

different degrees *i.e.*, first security is different from subordinate interest.

III. Guaranteed Accounts

The Commission proposed that an FCM could not consider an account to be guaranteed unless a written guarantee agreement governing such an account is filed with the FCM, together with an opinion of counsel stating that the guarantee agreement is sufficient to be a binding guarantee under applicable local law. The rule would also provide that if a guaranteed account becomes undermargined, the existence of a guarantee agreement, standing alone, would not be sufficient to alleviate the guaranteed account's undermargined status. Such an account's undermargined status could only be alleviated by accruals on, or a reduction of, open positions, or by the deposit of additional funds. The rule would also provide that if the FCM had prior written authorization of the guarantor, and there were sufficient excess net equity in the guarantor's account, the FCM could transfer funds from the guarantor's account to the guaranteed account. Unless and until any of those actions were taken, however, the guaranteed account would remain undermargined. There would be similar treatment if a guaranteed account were in debit or deficit status. The proposal was intended to clarify existing interpretations, which extend back to Commodity Exchange Authority Administrative Determination No. 15 (August 10, 1937). Several commenters agreed that a guarantee itself should not be good capital just as a guarantee is not treated as a current liability. This is already the Commission's view. The question is how is this effect achieved.

Certain commenters stated that the transfer of funds to the appropriate account which would be required under the new rule may present various operational problems and perhaps adverse tax consequences. The Commission, however, believes that any adverse consequences would arise from the substance of the transaction, which is a loan of margin from one account to another, and not from the effect of the transfer itself. Alternatives to the proposal which have been suggested include the use of an escrow-type account which could be established by a guarantor for its guaranteed accounts. It has also been suggested that consideration be given to the development of a uniform guarantee agreement legally validated for use in each jurisdiction in which a firm has a branch office as a way to cut costs and eliminate the need for an opinion of counsel for each guarantee. The

Commission believes these suggestions may have merit and specifically requests that commenters address these suggestions in any additional comments and, in particular, consider how such suggestions could be implemented. In this connection, the Commission notes that guarantees have caused problems in several insolvencies.

IV. Other Matters

As noted above, the Commission previously extended the comment period with respect to its proposal to require FCMs to calculate a concentration charge in computing their adjusted net capital. In that notice, several areas of possible modification to the August 5 concentration charge proposal were discussed, and comment was specifically requested thereon. The Commission would appreciate receiving the workpapers which have already been developed by the exchanges and by other commenters who have not provided the basis for any calculations previously submitted, but the Commission does not believe that commenters need to make any further calculations with respect to its original proposal. The Commission wishes to reiterate its request for comment on possible modifications to the original concentration charge proposal, including the suggestion of other alternatives that may be responsive to that request. Alternative calculations should be supported by sample impact data. Due to the complexity of this undertaking, the Commission fully expects that before any final action would be taken on a concentration charge rule or any responsive alternatives submitted, there would be a reproposal and a further opportunity for interested persons to comment. Furthermore, the Commission reserves the right to repropose the other items included in the August 5, 1985, release if the Commission determines such a procedure to be warranted after reviewing all comments it receives on these issues.

The Commission wishes to encourage commenters to suggest possible alternatives not previously discussed by the Commission regarding any of the financial rule proposals and to discuss whether any single proposal or combination might eliminate the need for any other proposal. For example, commenters should also consider whether creating a special class of segregated funds for floor traders and brokers accounts would provide adequate protection for public customer funds in a Volume-type situation absent a capital charge. Commenters might also address whether an alternative to the capital charge on undermargined

accounts which would require that the amount of such a charge instead be added to a firm's required funds in segregation would be helpful. The Commission therefore welcomes written comments from all interested parties who have not yet submitted any written comments, and invites those who have already submitted written comments to supplement their prior submissions in light of the matters raised herein.

Issued in Washington, DC, on December 2, 1985 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-28905 Filed 12-4-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 166 and 167

[CGD 84-021]

Port Access Route Study Results

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: This notice publishes the results of the Port Access Route Study as reopened by announcement in the Federal Register on July 26, 1985 (49 FR 30078). The study area included the area immediately westward of the Santa Barbara Channel off Point Arguello along the coast of central California. Only the results for this study area are published in this document. Study results for adjacent areas have been previously published and are noted in the background section.

In order to provide a right of way for navigation through areas of offshore development and to separate opposing lanes of traffic, the following routing measures are recommended: an extension of the Santa Barbara Channel traffic separation scheme to approximate position 120 degrees, 55 minutes west longitude, and a fairway system continuing west and north from that position to 35 degrees latitude.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Office of Navigation, (G-NSR-3), Room 1408, U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593, telephone number (202) 245-0108, between 8 a.m. and 3:30 p.m., Monday through Friday. Information is also available from Lieutenant Commander Rober Varanko, Eleventh Coast Guard District (mvs), room 709, 400 OceanGate,

Long Beach, CA 90822, telephone (213) 590-2301).

SUPPLEMENTARY INFORMATION:

Background

Port Access routing needs in the area northwest of the Santa Barbara Channel off of California were studied between 1979 and 1982, and results were published on June 24, at 47 FR 27430. One recommendation developed during that study was to extend the Santa Barbara Channel traffic separation scheme (TSS) westward approximately 25 miles to a new precautionary area off of Point Arguello, then northward another 32 miles to 35° latitude where it would join with a shipping safety fairway.

All permanent amendments to an existing TSS on international waters, including a TSS extension, must be approved by the International Maritime Organization (IMO), before they can be implemented. Also, a newly adopted TSS on the United States Outer Continental Shelf cannot be effective until it has completed the rulemaking process as required by the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223).

The proposed extension was first submitted to the IMO Sub-Committee on Safety of Navigation (SUBNAV) at its 28th Session in October 1983 for an initial technical review. SUBNAV determined at that time that the proposed extension of the Santa Barbara Channel TSS did not have sufficient aids to navigation to provide for vessel position fixing within IMO design criteria. The Subcommittee would reconsider the proposal if permanent platforms qualifying as aids to navigation to support the TSS are constructed in the vicinity of the proposed extension.

In areas where a TSS does not meet IMO requirements but where a right of way for navigation is necessary, the PWSA provides an alternative in the form of safety fairways in which fixed structures are not permitted. Establishment of a fairway does not involve IMO approval.

