substantive changes in the regulation. The requirement for the endorsement for insurance and surety bonds was previously subject to notice and comment and was adopted on November 21, 1983 (48 FR 52683). As the November 21, 1983 final rule indicated, enforcement of the endorsement requirement was delayed until OMB approval was obtained. It is not anticipated that a request for comments would result in the receipt of useful information. No economic impacts are anticipated as a result of this action. Accordingly, a full regulatory evaluation is not required. For the above reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant impact on a substantial number of small entities.

Since the rule was effective on November 19, 1983, this amendment only advises that the recordkeeping requirement will be enforced beginning 90 days from April 2 or July 2, 1984. The minimum levels of financial responsibility are currently in effect.

List of Subjects in 49 CFR Part 387

Highways and roads, Motor carriers, Motor vehicles, Financial responsibility, Insurance, Penalties, Reporting and recordkeeping requirements.

(Sec. 30 Pub. L. 96-296, 94 Stat. 793; Sec. 108(6)(5), Pub. L. 96-510, 94 Stat. 3767; U.S.C. 315; 49 CFR 1.48 and 301.60)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued: May 21, 1984.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

Subpart B—Motor Carriers of Passengers

The FHWA hereby amends 49 CFR Part 387, Subpart B, as follows:

§ 387.39 [Amended]

1. In § 387.39, amend the first sentence by adding the words "and approved by the OMB" after the words "by the FHWA."

2. In § 387.39, amend Illustrations I and II by adding the number "2125-0518" to the upper right hand corner after the words "Form Approved OMB No."

3. At the end of § 387.39, add the following words, "[OMB Control No. 2125-0518]."

[FR Doc. 84-14172 Filed 5-25-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Cowania Subintegra (Arizona Cliffrose) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service determines a plant, *Cowania subintegra* Kearney (Arizona Cliffrose) to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. Critical habitat is not designated. This plant is endemic to Arizona with only two widely separated populations known to exist, one in Mohave County and one in Graham County. Both areas are subject to browsing and road maintenance; one population could be additionally impacted by mining. This action implements protection provided by the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is May 29, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Region 2, 421 Gold Avenue, SW, Albuquerque, New Mexico 87103 (505/766-3972).

FOR FURTHER INFORMATION CONTACT: Dr. Russell Kologiski, U.S. Fish and Wildlife Service, Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972).

SUPPLEMENTARY INFORMATION:

Background

Cowania subintegra was first collected by Darrow and Crooks on April 20, 1938, and was later described by Kearney (Kearney, 1943). The first population discovered was in southeastern Mohave County, Arizona and covers approximately 600 acres. The second known population is in Graham County, Arizona, and is scattered over about 100 acres. *Cowania subintegra* is an evergreen shrub reaching 75 centimeters in height. The bark is pale gray and shreddy. The leaves, twigs and flowers are covered with dense, short, white hairs. The leaves are entire to lobed with one prominent vein. The flowers are white or yellow, with petals about 10 millimeters long (Phillips *et al.*, 1980).

Cowania subintegra is most closely related to *Cowania ericaefolia* which grows in the Chihuahuan Desert of Trans-Pecos Texas and Coahuila, Mexico. The widely separated ranges of the species suggest a more continuous range in the past that was long ago fragmented into relict populations (Van Devender, 1980). *Cowania subintegra* and other limestone endemics are valuable in the study of the biogeography and evolution of Southwestern floras.

Cowania subintegra grows in gravelly clay loam soils over limestone on low rolling hills in the Arizona upland subdivision of the Desert Formation (Brown and Lowe, 1977). The vegetation of the area is dominated by *Larrea tridentata* (creosote bush), *Chrysothamnus nauseosus* (rabbit brush), *Canotia holocantha* (false palo verde), and *Acacia greggii* (catclaw acacia).

All known populations of *Cowania subintegra* occur on either Federal lands or Arizona State lands. The Federal lands are administered by the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA) and the Arizona lands are administered by the Arizona Department of Transportation (DOT). The species is threatened by overgrazing, mining activities, and maintenance of road and pipeline right-of-ways (Van Devender, 1980). The lack of seedlings and the low percent of fruit indicate that the overall reproductive rate is poor for both the Mohave County population and the Graham County population (Phillips *et al.*, 1980).

Federal governmental action involving this species began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the meaning of Section 4(c)(2) of the Act, and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant

species to be endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Cowania subintegra* was included in the 1975 Smithsonian Report, the 1975 notice, and the 1976 proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn, although a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal, along with four other proposals which had expired. A revised notice for plants was published in the December 15, 1980, **Federal Register** (45 FR 82480) and included *Cowania subintegra* as a category 1 species. Category 1 comprises taxa for which the Service has substantial information on biological vulnerability and threats to support the appropriateness of proposing to list the taxa as endangered or threatened species. This notice has subsequently been accepted as a petition under section 4(b)(3)(A) of the Act, as amended in 1982. The Service published a proposed rule to list *Cowania subintegra* as an endangered species in the July 15, 1983, **Federal Register** (48 FR 32520).

Summary of Comments and Recommendations

In the July 15, 1983, proposed rule (48 FR 32520) and associated notifications, all interested praties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Arizona Republic*, Phoenix, Arizona, on August 11, 1983, which invited general public comment. Eleven comments were received and are discussed below. No public hearing was requested or held.

Comments were received supporting the listing of *Cowania subintegra* from the Arizona Game and Fish Department, the District Botanist and State Director of the Bureau of Land Management (BLM), the Arizona Office of Economic Planning and Development, and the International Union for the Conservation of Nature and Natural Resources. The University of Arizona Office of Arid Lands Studies stated that the species should be watched to avoid the possibility of extinction.

El Paso Natural Gas Company informed the Service that the pipeline that passes through the Burro Creek area is owned and maintained by Southern Union Gas. This correction has been made in the final rule.

No comment letters were received from the District IV Council of Governments and Southeastern Arizona Governments Association. The Arizona Commission of Agriculture and Horticulture said that the plant was not of any medicinal value. They also recommended strategic fencing by BLM without posting to provide protection from browsing and off-road vehicles.

The BLM, in addition to supporting the proposal, described the parent material at the Burro Creek area as slightly metamorphosed volcanic ash deposits and dolomitic limestone and the soil as shallow to moderately deep cherty clay loam; gypsum was not detected. They also commented that a total of 114 mineral claims are found within a mile radius of the Burro Creek population and 12 of these are located within the same quarter section. This is an additional 105 claims since preparation of the proposal. The BLM is conducting a browse utilization study and has addressed *Cowania subintegra* in the planning documents for this area. Both BLM and the grazing allottee are interested in water development projects in the Burro Creek area which could result in increased utilization of the area for forage. The final rule has been corrected to reflect these comments.

A grazing allottee in the Burro Creek area, commented that extinction is to be expected and he disagrees with spending money on any species that has no commercial or "scenic" value. He believes that it is abundant where found, is threatened by burro overgrazing, and by poor reproduction. However, Congress, in enacting the Endangered Species Act, allowed neither commercial nors"scenic value" to be used as criteria in the Act to determine whether or not to list a species. Only 700 plants are known to exist and populations are vulnerable due to poor reproduction and overgrazing threats, among others. Senator Goldwater and Senator DeConcini also inquired about the proposal in response to the receipt of a copy of the letter from the grazing allottee.

In addition to these comments, the Arizona Plant Recovery Team supports the proposed listing of *Cowania subintegra*.

Summary of Factors Affecting the Species

After a through review and consideration of all information available, the Service has determined that *Cowania subintegra* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cowania subintegra* Kearney (Arizona cliffrose) and as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* There are two known populations of *Cowania subintegra* covering approximately 600 acres in Mohave County and 100 acres in Graham County. Habitat destruction through mining is one of the threats to the Burro Creek population in Mohave County. At present there are 114 BLM mining claims within a mile radius of this population, but it is not known to what extent the mineral resources of the area will be developed. Twelve of these claims are located within the same quarter sections that *Cowania subintegra* inhabits (Butterwick, pers. comm.). Areas within the population have been bladed thus destroying habitat, apparently to expose subsurface formations for mineral exploration.

A graded road and a portion of the Southern Union Gas pipeline pass through the Burro Creek area. Maintenance work for both involves occasional blading which prevents any plant establishment in these areas. A high voltage power line also passes through the Burro Creek area and some habitat destruction occurred during construction. A highline pole storage area is also in the vicinity of the Burro Creek population and effectively removes that area from habitation by this plant.

