc.
Amber Refining
American Petrofina Inc.
Asamera Oil Inc.
Ashland Oil Inc.
Atlantic Richfield Company
Beacon Oil Company
Champlin Petroleum Company
Charter International Oil Company
Clark Oil & Refining Corporation
Coastal Corporation
Conoco Inc.
CRA Inc.
Crown Central Petroleum Corporation
Diamond Shamrock Corporation
Dorchester Refining Company
Exxon Corporation
Farmers Union Central Exchange Inc.
Fletcher Oil & Refining Company
Getty Oil Company
Gulf Oil Corporation
Hunt Oil Company
Husky Oil Company
Indiana Farm Bureau Cooperative Association
Kerr-McGee Corporation
Koch Industries Inc.
Marathon Oil Company
Mobil Oil Corporation
Murphy Oil Corporation
National Cooperative Refinery Association, Inc.
Pacific Resources Inc.
Pennzoil Company
Phillips Petroleum Company
Placid Refining Company
Quaker State Oil Refining Corporation
Rock Island Refining Corporation
Shell Oil Company
Sinclair Oil Corporation
Southern Union Refining Company
Southland Oil Company
Standard Oil Company (Indiana)
Standard Oil Company (Ohio)
Standard Oil Company of California
Sun Company Inc.
Tenneco Inc.
Tesoro Petroleum Corporation
Texaco Inc.
Texas Eastern Transmission Corporation
Tosco Corporation
Total Petroleum Inc.
Union Oil Company of California
USA Petroleum Corporation
U.S. Oil and Refining Company
Witco Chemical Corporation

Chemical Manufacturers Association

GAF Corporation
Great Lakes Carbon Corporation
Koppers Company Inc.

Glass—Pressed and Blown (Battelle Institute)

Owens-Corning Fiberglas Corporation

SIC 30—Rubber and Miscellaneous Plastic Products

Chemical Manufacturers Association

American Cyanamid Company
Dart Industries Inc.
Ethyl Corporation
Exxon Corporation
Minnesota Mining & Manufacturing Company
Union Carbide Corporation
W.R. Grace & Company

Pharmaceutical Manufacturers Association

Baxter-Travenol Laboratories

Rubber Manufacturers Association

Ames Rubber Corporation
Armstrong Rubber Company
B.F. Goodrich Company
Carlisle Corporation
Cooper Tire & Rubber Company
Dayco Corporation
Dunlop Tire & Rubber Corporation
Firestone Tire & Rubber Company
Gates Rubber Company
General Tire & Rubber Company
Goodyear Tire & Rubber Company
Owens-Illinois Inc.
Teledyne Monarch Rubber Company
Uniroyal Inc.

SIC 32—Stone, Clay and Glass Products

Brick Institute of America

Belden Brick Company
Bickerstaff Clay Products Company Inc.
Boren Clay Products Company
Delta Brick & Tile Company, Inc.
General Dynamics Corporation (partial)
General Shale Products Corporation
Glen-Gery Corporation
Justin Industries Inc.
Maryland Clay Products, Inc.
Merry Companies, Inc.
Ochs Brick & Tile Company
Pine Hall Brick & Pipe Company
Richards Brick Company
Robinson Brick & Tile Company
Victor Cushwa & Sons, Inc.

Chemical Manufacturers Association

GAF Corporation
Minnesota Mining & Manufacturing Company
Vulcan Materials Company

Glass—Flat (Eugene L. Stewart)

AFG Industries Inc.
Ford Motor Company
Guardian Industries Corporation
Libbey-Owens-Ford Company
PPG Industries Inc.

Glass—Pressed and Blown (Battelle Institute)

Anchor Hocking Corporation (partial)
CertainTeed Corporation
Corning Glass Works (partial)
Owens-Corning Fiberglas Corporation
Owens-Illinois Inc. (partial)

Gypsum Association

Comtar Industries, Inc. (partial) †
Genstar Gypsum Products Company
Georgia-Pacific Corporation
Jim Walter Corporation (partial)
National Gypsum Company (partial)
Pacific Coast Building Products Company (partial)
United States Gypsum Company (partial)

National Lime Association

Ash Grove Cement Company (partial)
Bethlehem Steel Corporation (partial)
Can-Am Corporation
Cutler-Magner Company
Detroit Lime Company
Dravo Lime Company
General Dynamics Corporation (partial)
National Lime & Stone Company
Pete Lien & Sons
Rockwell Lime Company

St. Clair Lime Company
Steetley Resources, Inc.
Tenn-Luttrell Lime Companies
United States Gypsum Company (partial)
Vulcan Materials Company (partial)
Warner Company

Portland Cement Association

Aetna Cement Corporation
Alamo Cement Company
Arkansas Cement Corporation
Ash Grove Cement Company (partial)
Atlantic Cement Company Inc.
Blue Circle Industries
California Portland Cement Company
Capitol Aggregates Inc.
Centex Corporation
Cianbro Corporation
Columbia Cement Corporation
Coplay Cement Manufacturing Company
Davenport Cement Company
Dundee Cement Company
General Portland Inc.
Genstar Cement & Lime Company
Gifford-Hill Portland Cement Company
Ideal Basic Industries
Kaiser Cement Corporation
Keystone Portland Cement Company
Lehigh Portland Cement Company (partial)
Lone Star Industries Inc.
Louisville Cement Company
Medusa Corporation
Missouri Portland Cement Company
Monarch Cement Company
Monolith Portland Cement Company
Moore McCormack Cement, Inc.
National Cement Company
Northwestern State Portland Cement Company
Rinker Portland Cement Corporation
River Cement Company
South Dakota Cement Company
Southwestern Portland Cement Company
Texas Industries Inc. (partial)

Refractories Institute

Allied Chemical Corporation (partial)
Combustion Engineering Inc. (partial)
Corning Glass Works (partial)
Dresser Industries Inc. (partial)
Kaiser Aluminum & Chemical Corporation (partial)
Martin Marietta Corporation (partial)
Norton Company (partial)
United States Gypsum Company (partial)

Tile Council of America

American Olean Tile Company

SIC 33—Primary Metal Industries

Aluminum Association

Alcan Aluminum Corporation
Alumax
Aluminum Company of America
American Can Company
Atlantic Richfield Company (partial)
Cabot Corporation
Consolidated Aluminum Corporation
Ethyl Corporation
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
National Steel Corporation (partial)
Noranda Aluminum Inc.
Ormet Corporation
Pechiney Ugine Kuhlmann Corporation (partial)
Revere Copper and Brass Inc. (partial)
Reynolds Metals Company
Southwire Company

American Die Casting Institute

Hayes-Albion Corporation (partial)

American Foundrymen's Society

American Cast Iron Pipe Company
Amcast Industrial Corporation
Grede Foundries Inc.
Mead Corporation
Teledyne Inc. (partial)
United States Pipe Company

American Iron & Steel Institute

A. Finkl & Sons Company
Atlantic Steel Company
Armco Inc.
Babcock & Wilcox
Bethlehem Steel Corporation
Cargill, Inc.
Carpenter Technology Corporation
Colt Industries Inc.
Cyclops Corporation
Eastmet Corporation
Florida Steel Corporation
Inland Steel Company
Jones & Laughlin Steel Corporation
Keystone Consolidated Industries Inc.
Loan Star Steel Company
Lukens Steel Corporation
National Steel Corporation (partial)
Northwest Steel Rolling Mills Inc.
Northwestern Steel & Wire Company
Republic Steel Corporation
Sharon Steel Corporation
Teledyne Inc. (partial)
Timken Company
United States Steel Corporation
Washington Steel Corporation
Wheeling Pittsburgh Steel Corporation

American Mining Congress

Amax Inc.
Asarco Inc.
Inspiration Consolidated Copper Company
Kennecott Corporation (partial)
Louisiana Land & Exploration Company (partial)
Marmon Group Inc.
Newmont Mining Corporation (partial)
Phelps Dodge Corporation (partial)
St. Joe Minerals Corporation

Chemical Manufacturers Association

Dow Chemical Company

Construction Industry Manufacturers Association

J.I. Case—Tenneco Inc.

Copper & Brass Fabricators Council

Atlantic Richfield Company (partial)
Century Brass Products Inc.
Chicago Extruded Metals Company
Copper Range Company
Extruded Metals
Kennecott Corporation (partial)
Marmon Group Inc.
National Distillers & Chemical Corporation
Olin Corporation
Phelps Dodge Corporation (partial)
Revere Copper & Brass Inc. (partial)

SIC 34—Fabricated Metal Products

Aluminum Association

Aluminum Company of America
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
Reynolds Metals Company

American Boiler Manufacturers Association

Combustion Engineering Inc.
McDermott Inc.

Can Manufacturers Institute

American Can Company
Campbell Soup Company
Continental Group Inc.
Crown Cork & Seal Company Inc.
Miller Brewing Company
National Can Corporation
Stroh Brewery Company

Chemical Manufacturers Association

E.I. du Pont de Nemours & Company

SIC 35—Machinery, Except Electrical

Air Conditioning & Refrigeration Institute

Emerson Electric Company
Honeywell Inc.
Hussman Refrigeration Company
Johnson Controls Inc.
Sundstrand Corporation
Trane Company

Computer & Business Equipment Manufacturers Association

Control Data Corporation
Digital Equipment Corporation
International Business Machines Corporation
Sperry UNIVAC Corporation
TRW Inc.
Xerox Corporation

Construction Industry Manufacturers Association

Bucyrus-Erie Company
Clark Equipment Company
Cummins Engine Company Inc.
FMC Corporation
Ford Motor Company
Harnischfeger Corporation
Ingersoll-Rand Company
J.I. Case—Tenneco Inc.

SIC 36—Electric, Electronic Equipment

Chemical Manufacturers Association

Great Lakes Carbon Corporation
Minnesota Mining & Manufacturing Company

National Electrical Manufacturers Association

Airco Inc.
Allied Corporation
Emerson Electric Company
Harvey Hubbell Inc.
Johnson Controls Inc.
Reliance Electric Company
Square D Company
Union Carbide Corporation

SIC 37—Transportation Equipment

Aerospace Industries Association of America

Boeing Company
General Dynamics Corporation (partial)
Grumman Corporation
Hughes Aircraft Corporation

Lockheed Corporation
LTV Aerospace and Defense Company
Martin Marietta Corporation
McDonnell Douglas Corporation
Morton Thiokol Corporation
Northrop Corporation
Textron Inc.
TRW Inc.

Chemical Manufacturers Association

Hercules Incorporated
Tenneco Inc.

Motor Vehicle Manufacturers Association

American Motors Corporation
Chrysler Corporation
Ford Motor Company (SIC Code 33, Recovered Materials)
General Motors Corporation (SIC Code 30, 33, Recovered Materials)

SIC 38—Instruments and Related Products

Chemical Manufacturers Association

Eastman Kodak Company
Minnesota Mining & Manufacturing Company

Pharmaceutical Manufacturers Association

G.D. Searle & Company
Johnson & Johnson

[FR Doc. 85-20557 Filed 8-27-85; 8:45 am]
BILLING CODE 6450-01-M

federal register

Wednesday
August 28, 1985

Part V

Department of Health and Human Services

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance; Listing of Impairments—Mental Disorders; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Listing of Impairments—Mental Disorders

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These amendments revise the medical evaluation criteria for mental disorders for the disability programs in title II and title XVI of the Social Security Act. No revisions have been made to these criteria since 1979. The revisions reflect advances in medical treatment and in methods of evaluating certain mental impairments, and will provide up-to-date medical criteria for use in the evaluation of disability claims based on mental disorders. The regulations are mandated by section 5 of Pub. L. 98–460.

DATES: These regulations are effective August 28, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301–594–7415.

SUPPLEMENTARY INFORMATION: On June 7, 1983, the Secretary announced a top-to-bottom review of all disability program policies and procedures in consultation with appropriate subject-matter experts to assure that disability rules accurately and fairly carry out the intent of the Social Security Act and also reflect the latest advances in diagnosis, evaluation and treatment of disability causing impairments. Particular attention was given to updating and refining the disability eligibility criteria for mental disorders. Because of extensive concern about the evaluation of claims involving mental impairments, the Secretary announced the temporary exemption of about two-thirds or about 135,000 of these cases from continuing disability reviews until current rules could be reviewed and revised as needed.

Pub. L. 98–460 (section 5) requires the Secretary of Health and Human Services (HHS) to revise the rules used for the evaluation of mental impairments. In compliance with this law, we published a Notice of Proposed Rulemaking in the **Federal Register** (50 FR 4948) on February 4, 1985. Interested persons, organizations, and groups were invited to submit data, views or arguments pertaining to the proposed amendments within a period of 45 days from the date of publication of the notice. The comment period ended on March 21, 1985. After carefully considering all the comments submitted, the proposed amendments are being adopted with some modifications, which will be explained later in this preamble. We will also reply to the issues raised in the comments we received.

We are publishing final regulations to be effective for 3 years. The dynamic nature of the diagnosis, evaluation and treatment of the mental disease process requires that the rules in this area be periodically revised and updated. We intend to carefully monitor these regulations over a 3-year period to ensure that they fulfill congressional intent by providing for ongoing evaluation of the medical evaluation criteria. Therefore, 3 years after publication of final rules, these regulations will cease to be effective unless extended by the Secretary or revised and promulgated again as a result of the findings from the evaluation period.

The revision of the Listing of Impairments relating to mental disorders is but one element in an extensive plan for assuring fair and accurate evaluation of claims for disability benefits by those with mental impairments. Work is also being done to assure that severe impairments, but ones of less than listing-level severity, will be realistically reviewed in relationship to a person's ability to work. This step of the evaluation process requires a residual functional capacity (RFC) determination, and numerous activities are underway to assure that this part of the process is effective.

It is important to emphasize that not only in preparing these revisions but also in drawing up an overall mental impairment evaluation improvement plan, SSA has consulted with leading experts in the field of mental impairments from the American Psychiatric Association, the American Psychological Association and other professionals.

To provide an ongoing review and evaluation of mental impairment adjudication, SSA has entered into a contract with the American Psychiatric Association to provide for such an ongoing review of both the validity and reliability of disability evaluation criteria.

Explanation of Revisions

The revisions serve several purposes. The medical terms used to describe the major mental disorders and their characteristics and symptoms have been updated to conform to the nomenclature currently used by psychiatrists and other mental health professionals. Terminology of this type in the listings is based on that used in the third revision of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM III) published by the American Psychiatric Association. This edition, published in 1980 and now widely used by psychiatrists, psychologists and other mental health professionals, gives a common basis for communication, which is particularly important in evaluating medical reports used in determining disability.

The listings are also more specifically related to different types of mental disorders. Thus, fewer conditions are included under the same listing, resulting in an increase in the number of listings from four to eight. Because of the diversity of mental disorders, it was still necessary to group some disorders under a single listing. However, in the listings the organization of mental disorders is based on the third revision of the DSM III which provides a more realistic organization in terms of the common characteristics of the mental disorders that are evaluated under a particular listing.

The revisions also reflect evolving medical knowledge of the characteristics of mental disorders and their treatment and management. (Since the body of knowledge on mental disorders is constantly evolving, SSA will provide for the ongoing evaluation of the medical evaluation criteria for mental disorders to ensure that the criteria reflect the most up-to-date knowledge on those disorders.)

One of the major changes is in Listing 12.03 where language has been added to ensure that the chronic schizophrenic individual who may have his or her symptoms attenuated by treatment but who still cannot work because of more subtle manifestations of his or her disorder will now meet the severity of the revised listing. This had been the major area of criticism and a principal area of deficiency in the former regulations. Other minor changes occur in the Organic Mental Disorders listing, where language has been added to better measure intellectual loss; the Anxiety-Related Disorders listing, where specific language has been added to cover agoraphobia (12.06C); the Somatoform Disorders (12.07) and Personality Disorders (12.08) listings, where language has been added to give a more accurate description of these conditions based on the DSM III.

The following is a summary of the listings we are adopting in these final rules.

12.00 Preface

We are making several significant additions to the preface to the mental disorders listings. In 12.00A (*Introduction*) of the preface, we explain the basic approach used in the listings that follow. In this introduction, we explain that in most of the listings we use a dual approach, by dividing listings into two paragraphs, with the A paragraph describing the characteristics necessary to establish the presence of the mental disorder and the B paragraph describing the restrictions and limitations of function resulting from the disorder. In 12.00A, we also are providing a definition of "residual functional capacity" and are explaining how the concept applies in evaluating mental impairments.

In 12.00B (*Need for Medical Evidence*) of the preface, we describe the need for objective evidence for the evaluation of mental disorders. Although we are not making any substantial change in this area, we explain how clinical signs, symptoms and laboratory findings are used together in the evaluation of mental impairments. (Also, see 20 CFR sections 404.1528, 404.1529, 416.928, and 416.929.)

In 12.00C (*Assessment of Severity*) of the preface, we describe in detail the multiple factors in the paragraph B criteria of most of the mental disorders listings. (Similar factors are in paragraph C as well as paragraph B in two of the mental disorders listings, 12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders and* 12.06 *Anxiety Related Disorders.*) Two of these descriptions—involving activities of daily living and social functioning—are similar to descriptions in the previous listings for mental disorders. The others—involving concentration and task performance, and deterioration under work-like conditions—are not directly related to criteria contained in the prior listings for mental disorders. However, they are being included on the basis of the recommendations of mental health professionals, who consider them particularly important as work related characteristics affected by mental disorders. It should also be noted that, although the criteria in paragraph B are identical for several mental disorders listings, the number of items required under paragraph B in order to meet particular listings varies. (The selection of the number which must be met is based on the current evaluation of their effect on the functional ability to work. As additional experience is gained, the number of items required under paragraph B could change.)

In 12.00D (*Documentation*) of the preface, we discuss the evidence needed to document mental impairments. The new material stresses that at any one time during the course of a mental disorder an individual may appear to be relatively free of the characteristics of the disorder. Therefore, it is important to obtain evidence of the person's condition over the course of the mental illness. In 12.00D we discuss the importance of work attempts and circumstances surrounding termination of the work effort. We also discuss the use of psychological testing.

(Also, see 20 CFR 404.1512 through 404.1518 and 416.912 through 416.918.)