As a result of the SUBNAV determination, the Coast Guard decided the area needed further study. A Port Access Route Study was reopened on July 26, 1984 (49 FR 30078). The scope of the Study was limited in geography to the area of the TSS proposed to IMO and included the issue of the siting of exploratory drilling platforms adjacent to TSS lanes. The Eleventh Coast Guard District conducted the study encompassing the following geographic areas:

Segment (1) is off the coast between Point Sal and Point Arguello, and is bounded by a line connecting the following geographical positions:

Latitude	Longitude
35°00'00" N.	121°17'48" W.
34°30'45" N.	121°00'20" W.
34°29'00" N.	121°02'00" W.
35°00'00" N.	121°25'00" W.

Segment (2) is a circular area off the coast of Point Arguello. The circle has a radius of four miles centered upon geographical position 34°27'18" N latitude, 121°02'30" W longitude.

Segment (3) is off the coast between Point Arguello and Point Conception and is bounded by a line connecting the following geographical positions:

Latitude	Longitude
34°29'09" N.	120°58'12" W.
34°22'20" N.	120°29'42" W.
34°17'30" N.	120°31'12" W.
34°24'33" N.	120°59'00" W.

The Port Access study for these areas was performed in accordance with the Ports and Waterways Safety Act (33 U.S.C. 1223(c)(3) and 1224). During the study the Coast Guard consulted with federal and state agencies and considered the views of representatives of the maritime community, port and harbor authorities and associations, environmental groups and other parties who may be affected by the study results.

During the study the Coast Guard submitted a new proposal identifying sites of prospective platforms to the 30th session of SUBNAV which met in December 1984, for its technical evaluation. This proposal was supported by development plans for lease tracts off Point Conception which had recently become available. The new proposal would have extended the TSS only as far as a new precautionary area off of Point Arguello because no definite information was available on any future structures to be sited beyond the precautionary area.

At its 30th session SUBNAV approved a partial extension of the TSS nearest to the known platforms. The approval allows the TSS to be extended only to a point nineteen miles beyond the Santa Barbara Channel, six miles short of the proposed precautionary area. However, SUBNAV again advised that additional extensions to the west "would probably become acceptable if another offshore platform with appropriate aids to navigation were to be established in the future . . . west of longitude 120°50' W." (Subcommittee report, number 30/11).

The SUBNAV approval of the partial extension of the TSS was conditioned on the establishment of a high powered radar beacon (racon) and a light with a

twenty mile range on platform Harvest at position 34°38.09' N, 120°40.46' W. The TSS extension cannot become effective until this condition is met or until an alternative aid to navigation is approved under the IMO process.

All TSS change approved by SUBNAV must also be adopted by the IMO Maritime Safety Committee (MSC). The nineteen mile extension of the Santa Barbara Channel TSS was adopted by the MSC in May 1985. The approved extension is a portion of segment 3 of the study area.

Findings and Conclusions

The study reaffirmed the need for a traffic routing system to the northwest of the Santa Barbara Channel. The estimated traffic volume both north and south of 15-18 vessels per day in the study area, coupled with the increasing number of proposed offshore platforms, is sufficient to justify a designated routing system.

In light of the rejection by IMO of the full extension of the Santa Barbara TSS, as proposed in the original port access study, the recommended alternative is to establish a safety fairway in the area which was not approved as a TSS. The fairway will preserve a right-of-way for navigation until such time as new structures are erected which can serve as aids to navigation, and a new TSS proposal can be submitted to IMO. After information becomes available on development prospects for nearby tracts, a study should be conducted to determine whether a TSS is needed within these fairways and whether platforms existing or planned at that time would meet IMO requirements for aids to navigation supporting a TSS.

The recommended fairway is in the same position as the previously proposed TSS, with a one-mile wide fairway in place of the traffic lanes, and a non-fairway separation area. In place of the precautionary area, the one-mile wide fairways will be connected in such a way as to permit gradual course changes for vessels transiting the area. At the northernmost point (35 degrees north latitude), these fairway areas will connect to the coastal fairway proposed by the Twelfth Coast Guard District in its study of the Central California Coast (47 FR 46043; Oct 14, 1982).

During its study, the Eleventh Coast Guard District also reaffirmed the need for a buffer zone policy with guidelines on siting of structures near TSS lanes, as described in the original port access study results (47 FR 27433; June 24, 1982). Details of the policy and guidelines are available from the Eleventh District on request. In general,

the policy is to provide a safety margin for a mobile drilling unit (MODU) or platform and allow attending vessels room to maneuver without concern for passing traffic in the adjoining lane. The intent is also to prevent the navigable portions of a traffic lane from being reduced by permanent structures adjacent to the lane.

A joint U.S. Coast Guard, Corps of Engineers and Minerals Management Service policy on siting of structures in proximity to traffic separation schemes and fairways is needed. The Coast Guard is currently working with the Corps of Engineers to develop a process, within the permit regulations, which would allow a navigation safety evaluation of a structure before a permit is issued, when it is proposed to be in proximity to a designated shipping lane.

With respect to possible impacts on other offshore activities, it was determined, in consultation with the Minerals Management Service, that 80 lease tracts might be affected by the recommended routing system. 12 tracts in this area have already been leased. Specific economic impacts on the offshore lease program were not available at the time of this study. With the modification of the eight-mile diameter precautionary area to a pair of one-mile wide fairways, the area of the tracts affected by recommendation is substantially reduced. Following is a list of tracts, identified by block number, which the Eleventh District determined would be affected by the recommended routing system.

11, 12, 13, 14, 56, 57, 58, 100, 101, 102, 103, 145, 146, 147, 189, 190, 191, 192, 234, 235, 236, 278, 279, 280, 281, 323, 324, 325, 367, 368, 369, 370, 412, 413, 414, 415, 456, 457, 458, 459, 501, 502, 503, 504, 546, 547, 906, 937, 938, 980, 981, 982, 5182, 5183, 5184, 5282, 5283, 5284, 5285, 5286, 5381, 5382, 5383, 5384, 5485, 5386, 5387, 5388, 5389, 5484, 5485, 5486, 5487, 5488, 5489, 5490, 5587, 5588, 5598, 5599

Generally, where TSS or fairway lanes are one-mile wide, underlying resources are accessible via directional drilling. In the long run, however, adjustments may be necessary to allow recovery of known deposits. In such cases, a port access study may be needed to determine whether alternative routing is possible through areas where other lease rights may be affected and whether, in the case of a TSS, the adjustment would conform with IMO guidelines.