A portion of the Graham County population occurs on U.S. Highway 70 right-of-way on top of a hill through which the highway cuts. Protection of this species would involve not destroying the plants on the hill or the hill itself. Widening of the highway would be the greatest threat to *Cowania subintegra*. Herbicides, if sprayed on top of the hill (8–20 feet above the road),

could also harm the plants. Fortunately, current maintenance procedures do not threaten the *Cowania* or its habitat and there are no plans to widen the highway. The State of Arizona Department of Transportation has been contacted concerning protection of this species and has agreed to notify the Service if future construction or maintenance activities could adversely impact the *Cowania* population. To ensure continuation of these conditions, management and protection plans for this site are needed.

B. *Overutilization for commercial, recreational, scientific or educational purposes. Cowania subintegra* is not widely sought for horticultural or scientific purposes (Van Devender, 1980). The low numbers of plants, however, makes this species very vulnerable and any future taking for these two purposes would be detrimental. The populations of this species are easily accessible to collectors and vandals.

C. *Disease or predation.* The Burro Creek population of *Cowania subintegra* is heavily browsed, probably by cattle, mule deer, and feral burros. The site has been given a range rating of fair condition with a static trend, indicating overutilization of the range (BLM, 1982). Individual plants are in fair to poor condition, and are usually hedged. There is no evidence of reproduction except in Graham County on the U.S. Highway 70 right-of-way, where there are immature plants (Butterwick 1979; Phillips *et al.*, 1980). Further studies are being conducted to determine the impact of browsing on the plants, and to determine which herbivores are responsible and to what extent. *Cowania subintegra* is addressed in BLM planning documents; however, both BLM and the grazing allottee are interested in water development projects in this area. These projects could result in increased utilization of the plant for forage. Possible results of browsing are poor plant vigor, poor reproduction, and a lack of seedling establishment.

D. *The inadequacy of existing regulatory mechanisms.* Presently, there is no Federal or Arizona State law protecting *Cowania subintegra*, nor is there a management plan in effect for either population. Restrictions concerning the removal of plants from Federal lands are extremely hard to enforce, especially when the habitat is as easily accessible as with *Cowania*.

E. *Other natural or manmade factors affecting its continued existence.* Seeds collected from the Burro Creek population appeared to be non-viable. The lack of fertile seeds and the low number of seedlings at either locality suggest that reproduction in this species is inadequate to maintain population size (Phillips *et al.*, 1980). Further studies are needed to determine the cause of the poor reproduction.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Cowania subintegra* as endangered without critical habitat. Endangered status seems appropriate because of the two small populations, restricted distribution, and the current threats to the species. A decision to take no action would exclude *Cowania subintegra* from needed protection available under the Endangered Species Act. A decision to list as threatened would not adequately reflect the threats to the species or possibility of its extinction. Therefore, no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

The Endangered Species Act in section 4(a)(3), as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The Act does not protect endangered plants from taking or vandalism on lands under non-Federal jurisdiction and regulations on Federal lands are difficult to enforce effectively. This would be especially true for *Cowania subintegra*, whose habitat is located along a highway and is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Determining critical habitat for this species would make it more vulnerable to taking by collectors and vandalism, and increase enforcement problems. Designation would not appreciably increase the protection given the plant, since it occurs primarily on Federal land, where the controlling agencies know or can be informed of its location and may not undertake actions likely to jeopardize it. Therefore, it would not be prudent to determine critical habitat for *Cowania subintegra* at this time.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7 requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Federal lands on which *Cowania subintegra* occurs are administered by the BLM and the San Carlos Indian Reservation, Bureau of Indian Affairs (BIA). The BLM is aware of the Arizona cliffrose and is planning for the species in its management documents, the Burro Creek Riparian Management Plan and Big Sandy Herd Management Area Plan.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Cowania subintegra*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR Sections 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commercial trade in *Cowania subintegra* is not known to exist. It is anticipated that few trade permits would ever be sought or issued since the

species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to *Cowania subintegra*. Permits for exceptions to this prohibition are available through Section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and these will be made final following public comment. *Cowania subintegra* occurs only on BLM, BIA, and Arizona DOT lands. It is anticipated that few taking permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

The Service will now review this species to determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through Section 8(A)(e) of the Act, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

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

Effective Date

At the time of preparation of the proposed rule, some 9 mining claims were reported located within a mile of the Burro Creek population. Information received since publication of the proposed rule indicates that a total of 114 claims are now located within a mile. Mineral exploration, with consequent bulldozing or grading of ground and plant cover, has already been undertaken, and operational mining permits may be issued as early as May, 1984. The imminence of active development that, if uncontrolled, has the potential for seriously harming the main population of this plant constitutes good cause for giving immediate effect to this rule. Accordingly, this rule shall take effect upon publication.

Literature Cited

Brown, D. E., and C. H. Lowe. 1977. Map, Biotic Communities of the Southwest (scale 1:1,000,000). Rocky Mt. Forest and Range Expt. Sta., USDA Forest Service, Fort Collins, Colorado.

Butterwick, M. 1979. Report on the status of *Cowania subintegra*. Phoenix District Office, Bureau of Land Management, Phoenix, Arizona.

Kearney, T. H. 1943. A new cliff-rose from Arizona. Madrono 7:15–18.

Phillips, A. M., III, B. G. Phillips, L. T. Green, J. Mazzoni, and E. M. Peterson. 1980. Status Report: *Cowania subintegra*. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

U.S. Bureau of Land Management. 1982. Big Sandy Herd Management Area Plan. Phoenix District Office.

Van Devender, T. R. 1980. Status Report: *Cowania subintegra*. Arizona Natural Heritage Program, Tuscon, Arizona.

Authors

The authors of this final rule are Margaret Olwell and John Pulliam, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of Interior, P.O. Box 1306, Albuquerque, New Mexico, 87103 (505/766–3972). The editor is LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235–1975). Status information and a preliminary listing package were provided by Dr. Authur M. Phillips III, Dr. Barbara G. Phillips, Mr. L. T. Green, Ms. Jill Mazzoni, and Ms. Elaine M. Peterson, Museum of Northern Arizona, Route 4, Box 720, Flagstaff, Arizona, 86001.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1351 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, under Rosaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Rosaceae—Rose Family						
*	*	*	*	*	*	*
Cowania subintegra	Arizona cliffrose	U.S.A. (AZ)	E	147	NA	NA
*	*	*	*	*	*	*

Dated: May 16, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-14201 Filed 5-25-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Reclassify the Utah Prairie Dog as Threatened, With Special Rule To Allow Regulated Taking

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service reclassifies the Utah prairie dog (*Cynomys parvidens*) from endangered to threatened status under the Endangered Species Act of 1973, and issues a special regulation that allows a maximum of 5,000 animals of this species to be taken annually between June 1 and December 31 in parts of the Cedar and Parowan Valleys in Utah under a permit system developed by the Utah Division of Wildlife Resources. Such taking is in the best interest of the conservation of the Utah prairie dog, and will not be allowed to be inconsistent with the conservation of the populations in question. These populations have increased substantially in recent years, and are now straining the carrying capacity of available habitat in the Cedar and Parowan Valleys. They are thus vulnerable to outbreaks of disease (sylvatic plague) such as have occurred among overcrowded rodents elsewhere. There is also a serious conflict developing between these populations and human agricultural interests, which will result in antagonism from local ranchers, and possibly mass illegal killing of prairie dogs as unwanted nuisances. A program of transplanting prairie dogs onto public lands has not been able to keep up with the population expansion or relieve the population pressures. Regulated taking is now seen as the only way to relieve the situation in the Cedar and Parowan Valleys.

EFFECTIVE DATE: This rule is effective May 29, 1984 because it is necessary for the State of Utah to begin control of excess populations by June 1, 1984.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the Service's Regional Office, 134 Union Boulevard, 4th floor, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Galen Buterbaugh, Regional Director, U.S. Fish and Wildlife Service, Region 6, Denver, Colorado (303/234–2209), or John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Utah prairie dog (*Cynomys parvidens*) was listed as an endangered species on June 4, 1974 (38 FR 14678), pursuant to the Endangered Species Conservation Act of 1969. On November 5, 1979, the Utah Division of Wildlife Resources petitioned the U.S. Fish and Wildlife Service to remove the Utah prairie dog from the U.S. List of Endangered and Threatened Wildlife. The Service found that this petition contained substantial data and a proposal to reclassify the species from endangered to threatened status was published May 13, 1983 (48 FR 21604).