For inclusion in 12.00E, (*Chronic Mental Impairments*) we are adding new material explaining that, rather than placing undue reliance on the findings obtained on any single examination, it is important to evaluate the total treatment history of persons with chronic mental impairments.

In 12.00F (*Effects of Structured Settings*) and 12.00G (*Effects of Medication*) of the preface, we are adding new material relating to chronic mental disorders. We explain that evaluation of mental disorders must include consideration of the fact that medication, hositalization, or other highly structured living arrangements may minimize the overt indications of severe chronic mental disorders. In 12.00G we also acknowledge that medications may sometimes produce side-effects that add to the work-related limitations resulting from a mental disorder.

We are providing a brief discussion of the effects of current medical treatment for inclusion in 12.00H (*Effect of Treatment*).

The explanation of the special technique contained in 12.00I (*Technique for Application of the Mental Disorders Listing*) of the Notice of Proposed Rulemaking is now contained in the new §§ 404.1520a and 416.920a. As indicated in the title of the proposed 12.00I, the technique was designed to assist in application of the mental disorders listings. However, the scope of the technique is not limited to applying these listings. It is also for the purpose of assisting in the overall evaluation of disability due to mental impairments, as discussed in §§ 404.1520 and 416.920. For that reason, the discussion of the technique is now contained in the new §§ 404.1520a and 416.920a.

Explanation of Change for New Regulations §§ 404.1520a and 416.920a

We are introducing a procedure to assist in the evaluation of mental impairments. This procedure is to be followed by us at each administrative level of review. The procedure will assist us in (1) identifying additional evidence necessary for the determination of impairment severity, (2) considering and evaluating aspects of the mental disorder(s) relevant to your ability to work, and (3) organizing and presenting the findings in a clear, concise, and consistent manner.

A copy of the document which we are using to apply this technique is attached to this preamble.

12.01 Category of Impairments-Mental

12.02 Organic Mental Disorders

We are expanding paragraph A of the previous listing 12.02 to include four additional factors that are characteristic of organic mental disorders. In paragraph B, we are retaining from the prior listing the restrictions related to daily activities and an impaired ability to relate to other people. However, we have reworded the statement on an impaired ability to relate to other people to reflect difficulties in the total area of social functioning. We are adding two new items, 12.02B3 and 4, because severe organic mental disorders often result in deficiencies of concentration and many persons with these conditions experience a marked worsening of symptons when faced with stress. We are eliminating one requirement in the current listing—deterioration of personal habits. This characteristic is not always apparent in persons with severe organic mental disorders.

12.03 Schizophrenic, Paranoid and Other Psychotic Disorders

In this listing we are grouping psychotic conditions that are more closely related than in the current listing. We are moving affective disorders to a new separate listing, which follows this one. In paragraph A, we are retaining the three characteristics of these disorders contained in the prior listing—hallucinations, delusions, and illogical association of ideas. However, the concept of illogical association of ideas is being incorporated in 12.03A3 in association with other signs of disrupted thought. We are listing other characteristics of disorganized thought and behavior in 12.03A2 and 3. We are also including consideration of observed emotional changes that are often present in these disorders. We are revising

paragraph B in the manner previously described for listing 12.02. In paragraph C, we are adding new evaluation considerations that recognize that the more obvious symptoms of these disorders are often lessened by medication or support from mental health facilities or other sources. Individuals who have a medically documented history of one or more episodes of acute symptoms, signs and functional limitations described in paragraphs A and B, may have a remission either induced by treatment or by living in a supportive environment (such as a supervised group home). Many such individuals remain disabled because they experience a return of symptoms and signs when they encounter stressful circumstances or when they leave the supportive environment of the supervised living situation or sheltered work.

12.04 Affective Disorders

In the previous organization of the mental disorders listings, affective disorders were included as mood disorders with other functional psychotic disorders such as schizophrenias and paranoid states under the same listing. The new listing relates exclusively to affective disorders. In paragraph A of the listing, we describe the characteristics of affective disorders in much greater detail than they were described in the prior listing for functional psychotic disorders in 12.03. We are revising paragraph B in the manner previously described for listing 12.02.

12.05 Mental Retardation and Autism

In the previous organization of the mental disorders listings, listing 12.05 dealt solely with mental retardation. The new listing now relates also to autism. It was recognized that since autism was not covered by any of the mental disorders listings, confusion may result in application of the listings to autistic individuals. Therefore, autism is now specifically addressed in listing 12.05.

Paragraph A of both the prior and the new listing provides for the evaluation of persons who are so profoundly retarded that they cannot undergo psychological testing. The paragraph has been condensed to focus more directly on the absence of basic self-help skills that are most indicative of profound retardation that precludes psychological testing. Paragraph B, C, and D pertain to evaluation using psychological testing. These paragraphs specify that the lowest of the three scores derived from tests is to be used. However, this is not a new principle because it was found in the preface (paragraph 12.00B4) to the previous listing. Paragraph D also contains criteria to address autistic individuals whose general intellectual functioning is less diminished.

12.06 Anxiety Related Disorders

In the previous organization of the mental disorders listings, anxiety disorders were grouped in listing 12.04 with other similar functional nonpsychotic disorders. Now listing 12.06 exclusively covers disorders related to anxiety. Paragraphs 1, 2 and 4 of 12.06A of this listing are similar to the criteria in the prior 12.04 listing. A new paragraph 3 of 12.06A gives significance to frequent panic attacks. A new paragraph 5 of 12.06A provides for the inclusion of anxiety disorders resulting from traumatic experiences. The criteria we are including in paragraph B are the same as the paragraph B criteria in listing 12.02. In the new 12.06C, we recognize that confinement to the home characterizes a severe anxiety disorder. In listing 12.06, paragraph C serves as an option that can be used in lieu of paragraph B.

12.07 Somatoform Disorders

Somatoform disorders were previously evaluated along with other functional nonpsychotic disorders such as neurotic disorders, personality disorders, and alcohol addiction and drug addiction disorders under the former listing 12.04. The new 12.07 listing relates specifically to somatoform disorders. In 12.07A we are adding two characteristic patterns of these disorders to the one now in 12.04A6 of the former mental disorders listings. Paragraph B includes the same evaluation criteria found in paragraph B of listing 12.02 but three of the four criteria requirements must be met.

12.08 Personality Disorders

Personality disorders were previously evaluated along with other functional nonpsychotic disorders such as psychophysiologic disorders, neurotic disorders, and alcohol addiction and drug addiction disorders under listing 12.04. The new listing 12.08 exclusively covers personality disorders. In paragraph A of the listing we are retaining the two characteristics of personality disorders that were found in 12.04A7 of the prior listing. In 12.08A3 through 6 of the listing we are adding other descriptions that are characteristic of personality disorders. Paragraph B contains the same criteria included under paragraph B in listing 12.02; but in evaluating personality disorders under listing 12.08, at least three of the criteria requirements under paragraph B must be met.

12.09 Substance Addiction Disorders

We are adding a new listing that relates to addiction to alcohol or other drugs and to other substances that affect the central nervous system. However, the listing itself only serves as a reference listing by indicating which of the other listed impairments must be used to evaluate the behavior or physical changes resulting from the regular use of substances. (For example, should an individual with a substance addiction disorder experience seizures as a result of that disorder, either listing 11.02 (Epilepsy—major motor seizures) or listing 11.03 (Epilepsy—minor motor seizures) should be used for the evaluation of the substance addiction disorder.)

Substance addiction disorders continue to be regarded as medically determinable impairments, if substantiated on the basis of medically acceptable signs, symptoms, and laboratory findings.

Severe substance addiction disorders alone can be disabling and do not require other impairment involvement. Such was the case under the former listings where substance addiction disorders were evaluated under the criteria for functional nonpsychotic disorders (former listing 12.04). Under the revised listings, this continues to be the case. Revised listings 12.06 and 12.08 are two of the new listings which were created to address impairments formerly evaluated under listing 12.04. These listings are shown as reference listings under listing 12.09. Thus, if reference listing 12.06 or 12.08 are met or equaled on the basis of a substance addiction disorder, disability would be found without the consideration of other impairment involvement.

Frequently, however, there are many medical signs, symptoms, and findings of other impairments present which are aspects of, or which coexist with, substance addiction disorders. For example, findings associated with organic mental disorders (listing 12.02), depressive syndrome (listing 12.04), peripheral neuropathies (listing 11.14), liver damage (listing 5.05), gastritis (listing 5.04), pancreatitis (listing 5.08), and seizures (listings 11.02 or 11.03) sometimes are present of coexist with substance addiction disorders. Therefore, these listings are included as reference listings under listing 12.09 since the appearance of signs or symptoms contained in those listings suggest a number of possible directions

or considerations for further development and evaluation.

Public Comments

Subsequent to the publication of the Notice of Proposed Rulemaking in the **Federal Register** (50 FR 4948) on February 4, 1985, we mailed copies to organizations, associations, and other professionals whose responsibilities and interests require them to have some expertise in the evaluation of mental impairments. We also sent copies to State agencies, national organizations and other parties interested in the administration of the title II and title XVI disability programs. As part of our outreach efforts, we invited comments from State disability determination services, national organizations representing the mentally ill, advocates of the mentally ill, and service providers. We also invited comments from various health and medical associations as well as from law and legal service organizations. We received close to 1,000 letters containing comments pertaining to changes which we had proposed. Some commenters addressed a large number of issues pertaining to changes involving many different mental disorders listings. The majority of comments were from organizations and groups which represented people interested in specific mental impairments. Many were from sources with specialized backgrounds in psychiatry, psychology, and other specialties involving mental health. Many of the comments we received concerned the specific evaluation criteria for particular mental disorders such as autism, mental retardation, substance addiction disorders, and that due to traumatic brain injuries. Other comments questioned the reasons for not including other mental disorders in the Listing of Impairments.

We have carefully considered all the comments and have adopted some of the recommendations.

The comments concerning traumatic brain injuries and autism indicated that the proposed rules failed to specifically address these conditions and requested that specific criteria for these impairments be added to the proposed rules. For the reasons stated in our responses to these comments in the preamble, specific criteria have been added to listing 12.05 for autism, but specific criteria were not added for traumatic brain injuries. We believe that listing 12.02 (Organic Mental Disorders) provides adequate criteria for the evaluation of traumatic brain injuries when the effects of such injuries are mental. We do recognize, however, that those injuries sometimes present unique problems in evaluating them. Therefore, we have added a statement to 12.00D to caution that special care should be exercised in evaluating traumatic brain injuries in view of certain subtle findings associated with such injuries.

The comments on mental retardation objected to the proposed criteria on two basic points: (1) The use of outdated terminology, and (2) the manner in which disability is determined for individuals with an IQ of 60 to 69 inclusive. We are making modifications in this final regulation which address both of these points.

The comments on substance addition disorders objected to the proposed listing (12.09) and basically endorsed the recommendations of the special work group, which were not adopted by us. In response to these comments, we are restating the position we took in the preamble to the proposed rules—i.e., we are not adopting the work group's recommendation pending further study to measure its reliability in determining disability due to substance addiction. A special panel of experts has already been convened for that purpose.

Other significant changes include modifications to both the prefatory material to the listings and the listings themselves. The modifications to the prefatory material serve to clarify the following: the purpose of the paragraph "A" criteria found in most of the listings, the meaning of the word "marked," the use of neuropsychological testing, and the technique for application of the mental disorders listings. The modifications to the listings both clarify and expand the signs, symptoms, or laboratory findings used to medically substantiate a disorder for purposes of the listings (the "A" criteria) and clarify the criteria used to determine listings-level impairment severity (the "B" and "C" criteria).

In reviewing and analyzing the public comments to determine changes that were warranted on the basis of these comments, HHS was again assisted by the work group of experts who helped in the development of the proposed regulations.

The major objections to the regulations are discussed in this preamble. Some of these objections were repeatedly made; others were only made by one or two members of the public.

The changes we have made on the basis of public comments are identified in the following discussion of issues which were raised in the comments. Except for those comments pertaining to the mental disorder listings in general, we discuss these comments under the appropriate mental disorder listing or the introductory material pertaining to the comment.

A number of the comments that were received pertain to Social Security matters which are not within the purview of the proposed regulations. These comments have been referred to the appropriate components of the Social Security administration for consideration and reply and are not, therefore, addressed in this preamble.

Many of the written comments we received necessarily had to be condensed, summarized, or paraphrased. However, we attempted to express everyone's views adequately and to respond to the issues raised.

12.00A Introduction

Comment: One commenter suggested specifying whether residual functional capacity (RFC) is a negative or positive determination, that is, whether RFC is what the individual can do in spite of his or her impairment or what the individual cannot do in spite of his or her impairment.

Response: The definition of RFC in the listings is quite specific and stated in positive terms, that is, RFC is the work-related abilities an individual retains in spite of his or her medical impairments.

Comment: One commenter indicated that the introduction of functional criteria into the listings creates problems. The commenter felt that the addition of work related functions to the listings shifted the responsibility for determining the capacity to work from the examiner to the physician. The commenter also believes this will require work evaluations in all cases.

Response: We do not perceive the introduction of functional criteria into the listings as a cause for restricting the role of the disability examiner. The issue of disability is decided jointly by the physician and the disability examiner, and, therefore, the disability examiner participates in all decisions. In reference to the second point, we believe that work evaluations should not be requested except in those cases where evidence available for multiple sources other than work evaluations is not adequately determinative of the degree of limitation imposed by the impairment on the individual's ability to function.

Comment: One commenter suggested that in view of the decisions in *Mental Health Association of Minnesota* v. *Schweiker* and *City of New York* v. *Heckler*, which prohibit disability determinations based on the Listings alone, the additional factors concerning work functioning required in the RFC stage be spelled out. The commenter

believes that the inclusion of work-related functional restrictions in the listings may cause the adjudicator to overlook RFC evaluation and medical/vocational allowances.

Response: We fully agree that the determination of RFC is an independent step in the sequential evaluation of disability. These rules, however, are primarily concerned with the Listings and, thus, need only state, as they do, that the determination of RFC is crucial if the person does not meet or equal the Listings. There is no intent to circumvent either the court orders or the remainder of the sequential evaluation process.

Comment: One commenter suggested that RFC evaluations should not be done for individuals who have severe mental impairments unless they use work evidence or work evaluations based upon at least 8 hours of observation.

Response: There are other sources of information which can be relevant in RFC determinations. It would be inappropriate to limit the evidence necessary for the determination of RFC to work evaluations, since in many instances, other sources of evidence permit such determinations to be made.

Comment: One commenter felt the requirement in the first paragraph in 12.00A which says that an individual's limitation resulting from his or her impairment must have lasted or is expected to last for a continuous period of at least 12 months was too harsh. The commenter felt that there are some severe impairments that only last 6 to 9 months in duration.

Response: We agree that there are some severe impairments of duration less than 12 months. However, the Social Security Act in sections 216(i)(1), 223(d)(1)(A), and 1614(a)(3)(A) specifies that to meet the definition of disability, an individual's impairment must have lasted or can be expected to last for a continuous period of not less than 12 months. The requirement in 12.00A cited by this commenter is consistent with the law.

Comment: One commenter objected to the second sentence of the fourth paragraph in 12.00A of the proposed rules which related to the inability to work on the basis of the need for excessive supervision to perform routine repetitive tasks and the inability for acceptable social interaction in a normal work setting. The commenter indicated that the sentence was not an accurate depiction of the severity level expressed in the listed impairments. The commenter also pointed out that the word "equaling" was omitted from the first sentence in that paragraph.

Response: The intent of that sentence was only to serve as a general statement of the severity level already depicted by the Listings. To prevent any misapplication of the Listings, that sentence has been deleted. We have also added the word "equaling" to the first sentence of that paragraph to make the thought complete.

Comment: One commenter objected to the statement in the second paragraph A (third sentence) that "[T]he restriction listed in paragraph B and C must be the direct result of the mental disorder which is manifested by the clinical findings outlined in paragraph A." The commenter suggests that demonstrating this causal relationship is difficult and, in any event, is unnecessary according to the Listings themselves.

Response: We agree, and therefore, have deleted the word "direct" from the sentence. The revised sentence still requires that the mental impairment be the cause the work-related functional restrictions but does not require direct evidence of such causality. We believe that a reasonable assumption of causality could be made where a serious medically determinable mental impairment is present and the severe functional restrictions required in the B and C criteria are met.

Comment: Several commenters questioned the accuracy of the parenthetical statement contained in the last paragraph of 12.00A which discusses the non applicability of residual functional capacity (RFC) to certain claims categories (i.e., disabled title XVI children below age 18, widows, widowers, and surviving divorced wives). Some commenters felt that statement was inaccurate since they felt RFC was used in determining medical equivalence for those claims categories in certain circumstances. One commenter questioned what is meant by the statement that "RFC is used in most claims."

Response: The statement in question is correct. RFC does not apply to the claims categories cited. We agree that the statement that "RFC is used in most claims" is somewhat ambiguous. Therefore, to clarify its intended meaning, we have revised that statement to "RFC may be applicable in most claims." Concerning the use of RFC in determining medical equivalence, an individual's RFC is not a basis for making that determination. The manner in which medical equivalence is determined is discussed in § 404.1526 and 416.926.

12.00B Need for Medical Evidence

Comment: Several commenters indicated that in 12.00B, a statement is made that certain signs are typically assessed by a psychiatrist or psychologist. These commenters questioned whether psychiatrists and clinical psychologists are capable of assessing organic mental disorders, and if so, then behavioral neurologists should be permitted to make those assessments.

Response: Certainly psychiatrists and psychologists frequently evaluate patients suffering organic mental disorders including trauma victims, but they are not the only medical professionals that do so. It is recognized that behavioral neurologists have expertise in these areas and, where they are treating sources, certainly their records and evaluation should be sought. The listings cannot be a compendium of all medical professionals who see, treat, or help the mentally ill, but there is no intent to exclude any of the mental health care professionals as sources of evidence.

Comment: One commenter questioned whether other mental health professionals have specific roles defined, and suggested that psychological testing be the preferred method of examination for a consultative examination.

Response: The medical professional responsible for the case assessment has available the accumulated relevant information and can best determine the extent to which additional evidence is essential, how it should be secured and from whom. The designation of all such sources and methods would excessively encumber the regulations, and to identify some may tend to cause use of these to the exclusion of others. Concerning the use of psychological testing in consultative examinations, we believe such testing is necessary when indicated by the other evidence. However, to require such testing in all cases would be inappropriate.