Implementation

A notice of proposed rulemaking (NPRM) is planned for publication in 1986 to propose extension of the Santa Barbara TSS as far as it has been approved by IMO, and a shipping safety

fairway extending northward over the portion of the originally proposed TSS extension which has not received IMO approval. All comments received and alternatives evaluated during the study will be fully considered in developing the NPRM. The TSS extension and safety fairway to be proposed are described as follows:

Recommended TSS Extension

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	Longitude
34°20'54" N.	120°30'06" W.
34°18'54" N.	120°30'54" W.
34°25'42" N.	120°51'45" W.
34°23'45" N.	120°52'27" W.

(b) A traffic lane for westbound traffic between the separation zone and a line connecting the following geographical positions:

34°21'48" N.	120°29'54" W.
34°25'36" N.	120°51'27" W.

(c) A traffic lane for eastbound traffic between the separation zone and a line connecting the following geographical positions:

34°18'00" N.	120°31'06" W.
34°22'48" N.	120°52'42" W.

Recommended Shipping Safety Fairway

(a) One fairway will be recommended for west and northbound traffic (an area of approximately one mile in width between rhumb lines joining the following positions):

Latitude	Longitude
34°26'38" N.	120°51'27" W.
34°28'00" N.	120°57'30" W.
34°31'15" N.	121°01'45" W.
35°00'00" N.	121°18'30" W.
35°00'00" N.	121°19'49" W.
34°30'45" N.	121°03'00" W.
34°27'00" N.	120°58'00" W.
34°25'42" N.	120°51'45" W.

(b) A second fairway will be recommended for east and southbound traffic (an area of approximately one mile in width between rhumb lines joining the following positions):

34°23'45" N.	120°52'27" W.
34°25'00" N.	120°58'30" W.
34°29'45" N.	121°05'00" W.
35°00'00" N.	121°22'48" W.
35°00'00" N.	121°24'06" W.
34°29'09" N.	121°06'00" W.
34°24'27" N.	120°58'30" W.
34°22'48" N.	120°52'42" W.

Dated: November 22, 1985.

W.J. Brogdon, Jr.

Captain, U.S. Coast Guard, Chief, Office of Navigation (Acting).

[FR Doc. 85-28910 Filed 12-4-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42002C; BH-FRL 2909-4]

Fluoroalkenes; Proposed Test Rule

Correction

In FR Doc. 85-26529 beginning on page 46133 in the issue of Wednesday, November 6, 1985, make the following corrections:

1. On page 46134, in the first column, in the eighth line of the sixth complete paragraph, "4(a)(1)(A)(i)" should read "4(a)(1)(B)(i)";

2. On page 46136, in the second column, in the twenty-fourth line of the second complete paragraph, "§ 799.1700(c)(1)(C)(2)" should read "§ 799.1700(c)(1)(i)(C)(2)"; and

3. On page 46141, in the third column, in the ninth line, "VDR" should read "VDF".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-337; RM-5076; FCC 85-617]

AM-FM Program Duplication

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice proposes to amend the Commission's program duplication rules for AM-FM radio combinations to exempt the midnight to 6 AM time period from the purview of the rule. The Commission also intends to examine the need for program duplication limits in view of the current condition of the radio industry. The proposed rule change would facilitate expanded radio service in the midnight to 6 AM nighttime period.

DATES: Comments are due by January 2, 1986, and replies are due by January 17, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Proposed Rulemaking

In the matter of amendment of § 73.242 of the Commission's rules and regulations in regard to AM-FM Program duplication: MM Docket No. 85-357 and RM-5076.

Adopted: November 20, 1985.

Released: November 26, 1985.

By the Commission.

Introduction

1. By the *Notice of Proposed Rule Making (Notice)*, the Commission begins a reevaluation of § 73.242 of its Rules in regard to the duplication of programming on AM and FM radio stations that are co-owned in the same local area. The Commission is proposing to eliminate the restrictions of program duplication by AM-FM combinations. The Commission believes that this action would promote expanded radio operation and that such increased service would be in the public interest.

Background

2. Section 73.242 of the Commission's rules provides that if either station of an AM-FM combination is licensed in a community of over 25,000 population, the FM station may not devote more than 25 percent of the average program week to duplicated programming.¹ For the purposes of this rule, duplicated programming is defined as "the simultaneous broadcasting of a particular program over both the AM and FM stations or the broadcasting of a particular program by one station within 24 hours before or after the identical program is broadcast over the other station."

3. The Commission first adopted limits on the amount of program duplication by FM stations commonly owned with AM stations in the same local area in 1964.² At that time, the Commission sought to further two objectives. The first was to reduce the "inherent inefficiency" represented by duplication of the same programming on two co-located stations. The Commission also sought to foster the growth of FM radio service by promoting separate programming of FM stations. The Commission believed that increased separate programming of FM stations would encourage consumers to buy and use FM receivers. The rule as originally promulgated restricted program duplication to 50 percent by FM stations in communities of more than 100,000 population.

4. In 1974, the Commission initiated a new proceeding, Docket No. 20016, for the purpose of updating § 73.242 in light

of changed market circumstances.³ The 1976 *Report and Order* in that proceeding not only strengthened the rule but also widened its application.⁴ The new rule limited AM-FM combinations to a maximum of 25% duplication if either station served a community of more than 25,000 population. No substantive change has been made to the rule since that time.

5. On June 13, 1985, AGK Communications, Inc. (AGK) petitioned the Commission to amend § 73.242 of its Rules. AGK requests that the late night time period, midnight to 6 AM, be exempted from the purview of the program duplication rule. AGK submits that one of the rule's principal objectives, namely that of fostering the development of FM service, has been attained. Furthermore, AGK believes that it would be less wasteful of spectrum resources to permit unrestricted programming in the midnight to 6 AM time period than to have stations cease operation during this period in order to comply with the present rule.⁵ It submits that in many cases licensees need to use the time that is available for duplication under the 25% limit in other parts of the day. Supporting comments were filed by Holston Valley Broadcasting Corporation (Holston), the National Association of Broadcasters (NAB), and TETCO, Inc. (TETCO).