The Utah prairie dog is a burrowing rodent in the squirrel family (Sciuridae) that occurs only in southern Utah. Its total numbers were estimated to be about 95,000 in the 1920's (Turner, 1979), compared to an estimated 10,000 adult animals in the spring of 1982 (note: this figure is derived from the Utah Division of Wildlife Resources 1982 spring census total of 5,731 animals; according to Crocker-Bedford (1975), this census total needs to be doubled to obtain a valid population estimate since only 40 to 60 percent of the animals are above ground and counted during any census survey). This decline was caused by human-related habitat alteration and poisoning which resulted from the belief that prairie dogs compete with domestic livestock for forage. At present, the Utah prairie dog is still threatened over much of its range by loss of habitat to human residential and agricultural development.

The Utah prairie dog, however, is not in danger of extinction. Despite the above problems, overall numbers have increased since 1972. The total area occupied by the Utah prairie dog at present encompasses some 456,000 acres. This acreage is a rough estimate created by drawing a polygon around groups of prairie dog colonies, since no exact acreage figures are available. Thus, the actual area occupied by colonies would be somewhat less. The spring estimate of the number of adult animals in the Cedar and Parowan Valleys (encompassing about 113,000 acres in eastern Iron County), actually increased from 1,200 in 1976 to 7,300 in the spring of 1982. It should be clearly noted at this point that these population estimates are deceptive. They are based on early spring censuses and constitute only the adult animals that have successfully survived the winter. In the summer, after the young are born and become active, the numbers of Utah prairie dogs are much higher. This is the time at which it is necessary to reduce population pressures in the Cedar and Parowan Valleys. Female Utah prairie dogs give birth to an average of 4.8 young in April (Pizzimenti and Collier, 1975).

Assuming that ½ the adult population is female and each produces an average annual litter of only 4 young, the total adult and juvenile population of the species throughout its whole range in the summer would be at least 30,000 animals (5,000 adult females × 4 pups + 10,000 adults). In the Cedar and Parowan Valleys alone, the summer population would be well in excess of 20,000 animals (3,650 females × 4 pups +7,300 adults). The adult prairie dogs cease surface activity in late August and September, but the young animals continue surface activity and feeding for several months thereafter. These young prairie dogs suffer a high mortality rate in the fall and winter, but those that do survive over the winter contribute to the steady increase in the numbers of adult Utah prairie dogs noted since 1976. The problem that has developed is that the large number of juvenile animals added annually each summer to the expanding population is straining the carrying capacity of available habitat in the Cedar and Parowan Valleys. With such high population densities there may also be a greater danger of the outbreak of disease, sylvatic plague (Collier and Spillett, 1972).

In addition, there is serious conflict in the Cedar and Parowan Valleys between the Utah prairie dog and human agricultural interests. About 62 percent of all Utah prairie dog colonies occurred on private land in 1982; about 88 percent of the total number of animals occurred on private land. In the Cedar and Parowan Valleys, 98 percent of all prairie dogs occur on private land. The major crop on this private land is alfalfa, which is also a preferred food of the prairie dog. Crop losses are extensive where large prairie dog towns have developed; the prairie dog mounds damage haying equipment and the burrows drain irrigated fields. It is estimated that the large summer populations of these prairie dogs cost local ranchers 1.5 million dollars annually in crop losses and damage to equipment (Ivan Matheson, Utah State Senator, Pers. Comm.). The Utah Division of Wildlife Resources (Pers. Comm., 1984) feels that ranchers in the area will not continue to tolerate such large losses annually. Sooner or later they will take matters into their own hands and begin to illegally kill prairie dogs using methods which will have a far more catastrophic effect on the population. Farmers in the area

traditionally poisoned, shot, or trapped nuisance prairie dogs. Since the Utah prairie dog has been protected by the Endangered Species Act of 1973, however, these methods of control have no longer been legal. The populations continue to expand into previously unoccupied areas which include agricultural fields. In an increasing number of cases fields have become so densely populated that they have been completely ruined for agricultural use. Damage in the Cedar and Parowan Valleys has now reached the point at which there is genuine concern that local ranchers might take these illegal means of securing relief, and this could prove severely damaging to the remaining Utah prairie dog populations, perhaps even bringing about the extinction of the species in these valleys.

Outside of the Cedar and Parowan Valleys, Utah prairie dog numbers have remained relatively stable since 1976. In 1976, the number of prairie dogs outside of the Cedar and Parowan Valleys was estimated in the spring census to be about 3,000 animals in 30 towns. In 1982, the spring estimate was about 4,000 animals (including 730 animals transplanted to public lands in 1981) in 48 towns. During this period, however, numbers increased dramatically in the Cedar and Parowan Valleys, where the spring estimate showed an increase from 1,254 animals in 21 towns in 1976, to 7,378 animals in 33 towns in 1982.

In an effort to relieve the overpopulation problems in the Cedar and Parowan Valleys, the Utah Division of Wildlife Resources removed 2,437 animals between 1976 and 1980 for transplanting onto public lands. Although many of these animals apparently did not survive, the transplantation program, along with discovery of previously unrecorded colonies, has increased the number of known active prairie dog towns on public lands from 11 in 1976 to 32 in 1982. Meanwhile, the number of active towns on private land increased from 40 in 1976 to 57 in 1982. The transplantation program obviously has not been able to keep pace with the growing prairie dog population in the Cedar and Parowan Valleys, and new sites for reintroduction are limited. It therefore appears that population pressures in this area are now such that regulated taking is necessary for the management and proper conservation of the species. The draft Utah prairie dog recovery plan (1983) recognizes that such control might be necessary for the conservation of this species. It specifically states that towns should not be allowed to expand uncontrolled, causing significant conflict with other land uses (p. 25), and that trapping and shooting (among other control measures) should be used where necessary to control such populations (p. 26). The present rule recognizes the biological fact that the Utah prairie dog is a threatened rather than an endangered species, and would permit the State of Utah to authorize certain individuals to legally take up to 5,000 animals annually between June 1 and December 31 in delineated portions of the Cedar and Parowan Valleys when such take is necessary for the conservation and management of the Utah prairie dog. Also, the State will continue to live-trap prairie dogs on private lands and reestablish them on Federal lands as has been its practice since the mid-1970's. By taking this action, the Service is in complete accord with the stipulations of the draft recovery plan for the Utah prairie dog.

Summary of Comments and Recommendations

In the May 24, 1983, proposed rule (48 FR 21604) and associated notifications, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A notice was published in the Daily Spectrum newspaper, Cedar City, Utah, on July 4, 1983, which invited general comments. The comments received are discussed below.

The Service received nine comments on the proposal to reclassify the Utah prairie dog. The Utah Farm Bureau Federation commented on behalf of more than 18,000 Utah Farm Bureau families whose agricultural properties lie within the habitat of the Utah prairie dog. The Federation strongly supported the reclassification together with adoption of alternative means whereby depredation to crops and agricultural lands can be minimized, because a large part of the extensive damage done by the prairie dog occurs on cultivated alfalfa and grain fields. These animals destroy irrigation systems, reducing crop yields and damaging farm machinery.

The Wildlife Legislative Fund of America (WLFA) expressed support for reclassifying the Utah prairie dog. The WLFA indicated that culling of the Utah prairie dog populations is a sound wildlife management practice that would lessen the threat of epidemic disease and reduce the competition between prairie dogs and local residents.

The Governor of Utah also supported the reclassification of the prairie dog from endangered to threatened. He indicated that since the species was listed in 1973, the Utah Division of Wildlife Resources has carried out an active program to trap and relocate the species on public land to increase the number of active prairie dog towns. The program resulted in an increase of active prairie dog towns on public lands; however, at the same time, the number of active towns on private lands also increased. The population of the Utah prairie dog has been increasing in the Cedar and Parowan Valleys causing significant crop damage on private lands. The Governor further stated that the trapping and transplanting programs have not been successful in keeping pace with the increase in prairie dog populations and that more flexibility is needed to manage the Utah prairie dog.