Comment: Several commenters felt that medical professionals other than psychiatrists and psychologists are valuable sources of evidence.

Response: As indicated in the prior response, there is no intent to exclude any medical professionals as sources of evidence.

12.00C Assessment of Severity

Comment: One commenter stated that the Listings should stand independent of vocational factors, and should be based on nonwork-related factors. Otherwise, this commenter believes that part B of the listings would be contrary to the sequential evaluation process in the vocational or work-related limitations are considered rather than criteria based strictly on medical factors.

Response: The inclusion of more specific work-related limitations in part B of the revised listing was undertaken in order to give greater emphasis to work-related limitations in the adjudication of mental impairment claims. If the criteria B1 (activities of daily living) and B2 (social functioning) are sufficiently limited, a finding that the claimant meets or equals the listings without the need for development of more specific work-related findings can result under certain listings. The remainder of the sequential evaluation process, however, continues to be mandatory in all cases where it is concluded that the listings are not met or equaled. The mental RFC criteria are refinements of the part B criteria and are more specifically work-related.

Comment: Several commenters stated that the B1 and B2 criteria (activities of daily living and social functioning, respectively) common to most of the listings are not good predictors of an individual's ability to work.

Response: Research literature indicates that a person's ability to function in one environment (e.g., a community setting) is not predictive of a person's ability to function in a different type of environment (e.g., a work setting). On the other hand, studies do indicate that a significant predictor of future work performance is a person's ability to "get along" or function socially with others. The activities of daily living criteria (B1) incorporate more issues than in the former listings (see 12.00C1). The social functioning criteria (B2) give clearer emphasis to the ability to "get along" (see 12.00C2) as emphasized by criteria found in the literature.

The B2 criteria (social functioning), B3 criteria (concentration and task persistence) and B4 criteria (deterioration and decompensation) were intended to be work-related. It is accepted that there is little support for a direct relationship between appropriate and competent behavior in daily activities and the capacity to work in mentally impaired people. The intent of keeping the activities of daily living criteria was to have criteria for the evaluation of impairment severity which do not necessitate developing more specific work-related limitations. A finding of relationship between the B criteria and the ability to work is a much more important principle in mental RFC assessment than in the description of listings level severity.

Comment: One commenter indicated that the inability to perform any one of the activities described in the section on activities of daily living (12.00C1) should be sufficient to meet the listings.

Response: It is not the number of restricted activities that is important to the evaluation of impairment severity, but the overall degree of restriction and combination of restriction that is important.

Comment: One commenter indicated that recreational activities and leisure behavior should be included in the assessment of impairment severity.

Response: Recreational activities and leisure behavior are included in an assessment of activities of daily living. These activities must be evaluated in terms of their independence, appropriateness and effectiveness.

Comment: One commenter indicated that a deficit in any one area in the narrative description on social functioning (12.00C2) should be sufficient for an individual to meet the listings.

Response: It is not the number of social functions that are limited that is important to the assessment of impairment severity, but the overall degree to which social functioning is restricted and the combination of restrictions.

Comment: One commenter believed that with respect to language in the B criteria, the former language "seriously impaired ability to relate to other people" was more appropriate than "marked difficulties in maintaining social functioning," since the latter does not convey the work-related nature of the functional limitation.

Response: The description of "social functioning" found in 12.00C2 of the revised listings is much more detailed than is found in the description of "relating to other people" found in the former listings. The last sentence in 12.002C2 describes the assessment of social functioning in work situations. We believe that conclusions can be reached with regard to these abilities based on an assessment of experience in prior work situations, if applicable.

Comment: One commenter recommended that we change "concentration and task persistence" to "concentration or task persistence."

Response: Concentration and task persistence go together, in that both are evaluated on the basis of performance in adequately completing any given task. We do not believe they should be separated.

Comment: One commenter indicated that we should specify that concentration and task persistence need to be sustained over an 8 hour day.

Response: This concept is covered in the first sentence of the paragraph describing concentration and task persistence (12.00C3). The extent to which a claimant may be capable of sustained performance should be discussed as a mental RFC issue.

Comment: One commenter recommended that the criteria used to assess an individual's restriction of concentration and task persistence should read: An inability to complete tasks on time or properly in work settings or elsewhere due to limitations in affective or cognitive functioning.

Response: This is implied by the revised criteria. More refined measures of performance in work or work-like settings are included in the mental RFC assessment. Specific clinical findings need not be included in the B criteria.

Comment: One commenter recommended that the term "task persistence" should be changed to "task performance."

Response: We believe this would be inappropriate, since the performance of tasks is used to evaluate both concentration and task persistence, not just persistence.

Comment: One commenter recommended that the B3 criterion should be written to parallel B1 and B2, e.g., "marked difficulty in performing tasks."

Response: The B3 criterion specifying the difficulty encountered by individuals who have concentration difficulties in the timely completion of tasks is more specific and work-related than the general term "marked difficulties" and is, therefore, preferred.

Comment: One commenter stated that the proposed "B4" criterion which is common to most of the listings (i.e., repeated episodes of deterioration or decompensation in work or work-like situations which cause the individual to withdraw from that situation and/or to experience exacerbation of signs and symptoms), imposes additional and circular criteria to requirements in B1, B2, and B3.

Response: We do not believe the B4 criterion is circular. The criterion may be met by a return of signs, symptoms, findings and functional limitations listed in paragraph A and B1, B2, or B3, not all of which may meet listing-level severity. In this way the episodic (recurrent) nature of mental disorders and limitations is recognized as a major factor in mental impairment. For example, a claimant alleging impairment due to schizophrenia repeatedly may hallucinate, have marked difficulty concentrating, and totally withdraw socially in work or work-like settings. The claimant hallucinates and has marked difficulty only when stressed in work-like settings. On a routine basis, activities of daily living and

concentration and task persistence are not limited. On the other hand, the claimant has marked and persistent difficulties with social functioning at listing-level severity. The repeated deterioration and decompensation accompanied by marked difficulties in social functioning would render an individual unable to perform SGA in most circumstances. However, the claimant would not meet the listing in this case if the B4 criterion were eliminated.

Comment: One commenter indicated that the B4 criterion should be amended to read: Inability to respond successfully to work pressure.

Response: The concept recommended by this commenter is difficult to ascertain and measure. Furthermore, the recommended change would be a criterion for assessing severity which is less than that intended by the listings.

Comment: One commenter recommended that the language in the B4 criterion should be altered to reflect that repeated episodes of deterioration in work settings do not always result in withdrawal or exacerbation of signs and symptoms.

Response: In cases where there is no withdrawal or exacerbation of signs and symptoms, the impaired functioning that is work-related would be assessed under mental RFC. This listings level criterion is intended to reflect a higher level of severity.

Comment: One commenter recommended that the word "marked" as used in the B criteria be defined to convey the degree to which a particular restriction hampers an individual's ability to work.

Response: The intent of "marked" as found in the B criteria is to be a measure of functional restriction. The degree of restriction must be such that it would clearly interfere with the capacity to perform substantial gainful activity. The degree of restriction is defined as more than moderate but less than extreme or total (see 12.00C).

Comment: A number of commenters recommended modifications to the manner in which impairment severity is assessed by the "B" criteria. Some recommended that an individual should be found disabled if one of the B criteria is satisfied. Others recommended that specific combinations of two of the criteria should be sufficient to determine an individual disabled. And others recommended that the required number of "B" criteria be the same for all listings.

Response: Although some individuals meeting one of the B criteria alone may be too impaired to perform SGA, many others would not be disabled. One B criterion, alone, was regarded as an inappropriate standard for listing-level severity. Individuals who meet only one of the B criteria could still qualify for disability on the basis of their RFC and vocational factors. On the other hand, it is believed that a standard of four out of four of the B criteria is too stringent, going far beyond the severity level needed to presume the inability to work. With regard to disorders that are typically more severe (listings 12.02 through 12.06), we believe that two of the four B criteria must be met. With regard to the less severe disorders (listings 12.07 and 12.08), we believe that three of the four criteria must be met.

Comment: Several commenters stated that the reference to measuring concentration and task persistence over a work day in terms of the "ability to follow and understand simple story lines or news items on television or radio" is not valid and should be deleted.

Response: We agree that these factors are not related to job functions, and the phrase has been deleted.

Comment: Several commenters requested that an explicit warning be added to 12.00C3 to indicate that mental status or psychological testing alone should not be relied upon to accurately describe concentration or long-term persistence. Also, it was requested that the reference to the use of serial sevens testing to test concentration be deleted since that testing is not a valid measure of concentration.

Response: We agree with the commenters concerning their first point and have added the warning as requested. As to the second point, we did not delete the reference to the use of serial sevens testing to test concentration. On mental status examination concentration is assessed by tasks such as having the individual subtract serial sevens from 100.

Comment: One commenter recommended that the paragraph B3 criterion common to most of the listings which is used to describe the functional restrictions in the area of concentration and task persistence be modified to read: "Deficiencies of concentration and persistence resulting in frequent failure to complete tasks in a timely and accurate manner."

Response: We have modified the criterion as recommended except for the addition of the words "and accurate." "Accuracy" is rather nonspecific; it is believed that "timeliness" is a better concept. If the work is inaccurate, presumably it would have to be redone or the individual will require excessive supervision or review. In such cases, productivity and timeliness will be reduced and the criterion met. Accuracy tolerances are variable in different industries, and therefore, difficult to evaluate.

Comment: One commenter felt that the word "marked" as used in the B1 and B2 criteria common to most of the listings was ambiguous. Another commenter felt it should be defined to convey the degree to which a particular restriction hampers an individual's ability to work. A large number of commenters indicated that it should be clarified to stress that the assessment of an individual's functional restriction is not merely based upon the number of restricted activities (see 12.00C1 and 2), but the degree of restriction is important.

Response: For the reasons given by these commenters, we have added language to 12.00C to clarify the meaning of marked.

Comment: One commenter criticized the "B" criteria common to most of the listings since factors other than medical, such as vocational, were included.

Response: The B criteria do not include vocational factors, such as age, education, and past work experience. As a vocational factor, past work experience has a specific meaning which is the advantage gained from specific jobs in terms of skills, job knowledge, familiarity with work aids, or specific work environments. As used in the B4 criterion, "work or work-like settings" refer to deterioration under the stress of work related to attendance, punctuality, interaction with supervisors and coworkers, and production standards. The concepts are entirely different.

Comment: One commenter indicated that the discussion of the assessment of task persistence in work evaluations in 12.00C3 is incorrectly characterized as "concentration" assessment.

Response: For the reason stated by the commenter, that section has been modified as follows: "in work evaluations, concentration and task persistence are assessed through performance on such tasks as . . . ."

Comment: A number of commenters recommended changes to the paragraph B criteria common to most of the listings.

Response: Some of these recommendations were made with respect to a particular listing and have been responded to in the section that addresses comments on that listing. Mostly, however, these recommendations were editorial in nature, and we did not find that the recommended language warranted adoption. Other recommendations altered the severity level of the

functional restriction to the point where we felt it no longer represented a degree incompatible with the ability to work, and, therefore, were not adopted.

Comment: Several commenters indicated that since 12.00C2 calls for documentation of social strengths with specific examples, it would not be possible for the State agency evaluators to assess social functioning without conducting face-to-face interviews.

Response: The factors to be considered when assessing social functioning can be evaluated without the need for the disability evaluator to conduct a face-to-face interview. Generally, the record contains adequate information for the assessment of social functioning, and if not, such evidence can be obtained.

12.00D Documentation

Comment: One commenter presented a series of questions about workshops, which included: when to use them, logistical problems in arranging work evaluations, concerns about processing time and cost, and finally, some perceived problems in the use of workshop information in view of the fact that poor performance may be related to a lack of motivation or other factors not related to the impairment.

Response: There is no intent in 12.00D to establish criteria for the ordering and use of workshop evaluations. Workshops are simply listed as one of a number of acceptable sources of evidence. We realize that use of workshop evaluations may increase processing time and costs. However, if information from a workshop is necessary for resolution of a case, then it should be obtained. A workshop evaluation is, of course, not necessary if other evidence adequately resolves the issue of disability.

Proper documentation of a workshop evaluation includes the observations of a qualified work evaluator covering the observed behaviors and reasons for lack of success in the tasks and skills tested. Such observations should be sufficient to resolve issues related to effort and motivation.

Comment: One commenter points out that in his opinion there is an overreliance on WAIS IQ testing because identical WAIS scores may have different meanings, and the WAIS may not be appropriate to assess diffuse trauma or frontal lobe pathology.

Response: Section 12.00D states that the ". . . WAIS should be administered and interpreted by a psychologist or psychiatrist qualified to perform such evaluations." Such a requirement is the best safeguard available against improper interpretation of the data. With regard to the assessment of diffuse brain trauma or frontal lobe pathology, section 12.00D discusses the use of specialized neuropsychological tests for these disorders.

Comment: Several commenters feel that the statement in 12.00D which states that activities of daily living or social functioning may be in conflict with the clinical pictures otherwise observed or described is erroneous and undermines the importance of other than medical evidence. Furthermore, it is felt that if further evidence is needed to resolve such conflicts, it should be a workshop evaluation.

Response: The interpretation of these commenters goes beyond the language in this section and assumes that conflict means that there is functional restriction in the absence of signs and symptoms. This is not the intent of this section. In several other sections, it is made clear that signs and symptoms need not be currently severe for there to be severe, listing level functional restriction. However, we believe that resolution of real conflicts in evidence is imperative. For example, daily activities may be shown as unrestricted, but the clinical picture may show a very severe impairment which would be inconsistent with such function and which could not be explained by lapse of time or other conclusive finding. Such conflicts must be resolved.

Comment: One commenter stated that SSI applicants may not be able to afford the sophisticated psychological testing mentioned in section 12.00D and states that public health services, clinics, etc., do not provide such evidence. The commenter suggests that a system for providing such services is needed if the intent of the section is to be met.

Response: Applicants for SSI benefits have the responsibility to identify sources of medical evidence in support of their claims. However, when treating source evidence is insufficient to resolve the issues in the case, we obtain the necessary examination at no cost to the applicant.

Comment: One commenter indicates that there are several limitations to the use of medical evidence to resolve the issue of whether an individual can work and points out the advantages of workshop evaluations for this purpose.

Response: In these regulations and in the Notice published in the **Federal Register** (50 FR 9770) on March 11, 1985, we acknowledge the utility of workshop evaluations in cases involving mental impairments. We obtain reports from such evaluations whenever they are available and purchase such evaluations when appropriate. This evidence is used in conjunction with the medical evidence from all sources to evaluate disability. We do not agree that the only value of medical reports is to provide diagnostic impressions. Records from treating sources who have seen the patient over a substantial period are frequently very valuable in resolving many issues involved in disability determinations.

Comment: One commenter suggests that we define the frequently used words "medical evidence" so that it is clear that they do not exclusively refer to physicians' records.

Response: Acceptable sources of medical evidence are defined elsewhere in the disability regulations (see § 404.1513). We do not agree that medical evidence refers to sources other than that provided by these acceptable sources.

This regulation makes clear in several places, specifically 12.00D, that nonmedical sources of evidence are valuable in assessing impairment severity and residual functional capacity.

Comment: One commenter stated that it is not possible to establish equivalence of scores on different IQ tests.

Response: The language in 12.00D suggests comparing percentile of population rather than IQ score. If the normative samples on some tests are not sufficient to reliably use percentile data, then two alternatives are possible: (1) We can retest using the WAIS, or (2) we can rely on the total evidentiary record including a description of how the individual functions and whatever test data is available to decide the case as interpreted by the program psychiatrist or psychologist.

Comment: Several commenters indicated that performance on IQ tests does not provide useful data about an individual's ability to perform work tasks in other settings. Therefore, they recommend that such reference by deleted from the fifth paragraph of 12.00D.

Response: For the reason stated by the commenters, such reference has been deleted from 12.00D.

Comment: Several commenters indicated that the WAIS is not the most commonly used measure of intellectual ability, rather the WAIS–R is and should be cited instead.

Response: We agree with this statement. Therefore, the words "perhaps currently the most widely used measure of intellectual ability in adults" have been deleted. It was decided, however, to use the WAIS as generic for the various scales, rather than limiting the selection to one test, the WAIS–R.

Comment: A number of other commenters recommended editorial changes to 12.00D for purposes of clarification or requested that clarification of certain issues in 12.00D be provided.

Response: We have reviewed all of these requests in light of what other commenters favorably said about 12.00D and the changes made to 12.00D as a result of public comments and we believe that further modifications to 12.00D are unwarranted.

12.00E Chronic Mental Impairments

Comment: One commenter indicated that in section 12.00E it should be stated that a decision relying on a single examination to describe sustained ability to function should say why such a conclusion is proper.

Response: Situations in which we must rely on one examination should be very rare. In those situations, the information from such an examination could be supplemented by lay evidence from the claimant or family or other third party sources.

Comment: One commenter recommended that in 12.00E we define "sustained ability to function" by adding at the end of the phrase "in an eight hour day in the workplace."

Response: In 12.00E "sustained" refers to establishing baseline function for chronic mentally impaired individuals over time based on a longitudinal history of their illnesses rather than relating sustainability to a particular time context (e.g., an 8 hour day). The concept of sustained activity over a normal work day is considered in the B3 criterion, the 12.03C1 criterion, and the definition of residual functional capacity.

12.00F Effects of Structured Settings

Comment: One commenter disagrees with the concept in 12.00F that "people who can cope with a sheltered daily life could deteriorate under the stress of working." He states that work is very important to the rehabilitation of mentally ill people, and that Social Security benefits can be destructive because they remove the incentive to work and give the "patient's symptoms an unusual value."

Response: We do not intend for the new mental listings to extend benefits to those who are able to work. The point of section 12.00F is that an individual's ability to function well in a highly structured environment with minimal mental demands does not necessarily indicate that he or she could function outside of such a setting. The ability to handle the demands of work outside of a structured setting must be evaluated.

Comment: One commenter recommended emphasizing the fact that claims determination must be based on the total evidence rather than just one positive report.

Response: This was done in sections 12.00D and 12.00E of the proposed rules and is also contained in those sections of these final rules.