6. In its comments in support of the AGK petition, NAB argues that it is inconsistent for the Commission not to require any programming in the graveyard period and yet to penalize broadcasters for voluntary service in this period, even if on a duplicated basis. NAB also suggests that it may be appropriate for the Commission to revisit the entire matter of the program duplication rule. TETCO, in its comments, argues that § 73.242 is "no longer justified in light of the deregulation of radio, the proliferation of FM stations and . . . the fundamental right of the licensee to broadcast in the public interest."

Discussion

7. Upon consideration of AGK's petition and the statements of the

commenting parties, we believe that changes to the program duplication rule may be warranted. We recognize that the structure and economic condition of the radio industry, in particular that of the FM service, have changed significantly since the current rule was adopted. In view of these changed circumstances, we believe that to permit increased program duplication would provide public interest benefits in terms of increased radio service. Furthermore, we believe these benefits can be realized with only a minimal effect of spectrum resources.

8. As discussed above, one of the Commission's principal objectives in adopting the program duplication rule was to promote separate programming for FM stations and, thereby, to foster the growth of the FM radio service. We agree with the petitioner and the commenting parties that FM radio stations are now fully competitive in the radio industry and that it is no longer necessary to foster the development of the FM service through program duplication limits. Numerous reports in the trade press, audience research survey reports, and other published sources support this assessment.⁷ FM listenership now exceeds that of the AM service and FM stations are now a primary economic force in the radio industry. On this basis, we believe it is no longer necessary to maintain the program duplication rule for the purpose of fostering FM development.

9. We also believe that the kind of unrestricted, full-time program duplication that characterized the early years of the FM service is less likely to occur now. We believe that to permit increased program duplication now generally would not result in inefficient use of the broadcast radio channels. In this respect, we recognize that the service areas of AM and FM combined stations often do not fully coincide. If one of the stations in such a combination were off-the-air as a result of the program duplication limit, then some listeners would be denied a service they might otherwise receive. Thus, we believe that elimination of the program duplication rule could contribute to expanded radio service and would not be an inefficient use of the spectrum.

10. Furthermore, in cases where the potential audience of the combined

¹ See *Notice of Proposed Rule Making* in Docket No. 20016, 46 FCC 2d 277 (1974).

² See *Report and Order* in Docket No. 20016, 59 FCC 2d 147 (1976).

³ AGK points out that the Commission in past actions has acknowledged the low listenership of the graveyard period and has recognized the period to be suitable for experimental operation of AM stations. See *Operation of Visual and Aural Transmitters of TV Stations*, 48 RR 2d 373, 374 (1980). *Report and Order* amending § 73.853 of the Commission's Rules; and § 73.1510(c)(3) of the Commission's Rules.

⁷ For example, the Spring 1985 RADAR survey by Statistical Research, Inc. estimates that FM's share of all radio listening (7 days, 24 hours, all persons 12+) is 70.6%. FM's dominance of audience share is all the more remarkable in view of the fact that, as indicated by our own data, AM stations still outnumber FM stations by 4963 to 4236.

¹ See 47 CFR 73.242.

² See *Report and Order* in Docket No. 15084, 45 FCC 1515 (1964).

stations is of sufficient size and diversity to support separate programming, market forces are likely to lead licensees to provide that programming in order to reach the maximum number of listeners. On the other hand where it is not economically desirable to program combined stations separately, it seems preferable to allow stations to duplicate programming rather than have one of the stations go off-the-air and deny service to some portion of the potential audience. As stated by AGK, program duplication may be particularly desirable during the late night period when audiences, in general, are substantially smaller than at other times. During the nighttime period when listenership is low, many AM-FM combinations may not find it economically desirable or feasible to program their stations separately.

11. Finally, we believe that many heretofore profitable AM stations are presently experiencing financial distress due to the remarkable growth of the FM service. In fact, we believe that for many AM-FM combinations it is now the case that the viability of the AM station depends on its association with a stronger FM facility. A reduction of AM operating expenses at this particular time could mean the difference between success or failure for marginal AM stations and whether such stations continue to provide service to the population in their local communities.

12. Accordingly, we are proposing to eliminate the program duplication limits of § 73.242 of the Commission's rules. We invite comments on this proposal. In particular, we request comment on the effects that eliminating the program duplication rule might have in terms of spectrum efficiency, the expansion of broadcast radio service, and the viability of AM stations.

Regulatory Flexibility Act—Initial Analysis

13. *Reason for Action.* Elimination of the AM-FM program duplication rule is expected to provide needed programming flexibility to AM-FM combinations.

14. *Objective.* The Commission is proposing to eliminate the AM-FM program duplication rule to remove unnecessary regulation and to encourage increased nighttime radio service.

15. *Legal Basis.* The proposed amendment is authorized under section 303 of the Communications Act of 1934, as amended, which charges the Commission to explore new and improved uses of radio.

16. *Description, Potential Impact and Number of Small Entities Affected.*

Eliminating the program duplication rule is expected to benefit licensees of AM-FM combinations. In particular, it may benefit those licensees that are only marginally profitable or that cannot command nighttime audiences sufficient to make separate programming profitable. Accordingly, this amendment is expected to improve profitability and thereby prevent a station from going off-the-air at night. We do not know the exact number of AM-FM combinations which might choose to avail themselves of the opportunity to increase duplicated programming, however we expect this to be a small percent of all stations.

17. *Federal Rules which Overlap, Duplicate or Conflict with this Rule.* None.

18. *Significant Alternatives.* The alternatives are to maintain the status quo or to exempt the midnight to 6 AM time period from the AM-FM program nonduplication rule, as proposed by AGK. The Commission believes that these alternatives would unnecessarily restrict the programming decisions of licensees of combined AM-FM radio stations.

Procedural Matters

19. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

20. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantial disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submitted a written *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's

Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1201 of the Commission's Rules.

21. Pursuant to procedures set out in § 1.415 of the Commission's Rules, interested parties must file comments on or before January 2, 1986, and reply comments on or before January 17, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

22. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. 601 et seq.) (1981).

23. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, an original and 5 copies of all comments, replies, or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in the rule making proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (room 239) at its headquarters in

Washington, DC (1919 M Street, Northwest).

24. This Notice of Proposed Rule Making is issued pursuant to authority contained in sections 4(i) and 303 of the Commission's Act of 1934, as amended.