Joseph D. Armstrong, a farmer and rancher in Cedar City, Utah, indicated that the prairie dog problem should be placed back in its proper order with nature and man's meddling should be kept out of it. Mr. Armstrong was pleased that something was being done about the prairie dog problem.

William L. Murphy, of the Insect Identification and Beneficial Insect Introduction Institute supported the proposal to reclassify the Utah prairie dog, provided the species continues to receive protection as a threatened species and the habitat retains full conservation measures.

The U.S. Forest Service concurred with the reclassification of the prairie dog and indicated that the taking provision would be in the best interest of the conservation of the Utah prairie dog.

The National Park Service, Rocky Mountain Regional Office, concurred with the proposal to reclassify but mentioned that as an alternative to killing 5,000 prairie dogs annually in the Cedar and Parowan Valleys, agencies may wish to consider population control through the use of diethylsilbestrol (DES)—treated bait. This compound acts as a reproductive inhibitor in blacktailed prairie dogs. The Service and the State of Utah will study the possible use of this reproductive inhibitor as an alternative to killing.

Gilbert T. Yardley of Yardley Cattle Company in Beaver, Utah, indicated that the Utah prairie dog should never have been on the List of Endangered and Threatened Wildlife. Mr. Yardley believes that the prairie dog should be removed from classification under the Act as it has completely ruined a lot of farms and ranches in Utah.

The Wildlife Society was the only organization to make dissenting comments on the proposal to reclassify the prairie dog. The Society recommended that the species not be downlisted to threatened status unless downlisting was absolutely necessary to control colonies that would otherwise destroy their habitats.

The Society also questioned several statements in the proposed rule published in the May 13, 1983, **Federal Register** including that: (1) The total area occupied by the Utah prairie dog occupies some 456,000 acres, and (2) active towns on public lands have increased from 11 in 1976 to 35 in 1982. The Wildlife Society comments that these statements are misleading, as the actual area occupied must be closer to 5000 acres and according to work by G. D. Collier (Ph.D. Thesis, Utah State University, 1975) public lands now contain only 3 more viable colonies than they did when the species was listed.

The Society further states that the purpose of the rule change appears to be to legitimize current activities. They question whether private shooting can be controlled. The Wildlife Society does state that lethal control may be necessary to prevent habitat destruction especially when transplanting has proven ineffective, but it believes only government employees should do the actual controlling.

Another point raised by the Society is that several agencies have refused to allow transplants onto their lands. It believes that agency personnel would give even less support to recovery if the species were downlisted to "merely" threatened.

The Wildlife Society further commented that any downlisting of the prairie dog to threatened status should be limited to populations in the Cedar and Parowan Valleys of Iron County, Utah, since throughout most of its range, the Utah prairie dog is faring little better than in 1971. It states that prairie dogs in the Cedar and Parowan Valleys could even be considered racially distinct from most colonies elsewhere, because the breeding date in the two valleys is apparently genetically set to occur much earlier in the spring. Retaining the endangered status throughout most of the geographical range would encourage land management agencies to maintain at least their current level of participation in the recovery program.

In response to the Wildlife Society's comments, Utah prairie dog populations in the Cedar and Parowan Valleys are now destroying their habitats and expanding into agricultural areas, in many cases completely ruining fields for agricultural purposes. Lethal control is seen as the only alternative left to adequately control the prairie dogs.

The figure of 456,000 acres given for occupied habitat, as explained earlier in this rule, is a rough estimate created by drawing a polygon around groups of prairie dog colonies. No exact acreage figures are available for occupied habitat. Thus, the actual number of acres occupied would be less than the 456,000 acres.

The Society questions the increase of prairie dog towns from 11 in 1976 to 32 in 1982 on public lands, citing work by Collier (1975). Contrary to the Society's statement, the figure of 11 towns in 1976 did include all known sites, only 2 of which contained over 30 animals, while over 32 sites were discovered in 1982. In reality, the 54 sites listed by Collier in his 1975 work were in many cases obtained from responses to questionnaires sent out to individuals and landowners and were often never verified by actual field visits. In fact, the Utah Division of Wildlife Resources did attempt to field check all of Collier's sites in 1976 and could only locate six of his prairie dog towns.

The subject rule change is in no way an attempt to legitimize current activities. In reality, it is seen as the only way to prevent landowners from taking matters into their own hands, which could easily eradicate complete towns. In fact, illegal poisoning is already suspected in one area and two individuals have been prosecuted for illegal taking. It is true that taking by private individuals could be difficult to control. The permit system, however, will contain provisions for evaluation and followup by State personnel. Control by government agents would be impossible because of time and financial constraints.

It is also true that one of the major factors inhibiting the prairie dog recovery effort has been the reluctance of land managers to participate in the transplant program. However, past experience has shown that a threatened classification provides for greater management flexibility, and may reduce the present hesitancy on the part of land managers to cooperate in transplanting efforts since threatened species are not as stringently protected as endangered species.

Regarding the Society's recommendation to reclassify only in the Cedar and Parowan Valleys, a committee of experts on the species was requested by the Utah Division of Wildlife Resources to review the status of the Utah prairie dog in 1980. It was their decision that there was sufficient biological sound justification to warrant reclassification of the species throughout its entire range. In view of the observed increase in towns on public lands as well as the increased management flexibility which would be added by reclassification, the Service concurs with this finding.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Utah prairie dog should be reclassified as a threatened species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments) were followed. A species may be determined by the Secretary of the Interior to be an endangered or a threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Utah prairie dog (*Cynomys parvidens*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Utah prairie dog once ranged from Pine Valley in Iron and Beaver Counties, to the foothills of the Aquarius Plateau in the east, and from northern Washington and Kane Counties on the south to as far north as Nephi, Utah. Today, the species is confined to disjunct areas in southwestern Utah. In the 1920's, it was estimated that there were 95,000 Utah prairie dogs (Turner, 1979), whereas, the spring estimate in 1982 was around 10,000 adult animals (Utah Divison of Wildlife Resources, 1983). Among other factors, habitat destruction and modification for agricultural and residential uses were important in reducing the range and population of the species. Nevertheless, the population now appears to have been increasing since 1972, and transplants of individuals by State authorities has increased the range since then. At present (1982–83), the species occurs in an area encompassing some 456,000 acres of land, and about 38 percent of the colonies are located on public land. Although the total number of animals is still small, and the range reduced, the Utah prairie dog is not now in danger of extinction, but it should be closely monitored and managed to assure that it does not become endangered. Such monitoring and management can be carried on under a threatened classification.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Rodent populations are subject to sylvatic plague where conditions of overpopulation exist. In Utah's Cedar and Parowan Valleys, the Utah prairie dog population is now crowded, and there may be a possibility of this disease erupting among the animals. Although an outbreak of sylvatic plague would probably not result in the species' extinction, it could lead to its becoming endangered.

D. *The inadequacy of existing regulatory mechanisms.* Not applicable.

E. *Other natural or manmade factors affecting its continued existence.* In the Cedar and Parowan Valleys, localized high population levels of the Utah prairie dog reportedly result in crop losses and damage to equipment amounting to some 1.5 million dollars annually (Ivan Matheson, Utah State Senator, per. comm.). State authorities have not been able to relieve the situation by live-trapping and transplanting individual animals, and there is increasing concern that local ranchers will resort to illegal measures of control; local people have traditionally poisoned these prairie dogs in the past. This could pose a serious threat to the populations in the Cedar and Parowan Valleys and, since overall numbers and range are restricted, to the species as a whole.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this final rule. Based on this evaluation, the preferred action is to reclassify the Utah prairie dog to threatened status, and to permit an annual lethal take of the species of up to 5,000 animals in the Cedar and Parowan Valleys, Iron County, Utah. The reasons why alternatives to this action are not acceptable are discussed in detail in the background section of this rule.