Comment: One commenter suggested that SSA reemphasize the fact that medication and a structured environment can greatly decrease symptoms, and in such cases, assessment as to the functioning of individuals without the supportive environment or therapy should be made.

Response: The purpose of 12.00F and 12.00G is to stress the importance of considering the effect of medication and a structured environment in determining disability. 12.00F states that evaluations must consider the ability of individuals in highly structured settings to function outside such settings. However, we would never interfere with a treatment plan and expose an individual to stress that might cause deterioration in order to evaluate a claim for benefits.

Comment: Several commenters suggested including the family residence as an example of structured settings, since families often provide a highly structured and supportive environment. One of these commenters stated that therapeutic outpatient programs provide a highly structured and supportive environment to individuals living alone. He recommended that 12.00F reflect the fact that programs of structure and support are often provided in the least restrictive environment.

Response: We do not intend the two examples cited in 12.00F to be exclusionary; there are a number of other settings, including the family home, where structural and supportive care limit mental demands. To prevent any interpretation, however, that the two examples cited are exclusionary, the following phrase has been added to the sentence citing the examples: "or other environment that provides similar structure." We opted, however, not to include families specifically in the list of examples. We do not believe that families can be assumed to provide the psychosocial support, crisis intervention, and medication that the other mental health care facilities do, although some families may provide such a structure. The language does permit use of the family care situation if the family can demonstrate that it meets the stated criteria.

12.00G Effects of Medication

Comment: One commenter indicated that the second paragraph of 12.00G suggests that medication side effects should be considered a part of the RFC assessment if the listings are not met or equaled. This commenter believes this is an inaccurate statement of the law, since the assessment of RFC is one way to assess equivalent impairment severity.

Response: 12.00G states that "Such side effects (of medication) must be considered in evaluating overall impairment severity." This obviously includes impairments which meet or equal a listing. The section then goes on to say that where the combined effect of the side effects of medication and the impairment fall short of listing level severity, then all limitations including the side effects of medication must be considered in assessing RFC. Nothing in the section prohibits considering functional restrictions imposed by either impairment or medication in determining whether or not the listing is met or equaled. We believe the opposite is the case. Paragraph 12.00G, as written, specifically requires consideration of all restrictions in deciding severity.

12.00H Effect of Treatment

Comment: One commenter believes that the term "premorbid status" in 12.00H is inappropriate because for many forms of mental illness there is no clear start or onset. The commenter believes that the use of the term in listing 12.02, Organic Mental Disorders, may be appropriate, but its use in 12.00H is not.

Response: The intent of the language in 12.00H is to view the history of the impairment in light of appropriate therapeutic interventions. In most Social Security disability cases, there is a point at which the individual, his family, or other concerned individuals sought aid because it was recognized that the disabled individual could not work. For others, there is a clear demarcation in terms of the first psychotic episode or acute depression. The comments of this commenter are, of course, correct for many seemingly lifelong impairments such as personality disorders and early onset psychosis. Nevertheless, the concept of comparing restoration of function following treatment against a baseline of premorbid function is a useful concept in disability evaluation.

12.00I Technique for Reviewing the Evidence in Mental Disorders Claims To Determine Level of Impairment Severity

Comment: One commenter indicated that the rating scales in the technique discussed in 12.00I which are used to

assist in determining listings-level impairment severity appear to resurrect the Psychiatric Review Form (PRF) and the problems inherent in that form, i.e., scales used to rate impairment severity. Other commenters questioned the need for the other points on the rating scales which are less than listings-level severity.

Response: The technique described in 12.00I of the proposed rules has an entirely different conceptualization from the PRF, a form which was used on a voluntary basis. One purpose of the new technique is to correct problems that occurred with misapplication of the PRF (e.g., to prevent the misbelief that if an individual neither meets nor equals a listed mental impairment, it can then be presumed the individual can engage in substantial gainful activity).

The purpose of including other points on the rating scale of less than listings-level severity is to place the point representing listings-level severity into proper perspective. (It is for this reason that we have added another point to the scales above the point representing listing level severity.)

Although these scales are useful in determining listings-level severity, their use is not restricted to that. These scales also assist in concluding when an impairment is not severe and when an RFC assessment is necessary. Therefore, since the technique does more than just assist in determining listings-level severity, we have removed the discussion of the technique from 12.00I and have placed it in new §§ 404.1520a and 416.920a which deal with a more general use of the technique—i.e., as an assistive device for the evaluation of disability due to mental impairments.

Comment: Numerous commenters indicated that at the hearings level a medical advisor would have to be utilized in the vast majority of cases to assist in application of the technique discussed in 12.00I.

Therefore, some of these commenters felt that this would abrogate the decision-making responsibilities of the administrative law judge. They felt that this would cause delays in case processing should the services of the medical advisor not be readily available.

Response: We have examined the proposed rules in 12.00I in light of these comments and concur with the concerns of these commenters. Therefore, the discussion of the technique has been modified to indicate that the use of medical advisors is on an as needed basis. The role of the medical advisor at the hearings level remains advisory only—the use of a medical advisor in no way abrogates the decision-making responsibility of the administrative law judge.

Comment: Numerous commenters questioned the need for the remand procedure discussed in 12.00I, and recommended its deletion. The commenters were concerned that undue delay in rendering disability decisions would be encountered.

Response: We believe the remand procedure is consistent with current practice at the hearings level. We believe it is a valuable tool, especially if the services of a medical advisor are unavailable to the administrative law judge. As indicated in the proposed rules, the use of the remand procedure is discretionary. Based upon our past experience with the need to remand cases, undue delay should not occur in the disability decision-making process.

Comment: Several commenters indicated that the standard document itemizing the steps of the technique discussed in 12.00I should be completed by the individual's treating physician/psychologist rather than the disability evaluator, since the treating physician/psychologist has a better knowledge of the individual's history.

Response: We recognize that the treating physician/psychologist may have a better knowledge of the individual's history. However, the purpose of the technique is to assist the disability evaluator in organizing and evaluating all of the findings in a case, which may come from many sources, to ensure fair and equitable disability determinations. Since such determinations are not done by the individual's treating physician/psychologist, it would be inappropriate to have them complete the standard document.

Comment: A number of commenters indicated that if a medical advisor is used in accordance with the proper rules in 12.00I, such advisor should have certain qualifications (e.g., be a psychiatrist or psychologist).

Response: If the services of a medical advisor are necessary in a mental impairment case, our standard procedure is to make every reasonable effort to obtain the services of a qualified medical professional in the field of mental health. We are making a concerted effort to insure that the services of these professionals are available when needed.

12.02 Organic Mental Disorders

Comment: Several commenters recommended that 12.02A7 not limit the neuropsychological testing to the Luria-Nebraska or Halstead-Reitan batteries. These batteries are criticized for their length, specialized training needed, and cost. It was also indicated that "dementia" is inappropriate as used in 12.02A7.

Response: The use of dementia in 12.02A7, which deals with cognitive deficiencies, was inappropriate and has been deleted. The point with regard to limiting the type of neuropsychological testing to the Luria-Nebraska or Halstead-Reitan is also well taken. Paragraph A7 has been modified to indicate ". . . overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska or Halstead-Reitan . . . . ." Concerning the length, specialized training, and cost of the Luria-Nebraska and the Halstead-Reitan, we realize that these are things that would adversely impact on processing time and administrative costs if these instruments were used in all cases. However, it was never intended that these instruments be used in the evaluation of every organic mental disorder. Rather they would be used if submitted as evidence of record or they would be purchased in special circumstances.

Comment: One commenter indicated that the paragraph A criteria in 12.02 are not specific to organic mental disorders, while other findings which are specific, such as aphasia, are not included.

Response: The definition of organic mental disorders that follows the diagnostic category title must be satisfied so at the outset we have established that we are dealing with pathology that has an organic base. Thus, inclusion of Part A findings such as affective changes that are found in organic patients but may not be diagnostic of organicity in and of themselves is appropriate.

At the same time, no effort was made to provide an exhaustive list of all possible signs and symptoms of the mental illness in Part A as this would make the listing too voluminous for practical use.

To emphasize the fact that the definition of the various mental disorders must be satisfied first before applying the remaining criteria of those categories, we have removed the parentheses from around these definitions.

Comment: One commenter stated that personality changes (12.02A4) are different from other criteria and cannot be obtained from a physician who would not know the individual's premorbid personality state.

Response: A careful medical history and observation of the individual over time should put the physician or psychologist in a position to comment

on this criterion. There is, of course, nothing wrong with developing lay evidence which bears upon this issue. However, we do not see the 12.02A4 criterion as essentially different from the other criteria, and it may take a physician's or psychologist's interpretation to say which changes are meaningful as all individuals change over time.

Comment: Several commenters questioned what the relevance was of the 15 point IQ drop in 12.02A7.

Response: This drop is one standard deviation, and for those individuals where we have previous IQ scores for comparison, this clearly represents a significant change. The number of times this criterion can be applied may be limited because of the lack of availability to previous scores, but it is a useful and measurable criterion where the data for comparison exists.

Comment: A larger number of commenters indicated that the problems and clinical manifestations of the brain injured are unique, and, therefore, traumatic brain injury should be a separate category in the listings. These commenters believe that a separate listing should address the subtle long term cognitive deficits which may require neuropsychological evaluation. These commenters also believe specific mention should be made of behavioral neurologists and other specialists in this field who are better able to evaluate such impairments than are psychiatrists or psychologists.

Response: Traumatic brain injuries can affect individuals in various ways, such as neurological and mental, and it is the effects of the injury that we evaluate. In other words, to determine whether an individual with a traumatic brain injury can work, we evaluate the effects of the injury rather than the cause of the injury. Should a traumatic brain injury affect an individual mentally, that individual would be evaluated under the criteria for organic mental disorders (listing 12.02). Should the effects of the injury be neurological, the individual would be evaluated under the appropriate neurological listing (i.e., 11.02, 11.03, or 11.04).

The purpose of listing 12.02, as well as all of the other listings, is to serve as a medical standard for evaluating disability. That is, the listings permit us to conclude an individual is disabled based upon medical evidence alone without the need to consider other factors, such as age, education, or past work experience. The listings achieve this by describing impairments which are considered severe enough to prevent a person from being able to work. For individuals with a traumatic brain injury which has affected them mentally, we believe that listing 12.02 correctly identifies those individuals who should be allowed on the basis of medical factors alone.

In the event that a traumatically brain injured individual does not meet or equal a listing within one of the body systems affected by the injury, but yet the impairment significantly limits the individual's mental ability to do basic work activities, we then determine what the individual can still do despite his or her impairment (see the fifth paragraph of 12.00A). It is at this step that every aspect of the impairment must be considered in terms of how it impacts on the individual's ability to work.

In regard to the use of behavioral neurologists and other specialists to evaluate these injuries, we do not exclude the use of those specialists. If such specialists are sources of record, we will utilize their reports, and if they are not sources of record but their expertise is needed, we will obtain it.

We do recognize, however, that mental impairment due to traumatic brain injury is sometimes difficult to assess, especially in view of the subtle findings sometimes associated with that injury. In those circumstances, neuropsychological testing may be useful in determining these subtle brain function deficiencies. Therefore, we have added a statement in the fifth paragraph of 12.00D to emphasize the usefulness of such testing.

In view of the unique evaluation problems of traumatic brain injuries, we are initiating a special study to ensure that these rules as well as the other rules serve as valid measures of disability due to such injury. This study will be conducted with the assistance of appropriate experts in the health care field familiar with the unique problems of traumatic brain injury.

Comment: A large number of commenters indicated that autism and other related conditions are not covered by any of the proposed listings, and therefore, that would result in confusion of application of the listings to autistic persons. These commenters recommend that autism be addressed in both listing 12.02 (Organic Mental Disorders) and listing 12.05 (Mental Retardation).

Response: We agree that it would be useful to specifically address autism in the listings. However, we believe the most appropriate place to do so is listing 12.05. According to information from the National Society for Children and Adults with Autism, the vast majority of cases of autism should be able to be adjudicated under those criteria since the vast majority of autistic individuals have below average IQs. For the smaller population of autistic individuals who do not have below average IQs, gross deficits of social and communicative skills are often evidenced. Therefore, we have added language to 12.05D (formerly 12.05C in the proposed regulations) to address such individuals.

Comment: Several commenters requested that specific criteria for the evaluation of Alzheimer's disease be provided.

Response: Listing 12.02 (Organic Mental Disorders) contains criteria adequate for the evaluation of Alzheimer's disease.

12.03 Schizophrenic, Paranoid and Other Psychotic Disorders

Comment: One commenter indicated that the criteria in paragraph A of listing 12.03 are not sufficient to conclude a diagnosis of schizophrenia.

Response: Specific signs and symptoms under any of the listings 12.02 through 12.09 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. In the Notice of Proposed Rulemaking, the description of the disorder was the parenthetical material that immediately followed the listing title. We have removed the parentheses from that material to emphasize the fact that the part A requirements should only be considered after the description of the mental disorder is satisfied. Language to this effect has been added to the second paragraph of 12.00A to clarify this point.

Comment: One commenter indicated that it was unclear as to how the requirements of listing 12.03 were satisfied, i.e., what combination of paragraphs A, B, and C would satisfy the requirements of the listing.

Response: We believe the combination of the paragraphs within listing 12.03 which satisfy the listing are clearly stated in that listing, i.e., when the requirements in A and B are satisfied, or when the requirements in C alone are satisfied.

Comment: Several commenters indicated that paragraph C2 in Listing 12.03, which describes current history of 2 or more years of inability to function outside a highly supportive living situation, is in conflict with the 12-month duration requirement of the disability program.

Response: A possible result of making paragraph C only of 12-months' duration is to create confusion because paragraph C applies only when the acute component of the condition has been present but due to the use of medication of psychosocial support the symptoms and signs have been

attenuated. The usual slumbering condition after one or more episodes of acute symptoms that limit the ability to function should be differentiated from the acute psychotic episode. Therefore, to make it different, the time condition of 2 or more years should be kept.

The 2-year requirement taken from DSM III and placed in criterion C2 is a test of severity not duration and can only be applied retroactively. The 12-month duration requirement is in the law and cannot be modified by the regulatory process.

Comment: Several commenters questioned what the difference was between the B4 and C1 criteria in listing 12.03.

Response: The language in the two paragraphs is similar except that in B4, deterioration takes place only under stress, such as might be encountered in competitive employment. In C1, the individual has had a past history of acute decompensation and now has his or her symptoms attenuated by medication or a psychosocial support system. The deterioration here would occur with an increase in mental demands, not necessary only the stress of employment. The difference is one of degree and this criterion is for a specific class or chronically ill psychotic individuals who no longer show obvious signs and symptoms. The language in C1 was modified to clarify this distinction.

Comment. A number of commenters found the C1 criterion in listing 12.03 confusing, and indicated that the standard requiring increased use of mental health services may not be appropriate.

Response: We believe that the revision to the C1 criterion, as discussed in the response preceding this response, will address these commenters' concerns.

Comment. One commenter indicated that the phrase in paragraph C2 of Listing 12.03 "inability to function" should be defined.

Response: It seems clear that the "inability to function" is indicative of decompensation and a continuous need for structured living when such psychosocial support is removed.

12.04 Affective Disorders

Comment: One commenter suggested that 12.04A1 may be difficult to document because it requires the presence of four symptoms.

Response: The requirement of multiple symptoms as evidence of depression is well established. Paragraph A1 in 12.04 is consistent with that practice.

Comment. Two commenters suggested that the number of criteria for depression syndrome under 12.04A1 be three rather than four in order to be consistent with dysthymic syndrome as defined in DSM–III.

Response: The requirement for meeting four of the criteria in 12.04A1 is an intentional compromise between usual standards for dysthymic and major depression. We do not believe this requirement will disadvantage severely impaired individuals who would have the functional restriction in paragraph B, as such individual would clearly be unable to work.

Comment: One commenter suggested that the number of criteria for manic syndrome under 12.04A2 should be two rather than three.

Response: The regulatory criteria for manic syndrome requiring three medical findings is consistent with current diagnostic practice.

Comment: One commenter suggested adding "more talkative" as a criterion for manic syndrome under 12.04A2.

Response: Criterion 12.04A2b "Pressure of speech" addresses this same issue and is more consistent with diagnostic practice. If this additional and duplicative element were included, pressure of speech would be given double weight.

Comment: One commenter said that section 12.04B4 fails to consider claimants who are vulnerable to repeated acute episodes if exposed to stressful environments.

Response: The B4 criterion deals with individuals who experience decompensation and exacerbation of signs and symptoms under the stress of work or work-like settings. Individuals who decompensate under nonspecific stressful situations should satisfy the other B criteria. The specific language in B4 is meant to cover those individuals who decompensate only when mental demands are increased such as is required in a work situation.

Comment: Two commenters suggested that the criteria of 12.03C be added to 12.04. One said this change was needed for claimants with schizoaffective disorders. The other commenter felt that the criteria of 12.03C were applicable to all claimants with affective disorders.

Response: Concerning the first point, schizoaffective disorders should be evaluated under 12.03. Concerning the second point, we judged that the characteristically progressive nature of schizophrenic disorders is fundamentally different from the characteristically intermittent and remitting nature of affective disorders. We concluded that the criteria of 12.03C would not mean that an individual with an affective disorder could not reasonably be expected to engage in gainful work activity. This is, however, an area where further research and clinical experience may be expected to provide useful information.

Comment: One commenter recommended that "pervasive loss of interest in almost all activities" be added to the paragraph A criteria for the depressive syndrome.

Response: We believe that this recommendation has merit and is, therefore, being adopted. Paragraph 12.04A1a has been changed to read "a. Anhedonia or pervasive loss of interest in almost all activities; or."

12.04 Mental Retardation

Comment: Several commenters recommended a change of wording in the description of "mental retardation" in listing 12.05 to better reflect professionally-accepted terms.

Response: While we intended our definition to be descriptive rather than technical in its wording, we accept the commenters' suggested wording in principle as having specific and precise meaning to mental retardation professionals. However, we slightly modified the suggested wording in the interest of clarity.

Comment: Several commenters suggested problems with the use of specific IQ scores in establishing listing-level severity for mental retardation. It was noted that the scores referenced (59 and below, 60 to 69) apparently are those achieved on the WAIS. It was suggested that our requirement (in 12.00D) to determine "comparable scores" achieved on other standardized IQ tests was problematic since no recognized comparison chart exists, nor has one been prepared by us for use by disability examiners. To help eliminate this chance variation, it was suggested that a greater range of acceptable scores be given, or that there be a requirement that more than one IQ test be administered. It was further suggested that IQ scores achieved by the same individual on various tests (e.g., WAIS, WAIS–R, Stanford Binet), even though they would indicate the approximate same level of mental retardation, varied considerably in numerical value.

Response: While we agree in principle with these commenters, there are inherent difficulties in the use of severity levels other than obtained IQ scores, and certainly validity problems in requiring that an individual retake an IQ test. One possibility would be to require that the obtained IQ score be two or three standard deviations below the tests' established norms. This would be technically more correct, but practically not meaningful to most

nonprofessionals who use these regulations.

To help resolve the problems in the real differences across test scores, we plan to study this issue further. In the meantime, we have chosen to revise the wording of the proposed rule to reflect our reliance on the WAIS.

Comment: Several commenters suggested that paragraph A of listing 12.05 be changed from ". . . failure to develop even the most primitive self-help skills . . . and requiring custodial care" to "dependence on others for personal needs . . . and inability to follow directions. . . ." The commenters point out that even the most profoundly retarded individuals develop some self-help skills although they may require help to make such activity meaningful and to avoid accidents.

Response: We accepted this suggested wording. It does not alter our intended meaning, but uses terms which are considered more technically correct in the mental retardation field.

Comment: Several commenters expressed the following concerns about paragraph C of listing 12.05: The requirement for specific functional limitations (i.e., 12.05C 1 through 4) beyond meeting established IQ score levels makes this listing more difficult to achieve than other listings; the types of functional limitations specified are not appropriate for the mentally retarded; and the requirement that two of the functional limitations be present in order to meet or equal the listing severity level is too stringent.

Response: Our process of determining the number of the stated four functional limitations that must be present was based on professional advice and consideration of the degree of severity required to preclude work. We continue to believe that two of the functional limitations should be required since that reflects impairment severity that would preclude work. If there is a separate mental impairment, the case can be considered under the multiple impairment criterion which was added to the listing (12.05C). If we determine disability on the basis of behavioral and functional limitations related directly to the mental retardation syndrome, then it is believed the stricter criterion is justified and equivalent to the requirements for other impairments.

With regard to the commenters' assertion that the types of functional limitations specified are not appropriate for evaluation of the mentally retarded, one specific suggestion was to add a reference to "pace" of work in 12.05C, relating to failure to complete tasks due to deficiencies in concentration or persistence. Since the pace of work is a salient point in determining whether a mentally retarded individual can function acceptably in a work setting, we have accepted this suggestion. We believe this addition is also applicable for the other listing categories, and have added it to all those categories (i.e., the B3 criterion).

Another suggestion was to alter the wording of 12.05C4 to take into account the behavioral aspects of mental retardation. We believe this suggestion has merit, not only for listing 12.05 but for all the listings. Therefore, we have added language to the listings (the C4 criterion in 12.05 and the B4 criterion in the other listings) to address the behavior aspects of mental disorders.

Comment: Several commenters suggested that we add a new paragraph to 12.05 which would reinstate a section of the former mental retardation listing (12.05C). That section refers to a combination of mental retardation and other physical or mental impairments leading to disability. It is asserted that this wording would be valuable in the determination of disability for those individuals whose mental retardation level would not be sufficient, alone, to establish the sufficient severity level, but who have other impairments which lead to disability.

Response: When we determined to drop that section from the proposed rule, we sought to replace it with the severity indices in the proposed 12.05C. We agree, however, that not specifically mentioning the combination of mental retardation with other mental/physical impairments may be problematic. Therefore, we have included a specific paragraph to 12.05 (paragraph C) to address a combination of mental retardation with another mental or physical impairment. The proposed paragraph C has been relettered as paragraph D.

Comment: Several commenters recommended the addition of a paragraph to the preface of the listings which would separately address mental retardation. These commenters believe this is necessary since there are differences between mental retardation and the other listed mental disorders categories.

Response: We believe that adequate guidance is already given in the revised listings as to the correct application of the mental retardation listing, and, therefore, further guidance in the prefactory material is unnecessary. Furthermore, we believe that the medical consultants reviewing the evidence for purposes of the disability determination are aware of the differences between mental retardation and the other listed mental disorders categories.

Comment: A large number of commenters indicated that autism and other related conditions are not covered by any of the proposed listings, and therefore, that would result in confusion in application of the listings to autistic persons. These commenters recommend that autism be addressed in both listing 12.02 (Organic Mental Disorders) and listing 12.05 (Mental Retardation).

Response: We opted to place autism in the same listing as mental retardation as both are developmental disabilities and the vast majority of austistic people have subnormal scores on intelligence testing. It is true that perhaps as many as 15 percent of the autistic people do not have these reduced IQ's but they do have communications disorders, problems in social relationships, bizarre movements and perseveration that characterize the illness. Language has been added to paragraph D to address autistic individuals who do not have reduced IQ's. We revised the title of listing 12.05 to read "Mental Retardation and Autism" and added a description of the findings necessary to establish autism.

Comment: One commenter recommended that a criterion be added to listing 12.05 to address individuals who have IQ's in the range of 70 to 79.

Response: We believe that disability for individuals with IQ's in the range of 70 to 79 is more appropriately determined when the individual's RFC and vocational factors are considered.

12.06 Anxiety Related Disorders

Comment: Several commenters requested better definitions and examples of terms in the paragraph A criteria in 12.06 such as "apprehensive expectations," "motor tensions," "autonomic hyperactivity," and "vigilance and scanning."

Response: These terms are in general use in the mental health field and are defined and used in DSM-III. We do not believe such definitions belong in the listings themselves.

Comment: One commenter suggested that it would be hard to rule out malingering in professed phobias and panic disorders.

Response: Distinguishing malingering from actual anxiety disorders is always difficult when based on symptom reports by the claimant alone. That is why, throughout our disability determination process, signs are necessary to substantiate a claim. In the case of a phobic disorder avoidant behavior must be observed and documented, and of course, must

produce marked limitations in functioning before the listing could be met or equaled. In the case of panic disorders, we would expect documentation of the objective physical, as well as the subjective mental, manifestations of panic (e.g., sweating and/or tachycardia).

Comment: Two commenters criticized the paragraph C criterion in listing 12.06 of "complete inability to function independently" as too stringent on the basis that it requires a "vegetative state" and goes beyond the work-related limitations intended by the statute.

Response: On balance, most commenters agreed with the NPRM on this issue. We did not mean that a finding of function requires a "vegetative state." The issue is one of independence.

12.07 Somatoform Disorders

Comment: A number of commenters requested that "pain" be included as a criterion in paragraph A of listing 12.07.

Response: As indicated in the proposed rules, we are deferring the inclusion of "pain" as a criterion in paragraph A of 12.07 until additional study can be done concerning pain and its disabling effects. A Commission on the Evaluation of Pain is serving as the basis for this study.

Comment: Several commenters requested that we eliminate the phrases "of several years duration" and "beginning before age 30" from paragraph A of listing 12.07 since they do not understand the relevance of them.

Response: These criteria are consistent with current medical practice in establishing the presence of somatoform disorders, and, therefore, are being retained.

12.08 Personality Disorders

Comment: One commenter indicated that 12.08 could be interpreted more "liberally" than other sections of the listings.

Response: No indication of how this could be interpreted more liberally was given. We do not agree since the proposal requires three of the B criteria rather than the two B criteria required for most other listings.

Comment: Several commenters suggested that items B3 and B4 could only be documented based on past work history and this will frequently be unavailable because the claimant has not worked.

Response: Neither B3 nor B4 requires documentation based on actual work. B3 requires documentation of deficiencies of concentration and persistence resulting in frequent failure to complete tasks in work settings or elsewhere. The B4 criterion requires episodes of deterioration or decompensation in work or work-like situations. Documentation for B3 and B4 may be obtained based on findings derived from usual or customary activities in which the claimant has been involved. Documentation would also be available from specific clinical and laboratory findings such as a psychiatric or psychological examination, psychological testing, and work sampling evaluations.

Comment: Several commenters indicated that only two of the four B criteria should be required for listing 12.08 since that would be sufficient to determine an individual is unable to work. Otherwise, listing 12.08 would be more strict than the other listings.

Response: Personality disorders (as well as somatoform disorders in 12.07) are believed to be inherently less disabling than mental disorders such as psychotic disorders. In addition, there are inherent problems in assessing issues such as the role of motivation in determining the severity of personality disorders. For these reasons, more stringent criteria have been proposed to meet this listing. Individuals with personality disorders which are more than not severe but do not meet or equal the listings would still have a detailed RFC completed which would lead to a finding of disability in appropriate cases.

Comment: One commenter suggested that subsection C of listing 12.03 should be added to section 12.08 for personality disorders. Other commenters recommended that paragraph C should apply to all listings.

Response: Personality disorders are characterized by inflexible and maladaptive behavior manifested in an individual's long term functioning rather than being limited to discrete episodes of illness. Subsection C of 12.03 was intended to be used for individuals who have illnesses which are more episodic in nature and tenuously controlled with medications and/or psychosocial support. For this reason, 12.03 would not customarily be applicable to personality disorders. If the rare instance ever occurred where subsection C of 12.03 might be applicable, the concept of "equals" should be considered. Similar reasoning is applicable for not adding paragraph C to the other listings.

Comment: One commenter suggested that 12.08A omits signs and symptoms of histrionic and narcissistic personality disorders and that a criterion should be included for identity disturbances and chronic feelings of emptiness which characterizes a borderline personality disorder.

Response: The paragraph A criteria in 12.08 are not intended to be a comprehensive diagnostic list. In rare instances where criteria other than that of 12.08A would be used to medically substantiate a personality disorder, then the use of the concept of "equals" should be considered.

Comment: Several commenters indicated that certain signs or symptoms listed in the paragraph A criteria of listing 12.08 were very similar or the same as the paragraph A criteria of other listings. This would lead to problems in deciding which listing to use. It could also result in different decisions depending on which listing is used.

Response: The intention of the paragraph A criteria is to substantiate the presence of the mental disorder. Specific signs and symptoms under listings 12.02 through 12.09 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments must be analyzed or reviewed under the mental disorder category(ies) which is supported by the individual's clinical findings. For example, while seclusiveness and isolation may not always refer to separable or distinct attributes, the individual's condition should be adjudicated under the mental disorder category for which the signs and symptoms are considered clinically characteristic or diagnostic. We have added language to the second paragraph of 12.00A to clarify this.

Comment: One commenter recommended adding a statement to the listings to indicate that an impairment should not be analyzed under listing 12.08 if it can be adjudicated under any other listing.

Response: As discussed in the response prior to this response, impairments must be analyzed or reviewed under the mental disorder category(ies) which is supported by the clinical findings.

12.09 Substance Addiction Disorders

Comment: A number of commenters agree that there is a need for a separate discrete listing for substance addiction disorders; however, they believe that the reference listing substituted by us for the listing developed by the work group is inadequate.

Response: As indicated in the proposed rules, we agree that new developments in medical research provide some support for the work group's proposed listing. However, we

believe that the work group's proposed listing must be subjected to further study and analysis before considering its adoption as part of the listings.

General Comments

Comment: Several commenters indicated that for the sake of consistent application of the revised listings, it is essential for adequate training to be provided to the users of the revised listings. In addition, some commenters felt that the medical community must be informed of the changes.

Response: A campaign has been undertaken to inform the medical community of the revisions. In addition, adequate training will be provided on the revised listings.

Comment: One commenter called to our attention a number of typographical errors that appeared in the proposed rules and requested that corrective action be taken.

Response: We thank this commenter for calling those errors to our attention, and we have taken measures to correct those errors.

Comment: One commenter noted that we have entered into a contract with the American Psychiatric Association to provide for an ongoing review of the revised listings. The commenter urged us to consider contracting with other organizations having specialized areas of expertise, e.g., mental retardation, so that a more comprehensive review of the revised listings could be done.

Response: We will consider contracting with other expert groups for future evaluations of the mental listings.

Comment: Several commenters questioned the need for the 3 year sunset provision in the proposed rules. Some question the need for one at all, while others felt that the time period should be extended.

Response: During this 3 year period, we will carefully monitor the regulations to ensure an ongoing evaluation of the medical evaluation criteria. Periodic updating and revisions in this area are needed because of the dynamic nature of the diagnoses, evaluation and treatment of the mental disease process.

Comment: Several commenters indicated that the listings categories should have been expanded even further than the eight categories in the proposed rules in order to address particular aspects of categories not listed, such as borderline personality disorders and ecological mental illness. Another commenter recommended that we add a statement to discuss how an impairment should be evaluated if it is not one of the eight listed categories.

Response: Because of the diversity of mental disorders, it was necessary to group some disorders under a single listing. The organization of the revised listings is based on input from leading experts in the field of mental health and on the third revision of the DSM III which provides a realistic organization in terms of the common characteristics of the mental disorders that are evaluated under a particular listing. If an impairment is not listed, it can be evaluated in accordance with the "medical equivalence" concept (see regulations 404.1526 and 416.926).

In the case of borderline personality disorders, it is a difficult differential diagnosis which is sometimes classified under personality disorders and sometimes under schizoaffective schizophrenia. Depending on the presentation of the individual and the judgment of the physician, either the 12.03 or 12.08 criteria might be applied.

Concerning ecological mental illnesses, such illnesses have not been specifically included in the listings since there is no broad clinical acceptance of such illnesses. Claims on the basis of ecological illnesses would be handled under the medical equivalence concept.

Comment: Several commenters indicated that the proposed rules failed to address the childhood mental listings. Another commenter indicated that these rules failed to address those individuals who are physically disabled.

Response: Concerning the childhood mental listings, they are currently being analyzed with the intent of revising them. Proposed revisions to the childhood mental listings will be published in the **Federal Register** as proposed rules to permit the public to comment on them. Concerning the evaluation of individuals with physical impairments, these rules were not intended for that purpose. Evaluation of physical impairments is achieved through the nonmental sections of the Listing of Impairments.

Comment: Several commenters indicated that the new listings require more evidence, and thus will adversely impact processing time. These commenters indicated that some administrative procedure such as "medical hold" would help ensure compliance.

Response: We have a responsibility to make fair, accurate, and prompt decisions for those individuals who seek benefits. We realize that these listings and other initiatives require more, different, and better documentation, but we can only speculate as to what effect these changes may have on processing time. All cases must be well documented before a decision is made. At the same time, we will not retreat from our goal and responsibility to provide prompt decisions.

Comment: A number of commenters requested that various terms contained in the proposed rules be defined.

Response: To the extent possible, this has been done, e.g., "marked" has been clarified in 12.00C. However, further clarification of most terms was found unnecessary, since the terms were either defined in standard medical dictionaries or elsewhere in our materials.

Comment: A number of commenters have recommended various modifications or additions to the proposed criteria which are used to medically substantiate an impairment for purposes of evaluation under the listings (the paragraph A criteria).

Response: Some of these recommendations have been responded to under the mental disorder listing addressed by the recommendations. Those that were not specifically addressed were not adopted. That is not to say that the recommended criteria could not be used to medically substantiate a mental disorder impairment. Some of the recommended criteria could be used for that purpose under the medical equivalence concept. However, most of the recommended criteria were unique or uncommon and would be more appropriately a consideration under the medical equivalence concept.

Additional Changes

We expanded the list of criteria in paragraph A of Listing 12.04 (affective disorders) to incorporate another criterion that can be used to medically substantiate a depressive or manic syndrome. The criterion is "hallucinations, delusions, or paranoid thinking." We believe this criterion is as equally valid in medically substantiating a depressive or manic syndrome as the criteria contained in the proposed rules.

The criterion in paragraph A3 of listing 12.04 (affective disorders) has been reworded in order to clarify that the bipolar syndrome must have a history of a full symptomatic picture of both manic and depressive syndromes. However, it needs only be currently characterized by either of these syndromes.

We grouped the "e" through "i" criteria in paragraph A2 of listing 12.07 (Somatoform Disorders) so that they appear in a more logical way. As proposed, those criteria appeared as "e. psychogenic seizures; or f. Coordination disturbance; or g. Akinesia; or h. Dyskinesia; or i. Anesthesia." Those criteria now appear as follows; "e. Movement and its control (e.g.,

coordination disturbance, psychogenic seizures, akinesia, dyskinesia); or f. Sensation (e.g., diminished or heightened)."

We revised the disorders cross referenced in paragraph A of 12.09 (Substance Addiction Disorders) from "Chronic brain damage" to "Organic mental disorders," since, "Organic mental disorders" (Listing 12.02) is the name of the disorders being cross referenced.

Executive Order 12291: These regulations are not expected to produce significant additional program costs when compared to those which would be incurred under prior regulations. They will not affect the economy by $100 million or more yearly and will not increase costs or prices significantly for any segment of the population or otherwise meet the criteria for a major rule as specified in Executive Order 12291. Therefore, we have determined that a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations do not have a significant economic impact on a substantial number of small entities because they affect only individuals.

Paperwork Reduction Act

Under Pub. L. 96-511 (the Paperwork Reduction Act of 1980), we are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. Sections 404.1520a and 416.920a of this rule provide for the preparation of a standard document as a part of the procedure for evaluating mental impairments. At the initial and reconsideration levels of adjudication, the document is completed by a medical consultant who is generally in the employ of a State disability determination services that makes disability determinations for us.

OMB has determined that this constitutes an information collection requirement that is subject to review and approval under the Paperwork Reduction Act. When the Notice of Proposed Rulemaking was published, the public was invited to submit comments on the use of the document to the Office of Information and Regulatory Affairs, OMB. No comments were received, and the requirement has been cleared by OMB (0960-0413).

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, Survivors and disability insurance.

Dated: June 19, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: July 29, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

BILLING CODE 4190-11-M

PSYCHIATRIC REVIEW TECHNIQUE FORM

Name	SSN

Assessment is For: ☐ Current Evaluation ☐ 12 Mo. After Onset: _____

☐ Date Last Insured: _____ ☐ Other: _____ to _____

Reviewer's Signature	Date

I. MEDICAL SUMMARY

A. Medical Disposition(s):

1. ☐ No Medically Determinable Impairment
2. ☐ Impairment(s) Not Severe
3. ☐ Meets Listing _____ (Cite Listing and subsection)
4. ☐ Equals Listing _____ (Cite Listing and subsection)
5. ☐ Impairment Severe But Not Expected To Last 12 Months
6. ☐ RFC Assessment Necessary (i.e., a severe impairment is present which does not meet or equal a listed impairment)
7. ☐ Referral To Another Medical Specialty (necessary when there is a coexisting nonmental impairment) (Except for OHA reviewers.)
8. ☐ Insufficient Medical Evidence (i.e., a programmatic documentation deficiency is present) (Except for OHA reviewers.)

B. Category(ies) Upon Which the Medical Disposition(s) is Based:

1. ☐ 12.02 Organic Mental Disorders
2. ☐ 12.03 Schizophrenic, Paranoid and other Psychotic Disorders
3. ☐ 12.04 Affective Disorders
4. ☐ 12.05 Mental Retardation and Autism
5. ☐ 12.06 Anxiety Related Disorders
6. ☐ 12.07 Somatoform Disorders
7. ☐ 12.08 Personality Disorders
8. ☐ 12.09 Substance Addiction Disorders

II. Reviewer's Notes (Except OHA reviewers. OHA reviewers should record the subject information in the body and findings of their decision.): A. Record below the pertinent signs, symptoms, findings, functional limitations, and the effects of treatment contained in the case, B. Remarks (any information the reviewer may wish to communicate which is not covered elsewhere in form, e.g., duration situations).

III. Documentation of Factors that Evidence the Disorder (Comment on each broad category of disorder.)

A. 12.02 Organic Mental Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Psychological or behavioral abnormalities associated with a dysfunction of the brain . . . . as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ Disorientation to time and place
2. ☐ ☐ ☐ Memory Impairment
3. ☐ ☐ ☐ Perceptual or thinking disturbances
4. ☐ ☐ ☐ Change in personality
5. ☐ ☐ ☐ Disturbance in mood
6. ☐ ☐ ☐ Emotional lability and impairment in impulse control
7. ☐ ☐ ☐ Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.
8. ☐ ☐ ☐ Other _____

B. 12.03 Schizophrenic, Paranoid and Other Psychotic Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Psychotic features and deterioration that are persistent (continuous or intermittent), as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ Delusions or hallucinations

2. ☐ ☐ ☐ Catatonic or other grossly disorganized behavior

3. ☐ ☐ ☐ Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:

   a. ☐ Blunt affect, or

   b. ☐ Flat affect, or

   c. ☐ Inappropriate affect

4. ☐ ☐ ☐ Emotional withdrawal and/or isolation

5. ☐ ☐ ☐ Other _____

C. 12.04 Affective Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Disturbance of mood, accompanied by a full or partial manic or depressive syndrome, as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ Depressive syndrome characterized by at least four of the following:

   a. ☐ Anhedonia or pervasive loss of interest in almost all activities, or

   b. ☐ Appetite disturbance with change in weight, or

   c. ☐ Sleep disturbance, or

   d. ☐ Psychomotor agitation or retardation, or

   e. ☐ Decreased energy, or

   f. ☐ Feelings of guilt or worthlessness, or

   g. ☐ Difficulty concentrating or thinking, or

   h. ☐ Thoughts of suicide, or

   i. ☐ Hallucinations, delusions, or paranoid thinking.

2. ☐ ☐ ☐ Manic syndrome characterized by at least three of the following:

   a. ☐ Hyperactivity, or

   b. ☐ Pressures of speech, or

   c. ☐ Flight of ideas, or

   d. ☐ Inflated self-esteem, or

   e. ☐ Decreased need for sleep, or

   f. ☐ Easy distractability, or

   g. ☐ Involvement in activities that have a high probability of painful consequences which are not recognized, or

   h. ☐ Hallucinations, delusions, or paranoid thinking.

3. ☐ ☐ ☐ Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes).

4. ☐ ☐ ☐ Other _____

D. 12.05 Mental Retardation and Autism

|__| No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

|__| Significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period (before age 22) or pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period, as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. |__| |__| |__| Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded.*

2. |__| |__| |__| A valid verbal, performance, or full scale I.Q. of 59 or less.*

3. |__| |__| |__| A valid verbal, performance, or full scale I.Q. of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function.*

4. |__| |__| |__| A valid verbal, performance, or full scale IQ of 60 to 69 inclusive or in the case of autism, gross deficits of social and communicative skills.*

5. |__| |__| |__| Other _____

*NOTE: Items 1, 2, 3, and 4 correspond to Listings 12.05A, 12.05B, 12.05C, and 12.05D, respectively.

E. 12.06 Anxiety Related Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Anxiety as the predominant disturbance or anxiety experienced in the attempt to master symptoms, as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ Generalized persistent anxiety acompanied by three of the following:

   a. ☐ Motor tension, or

   b. ☐ Autonomic hyperactivity, or

   c. ☐ Apprehensive expectation, or

   d. ☐ Vigilance and scanning

2. ☐ ☐ ☐ A persistent irrational fear of a specific object, activity or situation which results in a compelling desire to avoid the dreaded object, activity, or situation

3. ☐ ☐ ☐ Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror, and sense of impending doom occurring on the average of at least once a week

4. ☐ ☐ ☐ Recurrent obsessions or compulsions which are a source of marked distress

5. ☐ ☐ ☐ Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress

6. ☐ ☐ ☐ Other _____

F. 12.07 Somatoform Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms, as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ A history of multiple physical symptoms of several years duration beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly

2. ☐ ☐ ☐ Persistent nonorganic disturbance of one of the following:

   a. ☐ Vision, or

   b. ☐ Speech, or

   c. ☐ Hearing, or

   d. ☐ Use of a limb, or

   e. ☐ Movement and its control (e.g., coordination disturbances, psychogenic seizures, akinesia, dyskinesia), or

   f. ☐ Sensation (e.g., diminished or heightened)

3. ☐ ☐ ☐ Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury

4. ☐ ☐ ☐ Other _____

G. 12.08 Personality Disorders

☐ No evidence of a sign or symptom CLUSTER or SYNDROME which appropriately fits with this diagnostic category. (Some features appearing below may be present in the case but they are presumed to belong in another disorder and are rated in that category.)

☐ Inflexible and maladaptive personality traits which cause either significant impairment in social or occupational functioning or subjective distress, as evidenced by at least one of the following:

Present-Absent-Insufficient Evidence

1. ☐ ☐ ☐ Seclusiveness or autistic thinking

2. ☐ ☐ ☐ Pathologically inappropriate suspiciousness or hostility

3. ☐ ☐ ☐ Oddities of thought, perception, speech and behavior

4. ☐ ☐ ☐ Persistent disturbances of mood or affect

5. ☐ ☐ ☐ Pathological dependence, passivity, or aggressivity

6. ☐ ☐ ☐ Intense and unstable interpersonal relationships and impulsive and damaging behavior

7. ☐ ☐ ☐ Other _____

H. 12.09 Substance Addiction Disorders: Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

Present - Absent - Insufficient Evidence

☐ ☐ ☐

If present, evaluate under one or more of the most closely applicable listings:

1. ☐ Listing 12.02 - Organic mental disorders*
2. ☐ Listing 12.04 - Affective disorders*
3. ☐ Listing 12.06 - Anxiety disorders*
4. ☐ Listing 12.08 - Personality disorders*
5. ☐ Listing 11.14 - Peripheral neuropathies*
6. ☐ Listing 5.05 - Liver damage*
7. ☐ Listing 5.04 - Gastritis*
8. ☐ Listing 5.08 - Pancreatitis*
9. ☐ Listing 11.02 or 11.03 - Seizures*
10. ☐ Other _____

*NOTE: Items 1, 2, 3, 4, 5, 6, 7, 8, and 9 correspond to Listings 12.09A, 12.09B, 12.09C, 12.09D, 12.09E, 12.09F, 12.09G, 12.09H, and 12.09I, respectively. If items 1, 2, 3, or 4 are checked, only the numbered items in subsections IIIA, IIIC, IIIE, or IIIG of the form need be checked. The first two blocks under the disorder heading in those subsections need not be checked.

IV. Rating of Impairment Severity

A. "B" Criteria of the Listings

Indicate to what degree the following functional limitations (which are found in paragraph B of listings 12.02-12.04 and 12.06-12.08 and paragraph D of 12.05) exist as a result of the individual's mental disorder(s).

Note: Items 3 and 4 below are more than measures of frequency. Describe in part II of this form (Reviewer's Notes) the duration and effects of the deficiencies (item 3) or episodes (item 4). Please read carefully the instructions for the completion of this section.

Specify the listing(s) (i.e., 12.02 through 12.09) under which the items below are being rated _____.

FUNCTIONAL LIMITATION	DEGREE OF LIMITATION					
1. Restriction of Activities of Daily Living	None ☐	Slight ☐	Moderate ☐	Marked* ☐	Extreme ☐	Insufficient Evidence ☐
2. Difficulties in Maintaining Social Functioning	None ☐	Slight ☐	Moderate ☐	Marked* ☐	Extreme ☐	Insufficient Evidence ☐
3. Deficiencies of Concentration, Persistence or Pace Resulting in Failure to Complete Tasks in a timely Manner (in work settings or elsewhere)	Never ☐	Seldom ☐	Often ☐	Frequent* ☐	Constant ☐	Insufficient Evidence ☐
4. Episodes of Deterioration or Decompensation in Work or Work-Like Settings Which Cause the Individual to Withdraw from that Situation or to Experience Exacerbation of Signs and Symptoms (which may Include Deterioration of Adaptive Behaviors)	Never ☐		Once or Twice ☐	Repeated* (three or more) ☐	Continual ☐	Insufficient Evidence ☐

B. Summary of Functional Limitation Rating for "B" Criteria

Indicate the number of the above functional limitations manifested at the degree of limitation that satisfies the listings. ☐ (The number in the box must be at least 2 to satisfy the requirements of paragraph B in Listings 12.02, 12.03, 12.04, and 12.06 and paragraph D in 12.05; and at least 3 to satisfy the requirements in paragraph B in Listings 12.07 and 12.08.)

* Degree of limitation that satisfies the Listings; Extreme, Constant and Continual also satisfy that requirement.

C. "C" Criteria of the Listings

1. If 12.03 Disorder (Schizophrenic, etc.) and in Full or Partial Remission

Note: Item b. below is more than a measure of frequency. Describe in part II of this form (Reviewer's Notes) the duration and effects of the episodes. Please read carefully the instructions for the completion of this section.

	Present	Absent	Insufficient Evidence	
a.	☐	☐	☐	Medically documented history of one or more episodes of acute symptoms, signs and functional limitations which at the time met the requirements in A and B of 12.03, although these symptoms or signs are currently attenuated by medication or psychosocial support.
b.	☐	☐	☐	Repeated episodes of deterioration or decompensation in situations which cause the individual to withdraw from that situation or to experience exacerbation of signs or symptoms (which may include deterioration of adaptive behaviors).
c.	☐	☐	☐	Documented current history of two or more years of inability to function outside of a highly supportive living situation.

(For the requirements in paragraph C of 12.03 to be satisfied, either a. and b. or a. and c. must be checked as present.)

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2. If 12.06 Disorder (Anxiety Related)

Present	Absent	Insufficient Evidence	
☐	☐	☐	Symptoms resulting in complete inability to function independently outside the area of one's home.

(If present is checked, the requirements in paragraph C of 12.06 are satisfied.)

BILLING CODE 4190-11-C

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950——)

For the reasons set out in the preamble, Part 404, Subpart P, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

Subpart P—Determining Disability and Blindness

1. The authority citation for Subpart P continues to read as follows:

Authority: Secs. 202, 205, 216, 221, 222, 223, 225 and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 68 Stat. 1080, 1081 and 1082 as amended, 70 Stat. 815 and 817, as amended, 49 Stat. 647, as amended (42 U.S.C. 402, 405, 416, 421, 422, 423, 425 and 1302).

2. A new § 404.1520a is added to read as follows:

§ 404.1520a. Evaluation of mental impairments.

(a) *General.* The steps outlined in § 404.1520 apply to the evaluation of physical and mental impairments. In addition, in evaluating the severity of mental impairments, a special procedure must be followed by us at each administrative level of review. Following this procedure will assist us in:

(1) Identifying additional evidence necessary for the determination of impairment severity;

(2) Considering and evaluating aspects of the mental disorder(s) relevant to your ability to work; and

(3) Organizing and presenting the findings in a clear, concise, and consistent manner.

(b) *Use of the procedure to record pertinent findings and rate the degree of functional loss.*

(1) This procedure requires us to record the pertinent signs, symptoms, findings, functional limitations, and effects of treatment contained in your case record. This will assist us in determining if a mental impairment(s) exists. Whether or not a mental impairment(s) exists is decided in the same way the question of a physical impairment is decided, i.e., the evidence must be carefully reviewed and conclusions supported by it. The mental status examination and psychiatric history will ordinarily provide the needed information. (See § 404.1508) for further information about what is needed to show an impairment.)

(2) If we determine that a mental impairment(s) exists, this procedure then requires us to indicate whether certain medical findings which have been found especially relevant to the ability to work are present or absent.

(3) The procedure then requires us to rate the degree of functional loss resulting from the impairment(s). Four areas of function considered by us as essential to work have been identified, and the degree of functional loss in those areas must be rated on a scale that ranges from no limitation to a level of severity which is incompatible with the ability to perform those work-related functions. For the first two areas (activities of daily living and social functioning), the rating of limitation must be done based upon the following five point scale: none, slight, moderate, marked, and extreme. For the third area (concentration, persistence, or pace) the following five point scale must be used: never, seldom, often, frequent, and constant. For the fourth area (deterioration or decompensation in work or work-like settings), the following four point scale must be used: never, once or twice, repeated (three or more), and continual. The last two points for each of these scales represent a degree of limitation which is incompatible with the ability to perform the work-related function.

(c) *Use of the procedure to evaluate mental impairments.* Following the rating of the degree of functional loss resulting from the impairment, we must then determine the severity of the mental impairment(s).

(1) If the four areas considered by us as essential to work have been rated to indicate a degree of limitation as "none" or "slight" in the first and second areas, "never" or "seldom" in the third area, and "never" in the fourth area, we can generally conclude that the impairment is not severe, unless the evidence otherwise indicates there is significant limitation of your mental ability to do basic work activities (see § 404.1521).

(2) If your mental impairment(s) is severe, we must then determine if it meets or equals a listed mental disorder. This is done by comparing our prior conclusions based on this procedure (i.e., the presence of certain medical findings considered by us as especially relevant to your ability to work and our rating of functional loss resulting from the mental impairment(s)) against the paragraph A and B criteria of the appropriate listed mental disorder(s). If we determine that paragraph C criteria will be used in lieu of paragraph B criteria (see listings 12.03 and 12.06), we will, by following this procedure, indicate on the document whether the evidence is sufficient to establish the presence or absence of the criteria. (See paragraph (d) of this section).

(3) If you have a severe impairment(s), but the impairment(s) neither meets nor equals the listings, we must then do a residual functional capacity assessment, unless you are claiming benefits as a disabled widow(er) or surviving divorced spouse.

(4) At all adjudicative levels we must, in each case, incorporate the pertinent findings and conclusions based on this procedure in our decision rationale. Our rationale must show the significant history, including examination, laboratory findings, and functional limitations that we considered in reaching conclusions about the severity of the mental impairment(s).

(d) *Preparation of the document.* A standard document outlining the steps of this procedure must be completed by us in each case at the initial, reconsideration, administrative law judge hearing, and Appeals Council levels (when the Appeals Council issues a decision).

(1) At the initial and reconsideration levels the standard document must be completed and signed by our medical consultant. At the administrative law judge hearing level, several options are available:

(i) The administrative law judge may complete the document without the assistance of a medical advisor;

(ii) The administrative law judge may call a medical advisor for assistance in preparing the document; or

(iii) Where new evidence is received that is not merely cumulative of evidence already in your case file or where the issue of a mental impairment arises for the first time at the administrative law judge hearing level, the administrative law judge may decide to remand the case to the State agency for completion of the document and a new determination. Remand may also be made in situations where the services of a medical advisor are determined necessary but unavailable to the administrative law judge. In such circumstances, however, a remand may ordinarily be made only once.

(2) For all cases involving mental disorders at the administrative law judge hearing or Appeals Council levels, the standard document will be appended to the decision.

(Approved by the Office of Management & Budget under control number 0960-0413)

3. Part A of Appendix 1 (Listing of Impairments) of Subpart P is amended by revising 12.00, Mental Disorder, to read as follows:

Appendix 1—Listing of Impairments

Part A

Criteria applicable to individuals age 18 and over and to children under age 18 if the disease processes have a similar effect on adults and younger persons.

* * * * *

12.00 Mental Disorders

The mental disorders listings in 12.00 of the Listing of Impairments will only be effective for 3 years unless extended by the Secretary or revised and promulgated again. Consequently, these listings will no longer be effective on August 28, 1988.

A. *Introduction:* The evaluation of disability on the basis of mental disorders requires the documentation of a medically determinable impairment(s) as well as consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. The listings for mental disorders are arranged in eight diagnostic categories: organic mental disorders (12.02); schizophrentic, paranoid and other psychotic disorders (12.03); affective disorders (12.04); mental retardation and autism (12.05); anxiety related disorders (12.06); somatoform disorders (12.07); personality disorders (12.08); and substance addiction disorders (12.09). Each diagnostic group, except listings 12.05 and 12.09, consists of a set of clinical findings (paragraph A criteria), one or more of which must be met, and which, if met, lead to a test of functional restrictions (paragraph B criteria), two or three of which must also be met. There are additional considerations (paragraph C criteria) in listings 12.03 and 12.06, discussed therein.

The purpose of including the criteria in paragraph A of the listings for mental disorders is to medically substantiate the presence of a mental disorder. Specific signs and symptoms under any of the listings 12.02 through 12.09 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) which is supported by the individual's clinical findings.

The purpose of including the criteria in paragraphs B and C of the listings for mental disorders is to describe those functional limitations associated with mental disorders which are incompatible with the ability to work. The restrictions listed in paragraphs B and C must be the result of the mental disorder which is manifested by the clinical findings outlined in paragraph A. The criteria included in paragraphs B and C of the listings for mental disorders have been chosen because they represent functional areas deemed essential to work. An individual who is severely limited in these areas as the result of an impairment identified in paragraph A is presumed to be unable to work.

The structure of the listing for substance addiction disorders, listing 12.09, is different from that for the other mental disorder listings. Listing 12.09 is structured as a reference listing; that is, it will only serve to indicate which of the other listed mental or physical impairments must be used to evaluate the behavioral or physical changes resulting from regular use of addictive substances.

The listings for mental disorders are so constructed that an individual meeting or equaling the criteria could not reasonably be expected to engage in gainful work activity.

Individuals who have an impairment with a level of severity which does not meet the criteria of the listings for mental disorders may or may not have the residual functional capacity (RFC) which would enable them to engage in substantial gainful work activity. The determination of mental RFC is crucial to the evaluation of an individual's capacity to engage in substantial gainful work activity when the criteria of the listings for mental disorders are not met or equaled but the impairment is nevertheless severe.

RFC may be defined as a multidimensional description of the work-related abilities which an individual retains in spite of medical impairments. RFC complements the criteria in paragraphs B and C of the listings for mental disorders by requiring consideration of an expanded list of work-related capacities which may be impaired by mental disorder when the impairment is severe but does not meet or equal a listed mental disorder. (While RFC may be applicable in most claims, the law specifies that it does not apply to the following special claims categories: disabled title XVI children below age 18, widows, widowers and surviving divorced wives. The impairment(s) of these categories must meet or equal a listed impairment for the individual to be eligible for benefits based on disability.)

B. *Need for Medical Evidence:* The existence of a medically determinable impairment of the required duration must be established by medical evidence consisting of clinical signs, symptoms and/or laboratory or psychological test findings. These findings may be intermittent or persistent depending on the nature of the disorder. Clinical signs are medically demonstrable phenomena which reflect specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality. These signs are typically assessed by a psychiatrist or psychologist and/or documented by psychological tests. Symptoms are complaints presented by the individual. Signs and symptoms generally cluster together to constitute recognizable clinical syndromes (mental disorders). Both symptoms and signs which are part of any diagnosed mental disorder must be considered in evaluating severity.

C. *Assessment of Severity:* For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph B of the listings for mental disorders (descriptions of restrictions of activities of daily living; social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work). Where "marked" is used as a standard for measuring the degree of limitation, it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively. Four areas are considered.

1. *Activities of daily living* including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. In the context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness and effectiveness. It is necessary to define the extent to which the individual is capable of initiating and participating in activities independent of supervision or direction.

"Marked" is not the number of activities which are restricted but the overall degree of restriction or combination of restrictions which must be judged. For example, a person who is able to cook and clean might still have marked restrictions of daily activities if the person were too fearful to leave the immediate environment of home and neighborhood, hampering the person's ability to obtain treatment or to travel away from the immediate living environment.

2. *Social functioning* refers to an individual's capacity to interact appropriately and communicate effectively with other individuals. Social functioning includes the ability to get along with others, e.g., family members, friends, neighbors, grocery clerks, landlords, bus drivers, etc. Impaired social functioning may be demonstrated by a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, social isolation, etc. Strength in social functioning may be documented by an individual's ability to initiate social contacts with others, communicate clearly with others, interact and actively participate in group activities, etc. Cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity also need to be considered. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority, e.g., supervisors, or cooperative behaviors involving coworkers.

"Marked" is not the number of areas in which social functioning is impaired, but the overall degree of interference in a particular area or combination of areas of functioning. For example, a person who is highly antagonistic, uncooperative or hostile but is tolerated by local storekeepers may nevertheless have marked restrictions in social functioning because that behavior is not acceptable in other social contexts.

3. *Concentration, persistence and pace* refer to the ability to sustain focused attention sufficiently long to permit the timely completion of tasks commonly found in work settings. In activities of daily living, concentration may be reflected in terms of ability to complete tasks in everyday household routines. Deficiencies in concentration, persistence and pace are best observed in work and work-like settings. Major impairment in this area can often be

assessed through direct psychiatric examination and/or psychological testing, although mental status examination or psychological test data alone should not be used to accurately describe concentration and sustained ability to adequately perform work-like tasks. On mental status examinations, concentration is assessed by tasks such as having the individual subtract serial sevens from 100. In psychological tests of intelligence or memory, concentration is assessed through tasks requiring short-term memory or through tasks that must be completed within established time limits. In work evaluations, concentration persistence, and pace are assessed through such tasks as filing index cards, locating telephone numbers, or disassembling and reassembling objects. Strengths and weaknesses in areas of concentration can be discussed in terms of frequency of errors, time it takes to complete the task, and extent to which assistance is required to complete the task.

4. *Deterioration or decompensation in work or work-like settings* refers to repeated failure to adapt to stressful circumstances which cause the individual either to withdraw from that situation or to experience exacerbation of signs and symptoms (i.e., decompensation) with an accommpanying difficulty in maintaining activities of daily living, social relationships, and/or maintaining concentration, peristance, or pace (i.e., deterioration which may include deterioriation of adaptive behaviors). Stresses common to the work environment include decisions, attendance, schedules, completing tasks, interactions with supervisors, interactions with peers, etc.

D. *Documentation:* The presence of a mental disorder should be documented primarily on the basis of reports from individual providers, such as psychiatrists and psychologists, and facilities such as hospitals and clinics. Adequate descriptions of functional limitations must be obtained from these or other sources which may include programs and facilities where the individual has been observed over a considerable period of time.

Information from both medical and nonmedical sources may be used to obtain detailed descriptions of the individual's activities of daily living; social functioning; concentration, persistance and pace; or ability to tolerate increased mental demands (stress). This information can be provided by programs such as community mental health centers, day care centers, sheltered workshops, etc. It can also be provided by others, including family members, who have knowledge of the individual's functioning. In some cases descriptions of activities of daily living or social functioning given by individuals or treating sources may be insufficiently detailed and/or may be in conflict with the clinical picture otherwise observed or described in the examinations or reports. It is necessary to resolve any inconsistencies or gaps that may exist in order to obtain a proper understanding of the individual's functional restrictions.

An individual's level of functioning may vary considerably over time. The level of functioning at a specific time may seem relatively adequate or, conversely, rather poor. Proper evaluation of the impairment must take any variations in level of functioning into account in arriving at a determination of impairment severity over time. Thus, it is vital to obtain evidence from relevant sources over a sufficiently long period prior to the date of adjudication in order to establish the individual's impairment severity. This evidence should include treatment notes, hospital discharge summaries, and work evaluation or rehabilitation progress notes if these are available.

Some individuals may have attempted to work or may actually have worked during the period of time pertinent to the determination of disability. This may have been an independent attempt at work, or it may have been in conjunction with a community mental health or other sheltered program which may have been of either short or long duration. Information concerning the individual's behavior during any attempt to work and the circumstances surrounding termination of the work effort are particularly useful in determining the individual's ability or inability to function in a work setting.

The results of well-standardized psychological tests such as the Wechsler Adult Intelligence Scale (WAIS), the Minnesota Multiphasic Personality Inventory (MMPI), the Rorschach, and the Thematic Apperception Test (TAT), may be useful in establishing the existence of a mental disorder. For example, the WAIS is useful in establishing mental retardation, and the MMPI, Rorschach, and TAT may provide data supporting several other diagnoses. Broad-based neuropsychological assessments using, for example, the Halstead-Reitan or the Luria-Nebraska batteries may be useful in determining brain function deficiencies, particularly in cases involving subtle findings such as may be seen in traumatic brain injury. In addition, the process of taking a standardized test requires concentration, persistence and pace; performance on such tests may provide useful data. Test results should, therefore, include both the objective data and a narrative description of clinical findings. Narrative reports of intellectual assessment should include a discussion of whether or not obtained IQ scores are considered valid and consistent with the individual's developmental history and degree of functional restriction.

In cases involving impaired intellectual functioning, a standardized intelligence test, e.g., the WAIS, should be administered and interpreted by a psychologist or psychaitrist qualified by training and experience to perform such an evaluation. In special circumstances, nonverbal measures, such as the Raven Progressive Matrices, the Leiter international scale, or the Arthur adaptation of the Leiter may be substituted.

Identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. In this connection, it must be noted that on the WAIS, for example, IQs of 69 and below are characteristic of approximately the lowest 2 percent of the general population. In instances where other tests are administered, it would be necessary to convert the IQ to the corresponding percentile rank in the general population in order to determine the actual degree of impairment reflected by those IQ scores.

In cases where more than one IQ is customarily derived from the test administered, i.e., where verbal, performance, and full-scale IQs are provided as on the WAIS, the lowest of these is used in conjunction with listing 12.05.

In cases where the nature of the individual's intellectual impairment is such that standard intelligence tests, as described above, are precluded, medical reports specifically describing the level of intellectual, social, and physical function should be obtained. Actual observations by Social Security Administration or State agency personnel, reports from educational institutions and information furnished by public welfare agencies or other reliable objective sources should be considered as additional evidence.

E. *Chronic Mental Impairments:* Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. Individuals with chronic psychotic disorders commonly have their lives structured in such a way as to minimize stress and reduce their signs and symptoms. Such individuals may be much more impaired for work than their signs and symptoms would indicate. The results of a single examination may not adequately describe these individuals' sustained ability to function. It is, therefore, vital to review all pertinent information relative to the individual's condition, especially at times of increased stress. It is mandatory to attempt to obtain adequate descriptive information from all sources which have treated the individual either currently or in the time period relevant to the decision.

F. *Effects of Structured Settings:* Particularly in cases involving chronic mental disorders, overt symptomatology may be controlled or attenuated by psychosocial factors such as placement in a hospital, board and care facility, or other environment that provides similar structure. Highly structured and supportive settings may greatly reduce the mental demands placed on an individual. With lowered mental demands, overt signs and symptoms of the underlying mental disorder may be minimized. At the same time, however, the individual's ability to function outside of such a structured and/or supportive setting may not have changed. An evaluation of individuals whose symptomatology is controlled or attenuated by psychosocial factors must consider the ability of the individual to function outside of such highly structured settings. (For these reasons the paragraph C criteria were added to Listings 12.03 and 12.06.)

G. *Effects of Medication:* Attention must be given to the effect of medication on the individual's signs, symptoms and ability to function. While psychotropic medications may control certain primary manifestations of a mental disorder, e.g., hallucinations, such treatment may or may not affect the functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the

psychotropic medications, particular attention must be focused on the functional restrictions which may persist. These functional restrictions are also to be used as the measure of impairment severity. (See the paragraph C criteria in Listings 12.03 and 12.06.)

Neuroleptics, the medicines used in the treatment of some mental illnesses, may cause drowsiness, blunted effect, or other side effects involving other body systems. Such side effects must be considered in evaluating overall impairment severity. Where adverse effects of medications contribute to the impairment severity and the impairment does not meet or equal the listings but is nonetheless severe, such adverse effects must be considered in the assessment of the mental residual functional capacity.

H. *Effect of Treatment:* It must be remembered that with adequate treatment some individuals suffering with chronic mental disorders not only have their symptoms and signs ameliorated but also return to a level of function close to that of their premorbid status. Our discussion here in 12.00H has been designed to reflect the fact that present day treatment of a mentally impaired individual may or may not assist in the achievement of an adequate level of adaptation required in the work place. (See the paragraph C criteria in Listings 12.03 and 12.06.)

I. *Technique for Reviewing the Evidence in Mental Disorders Claims to Determine Level of Impairment Severity*: A special technique has been developed to ensure that all evidence needed for the evaluation of impairment severity in claims involving mental impairment is obtained, considered and properly evaluated. This technique, which is used in connection with the sequential evaluation process, is explained in § 404.1520a and § 416.920a.

12.01 Category of Impairments-Mental

12.02 *Organic Mental Disorders*: Psychological or behavorial abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

1. Disorientation to time and place; or
2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
4. Change in personality; or
5. Disturbance in mood; or
6. Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders*: Characterized by the onset of pyschotic features with deterioration from a previous level of functioning.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
   a. Blunt affect; or
   b. Flat affect; or
   c. Inappropriate affect;

OR

4. Emotional withdrawal and/or isolation:

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

OR

C. Medically documented history of one or more episodes of actute symptoms, signs and functional limitations which at the time met the requirements in A and B of this listing, although these symptoms or signs are currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of deterioration or decompensation in situations which cause the individual to withdraw from that situation or to experience exacerbation of signs or symptoms (which may include deterioration of adaptive behaviors); or
2. Documented current history of two or more years of inability to function outside of a highly supportive living situation.

12.04 *Affective Disorders:* Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
   a. Anhedonia or pervasive loss of interest in almost all activites; or
   b. Appetite disturbance with change in weight; or
   c. Sleep disturbance; or
   d. Psychomotor agitation or retardation; or
   e. Decreased energy; or
   f. Feelings of guilt or worthlessness; or
   g. Difficulty concentrating or thinking; or
   h. Thoughts of suicide; or
   i. Hallucinations, delusions or paranoid thinking; or
2. Manic syndrome characterized by at least three of the following:
   a. Hyperactivity; or
   b. Pressure of speech; or
   c. Flight of ideas; or
   d. Inflated self-esteem; or
   e. Decreased need for sleep; or
   f. Easy distractability; or
   g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
   h. Hallucinations, delusions or paranoid thinking;

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.05 *Mental Retardation and Autism:* Mental retardation refers to a significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period (before age 22). (Note: The scores specified below refer to those obtained on the WAIS, and are used only for reference purposes.

Scores obtained on other standardized and individually administered tests are acceptable, but the numerical values obtained must indicate a similar level of intellectual functioning.) Autism is a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

C. A valid verbal, performance, or full scale IQ of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale IQ of 60 to 69 inclusive or in the case of autism, gross deficits of social and communicative skills with two of the following;

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or eleswhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.06 *Anxiety Related Disorders:* In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
   a. Motor tension; or
   b. Autonomic hyperactivity; or
   c. Apprehensive expectation; or
   d. Vigilance and scanning;

or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsions which are a source of marked distress; or
5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-liked settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

OR

C. Resulting in complete inability to function independently outside the area of one's home.

12.07 *Somatoform Disorders:* Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented by evidence of one of the following:

1. A history of multiple physical symptoms of several years duration, beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly; or
2. Persistent nonorganic disturbance of one of the following:
   a. Vision; or
   b. Speech; or
   c. Hearing; or
   d. Use of a limb; or
   e. Movement and its control (e.g., coordination disturbance, psychogenic seizures, akinesia, dyskinesia; or
   f. Sensation (e.g., diminished or heightened).
3. Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury;

AND

B. Resulting in three of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behavior).

12.08 *Personality Disorders:* A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. Seclusiveness or autistic thinking; or
2. Pathologically inappropriate suspiciousness or hostility; or
3. Oddities of thought, perception, speech and behavior; or
4. Persistent disturbances of mood or affect; or
5. Pathological dependence, passivity, or aggressivity; or
6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

AND

B. Resulting in three of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.09 *Substance Addiction Disorders:* Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

The required level of severity for these disorders is met when the requirements in any of the following (A through I) are satisfied.

A. Organic mental disorders. Evaluate under 12.02.
B. Depressive syndrome. Evaluate under 12.04
C. Anxiety disorders. Evaluate under 12.06.
D. Personality disorders. Evaluate under 12.08.
E. Peripheral neuropathies. Evaluate under 11.14.
F. Liver damage. Evaluate under 5.05.
G. Gastritis. Evaluate under 5.04.
H. Pancreatitis. Evaluate under 5.08.
I. Seizures. Evaluate under 11.02 or 11.03.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

For the reasons set out in the preamble, Part 416, Subpart I, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

Subpart I—Determining Disability and Blindness

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act; 49 Stat. 647, as amended, 86 Stat. 1471, as amended by 88 Stat. 52, 86 Stat. 1475, 86 Stat. 1478; 42 U.S.C. 1302, 1382c, 1383, and 1383b; unless otherwise noted.

2. A new § 416.920a is added to read as follows:

§ 416.920a Evaluation of mental impairments.

(a) *General.* The steps outlined in § 416.920 apply to the evaluation of physical and mental impairments. In addition, in evaluating the severity of mental impairments, a special procedure must be followed by us at each administrative level of review. Following this procedure will assist us in:

(1) Identifying additional evidence necessary for the determination of impairment severity;

(2) Considering and evaluating aspects of the mental disorder(s) relevant to your ability to work; and

(3) Organizing and presenting the findings in a clear, concise, and consistent manner.

(b) *Use of the procedure to record pertinent findings and rate the degree of functional loss.*

(1) This procedure requires us to record the pertinent signs, symptoms, findings, functional limitations, and effects of treatment contained in your case record. This will assist us in determining if a mental impairment(s) exists. Whether or not a mental impairment(s) exists is decided in the same way the question of a physical impairmant is decided, i.e., the evidence must be carefully reviewed and conclusions supported by it. The mental status examination and psychiatric history will ordinarily provide the needed information. (See § 416.908 for further information about what is needed to show an impairment.)

(2) If we determine that a mental impairment(s) exists, this procedure then requires us to indicate whether certain medical findings which have been found especially relevant to the ability to work are present or absent.

(3) The procedure then requires us to rate the degree of functional loss resulting from the impairment(s). Four areas of function considered by us as essential to work have been identified, and the degree of functional loss in those areas must be rated on a scale that ranges from no limitation to a level of severity which is incompatible with the ability to perform those work-related functions. For the first two areas (activities of daily living and social functioning), the rating of limitation must be done based upon the following five point scale: none, slight, moderate, marked, and extreme. For the third area (concentration, persistence or pace) the following five point scale must be used: never, seldom, often, frequent, and constant. For the fourth area (deterioration or decompensation in work or work-like settings), the following four point scale must be used: never, once or twice, repeated (three or more), and continual. The last two points for each of these scales represents a degree of limitation which is incompatible with the ability to perform the work-related function.

(c) *Use of the procedure to evaluate mental impairments.* Following the rating of the degree of functional loss resulting from the impairment, we must then determine the severity of the mental impairment(s).

(1) If the four areas considered by us as essential to work have been rated to indicate a degree of limitation as "none" or "slight" in the first and second areas, "never" or "seldom" in the third area, and "never" in the fourth area, we can generally conclude that the impairment is not severe, unless the evidence otherwise indicates there is significant limitation of your mental ability to do basic work activities (see § 416.921).

(2) If your mental impairment(s) is severe, we must then determine if it meets or equals a listed mental disorder. This is done by comparing our prior conclusions based on this procedure (i.e., the presence of certain medical findings considered by us as especially relevant to your ability to work and our rating of functional loss resulting from the mental impairment(s)) against the paragraph A and B criteria of the appropriate listed mental disorder(s). If we determine that paragraph C criteria will be used in lieu of paragraph B criteria (see listings 12.03 and 12.06), we will, by following this procedure, indicate on the document whether the evidence is sufficient to establish the presence or absence of the criteria. (See paragraph (d) of this section).

(3) If you have a severe impairment(s) but the impairment(s) neither meets nor equals the listings, we must then do a residual functional capacity assessment, unless you are claiming benefits as a disabled child.

(4) At all adjudicative levels we must, in each case, incorporate the pertinent findings and conclusions based on this procedure in our decision rationale. Our rationale must show the significant history, including examination, laboratory findings, and functional limitations that we considered in reaching conclusions about the severity of the mental impairment(s).

(d) *Preparation of the document.* A standard document outlining the steps of this procedure must be completed by us in each case at the initial, reconsideration, administrative law judge hearing, and Appeals Council levels (when the Appeals Council issues a decision).

(1) At the initial and reconsideration levels the standard document must be completed and signed by our medical consultant. At the administrative law judge hearing level, several options are available:

(i) The administrative law judge may complete the document without the assistance of a medical advisor;

(ii) The administrative law judge may call a medical advisor for assistance in preparing the document; or

(iii) Where new evidence is received that is not merely cumulative of evidence already in your case file or where the issue of a mental impairment arises for the first time at the administrative law judge hearing level, the administrative law judge may decide to remand the case to the State agency for completion of the document and a new determination. Remand may also be made in situations where the services of a medical advisor are determined necessary but unavailable to the administrative law judge. In such circumstances, however, a remand may ordinarily be made only once.

(2) For all cases involving mental disorders at the administrative law judge hearing or Appeals Council levels, the standard document will be appended to the decision.

(Approved by the Office of Management & Budget under control number 0960-0413)

[FR Doc. 85-20552 Filed 8-27-85; 8:45 am]

BILLING CODE 4190-11-M

federal register

Wednesday
August 28, 1985

Part VI

Department of the Treasury

Office of Revenue Sharing

31 CFR Part 51

Financial Assistance to Local Governments; Audit Requirements; Interim Rule

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Financial Assistance to Local Governments; Audit Requirements

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Interim rule.

SUMMARY: The Single Audit Act of 1984 (Pub. L. 98-502), which establishes uniform audit requirements for State and local governments receiving Federal financial assistance, was signed by the President on October 19, 1984. The interim rule makes the necessary changes in the Revenue Sharing regulations to conform to the requirements of the Single Audit Act.

DATES: Effective August 28, 1985.

Written comments must be received on or before October 28, 1985.

ADDRESSES: Send comments to Chief Counsel for Revenue Sharing, Office of Revenue Sharing, Treasury Department, Washington, D.C. 20226.

FOR FURTHER INFORMATION CONTACT: Richard S. Isen, Chief Counsel or James C. Harmon, Attorney-Advisor, Office of Chief Counsel for Revenue Sharing, Washington, D.C. 20226 Telephone: (202) 634-5182.

SUPPLEMENTARY INFORMATION:

Background

The Single Audit Act of 1984 (the "Act") has as its primary goal the improvement of audits of Federal aid programs. The Act requires State or local governments which receive $100,000 or more a year in Federal funds to have an audit made for that year. The Act also provides that State or local governments receiving Federal financial assistance which is equal to or in excess of $25,000 but less than $100,000 a year shall have an option of filing audits in accordance with the Single Audit Act or in accordance with the Federal laws and regulations governing the programs in which the State or local governments participate.

The following changes must be made to the Revenue Sharing regulations to effectuate compliance with the Single Audit Act of 1984 and the implementing OMB Circular A-128:

The first amendment inserts the words "qualifications and" prior to the word "independence" in § 51.100(f) of the regulations. This change is necessary to ensure that all auditors performing audits of local governments which receive Federal financial assistance meet both the independence and qualifications standards as set forth in *Standards for Audit of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General.

The second change adds paragraph (g), which defines the Single Audit Act, to § 51.100 of the regulations.

The third amendment redesignates § 51.102(a)(2) as §§ 51.102 (a)(2) and (a)(3). This amendment is necessary because the Single Audit Act requires local governments receiving $100,000 or more in Federal financial assistance in a fiscal year to file audits in accordance with the Act.

The fourth amendment redesignates § 51.102(a)(3) as § 51.102(a)(4). Section 51.102(a)(4) changes the period of time that a recipient government has to file an audit with the Director. Currently, a recipient government has eight months from the end of the fiscal year audited to file its audit. Pursuant to § 51.102(a)(4), the recipient government must submit audits within thirty (30) days after completion of the audit, but no later than one year from the end of the fiscal year audited.

The fifth amendment deletes the substance of the current § 51.102(a)(4). The reference to the OMB Compliance Supplement contained in current § 51.102(a)(4) is now referenced in § 51.102(a)(3) of the revised regulations.

The sixth amendment adds to § 51.102(b) the language making available to recipient governments which receive between $25,000 and $100,000 in Federal financial assistance the election to perform audits in accordance with the Single Audit Act.

The seventh amendment provides the basis for granting waivers and the procedure for requesting waivers with respect to § 51.102(a)(2). This amendment also provides that § 51.100 (e) and (f) respectively, are to be referred to in defining an independent audit agency.

The eighth amendment adds to § 51.104 language to make audits of secondary recipients conform to the single audit.

The ninth amendment deletes § 51.105 and replaces it with language which explains the single audit.

The tenth amendment inserts language in § 51.107(a)(3) to indicate that financial statements prepared in accordance with generally accepted accounting principles (GAAP) must use Statements 3 and 7 and Interpretation 7 as issued by the National Council on Governmental Accounting (NCGA) in defining the entity to be examined. Those recipient governments whose financial statements are prepared in accordance with a comprehensive basis of accounting other than GAAP are to continue to use the definition of entity provided by the Bureau of the Census.

The eleventh amendment is to § 51.108(a) and changes the period of time that a recipient government has to make a completed audit report available for public inspection. Currently, the recipient government shall make the audit report available for public inspection within thirty (30) days after the audit is completed. Pursuant to § 51.108(a) of the revised regulations, the recipient government must make the audit reports available for public inspection within thirty (30) days after the audit is completed and received by the recipient government.

The twelfth amendment makes the following additions to § 51.108(d):

- Language which states that a recipient government shall keep the audit workpapers longer than 3 years if so notified in writing by the Director;
- Language which makes audit workpapers available upon request to the Director and the Comptroller General at the completion of the audit; and
- Language which provides that recipient governments which have their audits performed by independent public accountants must notify those accountants of the requirement of retention of audit workpapers.

The thirteenth and final amendment adds paragraph (c) to § 51.109. Subsection (c) provides for the enforcement of the reporting requirements for those recipient governments filing audits in accordance with the Single Audit Act.

Need for Immediate Guidance

The changes that have been are necessary to comply with the Single Audit Act of 1984 and the implementing OMB Circular A-128. This interim rule is needed to provide immediate guidance to units of local government and the public. Accordingly, it is impractical to issue these interim regulations in accordance with the notice and public comment procedures of 5 U.S.C. 553(b), or subject to the effective date limitations of 5 U.S.C. 553(d).

Regulatory Flexibility Act

Since no notice in proposed rulemaking is required for interim rules the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply.

Executive Order 12291—"Federal Regulation"

The interim rule does not constitute a "major rule" within the meaning of section 1(b) of Executive Order 12291, entitled "Federal Regulation." A regulatory analysis is not required.

List of Subjects in 31 CFR Part 51

Accounting, Administrative practice and procedure, Civil rights, Handicapped, Aged, Indians, Revenue Sharing, Reporting and recordkeeping requirements.

Authority

The interim rule is issued under the authority of the Revenue Sharing Act (31 U.S.C. 6701 through 6724) and Treasury Department Order No. 224, dated January 26, 1973 (38 FR 3342) as amended by Treasury Department Order No. 103-1 dated March 18, 1982.

31 CFR Part 51, is, therefore, amended in the manner set forth below.

Dated: June 7, 1985.

Michael F. Hill,

Director, Office of Revenue Sharing.

PART 51—FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

1. Section 51.100 is amended by revising paragraph (f) and adding a new paragraph (g) to read as follows:

§51.100 Definitions.

* * * * *

(f) "*Independent audit*" means an audit conducted in a manner consistent with the qualifications and independence requirements specified in the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions,* issued by the Comptroller General of the United States.

(g) "*Single Audit Act*" means the application of uniform audit requirements for State and local governments as provided for by the Single Audit Act of 1984, Pub. L. 98-502 (31 U.S.C. 7501-07) and the implementing OMB Circular A-128, which appears as Appendix A to this subpart.

2. Section 51.102 is amended by revising paragraphs (a) (2), (3), and (4), (b) and the parenthetical text which follows the section to read as follows:

§ 51.102 Auditing and evaluation.

(a) *Audit requirement.* * * *

(2) A government which receives entitlement funds which are equal to or in excess of $25,000 but less than $100,000 in each of three consecutive fiscal years, shall have an audit made in accordance with paragraph (a) (1) of this section not less often than once every three years. The required audit would be conducted for any one of three consecutive years in which the entitlement funds were received.

(3) A government which receives $100,000 or more in a fiscal year shall have an audit made for each such fiscal year in accordance with the requirements of the Single Audit Act under §51.105 except that if the government establishes to the satisfaction of the Director that it is required by its constitution or statutes, administrative rules, regulations, guidelines, standards, or policies to conduct its audits on a biennial basis, then such audits may be made on a biennial basis. Audits conducted on a biennial basis shall cover both years within the biennial period. The OMB Compliance Supplement may be used by auditors as a guide in the performance of the compliance aspects of audits required under this section.

(4) Audits conducted to comply with the provisions of paragraph (a) (2) of this section shall be submitted to the Director within thirty (30) days after completion of the audit, but no later than one year from the end of the fiscal year audited.

(b) *Election by recipient government.* (1) A recipient government that receives entitlement funds which are equal to or in excess of $25,000 but less than $100,000 in any fiscal year shall have the option of:

(i) Having an audit made for such fiscal year in accordance with the requirements of the Single Audit Act under § 51.105 of this subpart; or

(ii) Complying with the requirements of § 51.102(a) (2) of this subpart.

(2) A recipient government may elect to have the requirements of paragraph (a) of this section not applicable to that government upon certifying to the Director that the audits are conducted in compliance with State or local law and meet the following requirements:

(i) The performance of the audits of the financial statements are independent as defined in § 51.100(f);

(ii) The audits of the recipient governments are conducted in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States;

(iii) The audits will be conducted at least as often as would be required by paragraph (a)(2) of this section; and

(iv) A compliance audit and an auditor's report on the study and evaluation of the internal accounting controls, as well as a financial audit are conducted.

* * * * *

(Information collection requirements in paragraph (a) (4) approved by the Office of Management and Budget under control number 1505-0038, and in paragraph (b)(2)(iv) under control number 1505-0086).

* * * * *

3. Section 51.103 and the parenthetical text which follows it, is revised to read as follows:

§ 51.103 Waiver of audit requirements.

(a) *Basis for granting waiver.* The Director may waive the provisions of §51.102(a)(2) for any recipient government which makes application for such a waiver for any fiscal period upon determining that:

(1) The accounts of such government are not auditable and the government is making substantial progress toward making its accounts auditable; or

(2) The government has been audited by a State audit agency which does not follow generally accepted government auditing standards or which is not independent as defined in §51.100 (e) and (f) respectively, and

which is demonstrating progress toward taking the necessary corrective action.

(b) *Procedure for requesting waiver.* (1) The chief executive officer of the recipient government shall apply to the Director in writing for the waiver and provide the following information:

(i) If the waiver is requested due to unaudibility of government financial accounts, an assurance that in the course of determining compliance with §51.102(a)(2), the independent auditor rendered an opinion that part or all of the financial accounts are not auditable. The waiver request shall further clearly set forth the arrangements which have been made or steps taken toward making such financial accounts auditable.

(ii) If the waiver is requested pursuant to paragraph (a)(2), an assurance that the State audit agency is demonstrating progress toward performing audits in accordance with generally accepted government auditing standards or becoming independent. The waiver request shall further clearly set forth the arrangements which have been made or steps taken toward establishing the use of generally accepted government auditing standards or achieving independence.

(2) The Director shall determine whether the recipient government or the State audit agency is making substantial progress towards taking the necessary corrective action.

(Information collection requirements in paragraph (b)(1) approved by the Office of Management and Budget under control number 1505-0086)

4. Section 51.104 is revised to read as follows:

§51.104 Audits of secondary recipients.

(a) *In general.* Each local government which provides $25,000 or more of Federal financial assistance to a secondary recipient (subrecipient) in any fiscal year shall be responsible for the audit of any entitlement funds transferred to the secondary recipient.

(b) *Responsibility of primary recipient government.* The primary recipient government shall:

(1) Determine whether the secondary recipient has met the audit requirements of § 51.102(a) or OMB's Circular A-110 for universities, hospitals or other nonprofit organizations;

(2) Determine whether the secondary recipient has expended the funds provided in accordance with the Act and its implementing regulations. This may be accomplished by reviewing the audit report of the secondary recipient or through other means (e.g., program reviews) if the secondary recipient has not yet conducted such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with the Act and regulations;

(4) Consider whether secondary recipient audits necessitate adjustment of the primary recipient's own records; and

(5) Require each secondary recipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this section.

5. Section 51.105 is revised to read as follows:

§ 51.105 Reliance upon audits under other Federal laws.

The Single Audit Act requires all States and local governments receiving $100,000 or more in Federal financial assistance for any of its fiscal years beginning after December 31, 1984, to conduct an annual audit made in accordance with the requirements of the Single Audit Act unless the State or local government is permitted to conduct its audits biennially by reason of administrative rules, regulations, guidelines, standards or policies. However, after December 31, 1986, any State or local government that conducts its audits biennially must conduct such audits annually unless such State or local government codifies a requirement for biennial audits in its constitution or statutes before January 1, 1987. Audits conducted on a biennial basis shall cover both years within the biennial period. An audit performed under the Single Audit Act shall be submitted to the Office of Revenue Sharing within thirty (30) days after completion of the audit, but no later than one year from the end of the fiscal year audited.

6. Section 51.107(a)(3) is revised to read as follows:

§ 51.107 Scope of audits.

(a) *In general.* * * *

(3) Audits pursuant to § 51.102(a)(2) for which reporting is said to be in accordance with generally accepted accounting principles (GAAP) must be guided in defining the entity by the National Council on Governmental Accounting's Statements 3 and 7 and Interpretation 7. (These pronouncements are considered as continuing in force by the recently established Governmental Accounting Standards Board, which is the successor organization to the National Council on Governmental Accounting). Those governments whose financial statements are prepared in accordance with a comprehensive basis of accounting other than GAAP should continue to use the definition provided by the Bureau of the Census which includes a unit as part of the entity if the Bureau has classified the unit as being dependent for general statistical purposes upon the recipient government. The classification of governments is contained in "The Census of Governments, Governmental Organization (Vol. 1)," published by the Bureau of the Census every five years and updated on a current basis to reflect significant changes occurring between censuses.

* * * * *

7. Section 51.108 (a) and (d) are revised to read as follows. The parenthetical text at the end of § 51.108(d) has already been codified in the CFR and is shown here only for the convenience of the user.

§ 51.108 Public inspection, retention and submission of audit reports and workpapers.

(a) *Public inspection.* A copy of the audit report under §§ 51.102(a)(2) and 51.105 shall be made available to any person for a period of three years. Within thirty (30) days after the audit is completed and received by the recipient, the report shall be placed at the principal office of the recipient government for public inspection during normal business hours. Where feasible, local public libraries and other public buildings should be used also. If the recipient government has no principal office, the audit report shall be made available for public inspection at a public place or places within the political boundaries of the recipient government to satisfy the requirements of this subsection.

* * * * *

(d) *Retention of audit workpapers.* Audit workpapers and related reports shall be retained for three years from the date of the audit report described in paragraph (a), unless the auditor is notified in writing by the Director to extend the retention period. Audit workpapers shall be made available upon request to the Director and the Comptroller General or to their representatives at the completion of the audit. Recipient governments whose audits are performed by independent public accountants, not in their employ, may meet the requirement of this section by informing the firm or individual of this requirement and encouraging them to comply.

(Information collection requirements in paragraphs (a) and (b) approved by the Office of Management and Budget under control number 1505-0086 and in paragraphs (c) and (d) under control number 1505-0038)

8. A new paragraph (c) is added to § 51.109 to read as follows:

§ 51.109 Procedures for effecting compliance.

* * * * *

(c) *Compliance with reporting requirements under the Single Audit Act.* Pursuant to section 7504 of the Single Audit Act, if a recipient government fails to comply with the audit reporting requirements of § 51.102(a)(3), enforcement shall be by the cognizant agency that has been designated by the Office of Management and Budget. If the Office of Revenue Sharing is not the cognizant agency designated by the Office of Management and Budget, the Director shall cooperate with the agency that has been so designated by the Office of Management and Budget.

9. Subpart F of Part 51 is amended by adding Appendix A to read as follows:

Appendix A to Subpart F—OMB Circular A-128, Audits of State and Local Governments

BILLING CODE 4810-26-M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A-128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98-

502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98-502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and
—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,
—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and
—Amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of Circular A-102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments,* issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a

schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance*. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
—Negative assurance on those items not tested;
—A summary of all instances of noncompliance; and
—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial

Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,

Director.

Attachment—Circular A-128

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

[FR Doc. 85-19779 Filed 8-27-85; 8:45 am]

BILLING CODE 4810-28-T

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