25. For further information concerning this proceeding, contact Alan Stillwell, Mass Media Bureau, (202) 632-6302.

Federal Communications Commission
William J. Tricarico,
Secretary.

Appendix

PART 73—[AMENDED]

Part 73 of Title 47 of the Code of Federal Regulations is proposed to be amended to read as follows:

1. The authority citation for Part 73 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

§ 73.242 [Removed]

2. 47 CFR 73.242 is proposed to be removed.

[FR Doc. 85-28641 Filed 12-4-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 177, 178 and 180

[Docket Nos. HM-183, 183A; Notice No. 85-4]

Requirements for Cargo Tanks; Corrections and Clarifications

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking; Corrections and Clarifications.

SUMMARY: This document corrects and clarifies a notice of proposed rulemaking that appeared beginning at page 37766 in the *Federal Register* of Tuesday, September 17, 1985 (50 FR 37766). In the proposed rule, RSPA seeks to amend the requirements in the Hazardous Materials Regulation (49 CFR Parts 171-179) pertaining to the manufacture of cargo tanks and the operation, maintenance, repair and requalification of all specification cargo tanks.

FOR FURTHER INFORMATION CONTACT: Charles Hochman (202) 755-4906, Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In Docket Nos. HM-183, 183A; Notice No. 85-4, published on September 17, 1985 (50 FR 37766), make the following corrections:

1. On page 37769, second column, the first sentence of the fourth full paragraph should read: "Notwithstanding these marking and manufacturing inconsistencies, each MC 300, 301, 302, 303, 304, 305, 306, 310, 311, and 312 cargo tank has been pressure tested to at least 3 psig."

2. On page 37769, second column, in the penultimate line, the word "shall" should read "shell".

3. On page 37769, third column, in the sixth and twelfth lines of the last paragraph, the term "hazardous wastes" should read "waste materials".

4. On page 37770, third column, in the eighth line of the third full paragraph, the reference "§ 173.24(d)" should read "§ 173.24(e)".

5. On page 37771, second column, in the eleventh line of the first full paragraph, the reference "§ 180.307(a)" should read "§ 180.407(a)".

6. On page 37771, third column, in the first line of the last paragraph, add "loan/" immediately to precede the word "unload".

7. On page 37772, second column, in the fourth line of the last paragraph, the abbreviation "MTB's" should read "MTB's".

8. On page 37773, second column, in the fifth line of the penultimate paragraph, the reference "§ 180.317" should read "§ 180.417".

9. On page 37773, third column, the last sentence of the last full paragraph should read: "Section 178-337-11 would also require that cable linkages for the internal valves be corrosion resistant."

10. On page 37778, third column, in the fourteenth line from the top, the words, "Non self-closing" should read "Self-closing" and at the end of the paragraph a sentence is added to read: "This section would also require that cable linkages for the internal valves be corrosion resistant."

11. On page 37778, third column, in the seventh line of the third full paragraph, the reference "§ 180.305(g)" should read "§ 180.405(g)".

12. On page 37781, first column, add item 1A to read:

1A. In § 171.2, paragraph (e) would be added to read as follows:

§ 171.2 General requirements.

(e) When a person performs a function covered by or having an effect on a specification prescribed in Part 178, 179 or 180 of this subchapter, an approval issued under this subchapter, or an

exemption issued under Subchapter B of this chapter, that person must perform the function in accordance with that specification, approval or exemption, as appropriate.

13. On page 37781, second column, in proposed § 171.7(d)(1), "December 31, 1984" should read "June 30, 1985".

14. On page 37781, third column, in § 171.8, in the ninth line of the proposed definition for "cargo tank", the word "and" should read "or".

15. On page 37782, first column:

a. The amendatory language in item 9 is corrected to read as follows:

"9. In 173.22, the introductory text to paragraph (a)(2) would be revised to read as set forth below and paragraph (b) would be removed and reserved."

b. 173.22, add the words, "the following" immediately before the colon symbol at the end of paragraph (a)(2) and remove the text of paragraph (b) and insert the word [Reserved].

16. On page 37782, second column, proposed § 173.33(a)(2) should read:

(a) * * *

(2) Two or more materials may not be shipped in the same cargo tank motor vehicle if, as a result of any mixture of the materials (including their vapors), an unsafe condition would occur, such as an explosion, fire, excessive increase in pressure, or the release of toxic vapors.

* * *

17. a. On page 37782, second column, in proposed § 173.33, in paragraph (b)(2), add the word "a" immediately to precede the word "hazardous".

b. Paragraph (b)(2)(ii) should read:

(b) * * *

(2) Due to its density, exceeds the maximum weight of lading marked on the specification plate.

* * *

18. On page 37782, second column, in the last line of proposed § 173.33(c)(2), the word "of" should read "or".

19. On page 37782, third column, in proposed § 173.33, in the fourth line of paragraph (d)(1), the word "should" should read "may"; add a sentence at the end of paragraph (d)(1) to read: "The requirements in this paragraph do not apply to MC 38 cargo tank motor vehicles transporting a cryogenic liquid or to MC 330, MC 331 and MC 338 cargo tank motor vehicles transporting a material described in part as a refrigerated liquid in § 172.101 of this subchapter"; and remove paragraph (e).

20. On page 37784, first column, proposed § 173.145(a)(7) (i) and (ii) should read:

§ 173.145 Dimethylhydrazine, unsymmetrical, and methylhydrazine.

(a) * * *

(7) * * *

(i) The design pressure of the cargo tank must be at least 25 psig.

(ii) Each cargo tank must be equipped with steel pressure relief valves conforming to § 178.342-10 of this subchapter.

21. On page 37784, second column, proposed § 173.154(a)(4) should read:

§ 173.154 Flammable solids, organic peroxide solids and oxidizers not specifically provided for.

(a) * * *

(4) Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions.

(i) Authorized only for sodium perchlorate or magnesium perchlorate, wet, with 10 percent or more water, equally distributed within the cargo tank.

(A) A cargo tank may have heating coils if an inorganic heating medium is used.

(B) Only a Specification MC 304 or MC 307 cargo tank motor vehicle is authorized for transportation by vessel.