Available Conservation Measures

Section 4(d) of the Act states that whenever any species is listed as a Threatened species, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. A special regulation is finalized herewith for the Utah prairie dog, at 50 CFR 17.40 (g), that will apply only to the populations in certain delineated portions of the Cedar and Parowan Valleys in Iron County, Utah. Taking in these delineated areas would be carried out in accordance with Utah State law, through a permit system established by the Utah Division of Wildlife Resources. The number of animals taken annually between June 1 and December 31 cannot exceed 5,000. Permits will be evaluated and issued on a case by case basis, based on whether taking is necessary for the conservation and management of the species and the effect on overall population status. Permits would allow controlled shooting, trapping, and drowning in specified areas monitored by the Division. Taking cannot include the use of chemical toxicants, since no such materials are registered for control of the species. This taking would be permitted as a conservation measure since the prairie dogs are overcrowding their habitat in these valleys, and population pressures cannot be relieved in any other way. Given the fact that the total population (juveniles and adults) in these valleys exceeds 20,000 animals during the summer, the maximum allowed take of 5,000 animals will not, in the Service's opinion, jeopardize the survival of the prairie dog population in the Cedar and Parowan Valleys. The 5,000 figure is based on estimates by the Utah Division of Wildlife Resources that roughly 33 towns totalling 7,200 adult dogs reside in the affected area. This amount of take from the annual increment of 14,000 young produced by this adult population annually will allow a sufficient number of young to remain in the population each year so that the population level will continue to be stable, and probably even supply surplus animals for livetrapping and transplanting elsewhere. Certainly far more than 5,000 animals die from natural causes in the fall and early winter. The take of 5,000 animals annually (primarily in the spring) should act to reduce natural die off levels in the fall and winter. To guard against any negative impacts on the population, the Service reserves the right to immediately halt take, or to reduce the level of take, of Utah prairie dogs if at any time it receives substantive information that such taking is proving deterimental to the conservation or survival of the species. The number of animals taken, their location, and the methods of take employed would then have to be reported at 90-day intervals to the U.S. Fish and Wildlife Service by the State.

The special rule provides that except for the limited take authorized by the special rule, the prohibitions and exemptions of 50 CFR 17.31 and 17.32 shall apply to the Utah prairie dog. The prohibitions of 50 CFR 17.31 for threatened species are essentially the same as those for endangered species (illegal to take, import, ship in interstate commerce or in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce; and illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken). Under 50 CFR 17.31(b), however, "any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conversation agency which is operating under a Cooperative Agreement with the Service or with the National Marine Fisheries Service, in accordance with Section 6(c) of the Act, who is assigned by his agency for such purposes, may, when acting in the course of his official duties, take those threatened species of wildlife which are covered by an approved Cooperative Agreement to carry out conservation programs." The State of Utah has such a cooperative agreement that covers the Utah prairie dog. In accordance with 50 CFR 17.32, permits will be available for scientific purposes, enhancement of propagation or survivl, economic hardship, zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

The State of Utah will continue its annual census count of Utah prairie dogs and submit data it obtains through these counts to the Service each year. The provisions of Section 7(a) of the Endangered Species Act would continue to apply to the Utah prairie dog throughout its range. All Federal agencies are required to insure that actions authorized, funded, or carried out by them are not likely to jeopardize the continued existence of the species. Other provisions of the Act, including those for land acquisition (Section 5) and financial assistance to States (Section 6) would also continue to apply to all populations of the Utah prairie dog.

National Environmental Policy Act

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

References

Collier, G.D., and J.J. Spillett. 1972. Status of the Utah prairie dog (*Cynomys parvidens*). Utah Academy of Science, Arts, Letters 49:27–39.

Crocker-Bedford, D. 1975. Utah prairie dog habitat evaluation. Proceedings of Utah Wildlife Technical Meeting. 7pp.
Heggen, A.W., and R.H. Hasenyager. 1979. Annual Utah prairie dog progress report to U.S. Fish and Wildlife Service by Utah Division of Wildlife Resources. Unpublished Report Salt Lake City, Utah: Division of Wildlife Resources.
Pizzimenti, J.J., and C.D. Collier. 1975. *Cynomys parvidens*. *Mammalian Species* 56:1–2.
Turner, B. 1979. An evaluation of the Utah prairie dog (*Cynomys parvidens*). Unpublished Report prepared for the Utah Division of Wildlife Resources, 53 pp.
Utah Division of Wildlife Resources. 1983. Draft Utah prairie dog recovery plan. Unpublished Report submitted to U.S. Fish and Wildlife Service.

Additional information pertinent to this proposed rule was received from the following agencies: Utah Division of Wildlife Resources, U.S. Bureau of Land Management, U.S. Forest Service, National Park Service, Mr. Ivan Matheson, Utah State Senator.

Authors

The primary authors of this rule are Jane P. Roybal and James L. Miller, U.S. Fish and Wildlife Service, 134 Union Boulevard, 4th Floor, Lakewood, Colorado 80225 (303/234–2496). John L. Paradiso, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975), served as editor.

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B and D of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by reclassifying the Utah prairie dog from endangered to threatened status under Mammals on the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Sciuridae							
*	*	*	*	*	*	*	*
Prairie dog, Utah	*Cynomys parvidens*	U.S.A. (UT)	Entire	T	6,148	NA	17.40(g)
*	*	*	*	*	*	*	*

3. Add the following special rule to § 17.40.

§ 17.40 Mammals.

* * * * * *

(g) Utah prairie dog (*Cynomys parvidens*)

(1) Except as noted in paragraph (g)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 shall apply to the Utah prairie dog.

(2) A Utah prairie dog may be taken under a permit issued by the Utah Division of Wildlife Resources, in accordance with the laws of the State of Utah, in the following areas of Cedar Valley and Parowan Valley, Iron County, Utah (Salt Lake Meridian): T33S R8W, T33S R9W, T34S R8W, T34S R9W, T34S R10W, T34S R11W, T35S R10W, T35S R11W, T36S R11W, T36S R12W, T37S R12W, T38S R12W: Provided, that such taking does not exceed 5,000 animals annually, and that such taking is confined to the period of from June 1 to December 31. The following information must be reported by the State every 90 days to the U.S. Fish and Wildlife Service's Regional Office, Region 6, Denver Federal Center, Denver, Colorado 80225, or to any other address designated by the Service: Name and address of each person holding an active permit; reason for issuance of each permit; number, location, and method of take for all Utah prairie dogs taken during the reporting period; and any other information requested by the Service.

(3) If the Service receives substantive evidence that takings pursuant to paragraph (g)(2) of this Section are having an effect that is inconsistent with the conservation of the Utah prairie dog population in the area designated by paragraph (g)(2), the Service may immediately prohibit or restrict such taking as is appropriate for the conservation of the population.

(4) The information collection requirement contained in Section (g)(2) above does not require Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

* * * * *

Dated: May 16, 1984.

G. Roy Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–14213 Filed 5–25–84; 8:45 am]
BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 49, No. 104
Tuesday, May 29, 1984

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

FEDERAL ELECTION COMMISSION

[Notice 1984-8]

11 CFR Parts 4 and 5

Public Records and the Freedom of Information Act; Access to Public Disclosure Division Documents; Amendment of Fee Provisions

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on the proposed revision of current fee schedules under 11 CFR Parts 4 and 5. The proposed regulations would revise the current fee schedules to update the actual costs of items listed and would set the fees in a more general fashion by describing the costs of reproduction instead of listing each item for which a charge is made. The Commission will also accept comments on two other amendments to the fee provisions under Parts 4 and 5. The first proposed amendment modifies the procedure for handling microfilm and computer tape requests, so that the requester would pay the outside producer of the requested material directly. This amendment would eliminate the requirement of debiting the Commission appropriation for reproduction costs that are not reimbursable.

Second, the proposed rule amends Part 4, Public Records and Freedom of Information Act, to clarify the Commission procedure for charging staff time. The Commission does not charge for staff time expended in duplicating materials requested under the Freedom of Information Act. Further information on these proposed amendments and revisions is provided in the supplemental information which follows.

DATE: Comments must be received on or before June 28, 1984.

ADDRESS: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 523-4143 or Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: The primary purpose of this proposed rule is to update the fee schedules for materials requested under the Public Records and Freedom of Information Act, 11 CFR Part 4, and Access to Public Disclosure Division Documents, 11 CFR Part 5, which have not been modified since the Commission first promulgated the schedules in 1979-80. The revisions in the fee schedules reflect changes in the "direct" cost to the Commission, or only those costs directly attributable to the actual reproduction of documents. The format of the proposed fee schedules has also been altered. In the present regulations, the publications for which charges are made are listed. This approach restricts the Commission's ability to add new publications or to revise the charges made for documents when they become more voluminous. The fee schedules are revised describe instead the Commission's actual costs for different types of reproduction, eliminating the need to set forth the price of each document. An up-to-date fee schedule for particular publications will continue to be made available in the Commission's Public Records Office.

A second purpose is to modify the billing procedure for microfilm and computer tape requests. In fulfilling its duties under the Freedom of Information Act, and in exercising its Public Disclosure functions, the Commission receives numerous requests for copies of records which appear on microfilm and on computer tape. Since the Commission does not have the facilities to duplicate microfilm or computer tape, private companies perform that service. Currently, the public requester pays the Commission a copying fee equal to the price billed to the Commission by the private duplicating firm. *See* schedules set out in 11 CFR 4.9(a) and 5.6(a). These monies are deposited directly into the U.S. Treasury, and the Commission pays the outside duplicating firm from its appropriation. The Commission therefore requested an opinion from the Comptroller General regarding a proposed change in procedures governing payment of fees for duplication of records. The Comptroller General approved the change in Commission billing arrangements. *See* Comp. Gen. Decision B-205151 (March 1, 1982).

Under the proposed regulation, each time a member of the public requests information in the form of microfilm or computer tape copies, the Commission will arrange for a private firm to produce that information and forward it to the Commission. The Commission will collect from the requester the appropriate fee for the duplication; however, the requester will make that fee payable not to the Commission but to the private firm which performed the duplicating. The Commission, upon receipt of payment, will forward the records to the requester.

The cost to the requester will continue to be regulated by the contract between the Commission and the private company and will not exceed the fees which the Commission would have been authorized to charge if it had processed the request in-house.

All non-exempt Commission documents which are on microfilm will continue to be available for inspection and copying at the Commission's Public Disclosure Division located on the street level, 1325 K Street, NW., Washington, D.C.

Lastly, this proposed rule modifies 11 CFR 4.9(a) for grammatical purposes and to delete language which purported to authorize the Commission to assess a fee for staff time spent in duplicating Freedom of Information Act materials. The Commission does not assess a fee for such time.

The Commission will review any comments received on the foregoing amendments to Parts 4 and 5 of the regulations. The changes in the fee schedules are subject to notice and comment before they can become final. 5 U.S.C. 552(a)(4)(A). The other amendments are not technically subject to notice and comment requirements because they pertain to the agency's procedures for collecting fees and do not alter the rights or interests of the public. 5 U.S.C. 553(b)(A). Nevertheless, the Commission will accept comments on these matters as well.

Statutory Authority

11 CFR Part 4. 5 U.S.C. 552.

11 CFR Part 5. 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a) and 31 U.S.C. 483(a).

List of Subjects

11 CFR Part 4

Freedom of information.

11 CFR Part 5

Archives and records.

PART 4—[AMENDED]

It is proposed to amend 11 CFR Part 4 by revising § 4.9 as follows:

§ 4.9 Fees.

(a)(1) Fees will be charged for the staff time utilized in searching for records, and for the expenses involved in the duplication of such records. These fees shall not exceed the Commission's actual costs in processing requests for records, in accordance with the following schedule:

Photocopying from microfilm reader-printer, $.15 per page
Photocopying from photocopying machines, $.05 per page
Paper copies from microfilm—Paper Print Machine, $.05 per frame/page
Reels of Microfilm:
Number of feet x $.061 per foot=(total cost per reel)
Publications: (New or not from stocks available.)
Cost of photocopying (reproducing) document, $.05 per page
Cost of binding document, $.30 per inch. Plus cost of staff research time after first ½ hour (see Research Time)
Publications: (Available stock.)
If available from stock on hand, cost is based on previously calculated cost as stated in the publication (based on actual cost per copy, including reproduction and binding).
Computer Tapes:
Cost ($.0006 per Computer Resource Unit Utilized—CRU) to process the request plus the cost of the computer tape ($25) and professional staff time (see Research Time). The cost varies based upon request.
Computer Indexes:
No charge for 20 or fewer requests for computer indexes, except for a name search as described below.
C Index—Committee Index of Disclosure Documents. No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $.05 for each ID number requested.
E Index (Parts 1–4)—Candidate Index of Supporting Documents. No charge for requests of 20 or fewer candidate ID numbers. Requests for more than 20 ID numbers will cost $.10 for each ID number requested.
D Index—Committee Index of Candidates Supported/Opposed. No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $.30 for each committee ID number requested.
E Index (Complete)—Candidate Index of Supporting Documents. No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $2.00 for each candidate ID number requested.
G Index—Selected List of Receipts and Expenditures. No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $2.00 for each ID number requested.
Other computer index requests for more than 20 ID numbers will cost $.0006 per CRU (Computer Resource Unit) utilized.
Name Search—A computer search of an entire individual contributor file for contributions made by a particular individual or individuals will cost $.0006 per CRU (Computer Resource Unit) utilized.
Research Time:
Clerical: first ½ hour is free; remaining time costs $3.50 for each half hour (equivalent of a GS–5) for each request.
Professional: first ½ hour is free; remaining time costs $8.00 per each half hour (equivalent of a GS–12) for each request.
Other Charges:
Certification of a Document. $7.35 per quarter hour Transcripts of Commission Meetings not previously transcribed, $6.70 per half hour (equivalent of a GS–11 executive secretary)

(2) Upon receipt of any request for the production of computer tape or microfilm, the Commission will advise the requester of the identity of the private contractor who will perform the duplication services. The fee for the production of computer tape or microfilm shall be made payable to that private contractor and shall be forwarded to the Commission.

(b) Commission publications for which fees will be charged under 11 CFR 4.9(a) include, but are not limited to, the following:

Advisory Opinion Index
Report on Financial Activity
Financial Control and Compliance Manual
MUR Index
Guideline for Presentation in Good Order
Office Account Index

(c) In the event the anticipated fees for all pending requests from the same requester exceed $25,00, records will not be searched, nor copies furnished, until the requester pays, or makes acceptable arrangements to pay, the total amount due. Similarly, if the records requested require the production of microfilm, or of computer tapes, the Commission will not instruct its contractor to duplicate the records until the requester has submitted payment as directed or has made acceptable arrangements to pay the total amount due. If any fee is not precisely ascertainable, an estimate will be made by the Commission and the requester will be required to forward the fee so estimated. In the event any advance payment differs from the actual fee, an appropriate adjustment will be made at the time the copies are made available by the Commission.

(d) The Commission may reduce or waive payment of any fees hereunder if it determines that such waiver or reduction is in the public interest because the proposed use of the information involved can be considered as primarily benefiting the general public as opposed to primarily benefiting the individual or organization requesting the information.

PART 5—[AMENDED]

2. It is proposed to amend 11 CFR Part 5 by revising § 5.6 as follows:

§ 5.6 Fees.

(a)(1) Fees will be charged for copies of records which are furnished to a requester under this part and for the staff time spent in locating and reproducing such records. The fees to be levied for services rendered under this part shall not exceed the Commission's direct cost of processing requests for those records computed on the basis of the actual number of copies produced and the staff time expended in fulfilling the particular request, in accordance with the following schedule of standard fees:

Photocopying from microfilm reader-printer, $.15 per page
Photocopying from photocopying machines, $.05 per page
Paper copies from microfilm—Paper Print Machine, $.05 per frame/page
Reels of Microfilm:
Number of feet × $.061 per foot = (total cost per reel)
Publications: (New or not from stocks available.)
Cost of photocopying (reproducing) document, $.05 per page
Cost of binding document, $.30 per inch
Plus cost of staff research time after first ½ hour (see Research Time)
Publications: (Available stock.)
If available from stock on hand, cost is based on previously calculated cost as stated in the publication (based on actual cost per copy, including reproduction and binding).
Computer Tapes:
Cost ($.0006 per Computer Resource Unit Utilized—CRU) to process the request plus the cost of the computer tape ($25) and professional staff time (see Research Time). The cost varies based upon request.
Computer Indexes:
No charge for 20 or fewer requests for computer indexes, except for a name search as described below.
C Index—Committee Index of Disclosure Documents. No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $.05 for each ID number requested.
E Index (Parts 1–4)—Candidate Index of Supporting Documents. No charge for

requests of 20 or fewer candidate ID numbers. Requests for more than 20 ID numbers will cost $.10 for each ID number requested.

D Index—Committee Index of Candidates Supported/Opposed. No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $.30 for each committee ID number requested.

E Index (Complete)—Candidate Index of Supporting Documents. No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $2.00 for each candidate ID number requested.