(ii) Only a Specification MC 304, MC 307, MC 310, MC 311, or MC 312, cargo tank motor vehicle is authorized for potassium nitrite. Also authorized for ammonium nitrate with 15 percent or more water in solution at a maximum temperature of 240 °F., if the cargo tank is insulated and designed for operation at temperature up to 250 °F. Transportation by vessel is not authorized.

(iii) Bottom outlets must conform to § 178.340-11(a)(1)(i) of this subchapter.

(iv) The pressure relief system must conform to § 178.342-10 of this subchapter, except that the pressure relief valve must be set-to-discharge at the cargo tank design pressure.

22. On page 37784, third column, in proposed § 173.190(b)(4)(iii), add the words "form or equivalent" immediately before the word "insulation".

23. On page 37785, first column, proposed § 173.224(a)(4)(iv) is added to read:

(a) * * *

(4) * * *

(iv) Pressure relief system must conform to § 178.342-10 of this subchapter.

24. On page 37785, first column, in proposed § 173.245(a)(29)(iii), the word "conforming" should read "conform".

25. On page 37786, first column, in the introductory text of proposed § 173.252(a)(4), add, "MC 311" immediately before "or MC 312".

26. On page 37787, first column, add a sentence at the end of proposed § 173.266(f)(2)(i) to read: "Additionally, a MC 312 cargo tank may be fabricated of Type 304L, 316 or 316L stainless steel."

27. On page 37788, third column, proposed § 173.294(a)(3)(i) should read:

(a) * * *

(3) * * *

(i) Each tank must be fabricated from Type 304 or Type 316 stainless steel, 99 percent pure nickel plates, titanium conforming to ASME SA-265, or be suitably lined with nickel or stainless steel.

28. On page 37790, third column, in proposed § 173.374, add paragraph (a)(4)(v) to read:

(a) * * *

(4) * * *

(v) Bottom outlets must conform to § 178.340-11(a)(1)(i) of this subchapter.

29. On page 37791, second column, in proposed § 177.814, the reference "§ 180.317" should read "§ 180-417".

30. On page 37792, second column, in the seventh line from the top in proposed § 178.337-3(b), the word "mast" should read "must".

31. On page 37792, second column, proposed § 178.337-3(b) (7) and (8) should read:

§ 178.337-3 Structural integrity.

(b) * * *

(7) The lateral shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface; and

(8) The torsional shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface.

32. On page 37792, the formula in the first line of the third column in proposed § 178.377-3(c) should read:

$$S = 0.5(S_y + S_x) + [S_z + (0.25(S_y - S_x)^2)]^{0.5}$$

33. On page 37793, first column, in the thirteenth line from the top in proposed § 178.337-3(e)(2), the word "paid" should read "pad".

34. On page 37793, first column, the section numbers "§ 178.377-4" and "§ 178.377-6" should read "§ 178.337-4" and "§ 178.337-6" respectively; the section number "§ 178.377-8" should

read "§ 178.337-8", and paragraph (a)(2) in that section is added to read:

§ 178.337-8 Outlets.

(a) * * *

(2) With the exception of gauging devices, thermometer wells, and pressure relief valves, each opening in a cargo tank intended for use in transporting a compressed gas (except carbon dioxide, refrigerated liquid) must be—

(i) Closed with a plug, cap or bolted flange;

(ii) Protected with an excess flow valve on product discharge openings or protected with a check valve on product inlet openings; or

(iii) Fitted with an internal self-closing stop valve as specified in § 178.337-11(a).

35. On page 37793, third column, in proposed § 178.337-11 the introductory text in paragraph (a), and paragraphs (a)(1), (a)(1)(i), and the first sentence in (a)(1)(ii) should read:

§ 178.337-11 Emergency discharge control.

(a) *Excess flow valves, back flow check valves and self-closing stop valves.*

(1) When required by § 178.337-8(a)(2):

(i) Each internal self-closing stop valve and excess flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are separated.

(ii) Each self-closing stop valve, excess flow valve, or check valve must be located inside the tank or inside a welded nozzle which is an integral part of the tank. * * *

36. On page 37794, first column, in proposed § 178.337-11, [redesignate paragraphs (a)(1)(vii) and (a)(1)(viii) as new paragraphs (a)(2)(i) and (a)(2)(ii); in paragraph (a)(3) remove the last sentence.

37. On page 37794, second column, in proposed § 178.337-11, in the fifth line in paragraph (b) remove the word "automatic", in the seventh line, the word "outboard" should read "ahead"; and the last sentence should read: "A single so-called 'stop-check' or excess flow valve may not be used to satisfy the requirements of this paragraph except as provided in paragraph (c) of this section."; in the third line of paragraph (c)(1), the word "excessive" should read "excess".

38. On page 37795, first column, proposed § 178.338-3(b) (7) and (8) should read:

§ 178.338-3 Structural integrity.

- (b) * * *
- (7) The lateral shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface; and
- (8) The torsional shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface.

39. On page 37795, second column, the formula in the third line in proposed § 178.338-3(c) should read:

$$S = 0.5(S_y + S_x) + \{S_z^2 + [0.25(S_y - S_x)^2]\}^{0.5}$$

40. On page 37797, second column, in proposed § 178.340-1(i), from the top the word "composes" in the heading, should read "composed".

41. On page 37798, second column, proposed § 178.340-3(b) (7) and (8) should read:

§ 178.340-3 Structural integrity.

- (b) * * *
- (7) The lateral shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface; and
- (8) The torsional shear stress due to a lateral accelerative force equal to twice the weight of the fully loaded vehicle applied at the road surface.

42. On page 37798, second column, the formula in proposed § 178.340-3(c) should read:

$$S = 0.5(S_y + S_x) + \{S_z^2 + [0.25(S_y - S_x)^2]\}^{0.5}$$

43. On page 37799, first column, proposed § 178.340-5 (b) and (c) should read:

§ 178.340-5 Manhole assemblies.

(b) Unless otherwise provided in the applicable individual specification, each manhole, fill opening and washout assembly must be structurally capable of withstanding, without leakage or permanent deformation, static internal fluid pressures of at least 36 psig, or test pressure, whichever is greater.

(c) Each manhole, filler and washout cover must be fitted with a safety device that prevents the cover from opening fully when internal pressure is present.

44. On page 37799, second column, the section heading in proposed § 178.340-8 should read "Accident damage protection"; in the second line of the introductory text in paragraph (a), the word "values" should read "valves".