G Index—Selected List of Receipts and Expenditures. No charge for requests of 20 or fewer committee ID numbers. Requests for more than 20 ID numbers will cost $2.00 for each ID number requested.

Other computer index requests for more than 20 ID numbers will cost $.0006 per CRU (Computer Resource Unit) utilized.

Name Search—A computer search of an entire individual contributor file for contributions made by a particular individual or individuals will cost $.0006 per CRU (Computer Resource Unit) utilized.

Research Time/Photocopying Time:

Clerical: first ½ hour is free; remaining time costs $3.50 for each half hour (equivalent of a GS–5) for each request.

Professional: first ½ hour is free; remaining time costs $8.00 per each half hour (equivalent of a GS–12) for each request.

Other Charges:

Certification of a Document—$7–35 per quarter hour

Transcripts of Commission Meetings not previously transribed.—$6.70 per half hour (equivalent of a GS–11 executive secretary)

(2) Upon receipt of any request for the production of computer tape or microfilm, the Commission will advise the requester of the identity of the private contractor who will perform the duplication services. The fee for the production of computer tape or microfilm shall be made payable to that private contractor and shall be forwarded to the Commission.

(b) Commission publications for which fees will be charged under 11 CFR 5.6(a) include, but are not limited to, the following:

Advisory Opinion Index
Report on Financial Activity
Financial Control and Compliance Manual
MUR Index
Guideline for Presentation in Good Order
Office Account Index

(c) In the event the anticipated fees for all pending requests from the same requester exceed $25.00, records will not be searched, nor copies furnished, until the requester pays, or makes acceptable arrangements to pay, the total amount due.

Similarly, if the records requested require the production of microfilm or of computer tapes, the Commission will not instruct its contractor to duplicate the records until the requester has submitted payment as directed or has made acceptable arrangements to pay the total amount due. If any fee is not precisely ascertainable, an estimate will be made by the Commission and the requester will be required to forward the fee so estimated. In the event any advance payment differs from the actual fee, an appropriate adjustment will be made at the time the copies are made available by the Commission.

(d) The Commission may reduce or waive payments of fees hereunder if it determines that such waiver or reduction is in the public interest because the furnishing of the requested information to the particular requester involved can be considered as primarily benefiting the general public as opposed to primarily benefiting the person or organization requesting the information.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

I certify that the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the fees assessed do not exceed the Commission's direct costs in duplicating records and provide for waiver in appropriate situations.

Dated: May 23, 1984.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 84–14214 Filed 5–25–84; 8:45 am]

BILLING CODE 6715–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Notice of extension of comment period on advance; Proposed rulemaking.

SUMMARY: On February 10, 1984, SBA published in the **Federal Register** an Advance Notice of proposed rulemaking regarding Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies (see 49 FR 5230).

That publication provided that comments on the advance notice would be received for a period of 60 days from date of publication. Subsequently, the comment period was extended for 30 days. This notice extends the comment period pertaining to the advance notice for an additional 30 days in order to provide more time for public comment on the above-referenced proposed rule.

DATE: Comments on the above-referenced proposed rule must be received by June 10, 1984.

ADDRESS: Written comments should be directed to Mr. Thomas C. Bresnan, Staff Accountant, Small Business Administration, Office of Finance and Investment, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above, telephone (202) 653–6782.

SUPPLEMENTARY INFORMATION: In order to provide more time for public comment on the above-referenced proposed rule, SBA is hereby extending the comment period relative to the proposal for an additional 30 days. The public is encouraged to supply comments in writing to the address indicated above so that a complete record on this important advance notice can be established.

Dated: May 18, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–14190 Filed 5–25–84; 8:45 am]

BILLING CODE 8025–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9172]

Smitty's Supermarkets, 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 Springfield, Missouri operator of retail grocery stores, among other things, to cease engaging in any concerted action to impede the collection or dissemination of comparitive price information. For a period of 5 years, the company would be prohibited from requiring price checkers to purchase items to be priced as a condition of allowing them to price check; denying price checkers the same access to its stores as is provided to customers; or

coercing any price checker, publisher or broadcaster to refrain from collecting or reporting comparitive price information. Additionally, the order would require the company to offer to reimburse TeleCable up to $1,000 for the broadcast of a comparative grocery price information program. Should the station elect to broadcast such a program, the company would be further required to post signs and place newspaper ads notifying the public that such a program is being broadcast.

DATE: Comments must be received on or before July 30, 1984.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. & Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bremer, Federal Trade Commission, P–752, 6th St. & Pa. Ave., NW., Washington, D.C. 20580. (202) 724–1256.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, 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

Grocery stores, Trade practices.

Before Federal Trade Commission

[Docket No. 9172]

Agreement Containing Consent Order To Cease and Desist

In the Matter of SMITTY'S SUPER MARKETS, INC., a corporation.

The agreement herein, by and between Smitty's Super Markets, Inc., a corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Smitty's Super Markets, Inc., hereinafter sometimes referred to as "Smitty's," is a Missouri corporation, with its principal office at 218 South Glenstone, Springfield, Missouri.

2. Smitty's has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Smitty's admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Smitty's waives:

a. Any further procedural steps;

b. The requirement that the Federal Trade Commission decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement is for settlement purposes only and does not constitute an admission by Smitty's that the law has been violated as alleged in the said copy of the complaint issued by the Comission.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Federal Trade Commission. If this agreement is accepted by the Federal Trade Commission, it 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 Smitty's, in which event it will take such action as it may consider appropriate, or without further notice to Smitty's issue and serve its decision containing the following Order in disposition of the proceeding and make information public in respect thereto. When so issued, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time as provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the ageed-to Order to Smitty's address as stated in this agreement shall constitute service. Smitty's 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 this agreement may be used to vary or contradict the terms of the Order.

7. A responsible official of Smitty's has read the complaint and the Order contemplated hereby on behalf of Smitty's. Smitty's understands that once the Order has been issued, Smitty's will be required to file one or more compliance reports showing that it has fully complied with the Order. Smitty's further understands that it will be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

ORDER

I

For purposes of this Order, the following definitions shall apply:

A. "Smitty's" means Smitty's Super Markets, Inc., its divisions and subsidiaries, officers, directors, representatives, agents, employees, successors and assigns.

B. "Price check" or "price checking" means the collecting, from information available to customers, of retail prices of items offered for sale by any retail grocery store (SIC 5411), which is done neither by nor on behalf of a person engaged in the sale of groceries, and which information is used in price reporting.

C. "Price checker" means any person engaged in price checking.

D. "Price reporting" or "price report" means the dissemination to the public of price checking information through any medium by any person not engaged in the sale of groceries.

E. "Springfield" means the counties of Christian and Greene, Missouri.

F. "Customer" means any individual who enters a retail grocery store for the purpose of grocery shopping, whether or not that individual actually makes a purchase.

G. "Person" means individuals, corporations, partnerships, unincorporated associations, and any other business entity.

H. "Geographic area" means: (1) A Standard Metropolitan Statistical Area as defined by the Bureau of the Census, U.S. Department of Commerce, as of October 1, 1982; or (2) a county.

I. "Supermarket" means any retail grocery store (SIC 5411) with annual sales of more than one million dollars ($1,000,000.00).

II

It is further ordered that:

A. Smitty's shall forthwith cease and desist from taking any action in concert with any other person engaged in the sale of grocery products which has the purpose or effect of restricting, impeding, interfering with or preventing price checking or price reporting.

B. Except as provided in paragraph II.C., for five (5) years following the date on which this Order becomes final,

Smitty's shall cease and desist from taking or threatening to take any unilateral action that would:

1. Require price checkers to purchase items to be price checked as a condition of allowing them to price check; or

2. Deny price checkers the same access to Smitty's supermarkets as is provided to customers; or

3. Coerce, or attempt to coerce, any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting.

C. 1. Nothing in paragraph II.B. shall prevent Smitty's from adopting reasonable, non-discriminatory rules governing the number of price checkers in its supermarkets at any one time for the purpose of preventing disruption of Smitty's normal business operations.

2. Nothing in subparagraph II.B.3. shall prevent Smitty's from publicly commenting upon or objecting to any price report in which its prices are compared to those of any other grocery retailer.