45. On page 37800, second column, the last sentence in proposed § 178.340-8(d)

should read: "The rear-end tank protection device must have a horizontal dimension at least equal to that of the cargo tank and a vertical dimension of at least 8 inches, and located at a height so as to minimize damage to the cargo tank, and its valves, fittings, or piping which could result in a possible loss of lading."

46. On page 37800, second column, in proposed § 178.340-9, at the end of the second line in paragraph (a) immediately after the word "vehicle", add the words, "that may pressurize the cargo tank"; in the fifth line in paragraph (f), the word "charing" should read "charging".

47. On page 37800, third column, in proposed § 178.340-10, in the fourth line in paragraph (b)(2), the word "value" should read "valve"; in the first line in paragraph (b)(5), the word "of" should read "or".

48. On page 37801, first column, in proposed § 178.340-10(d)(1), in the sixth line the word "value" should read "valve"; in the eighth line the word "then" should read "than".

49. On page 37802, third column, in the second line in proposed § 178.340-14(b)(5), the abbreviation "Tem." should read "Temp."

50. On page 37806, second column, the column headings in the table in proposed § 180.405(c) should be reversed in sequence.

51. a. On page 37807, second column, proposed § 180.405(g)(2) is revised to read:

(g) * * *

(2) The owner of 5 or more DOT Specification cargo tanks requiring retrofit of the manhole closure must retrofit at least 20 percent of the affected cargo tanks each year beginning in 198X.

b. In the sixth line in paragraph (i) the reference "§§ 180.313 and 180.307" should read "§§ 180.413 and 180.407".

52. On page 37808, third column, at the bottom of the page, after the last entry which now reads "MC 304, 307", in the table in proposed § 180.407, add a new entry to read:

Specification	Test pressure
MC 307 (manufactured after the effective date of the final rule or bearing an ASME Code "U" stamp).	1.5 times the design pressure

53. On page 37809, first column, proposed § 180.407(g)(2)(iii) is revised to read:

(g) * * *

(2) * * *

(iii) Each owner of 5 or more DOT Specification cargo tanks that must be

pressure tested every five years must pressure test at least 20 percent of the cargo tanks in his ownership each year beginning in 198X.

54. On page 37809, third column, the paragraph heading in proposed § 180.409(a) should read: *External visual inspection and test, internal visual inspection, lining inspection, and leakage test.*

55. On page 37811, third column, in proposed § 180.417(c)(1)(ii), the abbreviation "ASEM" should read "ASME".

In addition to these corrections and clarifications, RSPA wishes to clarify the difference between the leakage test, in proposed § 180.407(h), and the pressure test (hydrostatic and pneumatic), in proposed § 180.407(g). The leakage test is used to verify the leak tightness of a cargo tank and may be performed and certified by the owner. The pressure test is used to verify the structure and pressure integrity of a cargo tank and must be witnessed and certified by an Authorized Inspector.

Issued in Washington, DC on November 27, 1985, under the authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,
Director, Office of Hazardous Materials
Transportation.

[FR Doc. 85-28791 Filed 12-4-85; 8:45 am]

BILLING CODE 4910-80-M

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Finding on Desert Tortoise Petition**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Service announces its 12-month finding on the petition to list the desert tortoise as an endangered species. A finding was made that listing of the desert tortoise throughout its range is warranted, but precluded by other pending proposals of higher priority. Additional data are being gathered and existing data are being further evaluated.

DATE: The finding announced in this notice was made on September 18, 1985. The Service continues to seek and accept data on the species on an ongoing basis.

ADDRESSES: Information, comments, or questions should be submitted to the Associate Director-Federal Assistance (OES), U.S. Fish and Wildlife Service, Washington, D.C. 20240. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Room 500-Broyhill Building, Washington, D.C. 20240 (703/235-2771 of FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

The 1982 Amendments to the Endangered Species Act require a finding to be made within 12 months of petition receipt for any petition accepted for review in accordance with paragraph (A) or (D)(i) of Section 4(b)(3) as amended. Pursuant to paragraph (B) or (D)(ii) of Section 4(b)(3), this determines whether the requested action is warranted in light of our status review and all other information in our administrative record.

On September 14, 1984, the Service received a petition to list the desert tortoise (*Gopherus agassizii*) as an endangered species throughout its remaining range in Arizona, California, and Nevada (the Beaver Dam slope population of the desert tortoise in Utah was listed as threatened with critical habitat in 1980). The desert tortoise also occurs in adjacent Mexico (Sonora and Sinaloa). The petitioners were Martha L. Stout (Defenders of Wildlife), Faith T. Campbell (Natural Resources Defense Council), and Michael J. Bean (Environmental Defense Fund). A 90-day finding that the petition had presented substantial information indicating that the requested action may be warranted was made on December 14, 1984, and notice of the finding was then published in the April 2, 1985, *Federal Register* (50 FR 13054).

The petitioners submitted the Desert Tortoise Council's 838-page report "The Status of the Desert Tortoise (*Gopherus agassizii*) in the U.S." as supporting information. Following the announcement of the petition in the *Federal Register*, the Service received numerous comments some of which included additional data. The Service reviewed the Desert Tortoise Council's report, all comments and available data received, and all other data in its files. Involved Federal and State agencies and other parties were also contacted.

The range of the desert tortoise encompasses portions of California, Nevada, Utah, and Arizona in the United States and Sonora and Sinaloa in Mexico (Patterson 1982). The desert tortoise occurs in the Mojave Desert of California, Nevada, Utah, and northern Arizona; the Colorado Desert of California; and the Sonoran Desert of Arizona and Mexico. Desert tortoises are primarily found on flats and bajadas of the Colorado and Mojave deserts, and predominately occur on slopes in the Sonoran Desert (Berry 1984). The desert tortoise is long lived and herbivorous. Individuals do not reach sexual maturity until 12 to 20 years of age (Woodbury and Hardy 1948). The shell does not completely ossify until five or ten years of age (Luckenbach 1982). Female tortoises excavate nests in burrows and lay an average of 4.2 eggs. Females lay an average of 1.89 clutches per year (Turner and Berry 1984). Hatching success of clutches is generally unknown; and hatchlings do not normally receive parental care.