3. Whenever Smitty's believes that conditions exist that justify the exclusion of a price checker, it may submit to the Federal Trade Commission a sworn statement setting forth with particularity the facts that Smitty's believes meet such conditions. For purposes of this Order, the only conditions justifying the exclusion of a price checker are that another supermarket operator with whose prices Smitty's prices are compared in a price report has knowingly tampered with or manipulated the results of such price report for its own competitive gain either (a) by the use of information wrongfully obtained and not available to all supermarket operators whose prices are being compared, or (b) by inducing any price reporter or price checker to cause false information to be published or broadcast. Following the Federal Trade Commission's actual receipt of such statement, Smitty's may exclude the price checkers from its supermarkets in the geographic area(s) covered by the affected price report for so long as the conditions set forth in Smitty's statement shall exist. In any civil penalty action against Smitty's for a violation of subparagraph II.B.2. occurring after notice to the Federal Trade Commission was given by Smitty's as provided in this subparagraph, Smitty's shall have the burden of proving, by a preponderance of the evidence, that the conditions justifying the exclusion of a price checker as set forth in this subparagraph have been met. In meeting its burden, Smitty's may offer evidence only for the purpose of proving the facts set forth in its statement to the Federal Trade Commission. Nothing in this subparagraph shall be construed to be an exception to the prohibitions of paragraph II.A. of this Order.

III

It is further ordered that, upon the resumption of price reporting by TeleCable of Springfield that is similar in quality and coverage to that broadcast by it prior to October 14, 1981, and that includes any Smitty's supermarket, and upon receipt by Smitty's of written request for payment from TeleCable, Smitty's shall reimburse TeleCable for its actual cost of obtaining a price reporting program up to the amount of two hundred fifty dollars ($250.00) per week. Smitty's obligation under this Part (III) shall terminate either when it has reimbursed TeleCable in the total amount of one thousand dollars ($1,000.00) or three (3) years following the date on which this Order becomes final, whichever occurs first. Smitty's shall not reimburse TeleCable for costs incurred by TeleCable during any week for which TeleCable's costs are reimbursed by any other person.

IV

It is further ordered that, within seven (7) days following the date on which this Order becomes final, Smitty's shall send a letter, a copy of which is attached here as Exhibit A, together with a copy of this Order, to TeleCable of Springfield, informing TeleCable of Smitty's obligations under Parts II and V of this Order, TeleCable's rights under Part III, and the notices that Smitty's must receive from TeleCable before certain Order provisions become binding upon Smitty's.

V

It is further ordered that, if at any time during the two years following the date on which this Order becomes final, Smitty's is notified in writing by TeleCable of Springfield that price reporting that includes any of Smitty's supermarkets has resumed in Springfield:

A. For a period of sixty (60) days following the receipt of such notice, Smitty's shall post signs no smaller than 30 inches by 40 inches in a front window in each of Smitty's supermarkets in Springfield, stating:

Grocery Price Survey

A price survey comparing prices of selected grocery items at Smitty's and other Springfield grocery supermarkets is being broadcast over cable television. This comparative price survey can be seen on channel ——— and is broadcast from ——— to ———.

B. For a period of sixty (60) days following the receipt of such notice, whenever Smitty's places food advertisements of one-half page or larger in any printed advertising medium with circulation of 15,000 or more copies in Springfield, Smitty's shall publish an announcement as a part thereof in the same language provided in paragraph V.A. This announcement shall be no smaller than 3 inches high by 3 inches wide and shall be printed in conspicuous type. In each week in which Smitty's does not place a one-half page or larger food advertisement in such printed advertising medium, Smitty's shall place this announcement as a display advertisement in any printed advertising medium with circulation of 15,000 or more copies in Springfield.

VI

It is further ordered that Smitty's shall, within seven (7) days after the date on which this Order becomes final, and once a year thereafter for three years, provide a copy of this Order to each of its officers and supermarket managers, and secure from each such individual a signed statement acknowledging receipt of this Order.

VII

It is further ordered that Smitty's shall, within sixty (60) days after the date on which this Order becomes final, file with the Commission a verified written report, setting forth in detail the manner and form in which Smitty's has complied with this Order. Additional reports shall be filed at such other times as the Commission may by written notice require. Each compliance report shall include all information and documentation as may be required by the Commission to show compliance with this Order.

VIII

It is further ordered that Smitty's shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in it such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation or its retail grocery operations, which may affect compliance obligations arising out of this Order.

Exhibit A

TeleCable of Springfield,
1533 South Enterprise, Springfield, Missouri 65801

Dear Sir or Madam: This is to notify you that Smitty's Super Markets, Inc. ("Smitty's"), which operates Smitty's grocery stores in

Springfield, Missouri, has entered into a consent order with the Federal Trade Commission in which it has agreed that it will not interfere with efforts by independent parties such as TeleCable of Springfield to engage in price reporting or price checking in Smitty's grocery stores in Springfield. Smitty's has agreed that it will not require price checkers to purchase the items being price checked, will not deny price checkers the same access to its supermarkets as is provided to customers, and will not attempt to coerce any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting. The terms of and limitations on Smitty's agreement are set forth in a consent order issued by the Federal Trade Commission, a copy of which is enclosed herewith.

If TeleCable of Springfield institutes a price reporting program similar or superior in quality and coverage to the one broadcast by TeleCable in 1981, and if the program includes any of Smitty's grocery stores in Springfield, Missouri, Smitty's will reimburse TeleCable for its actual costs of obtaining price reports, up to the amount of $250 per week, and up to $1,000 in total. Smitty's will also place notices in its Springfield grocery stores and in its weekly advertisements, informing consumers of TeleCable's price surveys. The precise terms of Smitty's obligations to place such notices, and to reimburse TeleCable for certain of its costs, are set forth in the enclosed consent order.

In order to receive any funds to which you may be entitled and to effect the placement of the notices described above, please notify Smitty's in writing, c/o President, Smitty's Super Markets, Inc., 218 South Glenstone, Springfield, Missouri 65802, stating when the program began or is scheduled to begin, the time and channel on which the survey will be broadcast, and TeleCable's costs, if any, of obtaining the survey information.

Very truly yours,

President, Smitty's Super Markets, Inc.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Smitty's Super Markets, Inc.

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.

A complaint was issued against Smitty's Super Markets, Inc., ("Smitty's") and two other Springfield, Missouri, grocery retailers on December 16, 1983, charging them with a conspiracy to prevent an independent price checking firm from collecting comparative grocery price information from their stores for broadcast to the public over the local cable television station. A fourth retailer, Dillon Companies, Inc., had previously signed a consent agreement, which became final on October 13, 1983. The complaint against Smitty's charges that, by agreeing with others to prevent the collection and public dissemination of comparative grocery price information, Smitty's has engaged in conduct that constitutes a restraint on price competition and a group boycott, and that Smitty's conduct constituted an unfair method of competition or an unfair act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act. The complaint alleges that this conduct had the following anticompetitive effects: (1) price competition among Springfield grocery retailers has been suppressed; and (2) consumers in Springfield have been deprived of price information that can be used in the selection of a grocery store.

The proposed order provides that Smitty's must: (1) Refrain from engaging in concerted action to impede the collection or dissemination of comparative grocery price information; (2) refrain for five years from taking three specific types of actions to impede the collection or dissemination of comparative grocery price information; (3) reimburse the Springfield, Missouri, cable television station up to $1,000 for the broadcast of a comparative grocery price program, if the cable station elects to broadcast such a program; (4) if the cable station elects to broadcast such a program, to post signs and place advertisements for sixty (60) days notifying the public that such a program is being broadcast; (5) notify certain of its officers and employees of the terms of the order; (6) file periodic verified written compliance reports setting forth its compliance with the provisions of the order; and (7) provide the Federal Trade Commission at least 30 days notice prior to effecting changes in the corporation that may affect its compliance obligations arising from the order.

The proposed order, by requiring Smitty's to refrain from concerted and individual action to impede the collection or dissemination of comparative grocery price information, should ameliorate the anticompetitive effects resulting from the concerted action. The proposed order is intended to permit the marketplace to determine whether a comparative price survey is broadcast in Springfield, and to ensure that the development of new forms of consumer price information is not inhibited.

The purpose of this analysis is to facilitate public comment on the proposed order, and it 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. 84-14196 Filed 5-25-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

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

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

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

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

DATE: Comments must be submitted on or before July 30, 1984.

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-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be