Some desert tortoise populations in the southwestern United States are declining (Bury 1982; Luckenbach 1982; Berry 1984). The degree of the decline varies greatly across the range of the desert tortoise, with highest mortalities and habitat losses occurring in California and Nevada. However, the highest densities remaining occur in California, where some relatively small areas contain over 250 tortoises per square mile. Mortality rates in the western Mojave Desert are estimated to be 18 percent per year. The Colorado Desert populations experience much lower mortality, 2 percent per year. Parts of Nevada show steep declines (Berry 1984). Berry (1984) suggests that Arizona populations are declining because they appear to consist of fragmented populations and are composed predominantly of older individuals. However, Taubert (1985) and Fritts (1985) considered Arizona populations not to be isolated from one another. Although the desert tortoise is declining throughout part of its range, and the species has been extirpated from some areas, other large populations still remain.

The Service believes that for certain areas of the species' range (Arizona and Mexico) additional data are necessary to determine accurately the species' status in that portion of its range; different interpretations of some data (Arizona and Nevada) exist. Consequently, the desert tortoise was kept in Category 2 of the Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species

published in the *Federal Register* on September 18, 1985 (50 FR 37953).

The Service will gather additional data and will further evaluate the existing data on the desert tortoise. Following further evaluation of existing and any new data, the Service will readress the question of whether the declining populations constitute a significant portion of the species' range. Current information in the Service's files supports a finding that the petitioned action is warranted. However, such a conclusion could change due to the data gaps that presently exist. The Service has the option to list the tortoise throughout its range or list those populations currently facing the highest degree of threat, while studies proceed to resolve existing questions regarding remaining portions of the species' range. If ongoing studies indicate that listing certain populations is not warranted, then a new finding will be made and a notice indicating such will be published in the *Federal Register*.

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress in listing endangered and threatened species is being made, and is reported annually in the *Federal Register*. The most recent progress report was published on May 10, 1985 (50 FR 19761).

The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the desert tortoise.

Literature Cited

- Berry, K.H. 1984. The status of the desert tortoise (*Gopherus agassizii*) in the United States. Report to the U.S. Fish and Wildlife Service from the Desert Tortoise Council on Order No. 11310-0083-81.
- Bury, R.B. 1982. An overview. In R. B. Bury, ed. North American Tortoises: Conservation and Ecology. Wildlife Research Report 12, Washington, D.C. U.S. Department of the Interior, Fish and Wildlife Service.
- Fritts, T.H. 1985. Ecology and conservation of North American tortoises (genus *Gopherus*). II. Evaluation of tortoise abundance based on tortoise sign detected in field surveys. U.S. Fish and Wildlife Service, Denver Wildlife Research Center, Museum of Southwestern Biology, University of New Mexico.
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- Taubert, B.D. 1985. Update of desert tortoise (*Gopherus agassizii*) distribution in Arizona. Arizona Game and Fish Department.
- Turner, F.B. and K.H. Berry. 1984. Population ecology of the desert tortoise. Southern California Edison Company.
- Woodbury, A.M. and R. Hardy. 1948. Studies of the desert tortoise, (*Gopherus agassizii*). Ecol. Monogr. 18:145-200.

Author

This notice was prepared by E. LaVerne Smith, office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975 or FTS 235-1975).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 et seq.; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

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

Dated: November 22, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-28882 Filed 12-4-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Migratory Bird Hunting Regulations on Federal Indian Reservations, Indian Territory and Ceded Lands

AGENCY: Fish and Wildlife Service; Interior.

ACTION: Notice of intent: request for proposals from Indian tribes desiring special migratory bird hunting regulations for the 1986-87 hunting season.

SUMMARY: The purpose of this notice is to request proposals from Indian tribes that wish to establish special migratory bird hunting regulations for the 1986-87 hunting season, under the interim guidelines implemented for this purpose on September 3, 1985. The proposal should include the details described later in this document. The Service also

welcomes comments concerning this Notice.

DATE: Proposals and comments should be submitted by February 1, 1986, or as soon thereafter as possible. A later Federal Register Notice will announce the closing date.

ADDRESSES: All proposals and comments should be submitted to Director, FWS/MBMO, U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, Washington, DC 20240. A copy of the proposal should be sent to the appropriate Service Regional Office at the address shown near the end of this document.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202) 254-3207.

SUPPLEMENTARY INFORMATION:

Introduction

In the September 3, 1985, Federal Register (50 FR 35762-35765), the United States Fish and Wildlife Service implemented interim guidelines for migratory bird hunting regulations on Federal Indian reservations, Indian Territory, and ceded lands, and established special hunting regulations for certain tribes in the 1985-86 hunting season.

The Service has kept the comment period open indefinitely on the guidelines but will employ them to establish special migratory bird hunting regulations for interested Indian tribes for the 1986-87 hunting season.

Background

Proposed guidelines for establishing special Indian hunting regulations were published on June 4, 1985, (50 FR 23459-23470 and particularly 23467-23468) and included possibilities for: (1) On-reservation hunting (including Indian Territory), by both tribal and non-tribal members, with hunting by non-tribal members on some reservations to take place within Federal frameworks but on dates different from those selected by surrounding State(s); (2) on-reservation hunting (including Indian Territory) by tribal members only, outside of usual Federal frameworks; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the closed season requirement mandated by the 1916 Migratory Bird

Treaty with Canada. The guidelines are capable of application to those tribes that have recognized reserved hunting rights on Federal Indian reservations (including Indian Territory) and ceded lands. They also apply to establishing migratory bird hunting regulations for non-tribal members on reservations and Indian Territory where tribes have gained full wildlife management authority by judicial decisions or other means. In cases where the scope of tribal management authority is unclear, the Service, on request, will consult with tribal and State officials with the aim of reaching mutual agreement on tribal hunting regulations. The Service also will consult jointly with tribal and State officials in the affected State(s) where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

The Service recognizes that some changes in the guidelines may be necessary, and they should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount.

The guidelines may be used by tribes desiring special migratory bird hunting regulations for tribal or non-tribal members. The guidelines are not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located. In instances where a tribe may wish for the Service to recognize traditional on-reservation (including Indian Territory) hunting practices of tribal members, the guidelines provide a means for the Service and tribe to reach mutual agreement by means of a memorandum of understanding that has recently been developed for this purpose.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special regulations for the 1986-87 hunting season should submit a proposal that includes: (1) The requested hunting season dates and other details regarding regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities