7-28-80
Vol. 45 No. 146
Pages 49901-50302

Federal Register

Monday
July 28, 1980

Highlights

49903 **Allowances for Personnel on Foreign Duty** Executive order

49901 **Sale of Defense Articles to Egypt** Presidential determination

50296 **Grant Programs—Community Development** CSA republishes as proposed rule policy statement governing program management system for community action agencies; comments by 8-27-80

49967 **Grants—Social Programs** Commerce/NTIA announces solicitation for grant proposals to conduct a conference on "Increasing Participation of Minorities and Women in Public Telecommunications"; apply by 8-15-80

50264 **Health facilities** HHS/HCFA issues final notice on adoption of National Bureau of Standards fire safety evaluation system; effective 7-28-80 (Part IV of this issue)

50260 **Credit Unions** NCUA gives final notice of consumer program to assist Federal credit union officials in enforcing Federal consumer protection laws (Part III of this issue)

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Highlights

50268 **Medicare and Medicaid** HHS/HCFA proposes rule setting out requirements for automatic extinguishment systems for new long-term care facilities; comments by 9-26-80 (Part V of this issue)

50086 **Air Pollution Control** EPA establishes procedure for participating States to follow in assessment and collection of noncompliance penalties; effective 10-27-80 (Part II of this issue)

50274 **Pesticides** EPA issues statement of policy regarding labeling requirements for exporting; effective 3-29-79 (Part VI of this issue)

49917 **Credit** SEC announces general statement of policy on effect of termination of credit controls on operations of certain registered investment companies; effective 7-21-80

49921 **Financial disclosure** DOD/AF amends regulations establishing policy regarding the collection of financial data on individuals, organizations and businesses during investigations; effective 6-25-80

50282, 50285 **Flood Damage** FEMA issues interim rule providing for acquisition of flood damage structures, and transfer of title to State or local government; effective 7-28-80; comments by 9-1-80 (Part VII of this issue) (2 documents)

49954 **Electric Utilities** SEC proposes rule regarding the elimination of case-by-case consideration of joint venture projects by electric utility companies; comments by 9-2-80

49960 **Insurance** FEMA proposes amendment to FAIR Plans for "deserving property owners"; comments by 9-1-80.

50035 **Sunshine Act Meetings**

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Presidential Documents

Title 3—

The President

Presidential Determination No. 80-23 of July 16, 1980

Presidential Determination Under Section 4 of the Arms Export Control Act—Egypt

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 4 of the Arms Export Control Act, I hereby determine that the financing under the Arms Export Control Act of the sale of F-16 and associated missiles to Egypt is important to the national security of the United States.

You are requested on my behalf to report this determination to the Congress, as required by law.

This determination shall be published in the Federal Register.

Jimmy Carter

THE WHITE HOUSE,
Washington, July 16, 1980.

[FR Doc. 80-22732
Filed 7-24-80; 4:29 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12228 of July 24, 1980

Allowances for Personnel on Foreign Duty

By the authority vested in me as President of the United States of America by Sections 7 and 8 of the Defense Department Overseas Teachers Pay and Personnel Practices Act of 1959, as amended (20 U.S.C. 905–906), Section 235 of Title 38 of the United States Code, and Section 301 of Title 3 of the United States Code, and in order to delegate authority with respect to allowances for Veterans Administration personnel and to update existing authorities, it is hereby ordered as follows:

1–101. Payment of the additional compensation authorized by Section 8(a)(2) of the Defense Department Overseas Teachers Pay and Personnel Practices Act of 1959, as amended, shall be governed by the regulations contained in Executive Order No. 10000, as amended, which govern the payment of additional compensation in foreign areas (referred to as foreign post differential), subject to the provisions of Section 8(b) of that Act (20 U.S.C. 906 (a)(2) and (b)).

1–102. The following functions vested in the President are delegated to the Secretary of State:

(a) That part of the functions in Section 7(a) of the Defense Department Overseas Teachers Pay and Personnel Practices Act which consists of the authority to prescribe regulations relating to quarters and quarters allowances (20 U.S.C. 905(a)).

(b) The authority in Section 8(a)(1) of the Defense Department Overseas Teachers Pay and Personnel Practices Act to prescribe regulations relating to cost of living allowances (20 U.S.C. 906(a)(1)).

(c) The following authority in Section 235 of Title 38 of the United States Code to prescribe rules and regulations:

(1) Section 235(2), except as that section pertains to an allowance similar to that provided for in Section 911(9) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1136(9)).

(2) Section 235(3);

(3) Section 235(5);

(4) Section 235(6); and

(5) Section 235(7).

1–103. The following functions vested in the President by Section 235 of Title 38 of the United States Code are delegated to the Administrator of the Veterans Administration. The authority with respect to the allowances or benefits of paragraphs (1) and (4) of Section 235 which are similar to the benefits and allowances provided in the sections of the Foreign Service Act of 1946, as amended, designated in those paragraphs.

1–104. Executive Order No. 10853, as amended, is revoked. The rules and regulations which were prescribed by the Secretary of State or the Administrator of the Veterans Administration pursuant to Executive Order No. 10853, as amended, and which would be valid if issued pursuant to this Order, shall be deemed to have been issued under this Order.

Jimmy Carter

THE WHITE HOUSE,
July 24, 1980.

[FR Doc. 80-22767
Filed 7-25-80; 10:47 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2424

Expedited Review of Negotiability Issues

Correction

In FR Doc. 80-21718, appearing at page 48575 in the issue of Monday, July 21, 1980, the first sentence of paragraph (c) of § 2424.10 on page 48576 should have read as follows:

(c) When an order is issued as provided in paragraph (b) of this section, the agency or exclusive representative shall report to the appropriate Regional Director within a specified period failure to comply with an order that the agency shall upon request (or as otherwise agreed to by the parties) bargain concerning the disputed matter.

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y, Docket No. R-0319]

Bank Holding Companies and Change in Bank Control; Disposition of Property Acquired in Satisfaction of Debts Previously Contracted

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: This interpretation delineates the conditions governing the holding and disposition of assets acquired by bank holding companies and their banking or nonbanking subsidiaries in satisfaction of debts previously contracted.

EFFECTIVE DATE: July 22, 1980.

FOR FURTHER INFORMATION CONTACT: Bronwen M. Mason, Senior Attorney (202/452-3564), or Jennifer J. Johnson, Senior Attorney (202/452-3584), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the Board's authority under sections 4(c)(1)(D), 4(c)(2), 4(c)(8) and 5(b) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(1)(D), (c)(2), (c)(8), and 1844(b)), and section 8 of the Financial Institutions Supervisory Act (12 U.S.C. 1818) 12 CFR Part 225 is amended by adding a new § 225.140 to read as follows:

§ 225.140 Disposition of property acquired in satisfaction of debts previously contracted.

(a) The Board recently considered the permissibility, under section 4 of the Bank Holding Company Act, of a subsidiary of a bank holding company acquiring and holding assets acquired in satisfaction of a debt previously contracted in good faith (a "dpc" acquisition). In the situation presented, a lending subsidiary of a bank holding company made a "dpc" acquisition of assets and transferred them to a wholly-owned subsidiary of the bank holding company for the purpose of effecting an orderly divestiture. The question presented was whether such "dpc" assets could be held indefinitely by a bank holding company subsidiary as incidental to its permissible lending activity.

(b) While the Board believes that "dpc" acquisitions may be regarded as normal, necessary and incidental to the business of lending, the Board does not believe that the holding of assets acquired "dpc" without any time restrictions is appropriate from the standpoint of prudent banking and in light of the prohibitions in section 4 of the Act against engaging in nonbank activities. If a nonbanking subsidiary of a bank holding company were permitted, either directly or through a subsidiary, to hold "dpc" assets of substantial amount over an extended period of time, the holding of such property could result in an unsafe or unsound banking practice or in the holding company engaging in an impermissible activity in connection with the assets, rather than liquidating them.

(c) The Board notes that section 4(c)(2) of the Bank Holding Company Act provides an exemption from the prohibitions of section 4 of the Act for bank holding company subsidiaries to acquire *shares* "dpc". It also provides that such "dpc" shares may be held for a period of two years, subject to the Board's authority to grant three one-year extensions up to a maximum of five years.[1] Viewed in light of the Congressional policy evidenced by section 4(c)(2), the Board believes that a lending subsidiary of a bank holding company or the holding company itself, should be permitted, as an incident to permissible lending activities, to make acquisitions of "dpc" *assets*. Consistent with the principles underlying the provisions of section 4(c)(2) of the Act and as a matter of prudent banking practice, such assets may be held for no longer than five years from the date of acquisition. Within the divestiture period it is expected that the company will make good faith efforts to dispose of "dpc" shares or assets at the earliest practicable date. While no specific authorization is necessary to hold such assets for the five-year period, after two years from the date of acquisition of such assets, the holding company should report annually on its efforts to accomplish divestiture to its Reserve Bank. The Reserve Bank will monitor the efforts of the company to effect an orderly divestiture, and may order divestiture before the end of the five-year period if supervisory concerns warrant such action.

(d) The Board recognizes that there are instances where a company may encounter particular difficulty in attempting to effect an orderly divestiture of "dpc" real estate holdings within the divestiture period, notwithstanding its persistent good faith efforts to dispose of such property. In the Depository Institutions Deregulation and Monetary Control Act of 1980, (Pub.

[1] The Board notes that where the dpc shares or other similar interests represent less than 5 percent of the total of such interests outstanding, they may be retained on the basis of section 4(c)(6), even if originally acquired dpc.

L. 96-221) Congress, recognizing that real estate possesses unusual characteristics, amended the National Banking Act to permit national banks to hold real estate for five years and for an additional five-year period subject to certain conditions. Consistent with the policy underlying the recent Congressional enactment, and as a matter of supervisory policy, a bank holding company may be permitted to hold real estate acquired "dpc" beyond the initial five-year period provided that the value of the real estate on the books of the company has been written down to fair market value, the carrying costs are not significant in relation to the overall financial position of the company, and the company has made good faith efforts to effect divestiture. Companies holding real estate for this extended period are expected to make active efforts to dispose of it, and should keep the Reserve Bank advised on a regular basis concerning their ongoing efforts. Fair market value should be derived from appraisals, comparable sales or some other reasonable method. In any case, "dpc" real estate would not be permitted to be held beyond 10 years from the date of its acquisition.

(e) With respect to the transfer by a subsidiary of other "dpc" shares or assets to another company in the holding company system, including a section 4(c)(1)(D) liquidating subsidiary, or to the holding company itself, such transfers would not alter the original divestiture period applicable to such shares or assets at the time of their acquisition. Moreover, to ensure that assets are not carried at inflated values for extended periods of time, the Board expects, in the case of all such intracompany transfers, that the shares or assets will be transferred at a value no greater than the fair market value at the time of transfer and that the transfer will be made in a normal arms-length transaction.

(f) With regard to "dpc" assets acquired by a banking subsidiary of a holding company, so long as the assets continue to be held by the bank itself, the Board will regard them as being solely within the regulatory authority of the primary supervisor of the bank.

By order of the Board of Governors of the Federal Reserve System effective July 22, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-22556 Filed 7-25-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 20555; Amdt. 39-3860]

Costruzioni Aeronautiche Giovanni Agusta Model A109A Series Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of the nose landing gear strut mount assembly for manufacturing lot number and for cracks, and replacement of the mount assembly as necessary on certain Costruzioni Aeronautiche Giovanni Agusta Model A109A series helicopters. The AD is prompted by reports of failure of the nose landing gear which could result in an uncontrollable condition upon landing.

DATE: Effective August 11, 1980. Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from: Costruzioni Aeronautiche Giovanni Agusta, Cascina Costa (Gallarate), Italy.

A copy of the service bulletin is contained in the Rules Docket, Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: A. Astorga, Acting Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone: 513.38.30, or C. Chapman, Chief, Policy Standards Section, AWS-111, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, telephone: 202-426-8192.

SUPPLEMENTARY INFORMATION: There have been reports of cracking in the strut mount assembly of the nose landing gear strut, P/N 1808GR90 (Augusta P/N 109-0500-12-1) on certain Costruzioni Aeronautiche Giovanni Agusta Model A109A series helicopters which could result in a loss of control during landing.

Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires inspection of the nose landing gear strut mount assembly to determine the manufacturing lot number, inspection of assemblies made from lot number SS5211 for cracks, and replacement as necessary, or repetitive inspections of these assemblies until replaced by a new part from a manufacturer's lot number other than No. SS5211 on certain Costruzioni Aeronautiche Giovanni Model A109A series helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Costruzioni Aeronautiche Giovanni Agusta. Applies to Model A109A series helicopters, certificated in all categories, which have nose landing gear mount assembly, P/N 1808GR90 (Agusta P/N 109-0500-12-1), manufactured from forging lot SS5211, installed.

Compliance required as indicated, unless already accomplished.

To prevent failure of the nose landing gear, inspect the mount assembly, P/N 1808GR90 (Agusta P/N 109-0500-12-1), as follows:

(a) Within 25 hours time in service after the effective date of this AD, inspect the nose landing gear strut mount, P/N 1808GR90 (Agusta P/N 109-0500-12-1), to determine the manufacturer's lot number as etched on the mount assembly below the shimmy control group.

(b) If, as a result of the inspection required by paragraph (a) of this AD, the lot number is found to be other than SS5211, apply an identifying mark to the mount in accordance with "ACCOMPLISHMENT INSTRUCTIONS," PART I, paragraph 1.a., of Costruzioni Aeronautiche Giovanni Agusta Service Bulletin No. 109-14, dated February 12, 1979 (hereinafter referred to as the Service Bulletin), or an FAA-approved equivalent, and return to service.

(c) If, as a result of the inspection required in paragraph (a) of this AD the lot number is found to be SS5211 or the lot number is not legible, or is non-existent, before further flight, except as provided in paragraph (j) of this AD, using a mirror and a light source, visually inspect the upper portion of the strut mount for cracking or evidence of cracking.

Note.—During the inspection required by paragraph (c) of this AD, particular attention should be directed to the actuating cylinder attach pin area and the mount horns attach area to the fuselage structure in accordance with the Service Bulletin, or an FAA-approved equivalent.

(d) If, as a result of the inspection required in paragraph (c) of this AD, no cracking or evidence of cracking is found, return the helicopter to service and repeat the inspection in paragraph (c) of this AD before the first flight of each day, until paragraph (g) is accomplished.

(e) If, as a result of the inspection required in paragraph (c) or (d) of this AD, cracking of

the paint or other evidence of cracking is found, inspect the nose landing gear mount assembly as described in paragraph (c) of this AD using the fluorescent penetrant method.

(f) If, as a result of the inspection in paragraph (e) of this AD, no cracks are found, return the helicopter to service and repeat the inspection in paragraph (c) before the first flight of each day, until paragraph (g) is accomplished.

(g) If, as a result of the inspection required in paragraphs (c), (d), (e) or (f) of this AD, cracking is found, before further flight, except as provided in paragraph (j) of this AD:

(1) Accomplish paragraph (h) of this AD, and

(2) Replace the nose landing gear strut mount assembly, P/N 1808GR90 (Agusta P/N 109-0500-12-1), with a new part of the same P/N with lot number other than SS5211, in accordance with "ACCOMPLISHMENT INSTRUCTIONS," PART II, paragraphs 3 through 6, of the Service Bulletin, or an FAA-approved equivalent.

(h) If, as a result of the inspections required in paragraph (c), (d), and (e) or (f) of this AD, removal of the nose landing gear is necessary, before reinstallation of the nose landing gear, visually inspect the cylinder aft fitting assembly, P/N 109-0501-19-5, and related attach components for cracks, warpage, elongation of holes and fretting in accordance with "ACCOMPLISHMENT INSTRUCTIONS," PART II, of the Service Bulletin, or an FAA-approved equivalent. Replace damaged components as necessary.

(i) When paragraph (g) has been accomplished, no further inspections are required by this AD.

(j) The helicopter may be flown in accordance with FAR § 21.197 and FAR § 21.199 to a base where the inspection or replacement can be performed.

(k) For the purpose of complying with this AD, an FAA-approved equivalent may be approved by the Chief, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium.

This amendment becomes effective August 11, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not significant under the provisions of Executive Order 12044, as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on July 18, 1980.

M. C. Beard,

Director of Airworthiness.

[FR Doc. 80-22346 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 20556; Amdt. 39-3861]

LET Blanik Model L13 Glider; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of the horizontal stabilizer outer end ribs for cracks and repairs or replacement as necessary on LET Blanik Model L13 gliders. The AD is prompted by several reports of cracks found in the radius of the horizontal stabilizer outer end rib at the elevator hinge attachment which could result in loss of elevator control and control of the glider.

DATE: Effective August 11, 1980.

Compliance is required as indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from: Omnipol TFC, Washingtonova 11, Prague, Czechoslovakia; or from Aerosport, 32301 Corydon St., Elsinore, CA 92330.

A copy of the service bulletin is contained in the rules docket for this amendment in Room 916, 800 Independence Avenue S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: A. Astorga, Acting Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, Telephone: 513.38.30, or C. Chapman, Chief, Policy Standards Section, AWS-111, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, Telephone: 202-426-8192.

SUPPLEMENTARY INFORMATION: There have been several reports of cracks found in the radius of the horizontal stabilizer outer end rib at the elevator hinge attachment on LET Blanik Model L13 gliders. Some of the reported cracks were on low service time gliders; therefore the cracks do not appear to be related to service time but rather to the care exercised in protecting critical parts of the glider during ground transportation or hand assembly or disassembly. Failure of the horizontal stabilizer end ribs at the elevator hinge attachment could result in loss of elevator control and control of the glider. Since this condition is likely to exist or develop on other gliders of the same type design an airworthiness directive is being issued which requires inspection of the radii of the horizontal stabilizer outer end ribs for cracks and repair of cracks or replacement as necessary in accordance with LET mandatory Bulletin No. L 13/052 (undated) on all LET Blanik Model L13 gliders.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

LET Blanik. Applies to Model L13 gliders, certificated in all categories.

Compliance required as indicated.

To prevent failure of the horizontal stabilizer outer end ribs, accomplish the following:

(a) Within the next 10 hours time in service after the effective date of this AD, visually inspect the radii of the horizontal stabilizer end ribs for cracks in accordance with paragraph A, "Inspection," LET Mandatory Bulletin No. L 13/052, not dated, or an FAA-approved equivalent.

(1) If, during this inspection no cracks are found on either rib, before further flight, unless already accomplished, reinforce the stabilizer end ribs in accordance with paragraph B, "Reinforcement of stabilizer end rib," LET Mandatory Bulletin L 13/052, not dated, or an FAA-approved equivalent, at which time no further action is required by this AD.

(2) If, during this inspection cracks are found and the total crack length on either rib exceeds 10 mm, before further flight, replace both ribs (except that a crack-free rib need not be replaced) with new ribs of the same part number in accordance with paragraph C, "Replacement of stabilizer end rib," LET Mandatory Bulletin No. L 13/052, not dated, or an FAA-approved equivalent, and reinforce both ribs in accordance with paragraph B, "Reinforcement of stabilizer end rib," LET Mandatory Bulletin No. L 13/052, not dated, or an FAA-approved equivalent, at which time no further action is required by this AD.

(3) If, during this inspection any cracks are found but the total crack length on each rib does not exceed 10 mm—

(i) Before further flight, replace and reinforce stabilizer end ribs in accordance with paragraph (a)(2) of this AD at which time no further action is required by this AD; or

(ii) Accomplish the following:

(A) Before further flight, unless already accomplished, repair all cracks and reinforce both ribs in accordance with paragraph B, "Reinforcement of stabilizer end rib," LET Mandatory Bulletin No. L 13/052, not dated, or an FAA-approved equivalent; and

(B) At intervals not to exceed 100 hours time in service from the last inspection, visually inspect the radii of the horizontal stabilizer outer end ribs in accordance with the method specified in paragraph (a) of this AD.

(b) If, during any of these repetitive inspections accomplished in accordance with paragraph (a)(3)(ii)(B) of this AD any further cracking is found on either rib, replace both ribs (except that a crack-free rib need not be replaced) with new ribs of the same part number and reinforce any replacement ribs in accordance with the methods specified in paragraph (a)(2) of this AD, at which time no further action is required by this AD.

(c) For those gliders on which the stabilizer end ribs were reinforced in accordance with LET Mandatory Bulletin No. L 13/042, dated August 16, 1976, or an FAA-approved equivalent, comply with paragraph (a) of this AD.

(1) If no cracks are found during the inspection required by paragraph (a) of this AD, no further action is required by this AD.

(2) If any cracks are found during the inspection required by paragraph (a) of the AD, replace both ribs (except that a crack-free rib need not be replaced) with new ribs of the same part number and reinforce any replacement ribs in accordance with the methods specified in paragraph (a)(2) of this AD at which time no further action is required by this AD.

(d) For the purpose of this AD, "total crack length" means the combined length of all cracks on a rib, including those cracks already repaired.

(e) For the purpose of this AD, an FAA-approved equivalent may be approved by the Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium.

Note.—Cracks in the horizontal stabilizer end ribs may be caused by failure to protect critical parts of the glider during ground transportation or hand assembly or disassembly.

This amendment becomes effective August 11, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on July 18, 1980.

M. C. Beard,

Director of Airworthiness.

[FR Doc. 80-22347 Filed 7-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-SO-18; Amdt. No. 39-3818]

Piper Model PA-32 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This corrects an Airworthiness Directive (AD) applicable to certain Piper Model PA-32 series airplanes by changing the part number of the fuel tank vent hose replacement kit identified in paragraph (c)2. Part Number 764-001V should be 764-011V.

DATES: Effective July 10, 1980.

Compliance schedule—As prescribed in body of AD.

FOR FURTHER INFORMATION CONTACT:

R. C. Padgett, Engineering and Manufacturing Branch, Flight Standards Division, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION: Amendment 39-3818 (45 FR 43693), AD 80-14-01, requires the modification of the fuel tank vents and the replacement of the fuel tank vent connector hoses on certain Piper Model PA-32 series airplanes. The AD was prompted by reports of broken fuel tank vent hoses resulting in fuel leakage and the presence of fuel vapors in the cabin causing a possible fire hazard. After issuing Amendment 39-3818, a typographical error was found in the part number for the fuel tank vent hose replacement kit identified in paragraph (c)2.

Therefore, Amendment 39-3818 is corrected by revising paragraph (c)2 of the amendment to read as follows:

2. For Model PA-32-300 series airplanes, serial numbers 32-7940001 through 32-7940290, Models PA-32R-300, PA-32RT-300 and PA-32RT-300T series airplanes, modify the fuel tank vent system in accordance with the instructions listed on the "Fuel Tank Vent Hose Replacement Kit," Piper Part Number 764-011V.

Issued in East Point, Georgia, on July 14, 1980.

George R. Lacaille,

Acting Director, Southern Region.

[FR Doc. 80-22342 Filed 7-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 20554; Amdt. 39-3859]

Messerschmitt-Bolkow-Blohm GmbH Model BO-105 Series Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of the engine cowling for proper application of the fire protective paint and rework of those cowling assemblies where incorrect application is found on certain Messerschmitt-Bolkow-Blohm Model BO-105 series helicopters. The AD is prompted by reports of improper application of the protective paint, which can lead to failure of the engine compartment fire containment feature during an in-flight fire and subsequent serious damage to the helicopter.

DATES: Effective—August 11, 1980.

Compliance schedule—As prescribed in body of AD.

ADDRESSES: The applicable service bulletin may be obtained from: Messerschmitt-Bolkow-Blohm GmbH, Unternehmensbereich Drehflugler, Kundendienst, Abt. DVO4, Prandtlstrasse, 8012 Ottobrunn, Federal Republic of Germany.

A copy of the service bulletin is contained in the rules docket for this amendment in Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

A. Astorga, Acting Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, Telephone: 513.38.30, or C. Chapman, Chief, Policy Standards Section, AWS-111, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, Telephone: 202-426-8192.

SUPPLEMENTARY INFORMATION: There have been reports of incorrectly applied fire protection paint on the engine cowling P/N's 105-62502, 105-62503, 105-62651, 105-62656, 105-62657, or 105-62658 on certain Messerschmitt-Bolkow-Blohm Model BO-105 series helicopters. The reports indicate that in some cases the paint was applied between the asbestos lining and the cowling rather than on the interior side of the lining. If an incorrectly painted lining is subjected to heat, the paint may foam, separating the lining from the cowling. This condition is in non-compliance with an

airworthiness requirement, and could lead to failure to contain an engine compartment fire in flight with subsequent serious damage to the helicopter.

Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires a one time inspection of the engine cowling to determine proper application of the fire protective paint and, if a defective paint application is found, stripping and proper re-application of the fire protective paint and installation of new asbestos fabrics on the engine cowling of certain Messerschmitt-Blokow-Blohm Model BO-105 series helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Messerschmitt-Bolkow-Blohm GmbH.
Applies to Model BO-105 series helicopters, serial numbers up to and including 450, which have engine cowling assemblies P/N's 105-62502, 105-62503, 105-62651, 105-62656, 105-62657 or 105-62658 installed, certificated in all categories.

Compliance required as indicated.

To assure the proper application of the fire protection paint and compliance with airworthiness requirements accomplish the following, unless already accomplished:

(a) Within the next 100 hours time in service after the effective date of this AD—

(1) Removed the engine cowling; and

(2) Inspect for the presence of fire protection paint between the cowling and the asbestos fabric in accordance with paragraph A of part 2, "ACCOMPLISHMENT INSTRUCTIONS," of Messerschmitt-Bolkow-Blohm Service Bulletin No. 60-46, dated August 20, 1979 (hereinafter referred to as the Service Bulletin), or an FAA-approved equivalent.

(b) If as a result of the inspection required in paragraph (a)(2) of this AD, no evidence of the presence of fire protection paint between the engine cowling and the asbestos fabric is found, before further flight, except as provided in paragraph (d)—

(1) Replace asbestos fabric if heat damage or brittleness are present in accordance with paragraph 2.B of "ACCOMPLISHMENT INSTRUCTIONS," of the Service Bulletin, or an FAA-approved equivalent; and

(2) Return the engine cowling assembly to service.

(c) If as a result of the inspection required in paragraph (a)(2) of this AD, evidence of the presence of fire protection paint between the engine cowling and the asbestos fabric is found, before further flight, except as provided in paragraph (d), comply with the following in accordance with paragraph B of Part 2, "ACCOMPLISHMENT INSTRUCTIONS", of the Service Bulletin, or an FAA-approved equivalent—

(1) Remove the asbestos lining and install new asbestos lining;

(2) Apply fire protection paint and top lacquer to the asbestos lining; and

(3) Apply two coats Wiedokoll fire protection paint N6582.

(d) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where the repairs required by the AD may be accomplished.

(e) Before release to service of any engine cowling assemblies held as spares to which this AD is applicable, accomplish the inspection required in paragraph (a)(2) of this AD, and comply with paragraph (b) or (c) of this AD, as appropriate.

(f) for purposes of this AD, an FAA-approved equivalent must be approved by the Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium.

This amendment becomes effective August 11, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under Executive Order 12044 as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on July 18, 1980.

M. C. Beard,

Director of Airworthiness.

FR Doc. 80-22345 Filed 7-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 20553; Amdt. 39-3858]

Short Brothers Limited Model SD3-30 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Adminstration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Short Brothers Limited Model SD3-30 series airplanes by correcting the serial numbers of airplanes to which the AD is applicable.

DATE: Effective August 11, 1980.

Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from: Short Brothers Limited, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern, Ireland.

A copy of the service bulletin is contained in the rules docket for this amendment in Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20951.

FOR FURTHER INFORMATION CONTACT: A. Astorga, Acting Chief, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, Telephone: 513.38.30, or C. Chapman, Chief, Policy Standards Section, AWS-111, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, Telephone: 202-426-8192.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-3229 (43 FR 24827), AD 78-12-01, which currently requires the replacement of the fuel system purge valve on certain serial numbered Short Brothers Limited Model SD3-30 series airplanes. After issuing Amendment 39-3229, the FAA has determined that fuel system purge valve replacement is applicable to an additional serial number airplane and not applicable to one of the serial number airplanes listed in the AD. The applicable Service Bulletins have been reissued to correct the effectivity. Therefore, the FAA is amending Amendment 39-3229 to reflect the correct serial numbers and Service Bulletin.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making the amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-3229 (43 FR 24827), AD 78-12-01 as follows:

1. By revising the applicability statement to read "Applies to Model SD3-30 Airplanes Serial Numbers SH 3003 through SH 3007 and SH 3009 through SH 3015, certificated in all categories."

2. By changing the referenced Shorts Service Bulletin in paragraph (a) to read "Shorts Service Bulletin SD3-28-08, Revision No. 1, dated February 15, 1979."

This amendment becomes effective Aug. 11, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c); Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under Executive Order 12044 as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on July 18, 1980.

M. C. Beard,

Director of Airworthiness.

[FR Doc. 80-22344 Filed 7-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 73-WE-18-AD; Amdt. 39-3850]

Airworthiness Directives; AiResearch Model TPE-331 and TSE-331 Series Engines

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing Airworthiness Directive (AD) applicable to AiResearch Model TPE-331 and TSE-331 series engines that contain the grease lubricated fuel pump drive coupling spline configuration by approving a new fuel pump design to be in equivalent level of safety. This amendment is needed to allow an alternate means of compliance with this AD and discontinue the repetitive inspections otherwise required.

DATES: Effective July 31, 1980.

Compliance schedule—As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: This amendment further amends Amendment 39-1761 [38 FR 26811], AD 73-26-07 as amended by Amendment 39-1778 [39 FR 3818] as amended by Amendment 39-2954 [42 FR 34865] which currently requires inspection of fuel pump and coupling shaft drive splines on AiResearch Model TPE-331 and TSE-331 series engines that contain grease lubricated fuel pump drive coupling spline configuration.

After issuing Amendment 39-2954 the FAA has determined that the new fuel pump design satisfies an equivalent level of safety. Therefore, the FAA is further amending Amendment 39-1761 as amended by Amendment 39-1778 and as amended by Amendment 39-2954 to stipulate that accomplishment of AiResearch Service Bulletin TPE 331-73-0091 constitutes an alternate means of complying with this AD.

Since this amendment provides an alternate means of compliance, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by further amending Amendment 39-1761 [38 FR 26811], AD 73-26-07 as amended by Amendment 39-1778 [39 FR 3818], as amended by Amendment 39-2954 [42 FR 34865] by changing paragraph (d) to read as follows:

§ 39.13 [Amended]

* * * * *

(d) The initial and recurring cleaning, visual inspection and lubrication of the fuel pump and coupling shaft drive splines prescribed in paragraph (a) and (b) above may be discontinued after incorporation of improved fuel pump shaft alignment features described in AiResearch Service Bulletin TPE/TSE331-73-0051 dated April 29, 1977; TPE331-73-0054 dated April 29, 1977; TPE331-73-0056 dated May 6, 1977; or TPE331-73-0091 dated October 11, 1979; or later FAA approved revisions (as appropriate for various engine models).

* * * * *

This amendment becomes effective July 31, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transporation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Amendment 39-1761 became effective January 28, 1974.

Amendment 39-1778 became effective February 1, 1974.

Amendment 39-2954 became effective July 11, 1977.

This Amendment 3850 becomes effective July 31, 1980.

Issued in Los Angeles, California on July 10, 1980.

John D. Mattson,

Director, FAA Western Region.

[FR Doc. 80-22543 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-NW-36-AD, Amdt. 39-3852]

Airworthiness Directives; All Boeing Model 720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Airworthiness Directive (AD) requires a one-time high frequency eddy current inspection of the 720 fleet to detect cracks in the lower wing surface skins and stringers. Five operators have reported cracks in the lower wing surface skins and/or stringers on five different airplanes. The cracks were found between wing stations (WS) 265 and 470 in the vicinity of stringers 5 and 7. If the skin is cracked in combination with a complete severance of a stringer, a situation may exist in which limit load cannot be carried. This could result in the loss of the airplane.

DATES: Effective date August 3, 1980.

Initial compliance: As prescribed in the body of the AD.

ADDRESSES: Boeing Service Bulletins specified in this directive may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION, CONTACT: Mr. Harold N. Wantiez P.E., Airframe Section, ANW-212, Engineering and

Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2516.

SUPPLEMENTARY INFORMATION: Five operators have reported cracks in the wing lower skin and/or stringers 5 and 7 on five airplanes which have accumulated 26,000 to 50,900 landings (20,100 to 47,000 flight hours). On two airplanes, stringer 5 was severed at W.S. 374 and 379; on two other airplanes stringer 7 was severed at W.S. 310 and 346. Stringer 7 was found partially severed on a fifth airplane. Seven skin cracks were found at the affected stringers at W.S. 308, 310, 346, 348, 351, 374, and 379. These cracks varied in length from 0.75 to 8.0 inches. Cracking is attributed to fatigue.

The severance of stringers 5 and/or 7 in conjunction with skin cracks in the same area, will impose an additional load on adjacent stringers and skin. Failure to detect skin cracks prior to their growing to a critical length, in combination with a severed stringer, will result in degradation of the wing lower surface strength below regulatory fail-safe load requirements. For this reason, a one-time high frequency eddy current inspection is required. It is anticipated that terminating action or repetitive inspection requirements will be developed based on the results of this initial inspection.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure herein are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Boeing: Applies to all 720 series airplanes.

Accomplish the following:

A. Within the next 90 days or 100 landings after the effective date of this AD, whichever occurs first, unless accomplished within the last 100 landings, perform a one-time high frequency eddy current inspection of the wing lower surface skins and stringers in accordance with Boeing Alert Service Bulletin A3395 dated July 9, 1980, or later FAA approved revisions. Skin and/or stringers found cracked must be repaired prior to further flight in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

B. Report inspection results to the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 E. Marginal Way South, Seattle, Washington 98108.

(Reporting approved by the Office of Management and Budget under OMB Number 04-R0174).

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

This amendment becomes effective August 3, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provision of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 F.R. 11034; February 26, 1979).

Issued in Seattle, Washington, on July 16, 1980.

The incorporation by reference provisions in the document were approved by the Director of the Federal Register on June 19, 1967.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 80-22545 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-WE-26-AD; Amdt. 39-3851]

Airworthiness Directives; Pacific Scientific Co.—Rotary Buckle Restraint Systems

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Pacific Scientific Company rotary buckles used in crew and attendant aircraft seat restraint systems by extending the compliance period by sixty (60) days. This AD is needed because of unexpected delays in parts delivery which would place operators in violation without relief from the original compliance schedule which the FAA considers may be safely extended by the sixty (60) day period.

DATES: Effective July 31, 1980.

Compliance schedule—Compliance required within 240 days from January 31, 1980.

FOR FURTHER INFORMATION CONTACT:

Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-3646, (45 FR 763), AD 80-01-05 which currently requires replacement of certain Pacific Scientific Company rotary buckles installed in crew and attendant aircraft seat restraint systems within 180 days from January 31, 1980. After issuing Amendment 39-3646, the FAA has determined that a parts supply problem exists which could result in severe aircraft scheduling problems. The FAA has further determined that extension of the compliance time is a preferred course of action to some alternate solutions from a safety consideration. Therefore, the FAA is amending Amendment 39-3646 by extending the compliance time by sixty (60) days on Pacific Scientific Company rotary buckle restraint systems.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedures hereon are unnecessary and good cause exists for making this amendment effective in less than thirty (30) days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by amending Amendment 39-3646 (45 FR 763), AD 80-01-05 as follows:

§ 39.13 [Amended]

* * * * *

Compliance required within 240 days from January 31, 1980.

* * * * *

This amendment becomes effective July 31, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.— The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Amendment 39-3646 became effective January 31, 1980.

This Amendment 39-3851 becomes effective July 31, 1980.

Issued in Los Angeles, California on July 10, 1980.

John D. Mattson,

Director, FAA Western Region.

[FR Doc. 80-22544 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-SO-13]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Control Zone, Meridian, Mississippi (NAS Meridian)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the description of the Meridian, Mississippi (NAS Meridian), Control Zone by increasing the effective hours of operation from a part-time to a full-time Control Zone.

EFFECTIVE DATE: 0901 GMT, October 30, 1980.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: John W. Schassar, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the Federal Register on Monday, June 9, 1980 (45 FR 38407), which proposed to alter the description of the Meridian, Mississippi (NAS Meridian), Control Zone. The U.S. Navy has requested the Control Zone hours be extended to a full-time operation. The weather observation and reporting criteria will be provided by certified U.S. Navy observers on a 24-hour basis. The Flight Service Station at Key Field will provide the latest reported weather and wind conditions at NAS Meridian during the hours that the NAS Meridian Control Tower is not in operation. No objections were received to the proposed action.

Adoption of the Amendment

Accordingly, Subpart F, § 71.171 (45 FR 356) of Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 GMT, October 30, 1980, by deleting all after:

Meridian, Mississippi (NAS Meridian)

"* * * south of the runway end * * *"

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Georgia, on July 17, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-22547 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-AAL-8]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Control Zone and Transition Area Northway, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the Northway, Alaska, control zone and transition area by providing additional protected airspace for two new instrument approach procedures. The Nabesna NDB, on which the present instrument approach procedure is established, is being relocated. When the NDB relocation is complete, the present instrument approach procedure will be cancelled and two new instrument approach procedures allowing straight in approaches to runways 4 and 22 will be established. These changes in the instrument approach procedures to the airport necessitate the alteration of the control zone and transition area.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry Wylie, Operations, Procedures, and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, Alaska 99513, telephone (907) 271-5903.

SUPPLEMENTARY INFORMATION:

History

On April 28, 1980, the FAA proposed to amend § 71.171 and § 71.181 of Part 71 to the Federal Aviation Regulations (14 CFR Part 71) by altering the Northway, Alaska, control zone and transition area by adding an additional control zone extension to the southwest to protect the proposed straight in approach to runway 4 and by eliminating a part of the present control zone and transition area. This proposal inadvertently omitted provision for adequate airspace to protect one of the proposed NDB instrument approach procedure and the existing VOR instrument approach procedure. A correction to the notice of proposed rulemaking redescribing the terminal airspace needs to protect all of the Northway approach and departure procedures was published in the Federal Register on June 9, 1980, at page 38406. Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objections.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 356, 445) is amended, effective 0901 GMT, October 30, 1980, as follows:

Under § 71.171

Northway, Alaska, the text is deleted and

"Within a 5 mile radius of Northway Airport (lat. 62°57.7'N., long. 141°55.6'W.); within 3 miles each side of the 076° bearing from the Nabesna NDB extending from the 5-mile radius zone to 8 miles east of the NDB; within 3 miles each side of the 256° bearing from the Nabesna NDB extending from the 5-mile radius zone to 8 miles west of the NDB and within 3 miles each side of the 307° bearing from the Nabesna NDB extending from the 5-mile radius zone to 8-miles northwest of the Nabesna NDB."

is substituted therefor.

Under § 71.181

Northway, Alaska, the text is deleted and

"That airspace extending upward from 700 feet above the surface within 10 miles northeast and 10 miles southwest of the 304° and 124° bearings from Nabesna NDB, extending from 10 miles southeast to 20 miles northwest of the NDB; within 9.5 miles north and 4.5 miles south of the 076° bearing from the Nabesna NDB, extending from the NDB to 18.5 miles east of the NDB and within 4.5 miles north and 9.5 miles south of the 256° bearing from the Nabesna NDB extending from the NDB to 18.5 miles west of the NDB."

is substituted therefor.

(This amendment is made under the authority of § 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); § 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 1134, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, and anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Anchorage, Alaska, on July 16, 1980.

Robert L. Faith,

Director, Alaska Region.

[FR Doc. 80-22546 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-PC-4]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Guam Island Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Guam Island Transition Area to provide additional airspace to protect aircraft executing instrument approaches being developed for Rota International Airport.

EFFECTIVE DATE: September 4, 1980.

FOR FURTHER INFORMATION CONTACT: L. Jack Overman, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On May 29, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Guam Island Transition Area to provide additional airspace at Rota Island (45 FR 36092). This is to protect aircraft executing instrument approaches being developed for Rota International Airport. Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objections, except for a request for consideration of a procedure to limit the amount of deviation required on direct flights from Guam to Saipan. After reevaluation of the proposal, it was determined that the 8 mile to 11 mile extensions were unnecessary. This amendment is the same as that proposed in the notice except for the deletion of the extensions. § 71.181 of Part 71 was republished in the Federal Register on January 2, 1980, (45 FR 445).

The Rule

This amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes a 700 foot transition area at Rota International Airport to protect two NDB approaches being developed to Runway 9 and Runway 27. This action designates an area from 700 feet above the surface within an 8-mile radius of the airport. (Lat. 14°10'26"N., Long. 145°14'41"E.). The extension to 11 miles proposed in the notice are deleted from this final rule. This reduces the airspace required for protection of aircraft executing the proposed approaches, along with a reduction in the deviation on direct Guam-Saipan flights.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) is amended, effective 0901 GMT, September 4, 1980, as follows:

Under Guam Island, delete the words "thence to point of beginning." and substitute for them "thence to point of beginning, and within an 8-mile radius of the Rota International Airport (Lat. 14°10'26"N., Long. 145°14'41"E.)."

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a)), 1354(a), and 1510; Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on July 21, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-22555 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 121

[Docket No. 17326; SFAR No. 34]

Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft; Compensation for Required Security Measures in Foreign Air Transportation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation adopts a procedure for compensating air carriers who have incurred unreimbursed costs for screening passengers, and their carry-on baggage, moving in foreign air transportation. The purpose of this regulation is to implement the direction of Congress that the Secretary of Transportation provide appropriate compensation.

EFFECTIVE DATE: August 27, 1980.

FOR FURTHER INFORMATION CONTACT: H. E. Smith, Safety Regulations Staff (AVS-24), Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

I. Background

Section 24 of Public Law 94-353 (49 U.S.C. 1356a) directs the Secretary of Transportation to compensate any air carrier certificated under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) for the cost of screening passengers moving in foreign air transportation. In order to implement this statutory requirement, the FAA issued Notice of Proposed Rule Making No. 77-26 (42 FR 56957; October 31, 1977) proposing a procedure for compensating air carriers for this cost.

The FAA received five comments in response to the notice. Two comments were from professional associations who supported the proposal. Two were from U.S. air carriers, Trans World Airlines (TWA) and Pan American World Airways (Pan American). Both air carriers supported the proposal, and TWA suggested changes in the proposed formula and procedure for payment.

The fifth comment was from the Civil Aeronautics Board (CAB) which expressed the belief that the plan for payment which was proposed in the notice is essentially unworkable. The CAB expressed the view that its current policies have been "adequate to permit recovery of foreign security costs and that, if implemented, the FAA's program

has a good chance of providing duplicate payment for costs that were recouped as part of the carrier's passenger fares."

On August 3, 1978, the FAA held a public meeting to assist in resolving the substantive problems raised by the CAB. Prior to the meeting a notice of public meeting was issued (43 FR 30068; July 13, 1978) soliciting comments from all parties on the issues raised by the CAB. All parties were requested to submit information which supported or contravened the points raised by the CAB, and, at the end of the meeting, the participants were invited to submit any additional comments.

After the meeting, comments were received from TWA, Pan American, and the National Air Carrier Association (NACA).

II. Comments

A. Fare Effectiveness

In commenting generally on the notice, the CAB was concerned with what it considered to be the assumption implicit in the proposal, "that the fares the airlines are permitted to charge have been ineffectual in permitting the recovery of costs incurred in connection with foreign security precautions." The CAB stated it is confident that it has considered these costs in determining the reasonableness of fare changes, "because each fare increase authorized in air transportation, both domestic and foreign, in recent years was based on a complete cost justification in which all of the carriers' normal operating expenses (including various categories for traffic servicing expense into which security cost would logically fall) were considered." These and other comments by the Board were expanded at the public meeting by CAB staff members.

The CAB staff contended that because carriers included security costs as part of their justification for increases in international fares, the carriers intended to recover those costs through the fare structure. Because the Board considered those costs in determining the reasonableness of the fares, the staff argued that security costs have been built into the fare structure and are being recovered.

In response, Pan American conceded that part of the costs it submitted to the CAB to justify fare increases for foreign air transportation was "servicing expenses" which included security costs. However, it asserted that it made no attempt to base a fare increase on those costs because the ratio of security costs to overall operational costs was less than two-tenths of one percent, and it was looking to Congress for full reimbursement for security costs.

Both Pan American and TWA pointed out that none of the fare increases approved by the CAB for foreign air transportation was applied for, or approved on the basis of, security costs, and that the international fare structure has never specifically provided for those costs. They stated that foreign fare increases, for the most part, reflected compensation for increased fuel costs and other inflationary cost increases since 1973. Therefore, the commenters argue, security costs have been only compensated for in part, if at all, and only to the extent that increases in security costs contributed to total cost increases.

The CAB staff also suggested that, if operating revenues in foreign air transportation exceeded operating costs, it must be assumed that all security costs have been recovered. Accordingly, any payment for security costs by the FAA would result in double payment. In this connection, the CAB staff indicated that the carriers' total economic costs should not be considered in determining whether the carriers have been compensated for security costs, since the CAB does not guarantee a specified return to a carrier, nor does it set a standard for a rate of return for international operations.

On the other hand, TWA, Pan American, and NACA argue that all economic costs, including a reasonable rate of return, should be considered in determining whether revenues from fares covered security costs. They contend that, while the Board may not have established a formal rate of return for international fares, in some cases it has looked to the domestic standard of 12 percent as a "benchmark." The information submitted by TWA and Pan American with their comments indicates that the actual rate of return for those carriers was well below that standard.

The FAA cannot reimburse a carrier for security costs for which it has already been compensated. Neither the Act nor legislative history would support such a position. However, the information provided by Pan American and TWA indicates that the affected air carriers should be given the opportunity to show what security costs have not been recovered.

B. Accounting System

Proposed section 2(b) called for establishing total dollar amounts expended for security at each airport in accordance with the accounting procedures in 14 CFR Part 241, referred to as the uniform system of accounting. The CAB commented that under the proposal, the concept of matching security revenues and costs would be geared to a regulatory cost accounting system for security costs that was later terminated, eliminating the requirement to separately report these costs. For this reason, the CAB concluded that the uniform system of accounts would not call for the detailed information needed to determine the reasonableness of the costs submitted to the FAA.

The FAA agrees that reference in the special regulation to the accounting procedures in 14 CFR Part 241 would not be appropriate, since security costs were not reported separately after the security surcharge was merged into the domestic fare in 1976. Accordingly, section 2 has been revised to provide that listing of expenses, revenues, or statistics must be made in accordance with accounting procedures acceptable to the Administrator, and must be consistent with any data previously submitted to the CAB.

C. Revenue From Domestic Screening

In order to establish what revenue received by air carriers is attributable to domestic security screening, the FAA proposed a formula in section 2(a)(2) under which revenue computation would be based on recent fare increases approved by the CAB and the total number of passengers enplaned during the fiscal year in which the application for compensation is submitted. In its comment the CAB pointed out that the formula is based upon percentage general fare increases for the years involved. It contended that, because the carriers were not required to segregate security costs to support those fare increases, it cannot be determined whether there was in fact a direct correlation between changes in overall operating costs and changes in security costs for those periods. For this reason, the CAB questioned whether the proposed formula could accurately reflect revenue from security screening.

While the FAA is cognizant of the Board's general concern, there is no evidence that the rule will result in significant inaccuracies for scheduled air carriers. In addition, both Pan American and TWA have asserted that there was no excess of domestic security revenues over domestic security expenses to offset against international security expenses. TWA states that during the period 1973 through 1978, it experienced a net loss on its domestic security operations, with small profits between 1973 and 1974 being fully absorbed by subsequent losses.

NACA pointed out that the proposed formula is designed to apply only to scheduled foreign air transportation. It

noted that the use of CAB-approved fare increases in the formula makes it inapplicable to charter fares which are set by negotiation between the carrier and the customer. In addition, charter air carriers often cannot easily isolate security costs. For example, when a scheduled air carrier's gate position is used for an international departure, or ground service organization for passenger handling (including screening), the charter air carrier will often receive a single invoice that does not break out screening charges. Landing fees at foreign airports also do not indicate that portion of the fee attributable to security. For these reasons NACA requested that the final rule permit air carriers flexibility in calculating their costs.

In response to the comment by NACA, the regulation, as adopted, provides that the formula only applies to computation of revenues by scheduled air carriers. Charter air carriers may compute revenues from passenger fares by any accounting procedure acceptable to the Administrator.

D. Revenue From Foreign Screening

To assist in establishing revenue from the screening of passengers moving in foreign air transportation, proposed section 2(a)(3) provided that the air carrier must list fare increases, if any, obtained during the applicable year to cover the cost of that required screening. The CAB pointed out that there have been no specific security-related surcharges authorized in foreign air transportation. The CAB stated that, although security costs were reflected in the total carrier operating expenses which it relied on as justification for increased foreign passenger fares, the rule contains no percentages, formulas, or other guidelines on which the applicant could rely to develop the required figures. The CAB did state that, theoretically, the portion of a fare increase attributed to security functions could be isolated, but noted that allocation from unrefined data could produce inaccurate results.

Pan American agrees that it is not feasible to develop an accurate formula for establishing revenue from required screening functions in foreign air transportation. However, it demonstrated a reasonable approach to determining what part of the total revenues represent reimbursement for security expenses. It calculated that security costs amount to two-tenths of one percent of total expenses of passenger operations, and, therefore, not more than two-tenths of one percent of the fare increases requested could have been for security purposes.

Using this procedure, Pan American estimates that the amounts recovered from fare increases for foreign air transportation to compensate for security expenses represented only a small percentage of actual expenses incurred in security operations. It states that it incurred $7.9 million in security-related costs for the period July 1, 1975, to September 30, 1978, and estimates that it received only $0.5 million in increases as the security-related share of total fare increases for that period. Therefore, Pan American's net deficit for security costs would be approximately $7.4 million for those years.

TWA takes the position that no revenues earned in foreign air transportation can be attributed to passenger screening since no specific surcharge or fare increase was ever given to reflect the costs of screening when it began in foreign operations in 1973. TWA contends that for this reason the subsequent fare increases cannot be used to calculate revenue from screening, when the base to which they were applied did not include screening costs. TWA also points out that the CAB has refused to authorize increases in the normal economy fare, which supports the whole fare structure, and which, presumably, largely embodies the revenues that would cover security-related expenses. Accordingly, TWA claims $4.62 million in reimbursable security expenses for the three fiscal years involved, without any offset for revenue related to passenger screening.

After review of all of the comments received, the FAA is confident that an acceptable procedure for attributing revenues to screening in foreign air transportation can be arrived at by each air carrier applicant using a method such as that described by Pan American. Without specifying a formula for establishing those revenues, the regulation, as adopted, requires the applicant to show the manner in which they are arrived at. Under the regulation, the procedure used must be acceptable to the Administrator.

E. Procedure for Payment

1. *Listing of Security Expenses.*—TWA believes that listing the total dollar amount expended for security at each airport as required by proposed section 2(a)(1) would be too burdensome and costly. Instead, TWA suggests that security costs be listed for the four air transport entities specified in the Uniform System of Accounts and Reports (14 CFR Part 241, Section 21(g)), i.e., domestic operations, operations via the Atlantic Ocean, operations via the Pacific Ocean, and operations within the Latin American areas. The FAA recognizes the burden that the proposed requirement would have worked on the applicant, and the regulation, as adopted, only requires that security expenses be listed for each air transport entity.

2. *Derivation of Security Revenue.*—TWA objected to the formula in proposed section 2(a)(2)(iv) for the derivation of security revenue attributable to screening in intrastate, interstate, and overseas air transportation on the ground that it would generate ficticious revenue. TWA pointed out that, between July 1, 1975, through March 31, 1976, it did not implement CAB Order 75-8-103 which merged the security surcharge into the domestic fare because of the deadline for compliance having been extended to March 31, 1976. During that time a CAB order adjusting the surcharge in the 48 states from 41 to 34 cents per enplanement was in effect, and, therefore, the proposed formula in paragraph (iv) would not accurately reflect revenue during that time. TWA suggests that, for that period, the revenue listed be that reported by the carrier to the CAB.

In response to this comment, the regulation provides that the applicant must separately list revenue derived from passenger security charges. The proposed formula will only be applied to computing revenue derived from passenger fares to which no security charge was added. The security charge applicable to the period before adoption of CAB Order 75-8-103 is not specified, allowing the applicant to apply the appropriate charge for that period.

3. *Actual Revenue.*—TWA also criticizes proposed section 2(a)(2)(iv) because it would penalize a carrier who offered discount fares or delayed implementation of fare increases, and would put at a disadvantage a carrier whose revenue was reduced as a result of interline travel and joint fare prorates specified in the CAB's Phase 4 formula. TWA suggests that the regulation be revised to allow the carrier to demonstrate to the Administrator that the carrier's actual revenue is less than that computed using the formula in paragraph (iv), and the FAA has adopted this suggestion in the final rule.

4. *Passengers Enplaned.*—TWA requested a clarification of paragraph 2(c) which would have provided that, for the purpose of the formula for determining security revenue from domestic fares, if a passenger is enplaned more than once during any operation but assessed only once for required passenger screening, the passenger shall be considered as having been enplaned only once. TWA was

unsure of the application of this paragraph since the security charge is assessed only once on a "true origination basis," i.e., one charge from the point of origin to a point of destination without regard to the number of individual flight segments. In order to clarify the rule, "true originations" has been substituted for "passengers enplaned", and paragraph 2(c) has been eliminated.

5. *Reimbursement for Prior Years.*—TWA has requested that all security costs beginning in 1973 be considered for reimbursement. However, the FAA interprets section 24 to allow compensation only for unreimbursed security expenses incurred in fiscal years 1976 (including the period July 1, 1976, through September 30, 1976), 1977, and 1978.

6. *Independent Review.*—All applications for payment under this Special Federal Aviation Regulation will be reviewed by independent accountants or auditors.

7. *Payment Subject to Appropriation.*—Finally, it should be noted that payments to air carriers will not be made until appropriations for this purpose are provided by the Congress. Appropriations will be requested after applications for payment have been reviewed and determined to be valid.

F. Submission of Data

The FAA recognizes that, because security costs were not reported separately to the CAB after the security surcharge was merged into the domestic fare in 1976, it may be necessary to establish these costs through allocations based on available data. Review of claims using allocated costs will include review of the supporting data.

The regulation provides that data supplied must be consistent with any data that have already been reported to the Civil Aeronautics Board. Information should be furnished so that the data are reconcilable between airports and entities. Where allocations have been made, the basis for each allocation should be fully explained. If the information submitted is not acceptable to the Administrator, the claim will be denied.

G. OMB Approval Unnecessary

Because of the limited number of applications expected under this Special Federal Aviation Regulation, it has not been necessary to obtain approval of the reporting requirements contained in this rule from the Office of Management and Budget.

Adoption of the Amendment

Accordingly, the following Special Federal Aviation Regulation is adopted, effective August 27, 1980:

SFAR–34 Compensation for Required Security Measures in Foreign Air Transportation

Sec.
1. Applicability.
2. Application for compensation.
3. Deadline for submission of application.
4. Records.
5. Inspections.

1. *Applicability.* (a) This Special Federal Aviation Regulation prescribes rules governing the payment of compensation to an air carrier, certificated by the Civil Aeronautics Board under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371), which requests compensation for the cost of security screening facilities and procedures required under section 315(a) of that act (49 U.S.C. 1356(a)), and any regulation issued pursuant thereto, for the screening of passengers, and their carry-on baggage, moving in foreign air transportation.

(b) For the purpose of this Special Federal Aviation Regulation, the "air transport entities" are those specified by the Civil Aeronautics Board in 14 CFR Part 241, section 21(g), namely—

(1) Domestic operations;
(2) Operations via the Atlantic Ocean;
(3) Operations via the Pacific Ocean; and
(4) Operations within the Latin American areas.

2. *Application for compensation.* An air carrier requesting compensation under the Special Federal Aviation Regulation shall submit a separate application (in triplicate) for each fiscal year for which compensation is sought, that meets the following requirements:

(a) The application shall contain a listing of the expenses incurred for each air transport entity, during the period for which the application is submitted, for procedures required for the screening of passengers and their carry-on baggage. This listing shall show a grand total for each entity and a subtotal for each category specified in paragraph (b) of this section for each entity.

(b) Each list of expenses submitted with an application shall be divided into the following categories:

(1) Supervision and training.
(2) Personnel.
(3) Materials and supplies.
(4) Equipment maintenance.
(5) Equipment depreciation.
(6) Facility space costs.
(7) Expenses paid for security screening purposes to—
(i) U.S. airlines;
(ii) Foreign flag airlines; and
(iii) Others.
(8) Other expenses.
(9) Total expenses.

(c) The application shall contain a listing of revenues attributable to the cost of facilities and procedures required for the screening of passengers and their carry-on baggage.

The applicant shall list separately, for each air transport entity, total revenue and subtotals for the following:

(1) Passenger security charges.
(2) Passenger fares to which no security charge was added.
(3) Reimbursements from U.S. air carriers.
(4) Reimbursements from foreign flag air carriers.
(5) Reimbursements from airports, port authorities, and others for the screening of passengers and their carry-on baggage.
(6) Any other security screening revenues received from, or chargeable to, others.

(d) Unless the applicant demonstrates, to the satisfaction of the Administrator, its actual revenue from passenger fares for intrastate, interstate, and overseas air transportation, revenue from those fares after implementation of Civil Aeronautics Board Order 75–8–103 (Docket 25315; August 19, 1975) shall be established by multiplying the number of true originations by—

(1) For operations wholly within the State of Hawaii, the sum of 36 cents plus 36 cents times each overall percentage fare increase approved by the Civil Aeronautics Board, including Order 75–8–103;

(2) For operations from the 48 contiguous States to the State of Alaska, the sum of 62 cents plus 62 cents times each overall percentage fare increase approved by the CAB, including Order 75–8–103;

(3) For operations wholly within the State of Alaska, the sum of 80 cents times each overall percentage fare increase approved by the CAB, including Order 75–8–103; and

(4) For operations in intrastate, interstate, and overseas air transportation, other than those specified in paragraph (d) (1) through (3) of this section, the sum of 41 cents plus 41 cents times each overall percentage fare increase approved by the CAB, including CAB Order 75–8–103.

(e) The applicant must show the manner in which it establishes revenues received from passenger fares for foreign air transportation.

(f) The application shall contain a listing, for each air transport entity, of the number of—

(1) True originations;
(2) Persons screened;
(3) Passengers screened by the applicant for—
(i) Other U.S. air carriers; and
(ii) Foreign flag air carriers;
(4) Passengers screened for the applicant by—
(i) Other U.S. air carriers;
(ii) Foreign flag air carriers; and
(iii) Others; and
(5) Employee days expended on security, together with the cost, if any, for space provided for screening and related security activity.

(g) Each listing of expenses, revenue, or statistics required by this section shall be made in accordance with accounting procedures acceptable to the Administrator. Expenses, revenues, and statistics submitted as a part of an application shall be consistent with any data which have previously been reported to the Civil Aeronautics Board.

(h) The application shall contain a statement from an appropriate corporate official certifying that the application is correct and complete.

(i) The application shall be submitted to the Director, Office of Civil Aviation Security

(ACS-1), 800 Independence Avenue SW., Washington, D.C. 20591.

3. *Deadline for submission of application.* An air carrier that submits an application for compensation under this Special Federal Aviation Regulation shall submit that application not later than July 1, 1981.

4. *Records.* An air carrier that submits an application for compensation under this Special Federal Aviation Regulation shall specify in that application—

(a) The location of the accounting records pertaining to expenditures made, and revenues and fare increases obtained, and compensation paid, as described in section 2 of this Special Federal Aviation Regulation; and

(b) The name and telephone number of a person authorized to grant the Administrator access to the accounting records specified in paragraph (a) of this section.

5. *Inspections.* An air carrier that submits an application for compensation shall permit the Administrator to inspect the accounting records described in section 4(a) of this Special Federal Aviation Regulation during normal business hours at the office where the records are maintained.

This Special Federal Aviation Regulation terminates July 1, 1982, unless sooner superseded or rescinded.

(Sec. 24, Public Law 94-353 (49 U.S.C. 1356(a)); Sec. 1.47(f)(3), Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(f)(3))

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "for Further Information Contact:".

Issued in Washington, D.C., on July 22, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-22577 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 159

[Docket No. 20200; Amdt. 159-19]

Solicitation and Leafletting Procedures at National and Dulles International Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; deferral of effective date.

SUMMARY: In 49 FR 35314-35321, May 27, 1980, FAA amended the regulations pertaining to National Capital Airports to provide for the regulation of charitable, religious, and political leafletting and soliciting at National and Dulles Airports, in accordance with Title V of Pub. L. 96-193 enacted February 18, 1980. The effective date of the final rule was established as July 28, 1980. This amendment defers the effective date to October 26, 1980.

EFFECTIVE DATE: July 25, 1980.

FOR FURTHER INFORMATION CONTACT: Edward Faggen, Legal Counsel, AMA-7, Washington National Airport, Hangar 9, Washington, D.C. 20001. Telephone (703) 557-8123.

SUPPLEMENTARY INFORMATION: The final rule, issued on May 20, 1980, incorporated several significant modifications of the rule proposed in the NPRM (45 FR 20424). Based upon an estimate of the time necessary to complete administrative requirements associated with implementation of the final rule, the effective date established for the final rule was July 28, 1980.

Administrative approvals required included those under the Federal Reports Act (44 U.S.C. § 3501 *et seq.*) and the Privacy Act (5 U.S.C. § 552a). The processes for obtaining approval were initiated after issuance of the final rule due to the substantial notifications which were made to the proposed rule in response to public comments. It is now apparent that the agency will not get the necessary approval required under the Federal Reports Act and meet all of the technical requirements of the Privacy Act by July 28. Under the Federal Reports Act, OMB approval for the Airport Solicitation Permit can only be obtained after publication of the proposed form in the Federal Register followed by a comment period and formal notification of approval by OMB. Although these forms have been finalized, OMB has not completed its review. In addition, since the file of application forms to be utilized is a system of records under the Privacy Act, OMB regulations require the agency to publish a notice that a system of records will be established in accordance with the Act and prohibit use of the system for 60 days after publication.

As a result of these requirements and the amount of coordination necessary to obtain required approvals, the agency will not be able to fully implement the rule by July 28, 1980, although every reasonable effort was made to meet that date. FAA is therefore deferring the effective date 90 days to permit compliance with all administrative requirements associated with implementation of Part 159 as amended.

Amendment to the final rule: In the final rule (FR Doc. 80-15968) published on May 27, 1980 (45 FR 35314), the effective date is hereby changed to October 26, 1980.

(Secs. 2 and 4 of the Act for the Administration of Washington National Airport, 54 Stat. 686 as amended by 61 Stat. 94; Secs. 4 and 10 of the Second Washington Airport Act, 64 Stat. 770; sec. 313 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1359); sec. 6, Department of Transportation Act (29 U.S.C. 1655); Sec. 501 of Pub. L. 96-193, February 18, 1980)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is judged to be minimal and a detailed evaluation is not required.

Issued in Washington, D.C., on July 24, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-22544 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231 and 271

[Release Nos. 33-6224, and IC-11263]

Effect of the Termination of Credit Controls on the Operations of Certain Registered Investment Companies Including Money Market Funds

AGENCY: Securities and Exchange Commission.

ACTION: General Statement of Policy.

SUMMARY: The Securities and Exchange Commission announces a general statement of policy concerning implications under the federal securities laws of the rescission of credit control regulations applicable to certain registered investment companies, including "money market" funds. The credit control regulations were promulgated by the Board of Governors of the Federal Reserve System ("Board") on March 14, 1980, and subsequently amended on March 28, 1980, and May 22, 1980, pursuant to the Board's authority under the Credit Control Act of 1969, as implemented by Executive Order of the President. On July 3, 1980, the Board announced that its credit control regulations would be eliminated with respect to the weekly reporting periods beginning on July 28, 1980. This general statement of policy expresses the Commission's views concerning various disclosure obligations under the Securities Act of 1933 and various regulatory considerations under the Investment Company Act of 1940, which should promptly be considered by boards of directors of registered

investment companies which have been subject to the Board's regulations.

EFFECTIVE DATE: July 21, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth S. Gerstein, Special Counsel (202-272-3023); Gene A. Gohlke, Examination Program Coordinator (202-272-2024) or Jeffrey B. Bailey, Esq. (202-272-3033); Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On July 3, 1980, the Board of Governors of the Federal Reserve System ("Board") announced its decision to rescind its credit control regulations [12 CFR 229.11-.15] applicable to certain registered investment companies, including "money market" funds and short-term unit investment trusts. The Board's regulations, which were adopted on March 14, 1980, and thereafter amended on March 28, 1980, and May 22, 1980, required each investment company subject thereto to maintain a noninterest bearing special deposit with the Federal Reserve Bank in the district where such investment company had its principal place of business equal to a specified percentage of the amount by which the average of the daily amounts of its "covered credit" during specified weekly periods exceeded a specified "base" amount, subject to certain adjustments.[1]

In response to adoption of the Board's regulations, the Commission issued a general statement of policy concerning some of the implications of such regulations under the federal securities laws in order to provide the boards of directors of registered investment companies with guidance respecting various disclosure obligations under the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a *et seq.*] and various regulatory matters under the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a-1 *et seq.*].[2] Consistent with the views expressed in that general statement of policy, and in recognition of their responsibilities, many money market funds and their investment advisers implemented a variety of actions designed to modify the operations of such investment companies to accommodate the impact of the Board's regulations while minimizing inequities to existing shareholders and investors.

In particular, a number of so-called "clone" funds ("new funds") were organized by investment advisers to duplicate already existing money market funds ("existing funds"). The purpose of each new fund was to absorb new sales of shares which, if sold by the existing fund, could have increased the amount of its special deposit and, thus, adversely affected dividends payable to shareholders of the existing fund.[3] In order to enhance the ability of investment companies to take a variety of responsive actions, the Commission adopted Rule 6c-4(T) [17 CFR 270.6c-4(T)], which provides money market funds subject to the Board's regulations, and companies and persons dealing with such funds, with temporary exemptions on an emergency basis from various provisions of the 1940 Act and the rules adopted thereunder.[4]

The Commission believes that rescission of the Board's regulations will have various implications with respect to the operations of certain money market funds.[5] Accordingly, this general statement of policy is intended to provide guidance to the directors of registered investment companies which have been subject to the Board's regulations respecting compliance and disclosure responsibilities of such investment companies under the federal securities laws arising from termination of credit control regulations. In addition, it will outline one possible method that boards of directors may wish to utilize to transfer efficiently the interests of investors in new funds to existing funds, and one possible method that may be available for new funds to achieve the high degree of liquidity necessary to meet redemptions. It is not, however, intended to address all of the issues which may arise from the Board's action, which issues may nevertheless be appropriate for directors to consider.

Disclosing the Elimination of Special Deposits

The primary implication of the Board's rescission of its credit control regulations will be that money market funds no longer will be required to maintain special deposits and that special deposits now being held by Federal Reserve Banks will be refunded. When investment companies are able to invest the assets previously constituting special deposits, investors in these funds, generally, should receive somewhat increased yields. Thus, to the extent that the prospectuses of money market funds currently disclose the existence and consequences of the special deposit requirement, money market funds should amend their prospectuses as soon as practicable to reflect the investment and other implications of the elimination of the need to make special deposits. In this regard, the Commission will not object to the use of a Rule 424(c) [17 CFR 230.424(c)] "sticker" by an investment company to amend its prospectus. In addition, the Commission will not object to continued use of the current prospectus to sell securities during the time reasonably necessary to amend the prospectus to make appropriate disclosures.[6]

In certain cases, prompt disclosure of other matters also will be necessary and appropriate. For example, an existing fund which adopted certain restrictive polices respecting the sale of its shares to minimize the impact of the special deposit requirement on existing shareholders should disclose any revision of such policies.[7] Similarly, where any other modifications of a money market fund's policies, objectives or services are made as a result of the elimination of credit control regulations, the fund should promptly make appropriate disclosure of such modifications. The matters discussed hereinafter also may necessitate certain additional disclosures to investors.

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[1] 45 FR 17927 (March 19, 1980), 45 FR 22883 (April 4, 1980), and 45 FR 37413 (June 3, 1980). The last amendment to the Board's regulations reduced from 15 percent to 7.5 percent the proportion of each investment company's covered credit in excess of its base, required to be deposited under the regulations.

The Board's action provides that the week ending July 27, 1980, shall be the last reporting period for which special deposits will be required. Such special deposits are required to be made on August 4, 1980, and will be refunded on August 11, 1980. 45 FR 46064 (July 9, 1980).

[2] Investment Company Act Release No. 11088 (March 14, 1980) [45 FR 17954, March 20, 1980].

[3] Because the credit control regulations imposed a special deposit, generally, only on assets in excess of the outstanding "covered credit" on March 14, 1980 ("base"), existing funds would have to make special deposits only if their assets (covered credit) increased above their base amounts.

[4] Investment Company Act Release No. 11137 (April 22, 1980) [45 FR 28307, April 29, 1980].

[5] The rescission of the credit control regulations will also have an impact on short-term unit investment trusts. However, the implications of the Board's action with respect to short-term unit investment trusts should simply be that special deposits of existing trusts will be refunded to the trustees of the trusts and then distributed to unitholders. Thus, this general statement of policy relates principally to open-end, management investment companies investing in short-term debt obligations, commonly termed "money market" funds.

[6] Because shareholders of money market funds affected by the credit control regulations in many cases may have elected to have dividends reinvested, the Commission expects that any disclosures made by investment companies will be furnished promptly to existing shareholders, as well as to all future investors.

[7] As discussed at p. 19, *infra*, the Commission believes that certain matters should be considered by the boards of directors of money market funds before eliminating or modifying restrictive sales policies.

Implications for "New" Money Market Funds

As noted above, certain new funds were organized after the adoption of the credit control regulations by the investment advisers to existing funds for the purpose of minimizing the impact that additional sales of shares would otherwise have had on the existing funds. In most cases, these new funds are rather similar, if not identical, to the existing funds which they duplicate. However, the yields currently being earned by existing funds in most cases exceed those being earned by new funds by amounts which exceed differences attributable solely to the larger special deposits maintained by the new funds.[8]

Under these circumstances, many shareholders of new funds may decide to redeem their shares and to seek to purchase either (1) shares of the existing fund in the same "complex" of investment companies (if available) or (2) shares of another money market fund (whose shares may previously have been unavailable because of sales restrictions adopted after the institution of the special deposit requirement). In some cases, the level of such redemptions, coupled with reduced sales of new shares of such funds, may have serious implications respecting the future viability of new funds. As a result, directors of a new fund may have to consider seriously whether: (1) to terminate the business activities of and to liquidate the new fund; (2) to modify the fundamental investment objectives of the new fund to provide a continued business purpose; or (3) to enter into a merger, consolidation or reorganization with another money market fund. In some instances, shareholder approval may be necessary, and certain of these alternatives could cause the new fund to incur significant expenses.

Thus, the Commission believes that boards of directors of new funds should consider the effect of rescission of the credit control regulations on the continued viability of new funds as soon as reasonably practicable. Further, after that matter has been considered, it would be appropriate for new funds then to disclose their boards' conclusions as to any future courses of action they are likely to recommend that the new funds pursue. Most importantly, if the board of directors of a new fund determines that it is likely to seek shareholder approval of a fundamental change in the nature of a new fund's business or of a plan of liquidation or reorganization, or if the board determines to use an offer of exchange to transfer shareholders' interests to the existing fund, the board should carefully consider the appropriateness of creating a reserve account or some other protective device to assure that shareholders of the new fund who have benefited from the use of that investment vehicle each bear their fair share of any anticipated expenses, including unamortized organization expenses. Of particular concern to the Commission is the possibility that, if a new fund were to suffer significant net redemptions, the remaining shareholders of the new fund would bear a disproportionate portion of the expenses associated with liquidating, reorganizing or restructuring the fund.[9] In the Commission's view, failure of an investment company to take these anticipated expenses promptly into account may, under certain circumstances, raise questions as to whether a new fund's shares are being priced properly[10] and, depending upon all of the facts and circumstances, may raise questions concerning a breach of fiduciary duty on the part of those persons responsible for such decisions.[11]

The Commission cannot predict the magnitude of net redemptions of shares that may be experienced by new funds. However, it is possible that such funds may be faced with sufficient redemptions to require the sale of portfolio securities prior to maturity. In view of this possibility, the board of directors of a new fund should consider the appropriateness of maintaining an unusually high degree of liquidity so that an unusually high volume of shareholder orders to redeem shares can be satisfied promptly,[12] with minimum disruption of the fund's activities and operations.

Possible Arrangements for Orderly Transitions

As noted above, two significant concerns immediately confronting boards of directors of new funds appear to be: (1) the expected movement of investors from new funds to existing funds, and (2) the accompanying high level of redemptions that may be experienced by new funds. The Commission recognizes that a variety of methods might be utilized to deal with these concerns promptly and efficiently to provide investors in new funds with a means to exchange their shares promptly for shares of existing funds, and to enhance the liquidity of new funds. In this regard, outlined below are certain methods which might be utilized to effect exchanges of shares of new funds for shares of existing funds, and to meet redemptions, in instances where the board of directors has determined that it is in the best interests of shareholders of the new fund to suspend its operations.

1. *Offers of Exchange.* In providing for an orderly transition, boards of directors of existing funds, and the principal underwriters and investment advisers of such funds, may wish to make offers of exchange to shareholders of new funds. Such offers of exchange, when based upon the relative net asset value per share of the money market funds involved, are permitted under Section 11(a) of the 1940 Act [15 U.S.C. 80a-11(a)] without orders of the Commission.[13] Such offers would normally have to be accompanied by a

[8] These differences may, in part, be due to: (1) the higher expense ratios of new funds, and (2) the fact that existing funds still hold in their portfolios some higher yielding debt obligations which were acquired prior to the recent decline in short-term interest rates.

[9] Of course, if the investment adviser or underwriter of the new fund agreed to bear all of such expenses, the creation of a reserve account or some other protective device may not be necessary. The Commission would not view such agreement in these unusual circumstances to be a joint enterprise within the meaning of Section 17(d) of the Act [15 U.S.C. 80a-17(d)] and Rule 17d-1 thereunder [17 CFR 270.17d-1]. *See* Rule 17d-1(d)(8).

[10] Rule 22c-1 under the 1940 Act [17 CFR 270.22c-1] requires that redeemable securities of investment companies be sold and redeemed at the current net asset value per share next computed after receipt of an order to buy or to redeem such securities. Rule 2a-4 under the 1940 Act [17 CFR 270.2a-4], among other things, requires that expenses be included in calculating an investment company's current net asset value per share.

[11] Section 36(a) of the 1940 Act [15 U.S.C. 80a-35(a)], in pertinent part, authorizes the Commission to seek injunctive or other relief where any officer, director, investment adviser, or principal underwriter of a registered investment company has engaged, or is about to engage, in any act or practice constituting a breach of fiduciary duty involving personal misconduct.

[12] Although Section 22(e) of the Act [15 U.S.C. 80a-22(e)] permits redemption requests to be satisfied within seven days of receipt, some money market funds have undertaken to process shareholder purchase and redemption requests more expeditiously. Unless those undertakings are qualified, or have been modified with ample notice to all shareholders, it is expected that such funds will adhere to the more restrictive time periods which they have disclosed in their prospectuses.

[13] Anticipated liquidation expenses and unamortized organization expenses of a new fund must be fully and accurately reflected in the net asset value per share of that fund, regardless of the method utilized to value such fund's assets or to price such fund's shares. *See* p. 8, *supra*, concerning the establishment of liquidation reserves. The Commission believes that, if these expenses are not reflected in this manner, Section 11(a) of the 1940 Act would require the investment company making such an offer to obtain an order of the Commission prior to the making of an offer of exchange. On the other hand, to the extent that the investment adviser or principal underwriter of a new fund agreed to bear such expenses it would not be necessary to reflect such expenses in the new fund's net asset value per share. As noted above at n. 9, the Commission will not view such an agreement in these unusual circumstances as a joint enterprise within the meaning of Section 17(d) of the Act and Rule 17d-1 thereunder.

statutory prospectus to comply with the prospectus delivery requirements of Section 5 of the 1933 Act [15 U.S.C. 77(e)]. In these unusual circumstances where the existing fund and the new fund are for all practical purposes almost identical in structural make-up and operation, including having the same investment adviser and directors, to satisfy the requirement that a statutory prospectus be provided the Commission will not object to the use of a Rule 424(c) prospectus which consists of a document that: (1) incorporates by reference the prospectus of the new fund already delivered, and (2) includes such additional information as is necessary to constitute the complete prospectus of the existing fund.[14] Investment companies may rely on this Commission position only where the objectives, services and features of the new fund and existing fund are essentially the same. Of course, the Commission would not object if a statutory prospectus of the existing fund is sent with the offer of exchange.

Offers of exchange may be useful in achieving a prompt and orderly movement of shareholders from new funds to existing funds.[15] Thus, directors of new funds and existing funds may wish to consider various methods, consistent with applicable state law, to effectuate exchanges of shares. Such offers of exchange are not subject to the Commission's rules under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] respecting tender offers, which do not apply to equity securities of registered open-end investment companies.[16] However, because an offer of exchange is an offer of a security as to which the prospectus delivery requirements of Section 5 of the 1933 Act apply, shareholders to whom offers of exchange are made should be furnished, in the manner described above, with all material information relevant to their investment decisions, and be given appropriate time and means to communicate their decisions respecting such offers. Under such circumstances, the Commission will not object to offers of exchange being made effective pursuant to methods chosen by directors, provided that in each instance the boards of directors of the new fund and the existing fund determine that such procedures are fair and in the best interests of the shareholders of their respective funds.[17]

Many money market funds are utilizing amortized cost valuation or "penny rounding" pricing pursuant to orders of the Commission for purposes of pricing their shares for sales and redemptions.[18] Such prices constitute "net asset value" for purposes of Section 11(a) of the 1940 Act.[19] This practice is not inherently objectionable because the most basic assumption underlying the amortized cost and "penny rounding" pricing methods is that all securities purchased will be held to maturity by the investment company as a "going concern."

Nevertheless, under certain circumstances the use of exchange ratios reflecting relative net asset values based upon amortized cost prices or "penny rounded" prices of shares of the new fund and the existing fund could result in serious inequities due to the magnitude of the exchanges, and consequential redemptions, which may occur. For example, where at the time of exchange the unrounded market based net asset value per share of a new fund (less any reserve for liquidation and organization expenses) is less than the price per share of the new fund, the new fund would not in fact have sufficient assets to redeem all of its remaining shares at their amortized cost or "penny rounded" price. Such a result would be inequitable to remaining shareholders of the new fund. Similarly, a windfall gain could result to shareholders of the new fund remaining after the offer of exchange if the new fund's unrounded market based net asset value per share (less liquidation and organization expenses) at the time of exchange exceeds its amortized cost or "penny rounded" price per share.[20] Accordingly, in the Commission's view, if offers of exchange are effected at relative net asset values per share calculated through the use of any method other than by reference to market factors (without rounding), boards of directors should, consistent with their fiduciary duties, give close and careful consideration to adopting the use of a market based net asset value per share before exchanges of shares are effected in order to insure that such exchanges are equitable to all shareholders of the funds involved.[21]

Finally, in considering the timing and appropriateness of offers of exchange, boards of directors of new funds should be cognizant of the fact that special deposits will not be refunded until August 11, 1980. Significant redemptions of new fund shares prior to that date, absent appropriate emergency arrangements, will have the effect of increasing the portion of a new fund's assets subject to the special deposit, and could impair the ability of a fund to continue to redeem its remaining shares.[22]

[14] The financial information contained in the currently effective prospectus of the existing fund, or any more recent financial information contained in a periodic report to shareholders, may be utilized in the Rule 424(c) prospectus. In addition, shareholders should be advised to request a prospectus of the existing fund if they have not retained their copies of the new fund's prospectus.

[15] This assumes, of course, that the existing fund has the authority under state law through its corporate charter or articles of incorporation to own, purchase or hold the shares of another registered investment company.

[16] *See* Sections 14(d)(1) and 12(g)(2)(B) of the Securitis Exchange Act of 1934 [15 U.S.C. 78n(d)(1) and 78*l*(g)(2)(B)].

[17] If shares of the new fund are acquired by the existing fund pursuant to offers of exchange, the Commission will not view such acquisitions as violating the provisions of Section 12(d)(1) of the 1940 Act [15 U.S.C. 80a-12(d)(1)], provided that the shares so acquired are promptly redeemed. In this regard, the Commission intends to institute rulemaking proceedings to propose a temporary rule which may become effective on an emergency basis before July 28, 1980, immediately upon approval by the Commission, to exempt existing funds, whose fundamental policies may not permit the purchase of shares of other investment companies, from the provisions of Section 13(a) of the 1940 Act [15 U.S.C. 80a-13(a)] to the extent necessary to permit such purchases. In addition, the temporary rule would provide an exemption from the provisions of Section 12(d)(1) of 1940 Act to permit the existing fund to hold shares of the new fund for not more than 120 days where no investment advisory fee, or fee for administrative services, is charged by the existing fund on account of the shares so held.

The Commission will not view the offer of exchange, or the liquidation of assets which will follow of necessity, as having the effect of changing the nature of the business of the new fund so as to cease being an investment company without shareholder approval as required by Section 13(a)(4) of the 1940 Act [15 U.S.C. 80a-13(a)(4)].

[18] *See, e.g.*, Investment Company Act Release Nos. 10451 and 10824 (dated October 26, 1978, and August 8, 1979, respectively).

[19] *See* Section 11(a)(B) of the 1940 Act.

[20] Assuming directors have considered all other relevant factors, this latter result could be avoided through the declaration of a dividend prior to the exchange in an amount equal to the excess of market based net asset value per share (less amounts reserved) over the amortized cost price per share.

[21] In fact, boards of directors of funds operating pursuant to Commission orders permitting amortized cost valuation are required, pursuant to the conditions of such orders, to adjust exchange ratios to reduce to the extent reasonably practicable any unfair result or material dilution.

[22] To alleviate some of the problems that could arise if shareholders remain in new funds, directors may be asked to consider whether shareholders who remain in the new fund should be redeemed on an involuntary basis. In that regard, directors should consider carefully the factors addressed in Rule 13e-3 under the Securities Exchange Act of 1934 [17 CFR §240.13e-3]. The staff of the Commission has stated that it would not recommend action by the Commission if shares held by shareholders who have not accepted offers of exchange are involuntarily redeemed, provided the board of directors of the new fund concludes that such mandatory action is in the best interests of these shareholders. The offers of exchange in such cases should disclose fully the consequences of rejecting the exchange offer. Although, under most circumstances, effectuation of involuntary redemptions could be viewed as a violation of shareholders' fundamental rights to redeem shares, as assured by Section 22(e) of the 1940 Act, in this situation the need to assure the orderly suspension of the operations of new funds, in a manner that is not inequitable, could justify the use of this highly unusual measure.

This discussion is not intended to suggest that directors do not have the responsibility to consider and to determine whether other actions may not be equally appropriate.

2. *Sales of Securities Between Funds.* Section 17(a) of the 1940 Act [15 U.S.C. 80a-17(a)], in pertinent part, generally prohibits an affiliated person of a registered investment company from purchasing securities from, or selling securities to, such registered investment company. Registered investment companies that are part of the same "complex" of investment companies are normally affiliated persons of each other.[23] In such cases, securities held in the portfolio of the new fund could not be sold or otherwise transferred to the existing fund absent an exemption from the provisions of Section 17(a) of the 1940 Act. However, the most efficient and economical method of generating the necessary cash to meet the redemptions anticipated in new funds may be for the new fund to sell some or all of its assets to the existing fund.

The Commission intends to institute rulemaking proceedings permitting such transactions to be effected; it expects, before July 28, 1980, to propose a temporary rule which may become effective on an emergency basis, immediately upon approval by the Commission. It is expected that this rulemaking will require that the boards of directors of the companies involved find the transaction to be in the best interests of the respective affiliated companies, and find that the interests of the shareholders of the respective companies will not be diluted as a result of the transaction. The rule will require that all portfolio instruments of the new fund being sold to the existing fund be sold at market value (*i.e.*, marked to market), regardless of whether the new fund previously has valued such instruments at amortized cost, but will permit the sale of individual instruments at their amortized cost values provided that in the aggregate the mark to market value of all such individual instruments being sold does not differ materially from the amortized cost value of such instruments. Solely for this purpose, the rule will deem a deviation of mark to market value from amortized cost value of less than ½ of 1 percent not to be material.[24]

The adoption of such a rule should enable new funds to generate sufficient cash, and existing funds to purchase assets, promptly and without some of the transactions costs normally associated with sales and purchases of portfolio securities.

Other Matters

Before revising any current policies presently restricting the sale of shares of an existing fund, the board of directors of the fund should give careful consideration to the potential impact of such policy revision upon existing shareholders of the fund. For example, if an existing fund previously has limited sales of its shares to existing accounts, the board of directors should consider whether elimination of that sales restriction at this time would result insubstantial new sales of fund shares, requiring the fund to purchase debt securities bearing lower yields and thereby reducing significantly the dividends payable on existing shares of the fund.[25] Although under ordinary circumstances the Commission would not expect money market funds to alter their sales policies merely because of declining interest rates, the extraordinary level of sales of shares of existing funds that may occur warrants directoral consideration of this issue.

In addition, where a new fund currently is relying upon temporary Rule 6c-4(T) and the board of directors of that new fund is considering whether to modify its investment objectives, its features or its services, the directors should recognize that such modifications may deprive the new fund of its ability to continue to rely upon the temporary rule.[26] Such modifications could also eliminate the availability of the rule for use by other persons and companies associated or dealing with the new fund and now relying on the rule.[27] On the other hand, the rescission of the Board's regulations will not be considered by the Commission as making a company or person ineligible to rely on Rule 6c-4(T) solely because of the rescission of the Board's regulations. Thus, paragraphs (a)(3) (ii) and (iii) of the rule, which, among other things, require that a fund relying upon the rule be a "covered creditor" under the Board's regulations, should be read for this purpose as though the Board's regulations remained in effect.

The Commission expects to consider the continued appropriateness of Rule 6c-4(T) in the near future, as investment companies react to rescission of the credit control regulations. As stated in the release adopting the temporary rule on an emergency basis, after appropriate notice, the Commission may determine it to be appropriate to rescind the rule in whole or in part.

Finally, the Commission expects to consider in the near future whether Rule 24e-2 under the 1940 Act [17 CFR 270.24e-2] should be amended to mitigate duplication of registration fees.

Conclusion

The Commission has instructed its Division of Investment Management to monitor closely the manner in which money market funds address the matters discussed herein, and to advise the Commission with respect to its findings as developments may require.

Accordingly, 17 CFR Parts 231 and 271 are hereby amended to incorporate therein this general statement of policy.

By the Commission.

George A. Fitzsimmons,

Secretary.

July 21, 1980.

[FR Doc. 80-22807 Filed 7-25-80; 8:45 am]

BILLING CODE 8010-01-M

[23] Section 2(a)(3)(C) of the 1940 Act [15 U.S.C. 80a-2(a)(3)(C)]. For purposes of Section 17(a) of the Act, each series of shares of a registered open-end investment company meeting the provisions of Section 18(f)(2) of the 1940 Act [15 U.S.C. 80a-18(f)(2)] should be deemed to be separate companies which are affiliated persons of each other. *See* Section 2(a)(8) of the 1940 Act [15 U.S.C. 80a-2(a)(8)].

[24] The rule will permit the sale of portfolio instruments of the new fund to the existing fund in several separate transactions. However, in such cases and in cases where all of the assets of the new fund are not sold, boards of directors of new funds will be required to consider certain factors in selecting those assets to be sold in order to protect the interests of shareholders remaining in the new funds.

[25] Of course, this possibility should also be considered before making any offer of exchange pursuant to Section 11(a) of the 1940 Act to shareholders of another money market fund.

[26] Among other things, paragraph (a)(3) of Rule 6c-4(T) requires that the new fund provide essentially the same features and services as an "existing company," and have comparable policies and objectives, in order to qualify for the exemptions provided by the rule.

[27] Paragraph (c) of Rule 6c-4(T) extends certain exemptions to persons and companies associated with or transacting business with a new fund to enable certain relationships and transactions with respect to an existing fund to continue with the new fund. However, that exemptive relief is conditioned upon the new fund meeting the requirements set forth in paragraph (a)(3) of the rule.

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 955

Obtaining Financial Data Information

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by adding a new part 955 to Subchapter O of 32 CFR, consisting of sections 955.0

through 955.31. This new part establishes Air Force policies regarding the obtaining of financial data information on individuals, organizations and businesses during investigations. It cites restrictions on the obtaining of financial data from consumer reporting agencies, including those of the Fair Credit Reporting Act (15 U.S.C. 1681), and outlines policy on signing contracts with credit bureaus. It implements Public Law 95-630, Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), and DOD Directive 5400.12.

EFFECTIVE DATE: June 25, 1980.

FOR FURTHER INFORMATION CONTACT: Captain Frederick N. Voigtmann, HQ AFOSI/XPM, Bolling Air Force Base, Washington, DC 20332, telephone (202) 767-5823.

SUPPLEMENTARY INFORMATION: Chapter VII, Title 32 of the Code of Federal Regulations is revised by adding Part 955 to Subchapter O—Special Investigation. This rule sets forth pertinent parts of the Right to Financial Privacy Act of 1978 and the implementing Air Force Office of Special Investigations (AFOSI) procedures thereto.

Title 32 of the Code of Federal Regulations is amended by adding a new Part 955 to read as follows:

PART 955—OBTAINING FINANCIAL DATA INFORMATION

Sec.

955.0 Purpose.

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955.23 Obtaining information by administrative subpoena and summons, or judicial subpoena.
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955.28 Transfer of financial information to other agencies.
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Attachment 1—Release authority for consumer reporting agency.
Attachment 2—Certificate of compliance with the Right to Financial Privacy Act of 1978.
Attachment 3—Sample notice to the customer of emergency access.
Attachment 4—Customer consent for banking institutions.
Attachment 5—Sample notice to the customer of access by search warrant.
Attachment 6—Sample notice of access by formal written request.
Attachment 7—Sample of formal written request.
Attachment 8—Sample format for requesting basic identifying account data.
Attachment 9—Sample notice to customer of delay of notice (search warrants).
Attachment 10—Sample notice to customer of delay of notice (formal written request).
Attachment 11—Sample notice to customer of transferred information.

Authority: 92 Stat. 3697, et seq., (12 U.S.C. 3401, et seq.).

Note.— This part is derived from Headquarters Air Force Office of Special Investigations Regulation 124-49, June 25, 1980. Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells the members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 955.0 Purpose.

This part establishes policies regarding the obtaining of financial data information on individuals, organizations and businesses during investigations. It cites restrictions on the obtaining of financial data from consumer reporting agencies, including those of the Fair Credit Reporting Act (15 U.S.C. 1681), and outlines policy on signing contracts with credit bureaus. It also implements Public Law 95-630, Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et. seq.), and DOD Directive 5400.12, Obtaining Information from Financial Institutions, in establishing procedures for requesting and obtaining information from banks and other financial institutions. It is not the intent of this part to confer rights on any person or to impose constraints more restrictive than those of the applicable law.

Subpart A—Obtaining Information from Consumer Reporting Agencies

§ 955.1 General.

Subject to the restrictions set out in this part, financial data information should be procured on subjects, suspects and other involved individuals or businesses whenever it pertains to the investigation. Financial data information may be useful in tracing income and expenditures of a subject or suspect, in developing complete information on the subject's financial background, or for confirming or refuting statements or testimony. This part does not set forth specific circumstances or conditions under which financial data information will be procured.

§ 955.2 Fair Credit Reporting Act.

The Fair Credit Reporting Act (15 U.S.C. 1681), enacted in 1970 and administered by the Federal Trade Commission, regulates consumer reports prepared by consumer reporting agencies for use in employment purposes, or for the extension of credit or insurance to individuals or families in their private capacity within the United States and its territories. The law does not apply outside of the United States and its territories, nor to reports compiled by consumer reporting agencies on business concerns or for the extension of credit or insurance to individuals in their professional or independent business capacity.

§ 955.3 Definitions.

(a) *Consumer Reporting Agency.* Any person or business which, for mandatory fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. A credit bureau is a consumer reporting agency, but the definition is broad enough to include any business which discloses any credit information on a consumer other than that information relating to its own dealings with that consumer. For example, a department store may provide information concerning its dealings with a consumer without being considered a consumer reporting agency, but it cannot disclose any information in its files relating to the

consumer's credit transactions with another individual or business without becoming a consumer reporting agency. Of course, if the store complies with the Act governing consumer reporting agencies, then it is free to disclose financial information concerning the consumer and third parties.

(b) *Consumer Report.* Any written or oral communication by a consumer reporting agency bearing on a consumer's credit worthiness, standing or capacity, or on his or her character, general reputation, personal characteristics, or mode of living, which is based in whole or in part on transactions or experiences between the consumer and third parties, is a consumer report under the law. Any report containing information solely as to transactions or experiences between the consumer and the person making the report is not a consumer report under the law.

(c) *Consumer.* An individual or family in his or her or its private capacity.

§ 955.4 Permissible uses of consumer reports.

Section 1681b of the Act governs the circumstances under which a consumer reporting agency may legally release consumer reports. That section is quoted as follows:

"A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

"(1) In response to the order of a court having jurisdiction to issue such an order.

"(2) In accordance with the written instructions of the consumer to whom it relates.

"(3) To a person which it has reason to believe—

"(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer, or

"(B) intends to use the information for employment purposes;

"(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

"(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

"(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer."

§ 955.5 Effect of the Fair Credit Reporting Act on AFOSI.

The Air Force Office of Special Investigations (AFOSI) can legally request consumer reports from a consumer reporting agency only when it presents the consumer's written permission, or when it intends to use the information for employment purposes or for determining the consumer's eligibility for a license or other benefit. The Act provides for obtaining consumer reports by court order, but this means is not readily available to AFOSI. A military or civilian court before which litigation is pending could issue such an order, but no court would normally issue an order merely to aid an AFOSI investigation.

(a) *Consumer's Written Permission.* No matter what the consumer report will be used for, a consumer reporting agency is authorized to release a consumer report when the consumer's written permission is presented. In any investigation where a consumer report is required or would be helpful and it cannot be legally obtained without the consumer's written permission (see (b) and (c) of this section), the agent should request the individual concerned to execute a written release if it would not jeopardize the security of the investigation. A release should also be requested when a consumer reporting agency which could legally release the information refuses to do so without a court order or written permission. If agents can legally request the consumer report (see (b) and (c) of this section), they should do so, and should present the written permission only if consumer reporting agencies refuse to release information without it. Individuals must be advised that signing the release is voluntary on their part. Attachment 1 of this part is a sample format for obtaining written permission applicable to consumer reporting agencies. Local reproduction of the format as a form is not authorized.

(b) *Employment Purposes.* Under the Act, a consumer report is used for "employment purposes" when it is used for the "purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee" (Section 1681a(h)). It is AFOSI policy that extremely few AFOSI investigations are conducted for employment purposes. Specifically, investigations of AFOSI contacts are not for employment purposes. Investigations in which it is believed that the only action contemplated is a board hearing on the subject's retainability in the Air Force will not be considered as being conducted for "employment purposes," unless command provides a positive written showing to this effect.

(c) *Eligibility for a License or Other Benefit.* The Act does not define a "license or other benefit granted by a governmental instrumentality," but early in the administration of the Act it was determined that security clearances are a "license." Personnel Security Investigations (PSI) are conducted to determine eligibility for a security clearance, so it is permissible to request consumer reports on the subjects of such AFOSI investigations or reciprocal PSI conducted by AFOSI for other agencies. Case types 184, 185 and 186 are in the nature of a PSI, in that the results of the investigation are submitted to a board which determines the subject's continuing eligibility for a security clearance. The results of such an investigation may also be used to determine the subject's retainability as an employee. During the course of such investigations, the allegations are sometimes found to be more serious than originally alleged and the investigation is converted to a different case type. When this happens, consumer reports cannot be requested, because the primary purpose of the investigation has become the gathering of evidence for use in a possible prosecution rather than a determination of security clearance eligibility or employment retainability. Consumer reports may not be requested on the dependents involved in parent dependency investigations under case type 561 because they are not the applicants for the benefit.

§ 955.6 Other information available to AFOSI from consumer reporting agencies.

In addition to the release of consumer reports under the circumstances outlined in 955.5 a consumer reporting agency can release to AFOSI information on its own dealings with the consumer (see 955.4) identifying data on consumers, and credit reports on businesses.

(a) *Identifying Data.* Section 1681f of the Fair Credit Reporting Act specifically authorizes consumer reporting agencies to release to any government agency a consumer's name, address, former addresses, places of employment, and former places of employment. There are no restrictions on the release of this identifying data to AFOSI.

(b) *Credit Reports on Businesses.* Any type of credit report, including investigative reports, on any kind of business may be released without restriction. The term "business" includes a proprietorship, partnership, corporation, trust, estate, cooperative,

association, or other entity. It includes persons who are in business by themselves, but the report would be limited to their business transactions.

§ 955.7 Headquarters evaluation.

If, during the course of an investigation, a question arises concerning the propriety of requesting a consumer report, a summary of the information should be provided the appropriate headquarters directorate. Subsequent to evaluation of the circumstances, the affected directorate will approve or disapprove the conducting of the lead.

§ 955.8 Contracts with credit bureaus.

The number of investigations in which obtaining credit bureau reports is desirable and permissible will usually not be great enough to warrant entering into contracts with credit bureaus. However, if the credit bureau refuses to release any information without a contract and the district commander determines that there will probably be a sufficient number of AFOSI requests under the contract to justify the expense, a contract may be signed. Before a contract may be signed, it must be sent to HQ AFOSI/XPM for coordination with AF/JAG and HQ AFOSI/AC. AFOSIR 177-3 contains provisions for the maintenance of credit bureau contracts.

§ 955.9 Penalties.

Since the Fair Credit Reporting Act provides stiff penalties for consumer reporting agencies which violate the law, such agencies may be reluctant to release any information to an investigative agency such as AFOSI. AFOSI has no means to force the release of information, so we must rely on liaison. The Act also provides that "any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than $5,000 or imprisoned not more than one year, or both." If the consumer has given his or her written permission, there is no need to explain the use that will be made of the consumer report. If, after a consumer has refused permission, an attempt is made to get a consumer report without the consumer's permission, the agent must be prepared to explain the legality of the request; for example, that the report will be used to determine the consumer's eligibility for a Government license or benefit as authorized by Section 1681b(3)D of the Act. Agents must never misrepresent the purpose for which the consumer report will be used. If requested by the agency, agents are authorized to execute a written statement to the effect that the consumer report will be used for official purposes and that AFOSI is authorized to receive it under the provisions of the Fair Credit Reporting Act. If the agent wants only identifying data on the consumer, there is no need to explain the intended use of the information to the consumer reporting agency.

Subpart B—The Right to Financial Privacy Act of 1978

§ 955.10 Purpose.

The main purpose of this law is to ensure that, except under certain well-defined circumstances and limitations, no Government agent or organization may obtain information contained in the financial records of any customer of any financial institution within the U.S. or its territories, unless by the customer's own consent, pursuant to a judicial or administrative subpoena or warrant, or in response to a formal written request meeting the requirements set forth below.

§ 955.11 Definitions.

(a) A "financial institution" includes primarily any office of a bank, savings bank, loan company, trust company, savings and loan company, credit union, or consumer finance institution.

(b) A "financial record" means an original record, a copy thereof, or information known to have been derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution.

§ 955.12 General rule.

No financial institution may provide to any Government authority access to or copies of any information contained in the financial record of any customer except as set forth in 955.13. Further, no such information may be released to any Government authority under procedures authorized by this law until the Government authority certifies in writing to the financial institution that it has complied with the applicable provisions of this law.

§ 955.13 Exceptions to the general rule.

(a) The financial institution may, on its own volition, release information to a Government authority for purposes of its own interests, such as to report possible crimes, to protect its own security or financial interest, such as in a legal proceeding, or in matters in which it may be assisting a customer.

(b) The financial institution may disclose any financial records or information which is not identified with or identifiable as being derived from the financial records of any particular customer.

(c) The financial institution may disclose information to supervisory or regulatory agencies of the institution or when disclosure of information is required by Federal law.

(d) The financial institution may disclose financial information pursuant to a request from the U.S. Secret Service for the purpose of conducting its protective functions or to a Government authority authorized to conduct foreign positive intelligence or foreign counterintelligence activities for the purpose of conducting such activities (see 955.20). In any case in which a request for access is made for these purposes, the financial institution is specifically prohibited from advising the customer that a Government authority has sought or obtained access to a customer's financial records.

(e) A financial institution may disclose financial information upon request to a Government authority if delay in granting access would create imminent danger of:

(1) Physical injury to any person;

(2) Serious property damage; or

(3) Flight to avoid prosecution.

§ 955.14 Authorized procedures.

(a) *Customer Consent.* A customer may authorize a financial institution to disclose personal financial information by furnishing to the institution a signed and dated statement which:

(1) Authorizes the disclosure for a specified period of time not to exceed three months;

(2) States that the customer may revoke such authorization at any time before the disclosure is made;

(3) Identifies the financial records which are authorized to be disclosed;

(4) Specifies the purposes for which, and the Government authority to which, such records may be disclosed; and

(5) States the customer's rights under the law.

(b) *Judicial Subpoena, Administrative Subpoena and Summons.* A financial institution may disclose financial records to a Government authority pursuant to a judicial subpoena, administrative subpoena, or summons if:

(1) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) A copy of the subpoena or summons is given to or mailed to the customer, and the customer is notified of the nature of the inquiry and of actions the customer may take if he or she objects to the disclosure; and

(3) Ten days since service or 14 days since mailing to the customer of the above notice have elapsed and the

customer has not challenged the disclosure.

(c) *Search Warrant.* A financial institution may disclose financial information relating to a customer pursuant to the serving by a Government authority of a Federal search warrant. In such cases, within 90 days after service the Government authority must mail a copy of the warrant and notice as to by whom, when, and for what purpose it was served, to the customer. However, where appropriate, a Government authority may request any Federal court to delay this required notice procedure for up to 180 days.

(d) *Formal Written Request.* A Government authority may request financial records pursuant to a formal written request to the financial institution if:

(1) No administrative summons or subpoena authority appears reasonably available;

(2) The request is authorized by regulations of the requesting authority;

(3) There is a reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(4) A copy of the request is given or mailed to the customer and the customer is notified of the nature of the inquiry and of the actions the customer may take if he or she objects to the disclosure; and

(5) Ten days since presentation or 14 days since mailing to the customer of the above notice have elapsed and the customer has not challenged the disclosure.

§ 955.15 Delay of notice.

In any situation listed in 955.14 which requires that notice of access to the financial record of any customer by a Government authority be given to the customer in writing, the Government authority may apply to any cognizant Federal court for a delay of 90 days in giving this notice if:

(a) The investigation involved is within the legal jurisdiction of the Government authority seeking the delay;

(b) The records are being sought in connection with a legitimate law enforcement inquiry; and

(c) There is reason to believe that giving notice without delay will result in:

(1) Endangering the life or physical safety of any person;

(2) Flight from prosecution;

(3) Destruction of or tampering with evidence;

(4) Intimidation of potential witnesses; or

(5) Otherwise seriously jeopardizing or delaying an investigation or other physical proceeding.

§ 955.16 Customer challenge provisions.

Within ten days of receipt or 14 days of mailing of any notice to a customer that a Government authority is seeking access to the customer's financial records held by any certain financial institution, the customer may request court action to prevent the access from being granted. The Government authority may respond to this challenge, and access will be decided through the Federal court system.

§ 955.17 Transfer of financial information.

Financial information obtained under these procedures may not be transferred to another agency or department without a certification in writing by the transferring agency that there is reason to believe that the records are relevant to a legitimate law enforcement investigation which is within the jurisdiction of the receiving agency. In cases of transfer, the customer must be notified within 14 days of the transfer, unless a court-ordered delay in notice has been obtained.

§ 955.18 Reporting requirements.

In April of each year, each Government authority which requests access to the financial records of any customers from any financial institution under the procedures of this law must make a report to the appropriate committees of the Congress. This report must include the number of requests that authority made during the past calendar year under each procedure set forth.

Subpart C—AFOSI Procedures for Requesting and Obtaining Information from Banking Institutions

§ 955.19 General applicability.

The provisions of the Right to Financial Privacy Act of 1978 and of this part do not govern obtaining access to financial records maintained by military banking contractors located outside the U.S., the District of Columbia, Guam, American Samoa, or the Virgin Islands. Access to financial records maintained by military banking contractors in overseas areas should be obtained through established liaison procedures.

§ 955.20 Obtaining information in foreign counterintelligence investigations.

(a) In any instance in which it is necessary for AFOSI to request financial information from any U.S. financial institution in connection with a legitimate foreign counterintelligence investigation, the request will include the following:

(1) A letter request for access to the records sought, signed by the District Commander, addressed to the financial institution, specifying the individual on whom the records are sought, the type of records sought, and a statement to the effect that the records are reasonably believed to be relevant to a legitimate foreign counterintelligence investigation which is within the mission of AFOSI to perform; and a notification to the institution that section 3414(3) of 12 U.S.C. 3401 et seq. prohibits disclosure to any person by the institution, its agents, or employees that these financial records have been sought or obtained.

(2) A certificate of compliance, signed by the District Commander, in the format as shown in Atch 2.

(b) In each case in which this procedure is used, HQ AFOSI/XP will be notified by the district involved. HQ AFOSI/XP will maintain by date, location, and case file number a record of each instance in which this procedure is used.

§ 955.21 Obtaining information in emergency situations.

(a) In any situation in which AFOSI requests information under emergency circumstances (see 955.13(e)) the request may be made orally or in writing explaining the nature of the emergency circumstance under which it is being made.

(b) The request must be accompanied by a certificate of compliance, as shown in attachment 2 of this part.

(c) Within five days after access is obtained under this procedure, a signed, sworn statement, prepared by the district commander, will be submitted for filing with the appropriate federal court having jurisdiction over the location of the record sought, setting forth the grounds for the emergency access. In such instances, the assistance of the local SJA will be requested in preparing and filing this statement.

(d) As soon as possible after access has been obtained, a letter, signed by the district commander, together with a copy of the request made by AFOSI to the financial institution, will be given to the customer or mailed by registered or certified mail to the last known address of the customer. (See attachment 3 of this part for sample format). This letter will advise the customer of the access, when access was given, by whom it was obtained, and the grounds on which the access was granted on an emergency basis. This notice may be delayed only through the procedures outlined in 955.15 and as set forth in 955.24.

(e) In each case in which this procedure is used, HQ AFOSI/XP will be notified by the district involved. HQ

AFOSI/XP will maintain a record by date, location, and case file number of each instance in which this procedure is used.

§ 955.22 Obtaining information with the customer's consent.

(a) Whenever feasible, AFOSI will request access to the financial records of an individual with the specific authorization in writing of the individual. A sample copy of this consent statement is shown in attachment 4 of this part.

(b) This consent statement will be submitted to the financial institution concerned along with a certificate of compliance, as shown in attachment 2 of this part.

(c) A copy of the customer's consent statement shall be made a part of the case file regarding the investigation and filed separately in the AFOSI Form 39a.

(d) In each case where this procedure is used, the district involved will notify HQ AFOSI/XP. HQ AFOSI/XP will maintain a record by date, location, and case file of each instance in which this procedure is used.

§ 955.23 Obtaining information by administrative subpoena and summons, or judicial subpoena.

These procedures are not available for use by AFOSI. No DoD component or agency has authority to issue an administrative summons or subpoena for access to financial records. A judicial subpoena is issued only in connection with pending judicial proceedings and would therefore not be initiated by AFOSI.

§ 955.24 Obtaining information by search warrant.

(a) AFOSI has authority through its civilian agents when they are enforcing the UCMJ to obtain and execute search warrants pursuant to the Federal Rules of Criminal Procedure. Search warrants signed by military commanders or military judges will not be used in the U.S. or its territories to gain access to financial records. This authority may be used only in investigations of military suspects. Coordinate with the local Staff Judge Advocate in obtaining a warrant in these cases.

(b) In any instance where access by search warrant issued to an AFOSI civilian agent is obtained, within 90 days thereafter, a copy of the warrant, together with a notice of the access obtained, will be mailed to the customer's last known address. (See attachment 5 of this part for format). This notice may be delayed only through the procedures outlined in 955.15, and as set forth in 955.26.

(c) In each case in which this procedure is used, the district involved will notify HQ AFOSI/XP. HQ AFOSI/XP will maintain a record by date, location and case file number of each instance in which this procedure is used.

§ 955.25 Obtaining information by formal written request.

(a) AFOSI may obtain access to the financial records of an individual pursuant to a formal written request to the financial institution involved under the following circumstances:

(1) The customer has declined to consent to the disclosure of his or her records, or it is determined that to seek consent from the customer would compromise or harmfully delay a legitimate law enforcement inquiry.

(2) The request adheres to the requirements as set forth in this paragraph and is signed by a district commander.

(3) There is reason to believe that the records sought are relevant to a legitimate AFOSI law enforcement inquiry.

(4) A notice to the individual as set forth in attachment 6 of this part and a copy of the formal written request have been given to the individual at least 14 days before or mailed to the customer's last known address at least 18 days before the date on which access is sought from the financial institution; or a delay in the notice to the customer requirements has been obtained in accordance with 955.15 and 955.26. Coordinate with the local Staff Judge Advocate for assistance in providing the required accompanying motion papers and sworn statement.

(b) The formal written request will be in the form of a letter, signed by the district commander concerned and must contain the following:

(1) A statement that the request is made pursuant to the Right to Financial Privacy Act of 1978;

(2) A description of the specific records to be examined;

(3) A statement that access is sought in connection with a legitimate law enforcement inquiry;

(4) A description of the nature of the inquiry (see attachment 7 of this part for sample format); and

(5) A designation that the district commander who signed the notice to the customer letter is the proper recipient of any challenge by the customer to the access requested.

(c) No access will be granted by the bank until after 14 days from service or 18 days from mailing a copy of the formal written request to the customer have elapsed.

(d) Before access will be given, a certificate of compliance, as shown in attachment 2 of this part, must be furnished to the financial institution. This statement may not be issued until the customer notice requirements, or a court-ordered delay thereof, have been fulfilled and no customer challenge has been received within the stated waiting periods.

(e) A formal written request may be issued for basic identifying account information only which is relevant to a legitimate law enforcement inquiry. Such a request, in the format as shown in attachment 8 of this part, may be issued to a financial institution for any or all of the following identifying data: name, address, account number, and type of account of any customer or ascertainable group of customers associated with a financial institution or class of financial transactions. This type of request will not require customer notice, challenge, or transfer of information procedures. Notification will be made to HQ AFOSI/XP by the district concerned in each instance in which this type of request is made. HQ AFOSI/XP will maintain a record by date, location, and file number of each instance in which this procedure is used.

(f) In each case in which any formal written request procedure is used, HQ AFOSI/XP will be notified by the district involved. HQ AFOSI/XP will maintain a record by date, location, and case file number of each instance in which this procedure is used.

§ 955.26 Delay in notice to the customer applications.

(a) In any case where there is reasonable cause to delay notice to the customer that a customer's financial records have been disclosed (see 955.15), the matter will be coordinated with the local Staff Judge Advocate (SJA). The SJA will be requested to assist in the composing and filing of a motion for delay, as authorized, in the nearest Federal court. If the delay is granted, copies of all appropriate documents will be retained in the 1A serial of the case file. Upon expiration of the authorized time period of delay, and many extensions requested and granted, notice to the customer requirements will be completed using the format as shown in attachment 9 or 10 of this part, as appropriate.

(b) In any case in which a delay in notice to the customer is applied for, the originating district will notify HQ AFOSI/XP of the application. HQ AFOSI/XP will maintain a record by date, location, and case file number of each instance in which this procedure is used.

§ 955.27 Customer challenges.

In any instance in which a customer properly files a challenge to any of the procedures under this part, the matter will be coordinated with the local SJA. Assistance from the SJA will be sought in making an appropriate reply to the challenge. In any such case, HQ AFOSI/XP will be notified of the challenge and will maintain a record of all challenge and the resolutions thereof.

§ 955.28 Transfer of financial information to other agencies.

(a) Any financial record obtained by AFOSI under the provisions of this part shall be marked with the following: "This record was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 4301 et seq., and may not be transferred to another federal agency or department without prior compliance with the transferring requirements of 12 U.S.C. 3412."

(b) Financial information obtained as a result of these procedures may be transferred upon request to another agency or department. Before any such transfer to any agency outside the DoD may be made, the appropriate district commander or headquarters director must certify in writing that there is reason to believe the record are relevant to the legitimate law enforcement inquiry within the jurisdiction of the recipient agency or department. A copy of this certificate will be maintained with the AFOSI copy of the released records.

(c) Whenever AFOSI transfers any financial information pursuant to a request of another agency or department, as outlined above, unless a delay in notice has been applied for and granted to the receiving agency or department or AFOSI has obtained a delay in notice pursuant to procedures set forth herein, notice of the transfer must be mailed by AFOSI to the customer within 14 days from the date the transfer took place. A sample format for this notice is shown in attachment 11 of this part.

(d) If a request for release of information is from a federal agency authorized to conduct foreign intelligence or foreign counterintelligence as defined in E.O. 12036, for purposes of conducting its protective functions, such release may be made without notifying the customer.

(e) In each case where a record is transferred, HQ AFOSI/XP will be notified by the district or headquarters element involved. HQ AFOSI/XP will maintain a record by date, location, and case file number of each instance in which this procedure was used.

§ 955.29 Refusal to comply by banking institutions.

In the event any financial institution refuses to comply with a request for financial data information which is made pursuant to any procedure outlined in this part, the matter should be referred to HQ AFOSI/XP for resolution.

§ 955.30 Retention of documents.

All documents relating to any requests for access made under the procedures of this part, including certificates of compliance, consents, and notices to a customer will be retained in the 1A serial as a permament part of the case file.

§ 955.31 Reporting requirements.

(a) No later than February 10 of each year, HQ AFOSI/XP will prepare an annual tabulation for the preceding calendar year which will include:

(1) The number of requests for access to financial institutions, specifying the types of access and any other information deemed relevant or useful.

(2) The number of transfers to other agencies outside the DoD of information obtained under procedures outlined in this part.

(3) The number of customer challenges to the transfer of information and whether they were successful.

(4) The number of individual customer challenges to access and whether they were successful.

(5) The number of applications for delays of notice to the customer, the number granted, and the names of officials requesting such delays.

(6) The number of delay of notice extensions sought and the number granted.

(7) The number of refusals by financial institutions to grant access under each procedure used by AFOSI.

(b) This report will be submitted to the Defense Privacy Board, Office of the Deputy Assistant Secretary of Defense (Administration), no later than February 15 of each calendar year.

Attachment 1

Release Authority for Consumer Reporting Agency

(Date)_____

(Place)_____

In connection with an official investigation, I, _____ hereby authorize and request any and all credit bureaus or other consumer reporting agencies* providing consumer reports or any business establishment having data concerning business and other transactions to furnish them to any Special Agent of the Air Force Office of Special Investigations who presents this authorization. This authorization specifically includes authority to release for examination and reproduction, without legal process, all pertinent records concerning me.

Special Agent _____ has advised my of the provisions of the Privacy Act of 1974.**

Witness:

Special Agent, Air Force Office of Special Investigations, United States Air Force.

(Signature)

(Address)

*Specific name(s) of institutions or business may be set out if appropriate.

Attachment 2

Certificate of Compliance With the Right to Financial Privacy Act of 1978

(Official Letterhead)

(Date)

To: (Name and address of financial institution)

From: (Name and address of AFOSI unit)

Subject: Certificate of Compliance with the Right to Financial Privacy Act of 1978

I certify, pursuant to section 3403(b) of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq., that the applicable provisions of that statute have been complied with as to the [customer's consent, search warrent or judicial subpoena, formal written request, emergency access, as applicable] presented on (date), for the following financial records of (customer's name): (Describe the specific records)

(Signature)

(Name and Title of official)

(AFOSI address)

(Telephone)

Pursuant to section 3417(c) of the Right to Financial Privacy Act of 1978, good faith reliance upon this certificate relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of these financial records.

Attachment 3

Sample Notice to the Customer of Emergency Access

(Official Letterhead)

(Date)

To: (Name and address of individual)

From: (Name and address of AFOSI unit)

Subject: Emergency Access to Financial Records under the Right to Financial Privacy Act of 1978

Records concerning your transactions held by the financial institution named in the enclosed request were obtained by the Air Force Office of Special Investigations under the Right to Financial Privacy Act of 1978 on (date) for the following purpose: [State with reasonable specificity the nature of the law

**Include this statement when requesting this authority in connection with a parent dependency investigation. In accordance with the Privacy Act of 1974, the dependent must be advised that he or she need not authorize the release of any financial data and cannot be compelled to do so; however, failure to do so could result in dependency benefits being terminated.

enforcement inquiry). Emergency access to such records was obtained on the grounds that (state grounds).

(Signature)
(Name and Title of official)
(AFOSI address)
(Telephone)

Attachment 4

Customer Consent for Banking Institutions

Pursuant to section 3404(a) of the Right to Financial Privacy Act of 1978, I, (Name of Customer), having read the explanation of my rights on the reverse side, hereby authorize the (Name and address of financial institution) to disclose these financial records: (List the particular financial records) to the Air Force Office of Special Investigations for the following purpose(s): (Specify the purpose(s)).

I understand that this authorization may be revoked by me in writing at any time before my records, as described above, are disclosed, and that this authorization is valid for no more than three months from the date of my signature.

Date: _____
Signature: _____
(Typed name)
(Address of customer)

Statement of Customer Rights Under the Right to Financial Privacy Act of 1978

Federal law protects the privacy of your financial records. Before banks, savings and loan associations, credit unions, credit card issuers, or other financial institutions may give financial information about you to a federal agency, certain procedures must be followed.

Consent to Financial Records

You may be asked to consent to the financial institution making your financial records available to the Government. You may withhold your consent, and your consent is not required as a condition of doing business with any financial institution. If you give your consent, it can be revoked in writing at any time before your records are disclosed. Furthermore, any consent you give is effective for only three months, and your financial institution must keep a record of the instances in which it discloses your financial information.

Without Your Consent

Without your consent, a federal agency that wants to see your financial records may do so ordinarily only by means of a lawful subpoena, summons, formal written request, or search warrant for that purpose. Generally, the federal agency must give you advance notice of its request for your records explaining why the information is being sought and telling you how to object in court. The federal agency must also send you copies of court documents to be prepared by you with instructions for filling them out. While these procedures will be kept as simple as possible, you may want to consult an attorney before making a challenge to a federal agency's request.

Exceptions

In some circumstances, a federal agency may obtain financial information about you without advance notice or your consent. In most of these cases, the federal agency will be required to go to court for permission to obtain your records without giving you notice beforehand. In these instances, the court will make the Government show that its investigation and request for your records are proper. When the reason for the delay of notice no longer exists, you will usually be notified that your records were obtained.

Transfer of Information

Generally, a federal agency that obtains your financial records is prohibited from transferring them to another federal agency unless it certifies in writing that the transfer is proper and sends a notice to you that your records have been sent to another agency.

Penalties

If the federal agency or financial institution violates the Right to Financial Privacy Act, you may sue for damages or seek compliance with the law. If you win, you may be repaid your attorney's fee and costs.

Additional Information

If you have any questions about your rights under this law, or about how to consent to release your financial records, please call the official whose name and telephone number appears below:

_____
(Name, title, telephone number)

_____
(Component activity, address)

Attachment 5

Sample Notice to the Customer of Access by Search Warrant

(Official Letterhead)
(Date)

To: (Name and address of individual)
From: (Name and address of AFOSI unit)
Subject: Access by Search Warrant to Financial Records under the Right to Financial Privacy Act of 1978

Records or information concerning your transactions held by the financial institution named in the enclosed search warrant were obtained by the Air Force Office of Special Investigations on (date) for the following purpose: (State purpose). You may have rights under the Right to Financial Privacy Act of 1978.

(Signature)
(Name and Title of official)
(AFOSI address)
(Telephone)

Attachment 6

Sample Notice to Customer of Access by Formal Written Request

(Official letterhead)
(Date)

(Name of individual)
(Address of individual)

Dear (Individual's name): Information or records concerning your transactions held by the financial institution named in the attached request are being sought by the Air Force Office of Special Investigations in accordance with the right to Financial Privacy Act of 1978, Title 12, United States Code, Section 3401 et seq., and AFOSI Regulation 124–49, for the following purpose(s): (List purpose(s)).

If you desire that such records or information are not made available, you must:

1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.
2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts: (List applicable courts).
3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to: (List appropriate AFOSI official and address).
4. Be prepared to come to court and present your position in further detail.
5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of personal service or 14 days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.

3 Attachments:
1. Copy of Request.
2. Motion papers.
3. Sworn statement.

(Signature)
(Name and Title of official)
(AFOSI address)
(Telephone)

Attachment 7

Sample of Formal Written Request

(Official letterhead)

(Date)

To: (Name and address of financial institution)
From: (Name and address of AFOSI unit)
Subject: Formal Written Request for Financial Records of (customer's name or any other appropriate identification)

In connection with a legitimate law enforcement inquiry and pursuant to section 3402(5) and section 3408 of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq., and AFOSI Regulation 124–49, you are requested to provide the following account information pertaining to the subject: (Describe the specific records to be examined)

The Air Force Office of Special Investigations is without authority to issue an administrative summons or subpoena for access to these financial records which are required for (Describe the nature or purpose of the inquiry).

A copy of this request was (personally served upon or mailed to) the subject on (date) who has (10 or 14) days in which to

challenge this request by filing an application in an appropriate United States district court if the subject desires to do so.

Upon expiration of the above mentioned time period and absent any filing or challenge by the subject, you will be furnished a certification certifying in writing that the applicable provisions of the Act have been complied with prior to obtaining the requested records. Upon your receipt of a Certificate of Compliance with the Right to Financial Privacy Act of 1978, you will be relieved of any possible liability to the subject in connection with the disclosure of the requested financial records.

(Signature)
(Name and Title of official)
(AFOSI address)
(Telephone)

Attachment 8

Sample Format for Requesting Basic Identifying Account Data

(Official Letterhead)

(Date)

To: (Name and address of financial institution)
From: (Name and address of AFOSI unit)
Subject: Request for Basic Identifying Account Data concerning (Customer's name or any other appropriate identification)

In connection with a legitimate law enforcement inquiry and pursuant to section 3413(g) of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq., you are requested to provide the following account information: (Name, address, account number, and type of account of any customer or ascertainable group of customers associated with a certain class of financial transactions).

I hereby certify, pursuant to section 3403(b) of the Right to Financial Privacy Act of 1978, that the provisions of the Act have been complied with as to this request for account information.

(Signature)
(Name and Title of official)
(AFOSI address)
(Telephone)

Under section 3417(c) of the Act, good faith reliance upon this certification relieves your institution and its employees and agents of any possible liability to the subject in connection with the disclosure of the requested financial records.

Attachment 9

Sample Notice to Customer of Delay of Notice (Search Warrants)

(OfficialLetterhead)

(Date)

To: (Name and address of individual)
From: (Name and address of AFOSI unit)
Subject: Delay of Notice of Access by Search Warrant to Financial Records under the Right to Financial Privacy Act of 1978

Records or information concerning your transactions held by the financial institution named in the enclosed search warrant were obtained by the Air Force Office of Special Investigations on (date). Notification was delayed beyond the statutory 90-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning (state with reasonable specificity). You may have rights under the Right to Financial Privacy Act of 1978.

(Signature)
(Name and Title of official)
(AFOSI address)
(Telephone)

Attachment 10

Sample Notice to Customer of Delay of Notice (Formal Written Request)

(OfficialLetterhead)

(Date)

To: (Name and address of individual)
From: (Name and address of AFOSI unit)
Subject: Delay of Notice of Access by Formal Written Request to Financial Records under the Right to Financial Privacy Act of 1978

Records or information concerning your transactions which are held by the financial institution named in the enclosed process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of the court so ordering) under the Right to Financial Privacy Act of 1978 that such notice might (state reason). The purpose of the investigation or official proceeding was (state purpose with reasonable specificity).

(Signature)
(Name and Title of official)
(AFOSI address)
(Telephone)

Attachment 11

Sample Notice to Customer of Transferred Information

(OfficialLetterhead)

(Date)

To: (Name and address of individual)
From: (Name and address of AFOSI unit)
Subject: Notice of Transfer of Financial Records Obtained under the Right to Financial Privacy Act of 1978

Copies of or information contained in your financial records lawfully in the possession of the Air Force Office of Special Investigations have been furnished to (name of agency) pursuant to the Right to Financial Privacy Act of 1978 for the following purposes: (state reason). If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Right to Financial Privacy Act of 1978 or the Privacy Act of 1974.

(Signature)
(Name and Title of official)
(AFOSI address)
(Telephone)

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 80-22628 Filed 7-25-80; 8:45 am]
BILLING CODE 3910-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Mobile Home Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximim interest rates on guaranteed mobile home loans. These decreases in interest rates apply to mobile home unit loans, mobile home lot loans, and combination mobile home unit and lot loans. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to purchase a mobile home unit, lot, or a combination mobile home unit and at a lower monthly cost.

EFFECTIVE DATE: July 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Ave., N.W., Washington, DC 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administration is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for mobile home loans guaranteed by the VA as he finds the mobile home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional mobile home loans, and the decrease of other short-term and long-term interest rates—have shown that the mobile home capital markets have improved. It is now possible to decrease the interest rates on mobile home unit loans, lot loans, and combination mobile home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans. These lower interest rates should assist more veterans in the purchase of mobile home housing because of the decrease in the monthly loan payments for principal and interest.

These decreases in the maximum rates applicable to mobile home loans are accompanied by amending § 36.4212(a)(1), (2) and (3), title 38, Code of Federal Regulations. Compliance with the procedure for publication of proposed regulations prior to final adoption is waived because compliance would deny veteran mobile home purchasers the advantage of a lower interest rate pending the ultimate

effective date which would necessarily be more than 30 days after publication in proposed form.

These amendments are adopted under authority of sections 210(c), 1819(f) and (g) of title 38, United States Code.

Approved: July 18, 1980.

Max Cleland,

Administrator.

In § 36.4212, paragraph (a) is revised to read as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charges the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective July 21, 1980, 14½ percent simple interest per annum for a loan which finances the purchase of a mobile home unit only.

(2) Effective July 21, 1980, 14 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective July 21, 1980, 14 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a mobile home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the mobile home.

* * * * *

(38 U.S.C. 210(c), 1819(g))

[FR Doc. 80-22529 Filed 7-25-80; 8:45 AM]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 54

Grants for Community Mental Health Centers

Correction

In FR Doc. 80-21404, appearing at pages 48478-48506, in the issue for Friday, July 18, 1980, make the following changes:

1. On page 48491, in the middle column, third line from the top, "(a)" should be "(e)".

2. On page 48493, in Appendix A, the first set of figures for "Male head: Nonfamily", the income figure for "65 years old and over", which now reads "1777" should read "1774".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5858]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

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

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

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

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

The catalog of domestic assistance number is 83.100.

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

§ 64.6 List of Suspended Communities.

State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Alabama	Sumter	York, city of	010196A	Jan. 7, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	June 11, 1975	Aug. 7, 1980.
California	Santa Cruz	Unincorporated areas.	060353B	June 4, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Aug. 16, 1974; May 29, 1979	Do.
Do	Santa Clara	Gilroy, city of	060340B	Jan. 17, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	May 31, 1974; June 4, 1976	Do.
Do	Stanislaus	Unincorporated areas.	060384A	Dec. 27, 1973, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.		Do.

State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Colorado	Boulder	Lyons, town of	0800298	May 29, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Dec. 28, 1973	Do.
Connecticut	Hartford	Rocky Hill, town of.	0901428	May 12, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	June 7, 1974; June 17, 1977	Do.
Georgia	Chatham	Unincorporated areas.	130030A	Sept. 18, 1970, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Mar. 5, 1976	Do.
Do	Cobb	Powder Springs, city of.	1300588	Apr. 25, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Apr. 12, 1974; Aug. 27, 1976	Do.
Illinois	Henry	Cleveland, village of.	1707488	Apr 8. 1977, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	May 13, 1977	Do.
Do	Lake	Old Mill Creek, village of.	1703858	Aug. 8, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Aug. 30, 1974; May 14, 1976	Do.
Do	Cook	Olympia Fields, village of.	1701398	Aug. 7, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	May 3, 1974; Apr. 25, 1975	Do.
Do	Lake	Round Lake Beach, village of.	1703868	Sept. 13, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Mar. 29, 1974; June 25, 1976	Do.
Do	do	Round Lake, village of.	1703898	Mar. 12, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Apr. 5, 1974; Mar. 26, 1976	Do.
Do	St. Clair	Sauget, village of.	170635A	July 6, 1976, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Dec. 13, 1974	Do.
Do	Cook	South Holland, village of.	1701638	June 7, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Mar. 15, 1974; July 1, 1977; July 14,1978	Do.
Do	Tazewell	Unincorporated areas.	1708158	Aug. 16, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	June 2, 1978	Do.
Do	Cook	Thornton, village of.	170168C	Feb. 14, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Apr. 5, 1974; June 4, 1976; Apr. 21, 1978	Do.
Do	Lake	Vernon Hills, village of.	170394C	Mar 24, 1975, emergency; Aug. 1, 1980 regular; Aug. 1, 1980, suspensed.	Feb. 4, 1977	Do.
Indiana	do	Schneider, town of.	1801438	Mar. 3, 1976, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Dec. 17, 1973; June 11, 1976	Do.
Do	Clark	Sellersburg, town of.	1800288	Aug. 14, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Nov. 23, 1973; July 16, 1976	Do.
Kentucky	Warren	Bowling Green, City of.	210219A	Apr. 17, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	May 31, 1974; Dec. 10, 1976	Do.
Do	Fulton	Fulton, city of	2100768	May 30, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Feb. 15, 1974; Nov. 15, 1974	Do.
Do	Davies	Owensboro, city of.	2100638	Mar 27, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Apr. 24, 1974; Feb. 20, 1976	Do.
Do	Warren	Unincorporated areas.	2103128	Apr 16, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	July 15, 1977; Apr. 7, 1978	Do.
Maine	Aroostook	Caribou, city of	2300148	Dec. 24, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Apr. 12, 1974; Aug. 27, 1976	Do.
Michigan	Genesee	Burton, city of	260267B	Jan. 21, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Dec. 3, 1976	Do.
Do	Ingham	East Lansing, city of	2600698	Mar. 24, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	May 24, 1974; July 30, 1976	Do.
Do	Genesee	Grand Blanc, township of.	2600798	Jan. 23, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Aug. 19, 1977	Do.
Do	Wayne	Crosse Ile, township of.	260227B	Feb. 23, 1973, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	June. 7, 1974; July 11, 1975	Do.
Minnesota	Dakota	Inver Grove Heights, city of.	2701068	Apr 9, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	May 24, 1974; July 16, 1976	Do.
Missouri	Howell	Mountain View, city of.	2901658	Apr. 1, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	May 10, 1974; June 18, 1976	Do.
Montana	Lincoln	Unincorporated areas.	300157B	Apr. 3, 1978 emergency; Aug. 1, 1980 regular; Aug. 1, 1980, suspended.	Jan. 10, 1978	Do.
Nebraska	Hall	do	3101008	Mar. 14, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Dec. 20, 1974; June 21, 1977	Do.
New Jersey	Middlesex	South Plainfield, borough of.	3402798	Sept. 4, 1973, emergency; Aug. 1, 1980 regular; Aug. 1, 1980, suspended.	Feb. 22, 1974; Mar. 5, 1976	Do.
New York	Steuben	Lindley, town of	3607788	May 29, 1973, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	June 21, 1974; June 18, 1976	Do.
North Carolina	Buncombe	Unincorporated areas.	370031B	Jan. 28, 1974, emergency; Aug 1, 1980, regular; Aug. 1, 1980, suspended.	June 10, 1977	Do.
North Dakota	Pembina	Drayton, city of	380150C	Apr. 23, 1974 emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	May 24, 1977; Apr. 16, 1976; Feb 4, 1977	Do.
Ohio	Hamilton	Amberley, village of.	390206A	Nov. 16, 1973, emergency; Aug. 1, 1980 regular; Aug. 1, 1980, suspended.	———	Do.
Do	Lorain	Amherst, city of	390347B	Apr 14, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Mar. 15, 1974; Apr. 23, 1976	Do.
Do	Washington	Belpre, city of	390567B	Apr 18, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Apr. 5, 1974; June 27, 1975	Do.

State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Do	Cuyahoga	Bentleyville, village of.	390682A	Mar. 24, 1976, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Feb. 7, 1975	Do
Do	Hamilton	Blue Ash, city of.	390208A	Nov. 7, 1973, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Feb. 21, 1975	Do
Do	Greene	Spring Valley, village of.	390196B	Apr. 9, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Nov. 16, 1973; Apr. 9, 1976	Do
Do	Warren	Waynesville, village of.	390565B	Apr. 22, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Nov. 9, 1973; June 4, 1976	Do
Oklahoma	Rogers	Catoosa, city of.	400185C	Jan. 8, 1976, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Sept. 6, 1975; Feb. 27, 1976; Jan. 14, 1977	Do
Pennsylvania	Blair	Catharine, township of.	420962B	Oct. 4, 1973, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Jan. 23, 1974; May 28, 1976	Do
Texas	Dallas and Denton	Coppell, city of.	480170B	June 11, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Mar. 8, 1974; June 4, 1976	Do
Do	Limestone	Mexia, city of.	480442B	Aug. 18, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Mar. 15, 1974; Apr. 2, 1976	Do
Do	Smith	Tyler, city of.	480571A	Aug. 5, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Jan. 10, 1975	Do.
Washington	Clallam	Port Angeles, city of.	530023B	July 9, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	May 31, 1974; Jan. 16, 1976	Do.
Do	Spokane	Spokane, city of	530183A	Oct. 25, 1973, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	May 24, 1974	Do.
Do	Thurston	Tumwater, city of.	530192B	Dec. 18, 1974, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Jan. 23, 1974; Aug. 13, 1976	Do.
Wisconsin	Winnebago	Omro, city of	550533A	Oct. 22, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Nov. 15, 1974	Do.
Do	....do	Winneconne, village of.	550512B	Aug. 15, 1975, emergency; Aug. 1, 1980, regular; Aug. 1, 1980, suspended.	Jan. 6, 1974; Oct. 1, 1976	Do.

[1] Certain Federal assistance no longer available in special flood hazard area.

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

Issued: July 21, 1980.

Francis V. Reilly,

Acting Federal Insurance Administrator.

[FR Doc. 80-22573 Filed 7-25-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 5857]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plan management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has indentified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The program number in the catalog of domestic assistance is 83.100 "Flood Insurance".

This program is subject to coordination procedures specified in OMB Circular A–95.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

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

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization Cancellation of sale of flood insurance in community	Special flood hazard area identified
Alabama	Coffee	Enterprise, city of	010045B	July 2, 1980, suspension withdrawn	July 26, 1974 and Oct. 10, 1975.
Do	Geneva	Geneva, city of	010065B	do	Mar. 29, 1974 and Jan. 9, 1976.
Connecticut	New London	Montville, town of	090099B	do	Oct. 18, 1974 and Sept. 3, 1976.
Do	Fairfield	Westport, town of	090019A	do	July 19, 1974.
Delaware	Kent	Bowers, town of	100002A	do	Aug. 9, 1974.
Florida	Seminole	Casselberry, city of	120291C	do	Feb. 1, 1974 and Oct. 10, 1975 and Oct. 15, 1976.
Illinois	Madison	Alton, city of	170437B	do	Mar. 8, 1974 and Jan. 9, 1976.
Do	Cook	Blue Island, city of	170064C	do	Mar. 22, 1974 and Feb. 20, 1976 and May 19, 1980.
Do	Dupage	Clarendon Hills, village of	170203B	do	Mar. 8, 1974 and Dec. 26, 1975.
Maine	Franklin	Strong, town of	230061B	do	June 14, 1974 and July 23, 1976.
Massachusetts	Franklin	Bernardston, town of	250110A	do	Dec. 10, 1976.
Do	do	Charlemont, town of	250112B	do	Aug. 2, 1974 and Aug.13, 1976.
Do	do	Colrain, town of	250113B	do	July 26, 1974 and Aug. 27, 1976.
Do	Essex	Danvers, town of	250079B	do	July 26, 1974 and Jan. 7, 1977.
Do	do	Methuen, town of	250093B	do	Aug. 30, 1974 and Apr. 8, 1977.
Do	Dukes	Oak Bluffs, town of	250072A	do	July 19, 1977.
Do	Bristol	Raynham, town of	250061A	do	Aug. 9, 1974 and July 30, 1976.
Do	Franklin	Shelburne, town of	250127B	do	June 28, 1974 and Feb. 4, 1977.
Do	Middlesex	Woburn, city of	250229B	do	Aug. 2, 1974 and June 28, 1977.
Michigan	Genesee	Grand Blanc, city of	260255B	do	July 11, 1975 and June 4, 1976.
Minnesota	Washington	Newport, city of	270510B	do	Mar. 22, 1974 and Sept. 24, 1976.
New Mexico	Santa Fe	Santa Fe, city of	350070B	do	May 10, 1977.
New York	Steuben	Erwin, town of	360774B	do	Nov. 23, 1973 and Sept. 10, 1976.
Do	Erie	Lackawanna, city of	360247B	do	June 28, 1974 and Aug. 13, 1976.
Ohio	Cuyahoga	Chagnn Falls, city of	390103B	do	Mar. 15, 1974 and May 7, 1976.
Do	Trumbull	Girard, city of	390536B	do	Jan. 23, 1974 and May 21, 1976.
Oklahoma	Creek	Drumright, city of	400052B	do	Nov. 23, 1973 and May 31, 1977.
Do	Muskogee	Muskogee, city of	400125B	do	Mar. 22, 1974 and Jan. 2, 1976.
Do	Kay	Ponca City, city of	400080B	do	Feb. 1, 1974 and Dec. 24, 1976.
Do	Potewatomie	Shawnee, city of	400178B	do	Dec. 27, 1974 and May 21, 1976.
Pennsylvania	Berks	Mohnton, borough of	420142B	do	Dec. 28, 1973 and May 7, 1976.
Do	York	Newberry, township of	422226B	do	Oct. 18, 1974 and Jan. 30, 1976.
Do	Allegheny	O'Hara, township of	421088B	do	Sept. 20, 1974 and Nov. 14, 1975.
Do	Tioga	Putnam, township of	420624B	do	Feb. 1, 1974 and Oct. 1, 1976.
Do	do	Richmond, township of	420625B	do	May 3, 1974 and May 21, 1976.
Do	Luzerne	Sugarloaf, township of	420997B	do	May 3, 1974 and June 18, 1976.
Do	Montgomery	Towamencin, township of	422236A	do	Jan. 31, 1975.
South Carolina	Orangeburg	Holly Hill, town of	450163	do	June 7, 1974 and Apr. 23, 1976.
South Dakota	Pennington	Box Elder, city of	460069	do	Oct. 25, 1974.
Tennessee	Williamson	Franklin, city of	470206B	do	May 31, 1974 and Apr. 23, 1976.
Do	Marion	Unincorporated areas	470114A	do	Oct. 28, 1977.
Do	Franklin	Winchester, city of	470056B	do	June 14, 1974 and Oct. 22, 1976.
Vermont	Windsor	Bridgewater, town of	500144B	do	Aug. 16, 1974 and Feb. 18, 1977.
Do	Rutland	Poultney, town of	500099B	do	June 28, 1974 and Feb. 11, 1977.
Do	do	Poultney, village of	500266B	do	Dec. 6, 1974 and Nov. 29, 1977.
Virginia	Wise	Coeburn, town of	510176B	do	May 10, 1974 and Aug. 13, 1976.
Mississippi	Jasper	Bay Springs, town of	280087	July 3, 1980, emergency	Aug. 1, 1975.
Colorado	Eagle	Gypsum, town of	080295A	July 7, 1980, emergency	Jan. 8, 1980.
Kansas	Kingman	Unincorporated Areas	200589A	do	Oct. 18, 1977.
North Carolina	Lenoir	do	370144	do	Dec. 27, 1974 and July 21, 1978.
Pennsylvania	Lancaster	Eden, township of	421772A	do	Aug. 30, 1974 and May 7, 1976.
Iowa	Howard	Protivin, city of	190419	July 8, 1980, emergency	Sept. 12, 1975.
New York	361107	Cherry Creek, town of	361107	do	May 12, 1978.
Ohio	Green & Clark	Clifton, village of	390678	do	Aug. 8, 1975.
Oklahoma	Oklahoma	Nicoma Park, city of	400424	do	Aug. 13, 1976.
Texas	Dallas & Ellis	Glenn Heights, city of	481265	do	Nov. 19, 1976.
Massachusetts	Norfolk	Holbrook, town of	255212A	July 31, 1970, emergency Apr. 28, 1972, reg. July 3, 1978, susp. July 8, 1980, rein.	Apr. 28, 1972
Washington	Cowlitz	Kalama, city of	530269	July 7, 1980, emergency	July 11, 1975.
Missouri	St. Charles	Flint Hill, village of	290883	July 9, 1980, emergency	.
Ohio	Summit	Remindervile, village of	390655A	do	May 18, 1979.
Oklahoma	Creek	Bristow, city of	400051A	do	June 28, 1974 and Dec. 26, 1975.
New York	Seneca	Lodi, village of	361603 New	do	.
Maine	Cumberland	Baldwin, town of	230200B	July 14, 1980 emergency July 14, 1980, reg.	Feb. 14, 1975 and Dec. 13, 1977 .
Michigan	Genesee	Montrose, township of	260399A	July 29, 1975, emergency July 2, 1980, reg. July 2, 1980, susp. July 10, 1980, rein.	June 27, 1975

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

Issued: July 14, 1980.

Francis V. Reilly

Acting Federal Insurance Administrator.

[FR Doc. 80-22574 Filed 7-25-80; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 83

[PR Docket No. 79-86; FCC 80-398]

Simplification of the FCC's Rules for Recreational Boaters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This item adopts simplified marine radio rules for recreational boaters. The recreational boater will now have the option of purchasing Part 83 of the FCC's rules or the new publication entitled *How to Use Your VHF Marine Radio.* These rules will provide the recreational boater with more easily understandable rules and should lead to better compliance and radio operations in the marine VHF band.

EFFECTIVE DATE: August 21, 1980.

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

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bagnato, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Report and Order—Proceeding Terminated

Adopted: July 8, 1980.

Released: July 28, 1980.

In the matter of simplification of the FCC's rules for recreational boaters, PR Docket 79-86. See 44 FR 24002, April 23, 1980.

1. The Commission is adopting new "simplified" VHF radio communication rules for recreational boaters. We are publishing these rules as a separate subpart of Part 83.

What Is the Background of This Rulemaking?

2. Most recreational or pleasure boats are not required by law to have two-way marine radios. However, for safety or other reasons, about 300,000 recreational boaters have put marine radios on their boats. Each boat that has a marine radio is part of an international safety system called the Maritime Mobile Radio Service. It is therefore very important that boaters operate their marine radios correctly. The best way to operate a marine radio correctly is to do so in compliance with the marine radio rules.

3. There are two problems with the existing rules that apply to recreational boaters. The first problem is that Part 83 applies to all shipboard stations in the Maritime Mobile Radio Service, including stations on recreational boats. However, most of the rules in Part 83 relate to marine radio on large passenger and commercial vessels. Part 83, along with Part 81, is available to recreational boaters only as Volume IV of the FCC's rules. A typical recreational boater must buy and read rules that are unrelated to his or her radio operation. The form in which we publish these rules thus makes them inaccessible and discourages their use by recreational boaters.

4. The second problem with the existing rules is the way they are written. Some of them are too technical and use words that a typical recreational boater may not understand. Others are poorly written. The writing style and format of these rules make them very difficult to read and understand.

What Rules Did We Propose?

5. On April 12, 1979, we proposed new rules for recreational boaters that were designed to solve these two problems. Our solution to the first problem was to take from Part 83 only those rules that applied to recreational boaters and publish them in a separate booklet. In doing this, we greatly simplified the content of the rules and made them more accessible to recreational boaters.

6. Our solution to the second problem was to write the rules we took from Part 83 in "plain language." We chose a question-and-answer type format for each rule and simplified its language. In doing this, we made the rules easier to read and understand.

What Comments Did We Receive?

7. On April 23, 1979, we published these proposed rules in the Federal Register (44 FR 21004) to give the public an opportunity to comment on them. The comment period lasted four months. During that time, we received comments from 34 individuals and from eight organizations.

8. Most of the general comments we received were favorable. Approximately one-half of the commenters wanted us to add more information on how to call another boat or how to call through a marine operator (public coast station). Some commenters thought the rules should include more information on how to get forms, how to make radio checks and what superfluous communications are. Others thought we should include the definitions of MAYDAY or other special calls. Some commenters wanted us to require radio operators to sign certificates showing that they read and understood the rules and to levy fines for violations.

9. One commenter, Communications Associates, Inc. (CAI), wanted us to include rules for single sideband radios and information on the two tone distress alarm signal. CAI thinks that recreational boaters will only have these VHF rules on their boats, rather than Part 83 which contains this information.

10. Mr. Harry R. Schoepe supported our effort to simplify the rules, but was concerned that we had deleted important information in the process. For example, he thought we should tell recreational boaters that they must post their license and that they must use the correct channels for communicating to avoid abusing the calling channels. Mr. Schoepe also thought we should warn boaters about interference caused by children playing with a marine radio and about incorrect communication procedures. Mr. Schoepe reminded us that the Maritime Mobile Radio Service is a safety service first and that our rules, whatever their format, should treat it that way.

11. Several commenters wanted us to give these rules out free. Some wanted us to allow use of the Radio Technical Commission for Marine Services (RTCM) handbook, "How to Use Your Radiotelephone," as a substitute for Part 83. Several commenters wanted us to make channel 22—used for communications with the Coast Guard—a mandatory channel. Others wanted us to make channel 12—now used for port operations—a U.S. Coast Guard channel because channel 22 is always busy.

What Rules Are We Adopting?

12. The rules we are adopting are very similar to those we proposed. While we have added some instructions and clarifying information (Rule 19 on calling other boats and Rule 20 on calling through marine operators), we did not add the other restrictions and information that the commenters suggested. While their comments were very helpful, we wanted to keep the rules as simple and easy to read as possible. We thought that if we added more restrictions and information to the

rules, we would make them too complex. This would be contrary to our purpose in simplifying these rules. We hope that anyone who wishes more information will either use Part 83 or the RTCM handbook, "How to Use Your Marine Radiotelephone." We cannot, however, allow this handbook to be substituted for these rules or for Part 83.

13. We did not include any rules for single sideband, since the majority of recreational boaters use VHF radios. The single sideband rules will remain in Part 83, and anyone who uses single sideband aboard his or her boat can use Part 83.

14. The new rules will be available in a separate booklet from the Government Printing Office. We will allow manufacturers to reproduce them and to enclose them with new equipment.

15. Our authority for adopting the new rules for recreational boaters is in Sections 4(i) and 303 of the Communications Act of 1934, as amended. These sections give the FCC authority to make rules to carry out the provisions of the Communications Act.

16. The FCC orders amendment of Parts 0 and 83 of the Commission's rules as they appear in the Appendix effective August 21, 1980. This action terminates PR Docket No. 79-86.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 0 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended to read as follows:

PART 0—COMMISSION ORGANIZATION

1. In § 0.415, paragraph (b) is amended as follows:

§ 0.415 The rules and regulations (loose-leaf service).

(a) * * *

(b) Subpart CC of Part 83 (*How to Use Your VHF Marine Radio*), Part 95—Subpart A (General Mobile Radio Services Rules and Regulations), Part 95—Subpart C (Radio Control Service Rules and Regulations), Part 95—Subpart D (Citizens Band Radio Service Rules and Regulations), Part 95—Subpart E (Technical Regulations Personal Radio Services), Part 97 (Amateur Radio Service), and Part 99 (Disaster Communications Service) are not included in the loose-leaf service, but instead available as separate pamphlets from the Superintendent of Documents. These pamphlets are revised annually or as required.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. In § 83.367, paragraph (b) is amended by the addition of a footnote to read as follows:

§ 83.367 Station documents.

(a) * * *

(b) Ship radiotelephone stations not subject to the Safety Convention shall be provided with the documents listed in subparagraphs (1), (2), (3) and (6)[1] of paragraph (a) of this section. At the option of the licensee of radiotelephone station not subject to the compulsory equipment requirements of the Communications Act or the Great Lakes Agreement, the required copy of Part 83 of the Commission's rules may be retained in a suitable place on shore in lieu of being provided aboard the vessel.

2. A new Subpart CC is added to read as follows:

Subpart CC—How To Use Your VHF Marine Radio

General

83.1001 (VHF MARINE RULE 1). Who are these rules for?
83.1002 (VHF MARINE RULE 2). What do these rules tell me?

How To Get a License

83.1003 (VHF MARINE RULE 3). Do I need a license?
83.1004 (VHF MARINE RULE 4). How do I apply for my license and for my RP?
83.1005 (VHF MARINE RULE 5). May I operate my marine radio while my applications are being processed?
83.1006 (VHF MARINE RULE 6). How do I make changes during my license term?
83.1007 (VHF MARINE RULE 7). How do I renew my license?
83.1008 (VHF MARINE RULE 8). What do I do if I lose my license or RP?
83.1009 (VHF MARINE RULE 9). What must I do if I sell my boat?

How To Operate Your Radio

83.1010 (VHF MARINE RULE 10). What type of equipment must I have?
83.1011 (VHF MARINE RULE 11). May I install and service my marine radio?
83.1012 (VHF MARINE RULE 12). What channels may I use?
83.1013 (VHF MARINE RULE 13). How do I operate my marine radio?
83.1014 (VHF MARINE RULE 14). What communications are prohibited?
83.1015 (VHF MARINE RULE 15). Do I have to keep a radio log?
83.1016 (VHF MARINE RULE 16). Do I need a copy of the FCC's rules?
83.1017 (VHF MARINE RULE 17). Do I have to make my ship station available for inspection?
83.1018 (VHF MARINE RULE 18). What happens if I violate these rules?

Operating Procedures

83.1019 (VHF MARINE RULE 19). How do I call another ship?
83.1020 (VHF MARINE RULE 20). How do I place a call through a public coast station?

Emergency Operating Requirements

83.1021 (VHF MARINE RULE 21). What are the marine emergency signals?
83.1022 (VHF MARINE RULE 22). What is the marine distress procedure?

Order Form for FCC's Rules.

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

Subpart CC—How To Use Your VHF Marine Radio

General

§ 83.1001 (VHF Marine Rule 1) Who are these rules for?

These rules are for recreational boaters who have put VHF (*Very High Frequency*) marine radios on their boats. A VHF marine radio is a two-way radio for boaters. VHF marine radios operate on channels in the very high frequency band between 156 and 162 MHz.

§ 83.1002 (VHF Marine Rule 2) What do these rules tell me?

Rules 3 through 9 tell you how to get a license for your radio. Rules 10 through 22 tell you how to operate your radio.

How To Get a License

§ 83.1003 (VHF Marine Rule 3) Do I need a license?

You must have both a ship station license and at least a restricted radiotelephone operators permit (RP) before you use your radio.

[1] The separate publication (Subpart CC of Part 83) entitled, *How to Use Your VHF Marine Radio*, may be substituted for the required copy of Part 83 of this chapter in the case of voluntarily equipped VHF radiotelephone ship stations.

§ 83.1004 (VHF Marine Rule 4) How do I apply for my license and for my RP?

(a) Use FCC Form 506[1] to apply for a ship station license. The license term is for five years. You may not transfer this license to another person or boat.

(b) Use FCC Form 753 to apply for an RP. You must be at least 14 years old. There is no test required. The RP is issued for your lifetime.

§ 83.1005 (VHF Marine Rule 5) May I operate my marine radio while my applications are being processed?

(a) Your may operate your marine radio after you have mailed your applications to the FCC, if—

(1) You fill out a temporary operating authority application (FCC Form 506–A), and

(2) You *keep* this form with your station records. The completed form *is* your temporary operating authority.

(b) This temporary operating authority is valid for 60 days after you mail your applications to the FCC.

§ 83.1006 (VHF Marine Rule 6) How do I make changes during my license term?

(a) The following table tells you what you must do for changes during your license term:

If you change your mailing address, *you must* tell the FCC in writing.

If you change your name, *you must* tell the FCC in writing.

If you are a corporation and the ownership or control of the corporation changes, *you must* apply for a new ship station license.

If you add or replace a transmitter which operates in the same frequency band, *you must* (no action required).

If you add a transmitter which operates in a new frequency band, *you must* apply for modification of your ship station license.

(b) Send your written notice of change to FCC, P.O. Box 1040, Gettysburg, PA. 17352.

(c) Use FCC Form 506 to modify your ship station license.

§ 83.1007 (VHF Marine Rule 7) How do I renew my license?

(a) Use FCC Form 405–B to renew your license. The FCC will send you this form about 4 to 8 weeks before your license expires. If you do not receive this form, you may use FCC Form 506 to renew your license.

(b) If you send in your renewal form before your license expires, you may continue to operate under that license until the FCC acts on your application. You do not need a temporary permit, but you should keep a copy of the application you send the FCC.

(c) You must stop transmitting as soon as your license expires, unless you have already sent your renewal application to the FCC.

(d) If you did not send in your renewal application to the FCC before your license expired, you must stop transmitting until you receive your new license. However, if in DISTRESS, YOU MAY USE YOUR RADIO.

§ 83.1008 (VHF Marine Rule 8) What do I do if I lose my license or RP?

(a) If you lose your license, you must request a duplicate from the FCC, Gettysburg, PA 17325. Your request must include your name, your address and your station call sign.

(b) If you lose your RP, you must request a duplicate from the FCC. Use FCC Form 753 to request a duplicate RP.

§ 83.1009 (VHF Marine Rule 9) What must I do if I sell my boat?

If you sell your boat, you must send your ship license to the FCC, Gettysburg, PA. 17325 for cancellation. You cannot transfer your ship station license to another person or boat.

How To Operate Your Radio

§ 83.1010 (VHF Marine Rule 10) What type equipment must I have?

(a) Your radio must be type accepted by the FCC. You can tell a type accepted radio by the type acceptance label on the radio. You may look at a list of type accepted radios at any FCC field office or at FCC headquarters.

(b) The power output of your radio must not be more than 25 watts. You must also be able to lower the power of your radio to one watt or less.

(c) Your radio must be able to transmit on channel 16, channel 6 and at least one other channel.

§ 83.1011 (VHF Marine Rule 11) May I install and service my marine radio by yourself?

(a) You may install your radio in your boat by yourself. However;

(b) All repairs or adjustments to your radio must be made by, or under the supervision of, a first or second class commercial operator.

§ 83.1012 (VHF Marine Rule 12) What channels may I use?

(a) Each channel is used only for certain types of messages. You must choose a channel which is available for the type of message you want to send. Except where noted, channels are available for both ship-to-ship and ship-to-coast messages.

(b) The channels listed in the table below are the only channels you may use, even if your radio has more channels available.

Type of message	Channel(s) available
Distress, safety and calling—Use this channel to get the attention of another station (calling) or in emergencies (distress and safety).	16
Intership safety—Use this channel for ship-to-ship safety messages, and for search and rescue messages with ships and aircraft of the Coast Guard.	6
Coast Guard Liaison—Use this channel to talk to the Coast Guard. (But first make contact on channel 16).	22
Noncommercial—Working channels for recreational boats. Messages must be about the needs of the vessel. Typical uses include: fishing reports; rendezvous; scheduling repairs; and berthing information. Use channels 70 and 72 only for ship-to-ship messages.	9, 68, 69, 70, 71, 72, 78
Commercial—Working channels for working vessels only. Messages must be about business or needs of the vessel. Use channels 8, 67 and 88 only for ship-to-ship messages.	7, 8, 9, 10, 11, 18, 19, 67, 79, 80, [3] 88
Public Correspondence (marine operator)—Use these channels to call the marine operator at a public coast station, you can make and receive calls from telephones on shore. Except for distress calls, public coast stations usually charge for this service.	24, 25, 26, 27, 28, 84, 85, 86, 87, [3] 88
Port Operations—These channels are used in directing the movement of ships in or near ports, locks or waterways. Messages must be about the operational handling, movement and safety of ships. In certain major ports channels 11, 12 and 14 are being used for the Vessel Traffic Service systems being developed by the Coast Guard and are not available for general port operations messages. Use channel 20 only for ship-to-coast messages.	[1] 5, 12, 14, 20, 65, 66, 73, 74
Navigational—(also known as the bridge-to-bridge channel). This channel is available to all ships. Messages must be about navigation; for example, passing or meeting other vessels. You must keep your messages short. Your power must not be more than one watt. This is also the main working channel at most locks and bridges.	13
State Control—This channel may be used to talk to ships and coast stations operated by State or local governments. Messages must be about State regulation and control of boating activities.	17
Weather—On these channels you may receive weather broadcasts of the National Oceanic and Atmospheric Administration. These channels are only for receiving. You cannot transmit on them.	WX-1 (162.550 MHz) WX-2 (162.400 MHz) WX-3 (162.445 MHz)

[1] Not available in the Great Lakes and St. Lawrence Seaway.

[2] For use in Great Lakes and St. Lawrence Seaway only.

[3] Available only in Houston and New Orleans areas.

§ 83.1013 (VHF Marine Rule 13) How do I operate my marine radio?

(a) *Maintain your watch.* Whenever your radio is turned on (and not being used for messages), keep it tuned to Channel 16.

(b) *Power.* Try one watt first if the station being called is within a few

[1] FCC Form 506 is a new application form that replaced FCC Form 502 beginning April 1, 1979.

miles. If no answer, you may switch to higher power.

(c) *Calling coast stations.* Call a coast station on its assigned channel. You may use channel 16 when you do not know the assigned channel.

(d) *Calling other boats or ships.* Call other boats or ships on Channel 16. You may call on ship-to-ship channels when you know that the boat is listening on both a ship-to-ship channel and Channel 16. (NOTE: To do this, the boat has to have two separate receivers.)

(e) *Limits on calling.* You must not call the same station for more than 30 seconds at a time. If you do not get a reply, wait at least two minutes before calling again. After three calling periods wait at least 15 minutes before calling again.

(f) *Change channels.* After contacting another station on Channel 16, change immediately to a channel which is available for the type of message you want to send (See Rule 12).

(g) *Station Identification.* Identify your station by your FCC call sign at the beginning and end of each message. Identify in English.

§ 83.1014 (VHF Marine Rule 14) What communications are prohibited?

You Must *Not* Transmit—

(a) False distress or emergency messages;

(b) Messages containing obscene, indecent or profane words or meaning;

(c) General calls, signals or messages, except in an emergency or if you are testing your radio, (these are messages not addressed to a particular station); or

(d) When your boat is on land (for example, while the boat is on a trailer).

§ 83.1015 (VHF Marine Rule 15) Do I have to keep a radio log?

(a) You must keep a radio log. A radio log is a book in which you keep information about your radio. The radio log must be neat and orderly. Each page of the log must be numbered, signed by the operator, and show the name and call sign of your boat. You must keep your radio log for at least one year after the day of the last entry in the log.

(b) You must make the following entries in your radio log:

(1) Each distress (*Mayday*) message you send or hear;

(2) Each urgency (Pan Pan) or safety (Security) message you send; and

(3) The installation and servicing of your radio.

(c) For more information on distress messages, urgency messages and safety messages, see VHF Marine Rule 21.

§ 83.1016 (VHF Marine Rule 16) Do I need a copy of the FCC's rules?

(a) You must have either a current copy of these VHF marine rules, or a copy of Part 83. Part 83 is contained in Volume IV of the FCC's Rules and Regulations.

(b) Both these VHF marine rules and Volume IV are available from the Superintendent of Documents, Government Printing Office. See Order Form at the end of these rules.

§ 83.1017 (VHF Marine Rule 17) Do I have to make my ship station available for inspection?

Your station and your station records (radio log, station license and operator license or RP) must be shown when requested by an authorized FCC representative.

§ 83.1018 (VHF Marine Rule 18) What happens if I violate these rules?

(a) If it appears to the FCC that you have violated the Communications Act or these rules, the FCC may send you a written notice of the apparent violation.

(b) If the violation notice covers a technical radio standard, you must stop using your radio. You must not use your radio until you have had all the technical problems fixed. You may have to have tests conducted. You may have to report the results of those tests to the FCC. Test results must be signed by the commercial operator who conducted that test.

(c) If the FCC finds that you have willfully or repeatedly violated the Communications Act or these rules, your license may be revoked and you may be fined or sent to prison.

Operating Procedures

§ 83.1019 (VHF Marine Rule 19) How do I call another boat?

Speak directly into microphone in a normal tone of voice—speak clearly—distinctly.

(a) Make sure your radio is on.

(b) Select Channel 16 (156.8 MHz) and listen to make sure it is not being used.

(c) Press the microphone button and call the boat you wish to call. Say:
"

(Name of boat being called)
This is ."
(Your boat's name and call sign)

(d) Once contact is made on Channel 16, you must switch to a ship-to-ship channel (see Rule 12).

(e) After communications are completed, each ship must give its call sign and switch to Channel 16.

§ 83.1020 (VHF Marine Rule 20) How do I place a call through a public coast station?

Speak directly into microphone in a normal tone of voice—clearly—distinctly.

(a) Make sure your radio is on.

(b) Select correct channel for the public coast station, and listen to make sure it is not being used.

(c) Press microphone button and say:
"

(Name of coast station)
This is ."
(Your call sign)

(d) When coast station operator answers say:
"This is ———————
(Name of boat call sign and billing number if assigned)
Placing a call to ———————."
(City, telephone number desired)

Inform operator of type of billing desired.

(e) After completion of call say:
"——————— out."
(Name of boat, call sign)

Emergency Operating Requirements

§ 83.1021 (VHF Marine Rule 21) What are marine emergency signals?

(a) The three spoken international emergency signals are:

(1) *Mayday*—The distress signal MAYDAY is used to indicate that a station is threatened by grave and imminent danger and requests immediate assistance. MAYDAY has priority over all other messages.

(2) *Pan Pan*—The urgency signal PAN is used when the safety of the vessel or person is in jeopardy.

(3) *Security*—The safety signal SECURITY is used for messages about the safety of navigation or important weather warnings.

(b) You must give any message beginning with one of these signals priority over routine messages.

§ 83.1022 (VHF Marine Rule 22) What is the marine distress procedure?

Marine Distress Communications Form

Speak Slowly—Clearly—Calmly.

(a) Make sure your radio is on.

(b) Select *VHF Channel 16* (156.8 MHz).

(c) Press microphone button and say:
"Mayday—Mayday—Mayday."

(d) Say:
"This is ———————."
(Your boat name/call sign repeated three times)

(e) Say:
"Mayday ———————."
(Your boat name)

(f) Tell where you are: (What navigational aids or landmarks are near.)

(g) State the nature of your distress.
(h) Give number of persons aboard and conditions of any injured.
(i) Estimate present seaworthiness of your boat.
(j) Briefly describe your boat:
(Length in feet)_____
(Type)_____
(Color in Hull) _____

(k) Say: "I will be listening on *Channel 16.*"
(l) End Message by saying: "This is (Your boat name and call sign)_____ _____ over."
(m) Release microphone button and listen: Someone should answer.
If they do not, repeat call, beginning at Item No. 3 above.

- - - - - - - - - - - - - - - - Cut Along This Line - - - - - - - - - - - - - - - -

ORDER FORM FOR FCC RULES

Check Appropriate Box(s)

☐ Please send _____ copy(s) of Subpart CC, "HOW TO USE YOUR MARINE RADIO" ($_____ per copy).

☐ Please enter_____ subscription(s) to Volume IV, containing Parts 81 and 83 of the Federal Communications Commission Rules and Regulations ($15.75 per domestic subscription (which includes U.S. Territories) and $19.50 per foreign subscription).)
NOTE: Prices subject to change without notice. Prices were current as of March 1978.

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[FR Doc. 80-22559 Filed 7-25-80; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80-02; Notice 2]

Federal Motor Vehicle Safety Standards; New Pneumatic Tires, Passenger Cars

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

ACTION: Final rule.

SUMMARY: This notice amends Appendix A of Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires—Passenger Cars,* in response to a petition filed by the Rubber Manufacturers Association (RMA). As a result of this amendment, certain tire sizes are given an increased loading schedule. This change permits the use of those tire sizes on passenger cars with higher gross vehicle weight ratings than the passenger cars on which the tire sizes can presently be used.

EFFECTIVE DATE: This amendment is effective on July 29, 1980.

FOR FURTHER INFORMATION CONTACT: John Diehl, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-1714).

SUPPLEMENTARY INFORMATION: The loading schedules for the tire sizes listed in Appendix A of Federal Motor Vehicle Safety Standard No. 109 (49 CFR 571.109) indicate the maximum load each specified tire size can safely carry at certain designated inflation pressures. These loading schedules are derived from mathematical formula, which includes a "K factor". The function of this K factor is to ensure that the tire can safely carry the load indicated for it.

When P-metric tires were first introduced in 1975, one K factor was used for higher series P-metric tires and a different K factor was used for the lower series. The experience gained with P-metric tires since then has shown that the lower series tires can safely carry loads calculated according to the same K factor as the higher series tires use.

RMA filed a petition with this agency to amend the loading schedules for these P-metric tires in Appendix A of Standard No. 109. The agency published a notice proposing this amendment at 45 FR 13785, March 3, 1980. Four comments were submitted in response to this notice. Chrysler and Goodyear both support the change and urge that it be made effective as soon as possible.

RMA and Dunlop, the other two commenters, also support the change and also would like it to be made effective as quickly as possible. Both, however, requested that tires subject to the new loading schedule be permitted to be labeled with a maximum load calculated under either the old or the new loading schedule for six months after the change. This six month period was said to be necessary to permit the tire manufacturers to re-mark their existing molds with the maximum load information from the new loading schedule.

This request appears to be reasonable. The agency emphasizes that, for purposes of testing compliance of the tires with Standard No. 109, the values from the new loading schedule will be used immediately. Hence, all of these tire sizes will be tested at an increased load. However, to permit the manufacturers time to re-mark their molds, the maximum load information required to be marked on the sidewall of the tire, pursuant to the requirement of S4.3(c) of Standard 109, may be either the maximum load calculated under the old loading schedule for 180 days after the effective date of this rule. All tires of these sizes manufactured more than 180 days after the effective date of this rule must be labeled according to the new higher loading schedule published today.

NHTSA has reviewed the impacts of this rule and determined that there will be no new costs associated with its implementation, since it permits manufacturers to use certain tire sizes more widely. Further, the change in the loading schedules does not increase the compliance or testing costs for the manufacturers, since the same tests will be conducted on the tire sizes. Accordingly, this agency has concluded that this is not a significant regulation within the meaning of Executive Order 12044.

This rule specifies an immediate effective date, instead of 30 days after publication, as is usually required by

section 103 of the Safety Act (15 U.S.C. 1392) and the Administrative Procedure Act (5 U.S.C. 553(d)). In this instance, NHTSA finds good cause not to wait 30 days, because the tire manufacturers are selling tires in the rest of North America using maximum loads calculated according to the new loading schedules published today. Since the old U.S. loading schedules were lower than those used elsewhere in North America, particularly Canada, the tires manufacturers could not import into the United States tires in these sizes made in their North American plants. Additionally, 30 days is not necessary to permit an interested party to file an action for judicial review of this rule. There are no safety issues present and all the tire manufacturers that have expressed an opinion have urged an immediate effective date. Taken together, these factors constitute good cause for not waiting 30 days for the rule to become effective.

The program official and attorney principally responsible for the development of this rule are John Diehl and Stephen Kratzke, respectively.

In consideration of the foregoing, 49 CFR Part 571.109 is amended as specified below:

§ 571.109 New pneumatic tires—passenger cars. (Appendix Amended)

1. Table I–JJ in Appendix A is revised to read as follows:

Table I–JJ. *Tire Load Rating, Test Rims, Minimum Size Factors and Section Widths for "P/70" Series ISO Type Tires*

Tire size[1] designation	Maximum tire loads (kilograms) at various cold inflation pressures (kPa)									Test rim width (inches)	Minimum size factor (mm)	Section[2] width (mm)
	120	140	160	180	200	220	240	260	280			
P175/70R13	335	360	385	405	430	450	470	490	510	5	740	177
P185/70R13	365	395	420	450	470	495	515	540	560	5	761	184
P195/70R13	400	430	460	490	515	540	565	590	610	5½	786	196
P205/70R13	435	470	505	535	560	590	615	640	665	5½	806	203
P205/70R14	460	495	530	560	590	620	650	675	700	5½	832	203
P215/70R14	500	535	575	610	640	675	705	730	760	6	858	215
P225/70R14	540	580	620	660	695	730	760	790	820	6	873	223
P235/70R14	580	625	670	710	750	785	820	855	885	6½	904	235
P245/70R14	625	675	720	765	805	845	880	920	965	7	930	248
P225/70R15	565	610	650	690	725	760	795	830	860	6	904	223
P235/70R15	605	655	700	745	785	820	860	895	925	6½	929	235
P255/70R15	700	755	805	855	900	945	990	1030	1065	7	976	255

[1]The letter "D" for diagonal and "B" for bias belted may be used in place of the "R."
[2]Actual section width and overall width shall not exceed the specified width by more than the amount specified in §4.2.2.2.

2. Table I–KK in Appendix A is amended, with the following values substituted for the P235/60R14, P245/60R15, and P255/60R15 tire sizes:

Table I–KK. *Tire Load Rating, Test Rims, Minimum Size Factors and Section Widths for "P/60" Series ISO Type Tires*

Tire size[1] designation	Maximum tire loads (kilograms) at various cold inflation pressures (kPa)									Test rim width (inches)	Minimum size factor (mm)	Section[2] width (mm)
	120	140	160	180	200	220	240	260	280			
P235/60R14	500	540	580	615	645	680	710	740	765	6½	857	235
P245/60R15	565	610	650	690	730	765	795	830	860	7	907	248
P255/60R15	605	650	695	740	780	820	855	890	925	7	925	255

[1]The letters "D" for diagonal and "B" for bias belted may be used in place of the "R."
[2]Actual section width and overall width shall not exceed the specified width by more than the amount specified in §4.2.2.2.

(Secs. 103, 119, and 202, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407, and 1422); delegation of authority at 49 CFR 1.50)

Issued on July 21, 1980.

Joan Claybrook,
Administrator.

[FR Doc. 80–22418 Filed 7–25–80; 8:45 am]
BILLING CODE 4910–59–M

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM–169; Amdt. No. 172–60]

Labeling of Radioactive Materials Packages

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT

ACTION: Final rule.

SUMMARY: This amendment permits the optional use of radioactive materials labels required by the International Atomic Energy Agency (IAEA) in its standards for the safe transport of radioactive materials in place of the labels presently required in Subpart E to Part 172. The option to use either the IAEA labels or the labels presently prescribed in Subpart E to Part 172 is authorized until July 1, 1983, at which time use of the present labels will terminate and the new labels will become mandatory.

EFFECTIVE DATE: This amendment is effective on November 20, 1980.

However, compliance with the regulations as amended herein, is authorized immediately.

FOR FURTHER INFORMATION CONTACT: R. R. Rawl, Office of Hazardous Materials Regulation, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2311).

SUPPLEMENTARY INFORMATION: On January 8, 1979, the Materials Transportation Bureau (MTB) published a notice of proposed rulemaking, Docket HM-169; Notice No. 79-1 (44 FR 1852) which proposed an extensive revision of the Hazardous Materials Regulations (HMR) concerning radioactive materials. The intent of MTB under Docket HM-169 is to make the HMR more compatible with the latest revised international standards promulgated by the IAEA in its "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6." Included in Notice 79-1 is a proposal which would require use of labels adopted by the IAEA on December 16, 1977. Immediate action on the proposal concerning IAEA labels is being taken to lessen the impact caused by the incorporation of the revised IAEA labels in international standards one of which became mandatory on December 1, 1979. In order to provide relief for a situation which threatens to unnecessarily detain shipments of radioactive materials, the MTB is revising its labels to comply with those adopted by IAEA and authorize their use immediately. However, mandatory compliance will not be required until July 1, 1983. In the interim period, labeling of packages with either the presently required labels, or the newly adopted international labels is at the option of the shipper.

Comments received in response to the proposed regulations dealing with the new labels came from four sources. The most significant comment was the suggestion that a two year period be granted to allow for present stocks to be depleted and new labels to be procured. Three years are provided by this amendment.

Using the IAEA terminology (i.e. "Category III—Yellow label" rather than the DOT's "Radioactive Yellow—III label") was suggested by another commenter to be more appropriate in meeting our objective of regulatory compatibility. While either term would suffice, it is believed that the word, "radioactive" more distinctly identifies the various labels to be used.

Another commenter apparently unaware of the IAEA's adoption of these revised labels in 1977 objected to any change in labeling which would vary from the international standards. As this amendment would remove differences rather than create them, the concerns addressed by this commenter would appear to be satisfied.

In consideration of the foregoing, 49 CFR Part 172 is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. In § 172.403 paragraph (h) is added to read as follows:

§ 172.403 Radioactive material.

* * * * *

(h) Radioactive materials labels required by the regulations in effect prior to November 20, 1980, may continue to be used until July 1, 1983.

2. In § 172.436 paragraph (a) the comma following "label" is deleted and the label is changed as follows:

§ 172.436 Radioactive White—label.

(a) * * *

* * * * *

3. In § 172.438 paragraph (a) the comma following "label" is deleted and the label is changed as follows:

§ 172.438 Radioactive Yellow—II label.

(a) * * *

* * * * *

4. In § 172.440 paragraph (a) the label is changed as follows:

§ 172.440 Radioactive Yellow—III label.

(a) * * *

* * * * *

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 and App. A to Part 1.

Note.—The Materials Transportation Bureau has determined that this document will not result in a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (44 FR 11034), nor require an environmental impact

statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation and environmental assessment are available for review in the docket.

Issued in Washington, D.C. on July 18, 1980.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 80-22428 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 69-19; Notice 19]

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

ACTION: Final rule.

SUMMARY: This notice amends Motor Vehicle Safety Standard No. 108 by supplementing an amendment published on January 5, 1976 (49 FR 765) which adopted SAE Standard J588e, *Turn Signal Lamps,* September 1970 as the referenced standard for that item of lighting equipment. The effect of the amendment was to increase the minimum effective projected luminous area of all turn signal lamps but a corresponding change was not made in the maximum allowable candlepower for single and triple compartment yellow rear turn signal lamps in Figure 1. This notice effects that change.

EFFECTIVE DATE: Since the amendment imposes no new substantive requirements it is effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John Simeroth, Crash Avoidance Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: Standard No. 108 was amended in January 1976 to incorporate SAE J588e as the referenced standard on turn signal lamps. Table 1 of J588e establishes maximum candlepower restrictions for rear lamps, different than those in effect under J588d its predecessor with respect to single and triple compartment yellow turn signal lamps. When J588e was adopted, a corresponding changes was not made to Figure 1 of Standard No. 108 which sets out the photometric minimum candlepower requirements calculated using the "Group" or zonal method. This amendment to Figure 1 corrects that error.

§ 571.108 [Amended]

In consideration of the foregoing, Figure 1 of 49 CFR 571.108, Motor Vehicle Safety Standard is amended to read:

Group Totals, CP

Groups	Taillamps	Red stop and turn signal lamps	Yellow turn signal lamps	
			one	three
Maximum rear lamps only			750	1050

The program official and lawyer primarily responsible for the development of this amendment are John Simeroth and Taylor Vinson, respectively.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1;392, 1407); delegation of authority at 49 CFR 150)

Issued on July 21, 1980.

Joan Claybrook,

Administrator.

[FR Doc. 80-22417 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 78-8; Notice 3]

Motor Vehicle Safety Standard No. 108

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

ACTION: Final rule.

SUMMARY: This notice amends Motor Vehicle Safety Standard No. 108 by correcting and supplementing an amendment published on December 20, 1979 (44 FR 75385), which increased the maximum permissible candlepower for single compartment taillamps while extending requirements for contrast between stop (signaling) and tail (marking) functions at test points below the horizontal. The four amendments clarify the standards referenced by SAE Standard J585e and correct errors in the amendment.

EFFECTIVE DATE: Since the amendments impose no new substantive requirements they are effective July 28, 1980.

FOR FURTHER INFORMATION CONTACT: John Simeroth, Crash Avoidance Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: The amendment of December 20, 1979, substituted SAE Standard J585e, *Tail Lamps,* September 1977, for J585d as the referenced standard on taillamps.

This appeared to be the most logical way to increase the maximum permissible output of single compartment taillamps from 15 to 18 candlepower. At the time of the amendment a corresponding change was erroneously omitted from Figure 1, a candlepower chart, and this notice accomplished that change. Upon review, it was found that substitution of J585e for J585d impliedly incorporated by subreference the test provision of J575g, *Tests for Motor Vehicle Lighting Devices and Components,* March 1978. However, J575e is the appropriate standard, and paragraph § 5.1 is amended to reflect this. In addition, a statement is added to paragraph § 5.1 that the subreference in J585e to J256 shall not apply. SAE Recommended Practice J256, *Service Performance Requirements for Motor Vehicle Lighting Devices and Components,* July 1971, has not been incorporated by subreference into Standard No. 108 by adoption of J585e. Although Paragraph 1 of J585e says that "it is intended for use in conjunction with" J256 the agency does not view that language as establishing a mandatory requirement and the amendment to § 5.1 clarifies this.

Finally, although the preamble stated that compliance with the contrast requirements was not effective until July 1, 1980, the erroneous date of June 1, 1980 appeared in § 5.1.1.28. An amendment to that section corrects the mistake.

§ 571.108 [Amended.]

In consideration of the foregoing 49 CFR 571.108, Motor Vehicle Safety Standard No. 108 is amended as follows:

1. Figure 1 is amended to read:

Group Totals, CP

Groups	Taillamps		
	one		
Maximum rear lamps only	18		

2. Paragraph § 5.1.1.28 is revised by changing the date "June 1, 1980" to read "July 1, 1980."

3. Paragraph § 5.1 is revised to read:

§ 5.1 SAE Standards and Recommended Practices subreferenced by the SAE Standards and Recommended Practices included in Tables I and III and paragraphs § 4.1.4 and § 4.5.1 are those published in the 1970 edition of the SAE Handbook, except that the SAE Standard referred to as "J599" is J599c, *Lighting Inspection Code,* March 1973, and the

subreferenced SAE Standard referred to as "J575" is J575e, *Tests for Motor Vehicle Lighting Devices and Components*, August 1970, for taillamps, stop lamps, and turn signal lamps designed to conform to SAE Standards J585d, J585e, J586c, and J588e respectively. The reference in J585e to J256 does not apply. The subreferenced Standards and Recommended Practices for headlamps designed to conform to SAE Standard J579b, *Sealed Beam Headlamp Units*, December 1974, are those published in the 1977 edition of the SAE Handbook.

The program official and lawyer responsible for the development of this amendment are John Simeroth and Taylor Vinson, respectively.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on July 21, 1980.

Joan Claybrook,

Administrator.

[FR Doc. 80-22444 Filed 7-25-80; 8:45 AM]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Ex Parte No. 241 (Sub-No. 1)]

Investigation of Adequacy of Railroad Freight Car Ownership, Car Utilization; Distribution, Rules, and Practices

AGENCY: Interstate Commerce Commission.

ACTION: Final rule (Rescission of 49 CFR 1033.1, 2, 7, 16, 17, 18, and 19)

SUMMARY: The Interstate Commerce Commission is rescinding its car service regulations with the exception of 49 CFR 1033.15. Also rescinded are the filing requirements associated with Forms FCS-1 and FCS-2, Formula for Determining Freight Car Ownership. The Commission concluded that the rules have not been successful and that new approaches may be more effective.

EFFECTIVE DATE: August 25, 1980.

ADDRESSES: Copies of this decision are available through: Office of the Secretary, Room 2229, Interstate Commerce Commission, Washington, DC 20423, (800) 424-5230.

FOR FURTHER INFORMATION: Richard Felder, (202) 275-7693.

SUPPLEMENTARY INFORMATION: This rulemaking was instituted, by notice served April 13, 1979, to examine the effectiveness of our mandatory car service rules. We stated our interest in rescinding all or only some of the rules—in particular Rules 1 and 2. Our notice requested public comment on methods to improve car utilization and answers to four specific questions.

We have completed our review and have concluded that with the exception of 49 CFR 1033.15, the Commission's car service rules should be rescinded.

Our conclusion was based on a 3-part analysis. We developed a comparison between the 10-years of data which were found to justify the original prescription and the data for the 8-year period following the effectiveness of the prescribed rules. The comparison generally indicated that the overall number of cars and in particular, the supply of general purpose cars has continued to decline while the average daily number of unfilled car orders has continued to grow. Our analysis of comparative data on turnaround time, loaded to total mileage, average number of trips per car per year, and ton miles per serviceable car day indicated that at best fewer cars were hauling an equivalent annual tonnage longer distances, but that the average car is not being used any more efficiently than in the past.

The record established a general state of dissatisfaction with the performance of the mandatory rules. Their reliance on empty backhauls was found to result in an inflexible and inefficient car distribution system.

Finally, we found that circumstances have changed dramatically in the car distribution area. We cited such developments as (1) the adoption of realistic per diem charges to spur car acquisition, (2) the concept of flexible per diem, (3) the development of advanced computer technologies to track cars (Train II), (4) the success of various experiments (Trailer Train, RAILBOX, and Clearinghouse), and (5) the enforcement powers delegated to the AAR's Car Service Division under Car Hire Rule 19. With the advent of these new technologies and economic concepts, a more flexible market oriented system should emerge.

On balance, we concluded that the mandatory rules have not proved successful and that the rail industry's potential for increased productivity should not remain tied to a set of rules developed at the turn of the century when knowledge of actual car movements was unavailable.

We directed the carriers to continue to file their car service rules and to incorporate them into their tariffs. During the transition to a centrally managed car distribution system under the aegis of AAR, we presumed that the carriers would enforce the current rules, but that they would be applied on a more flexible basis. Naturally, the interests of smaller and more isolated shippers and carriers at the periphery of the rail system and the car distribution system for Appalachian coal would be protected.

We stated our intention to continue to oversee car service activities and to act in emergencies if voluntary efforts fail. Adversely affected persons were requested to notify appropriate regional officers of inequities resulting from the changeover to AAR management. In addition, we stated our intention to continue to examine TRAIN II data as well as data on ownership, unfilled orders, turnaround time, and Appalachian coal movement. The AAR was requested to file written quarterly reports detailing the industry's progress in revising the car distribution system. The first quarterly report is due September 1, 1980. An informal conference may be scheduled in lieu of a third report if we determine that substantial progress has not been made.

§§ 1033.1, 1033.2, 1033.7, 1033.16, 1033.17, 1033.18, 1033.19 [Removed]

Accordingly, in Title 49, Part 1033, of the Code of Federal Regulations, Sections 1033.1, 1033.2, 1033.7, 1033.16, 1033.17, 1033.18, and 1033.19 are rescinded.

(49 U.S.C. 10321(a), 11121(a), and 11122 and 5 U.S.C. 553 and 559.)

Note.—The decision will not significantly affect the quality of the human environment or conservation of energy resources.

Decided: July 18, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis, and Gilliam. Commissioner Stafford dissenting in part with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Stafford, dissenting, in part: The car service rules, 18 in number, have been in effect for a period of some 80 years, largely on a voluntary observance basis. It is only in the last 8 years that the industry has been required to mandatorily observe 7 of the 18 rules.[1] As noted in today's decision, major changes in operations and innovations in services have occurred during this period and, without question, resulted from the Commission's presence, guidance, and encouragement. The prescribed car service rules themselves have, in some instances, been modified on petition by the railroads.[2]

[1] Car Service Rule 19, an innovation by the Commission, provides for relief in appropriate circumstances.

[2] Car Service Rules 7 and 16. It must be recognized that the storage charge concept utilized in conjunction with Car Service Rule 16 was derived from Service Order No. 1112, an innovation by the Commission's Railroad Service Board.

The majority, based upon this very short experience with the prescribed rules but with little or no supporting evidence,[3] is now ready to renounce its efforts, to return observance of the rules to an industry-sponsored organization (AAR),[4] and, in effect, to wash its hand of the affair. But this action will not solve the continuing problems affecting the railroad industry, namely, car shortages and poor service. These problems have been present since before Federal regulation[5] and they will not disappear by ignoring them or wishing that they would disappear.

The majority's decision raises several serious questions which are left unanswered.

1. *The ability of the AAR to independently foster observance of the rules and to spur innovation in the rules.* In light of the 70-year period of nonobservance of those rules by the industry, some assurance that the AAR has the legal capacity, ability, and willingness to undertake the task is necessary. Mere repetition of the phrase "confidence in the AAR is insufficient.

2. *The delegation of the Commission's authority.* Although these are the carrier's rules, disputes over assessments or interpretation of the rules are matters hardly within the AAR's charter. Delegation of an agency's authority to an industry has been recently criticized.[6] Similar attempts at delegation have been held invalid.[7]

3. *The proposed reporting and the monitoring.* Although the majority indicates that the reporting by the AAR (not the carriers themselves) will provide the necessary incentive for observance of and modification of the rules, experience has shown that unless the reporting requirements are tied to a specific program monitored by the Commission, the end result will be unfavorable. What is necessary is a reporting program similar to that which resulted in the phase-out of longstanding master increase tariffs.[8]

4. *Congressional prerogatives.* The Constitution leaves to the Congress the authority to enact necessary legislation. Congress is presently reexamining the statute, 49 U.S.C. Subtitle IV, insofar as it pertains to railroads. Expressions of concern have been voiced regarding Commission action which may frustrate the Congressional prerogative. In these circumstances, it would be prudent to await Congressional action before taking the important steps proposed here.

In summary, while I am in agreement with the majority to the extent that prescribed Car Service Rule 15 is retained,[9] I believe that before the Commission removes its authority over the other 6 prescribed rules it must have the assurance that the AAR has the legal capacity, ability, and willingness to assume the task of enforcing observance of the rules. At a minimum, the AAR should be required to submit a plan of action.[10] The imminent legistative action on the several pending rail bills would seemingly dictate a cautious approach to taking any precipitous action which would adversely affect the interests of small shippers and other similar persons.

[FR Doc. 80-22870 Filed 7-25-80; 8:45 am]

BILLING CODE 7035-01-M

[3] Cf., *Industrial Union Department, AFL-CIO, Petitioner, v. American Petroleum Institute, et al.*, No. 78-911 and 78-1036, — U.S. —, July 2, 1980, 48 LW 5022, (The *Benzene* case), affirming *American Petroleum Inst. v. OSHA*, 581 F. 2d 493 (5th Cir. 1978), with respect to assumptions as compared to facts in a rulemaking proceeding. Assumptions largely underlie today's decision.

[4] During the 70-year period preceding mandatory observance of the rules, the carriers had on several occasions promised the Commission that they would faithfully observe their own rules. But during that period the rules were more honored in the breach than in their observance.

[5] Cf., *Holbrook v. St. Paul, M.&M.R. Co.*, 1 I.C.R. 323 (1887).

[6] "A Thorough Critique of Certification of Transport Category Aircraft by the Federal Aviation Administration", Sixteenth Report of the Committee on Government Operations, House Report No. 99-924, May 7, 1980.

[7] See, *Buckley v. Valeo*, 424 U.S. 1 (1976).

[8] Cf., also, Ex Parte No. 305, *United States v. Chesapeake & Ohio Ry. Co.*, 426 U.S. 500 (1976).

[9] I believe that Car Service Rule 19 should also be retained.

[10] Cf., the programs which resulted in the elimination of the series of outstanding master increase tariffs.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

Pacific Halibut Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Final Regulations.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes an amendment to the 1980 Pacific halibut regulations which will authorize fishing to begin in Area 4 on July 29, 1980, and remain open until the catch limit of 1 million pounds is taken, or until November 15, 1980.

EFFECTIVE DATE: July 25, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McVey, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, (907) 586-7221, or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington, 98105, (206) 634-1838.

SUPPLEMENTARY INFORMATION: The Commission has determined that the limit of catch set for the fishing season in Area 3 was attained on July 19, 1980. Accordingly, the Commission announced that Area 3 was closed to halibut fishing as of 0600 hours (PST) on July 19, 1980. Section 301.3(c) of the halibut regulations specify that Area 4 (The Gulf of Alaska west of 170° West longitude and the Bering Sea) would reopen 20 days after the final closure of Area 3.

The Commission has been advised by representatives of halibut fishermen that the 20-day delay in the Area 4 opening represents a serious and unnecessary handicap to the halibut fishermen, and they recommended instead that Area 4 open 10 days after the final closure in Area 3. The Commission recognizes the merit of this proposal and recommends that the halibut regulations be amended accordingly. The result of this change would mean that Area 4 would reopen on July 29, 1980, and remain open until the catch limit of 1 million pounds is taken or until November 15, 1980, whichever is earlier.

Persons affected by this amendment have been advised of the change. This publication is intended to provide the necessary change so that the codified regulations as they appear in 50 CFR will accurately reflect the management measures in effect in 1980.

Signed at Washington, D.C., this 23rd day of July, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

50 CFR 301.3(c) is revised to read as follows:

§ 301.3 Fishing seasons.

* * * * *

(c) In Area 4 the fishing season shall be divided into two periods provided that the catch limit specified in Section 301.6 of these regulations is not taken earlier. The first period shall begin on April 10 and terminate on April 30. The second period shall begin 10 days after the last closure of Area 3, as provided in paragraph (b) of this section, and terminate on November 15. Each fishing period shall begin at 1500 hours and terminate at 0600 hours on the designated dates.

* * * * *

(16 USC 772-772j)

[FR Doc. 80-22606 Filed 7-25-80; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 45, No. 146
Monday, July 28, 1980

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

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 580

[Docket No. ERA-R-79-10A]

Cancellation of Regional Public Hearing on Proposed Rulemaking Concerning Review and Establishment of Natural Gas Curtailment Priorities for Interstate Pipelines

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Cancellation of regional public hearing.

SUMMARY: On July 2, 1980, the DOE issued a Notice of Proposed Rulemaking (45 FR 45098, July 2, 1980), with regard to Review and Establishment of Natural Gas Priorities for Interstate Pipelines. A regional public hearing was scheduled in Houston for July 29, 1980. The hearing in Houston has been cancelled due to lack of public interest. This hearing will not be rescheduled.

FOR FURTHER INFORMATION CONTACT: Albert F. Bass (Division of Natural Gas), ERA, 2000 M Street, NW., Room 7108, Washington, D.C. 20461, (202) 653-3286.

Issued in Washington, D.C. on July 24, 1980.

[FR Doc. 80-22766 Filed 7-25-80; 10:31 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-NW-33-AD]

Airworthiness Directives: Boeing Model 707/720/727/737 Series Airplanes With Wood Electric Corp. Series 107, 108, and 2100 Circuit Breakers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: A defective Wood Electric Corporation Series 108 circuit breaker has caused extensive damage on a 727 airplane. The circuit breaker had failed to trip on electrical overload, resulting in wire insulation overheat and fire.

Investigation shows that some Wood Electric Series 107, 108 and 2100 circuit breakers may not open on electrical overload although they can be manually operated. Because of such defect, a manual pull test alone does not effectively detect faulty circuit breakers. An electrical overload test to insure satisfactory operation is deemed necessary.

This proposed rule would require the testing and ultimate replacement of all Wood Electric Corporation, Series 107, 108 and 2100, single-phase circuit breakers installed in Boeing Models 707/720/727/737 aircraft.

Wood Electric Corporation has been sold to Potter and Brumfield of Princeton, Indiana. However, since the nameplate of the affected circuit breakers still in service bears the Wood's identification, the former name will be referenced throughout this notice.

DATES: Comments must be received on or before August 25, 1980.

ADDRESSES: Send comments on the proposed rule in duplicate to: Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket, Docket No. 80-NW-33-AD, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION, CONTACT: Mr. Ted T. Ebina, Systems and Equipment Section, ANW-213, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2500.

SUPPLEMENTARY INFORMATION: AD 70-22-04 was issued effective May 19, 1971, against all Wood Electric Corporation Series 107, 108 and 2100 circuit breakers installed in aircraft. These circuit breakers were found to jam in the closed position if they had been inadvertently subjected to an impact force of approximately eight inch-pounds or a static load of approximately 75 pounds. To detect such jammed circuit breakers, the AD required an initial testing of the Series 107, 108 and 2100 circuit breakers and subsequent periodic testing by manually opening and closing the protective device. Any jammed circuit breakers were to be replaced with new circuit breakers. However, this test was not required if the modification required by the AD had been accomplished. The modification consisted of placing an anti-jam ring on the pushbutton shaft of the circuit breakers to help resist impact forces that could cause jamming. Once the anti-jam ring was installed, further inspection was not required.

On September 27, 1979, extensive damage was done on a Boeing Model 727 airplane due to a short circuit in a passenger service unit. The cause of this damage has been attributed to a Wood Electric Corporation Series 108 circuit breaker failing to trip on electrical overload, resulting in overheat and fire damage to wiring in the passenger service unit.

Internal examination of the circuit breaker showed that the center rollers had been flattened and positioned over-center below the bell crank roller, preventing it from moving up and opening the circuit to eliminate electrical overload. It was initially believed that the flatness of the roller caused the circuit breaker failure because it had been in the ON position for an extended period of time. However, subsequent internal examination of three additional defective circuit breakers revealed that they may fail to trip on overload even without the flat spots on the rollers. None of the latter circuit breakers showed the roller flatness nor provided indications as to the cause of the failure.

Because of this incident, the operator tested a total of 210 Wood Electric circuit breakers on the damaged airplane, and reported that all passed a mechanical test. In addition, all but 31 circuit breakers passed a 200% overload electrical test with a trip time of 15 to 60 seconds for acceptance.

For further investigation, the operator sent a total of 38 defective circuit breakers to the Boeing Company. This consisted of the 31 removed from the damaged airplane and an additional seven found defective by the operator.

Of the 38 circuit breakers returned to Boeing, 32 were rated at 5 amperes. These circuit breakers were subjected to a 200% electrical overload test requiring a trip duration of 15 to 60 seconds for acceptance. Of the 32 tested, only 24 tripped within this time span. The eight

failed circuit breakers were retested at 200% overload, requiring a trip time duration of 15 to 90 seconds. Of the eight tested, five tripped within this time span. The three failed circuit breakers were subjected to a further testing at 400% overload with a specified trip time of two to seven seconds and two tripped under this examination.

The remaining six of the 38 circuit breakers returned to The Boeing Company were rated at 7½ amperes. These six circuit breakers were similarly subjected to the same overload tests that were conducted on the 5-ampere circuit breakers. In the 15-to-60-second test at 200% overload, two of the six circuit breakers passed and four failed; in the 15-to-90-second test at 200% overload, one of the four passed and three failed; in the 2-to-7-second test at 400% overload, one of the three passed and two failed the overload test.

Since this malfunction is likely to exist or develop in other Boeing airplanes in which the Wood Electric Series 107, 108 and 2100 circuit breakers are installed, the proposed airworthiness directive would require that they be periodically tested until replaced.

FAA plans to issue a Maintenance Bulletin to advise FAA inspectors that operators of aircraft other than the affected models of this AD should be informed of the problems associated with the use of Wood Electric circuit breakers. Other regulatory actions may be taken with respect to the resolution of potential defects in these other aircraft.

Comments Invited

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

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rule Making (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket, Docket No. 80-NW-33-AD, 9010 East Marginal Way South, Seattle, Washington 98108.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new Airworthiness Directive:

Boeing: Applies to Boeing Model 707, 720, 727, and 737 airplanes having the Wood Electric Series 107, 108 and 2100 circuit breakers installed. Accomplish the following:

A. Within the next 1000 hours time-in-service after the effective date of this AD, unless already accomplished within the last 500 hours time-in-service, replace all Wood Electric Corporation single phase circuit breakers, Series 107, 108 and 2100, 5 to 35 amperes, inclusive, in accordance with Table I, "Equivalent Circuit Breakers," of this AD or test the circuit breakers to insure satisfactory operation during electrical overload conditions, in accordance with Boeing Service Bulletins 3391, 24-66 and 24-1029 (to be issued in July 1980). All circuit breakers found to be defective must be replaced prior to further flight.

B. Repeat the test procedure of Paragraph A every 1500 hours time-in-service thereafter until the affected circuit breakers are replaced.

C. As terminating action, within the next 5,000 hours time-in-service after the effective date of this AD, unless already accomplished, replace all Wood Electric circuit breakers Series 107, 108 and 2100, 5 to 35 amperes, inclusive, in accordance with Table I.

Table I.—*Equivalent Circuit Breakers*

Existing circuit breakers (Parts No.)			Replacement circuit breakers (Parts No.)	
Wood Electric Co.	Wood Electric Co.	Boeing specification	Mechanical Products[1]	Potter & Brumfield[2]
Model 707/720				
108-205-102	2105E	BACC18R5B	700-013-5	492-205-102
108-507-102	2107E	BACC18R7B	700-013-7	492-507-102
108-210-102	2110E	BACC18R10B	700-013-10	492-210-102
108-215-102	2115E	BACC18R15B	700-013-15	492-215-102
108-220-102	2120E	BACC18R20B	700-013-20	492-220-102
108-225-102	2125E	BACC18R25B	700-013-25	492-225-102
108-235-102	2135E	BACC18R35B	700-013-35	492-235-102
107-205-102	2105C	BACC18G701		501-205-102
107-507-102	2107C	BACC19G702		501-507-102
107-210-102	2110C	BACC19G703		501-210-102
107-215-102	2115C	BACC18G704		501-215-102
107-220-102	2120C	BACC18G705		501-220-102
107-225-102	2125C	BACC18G706		501-225-102
107-235-102	2135C	BACC18G707		501-235-102
Model 727				
108-205-102	2105E	BACC18R5B	700-013-5	492-205-102
108-507-102	2107E	BACC18R7B	700-013-7	492-507-102
108-210-102	2110E	BACC18R10B	700-013-10	492-210-102
108-215-102	2115E	BACC18R15B	700-013-15	492-215-102
108-220-102	2120E	BACC18R20B	700-013-20	492-220-102
108-225-102	2125E	BACC18R25B	700-013-25	492-225-102
108-235-102	2135E	BACC18R35B	700-013-35	492-235-102
Model 737				
108-205-102	2105E	BACC18R5B	700-013-5	492-205-102
108-507-102	2107E	BACC18R7B	700-013-7	492-507-102
108-210-102	2110E	BACC18R10B	700-013-10	492-210-102
108-215-102	2115E	BACC18R15B	700-013-15	492-215-102
108-220-102	2120E	BACC18R20B	700-013-20	492-220-102
108-225-102	2125E	BACC18R25B	700-013-25	492-225-102
108-235-102	2135E	BACC18R35B	700-013-35	492-235-102

[1] Mechanical Products Inc., P.O Box 729, Jackson, Mich. 49204.
[2] Potter & Brumfield, P.O. Box 322, Princeton, Ind. 47671.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the provisions of Executive Order 12044 and as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington, on July 18, 1980.

Jack Wichels,

Acting Director, Northwest Region.

[FR Doc. 80-22343 Filed 7-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-GL-28]

Proposed Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of this federal action is to designate controlled airspace near Grantsburg, Wisconsin, to accommodate a new instrument approach into Grantsburg Municipal Airport, Grantsburg, Wisconsin, established on the basis of a request from the local airport officials to provide that facility with instrument approach capability. The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions from other aircraft operating under visual conditions.

DATES: Comments must be received on or before August 24, 1980.

ADDRESSES: Send comments on the proposal to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 80-GL-28, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT:

Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this are will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedures necessitates the FAA to lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 80-GL-28, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before August 24, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700-foot controlled airspace transition area near Grantsburg, Wisconsin. Subpart G of Part 71 was republished in the Federal Register on January 1, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, the FAA proposes to amend Subsection 71.181 of Part 71 of the Federal Aviation Regulations as follows:

In § 71.181 (45 FR 445) the following transition area is added:

Grantsburg, Wis.

That airspace extending upward from 700' above the surface within a 6.5 statute mile radius of the Grantsburg Municipal Airport, Grantsburg, Wisconsin (latitude 45°47'45"N, longitude 92°40'15"W), and within 4.0 miles either side of the 188° bearing from the Grantsburg (GTG) VOR (latitude 45°46'09"N, longitude 92°40'30"W), extending from the 6.5 mile radius area out to 10.0 miles south of the airport.

This amendment is proposed under the authority of Section 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).

Note.—The Federal Aviation Administration has determined that his document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 80-GL-28, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on July 10, 1980.

Wm. S. Dalton,

Director, Great Lakes Region.

[FR Doc. 80-22548 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-GL-27]

Proposed Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of this federal action is to designate controlled airspace near Hutchinson, Minnesota, to accommodate a new instrument approach into Hutchinson Municipal Airport, Hutchinson, Minnesota, established on the basis of a request from the local airport officials to provide that facility with instrument approach capability. The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions from other aircraft operating under visual conditions.

DATES: Comments must be received on or before August 24, 1980.

ADDRESSEES: Send comments on the proposal to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 80-GL-27, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedures necessitates the FAA to lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 80-GL-27, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before August 24, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700-foot controlled airspace transition area near Hutchinson, Minnesota. Subpart G of part 71 was republished in the Federal Register on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, the FAA proposes to amend Subsection 71.181 of Part 71 of the Federal Aviation Regulations as follows:

In Section 71.181 (45 FR 445) the following transition area is added:

Hutchinson, Minn.

That airspace extending upward from 700' above the surface within a 6.5 statute mile radius of the Hutchinson Municipal Airport, Hutchinson, Minnesota (latitude 44°52'N, longitude 94°23'W), within 3.0 statute miles each side of the 340° bearing from the airport, extending from the 6.5 mile radius out to 8.5 statute miles northwest of the airport, excluding that portion that overlies the Litchfield, Minnesota, transition area.

This amendment is proposed under the authority of Section 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 80-GL-27, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on July 10, 1980.

Wm. S. Dalton,

Director, Great Lakes Region.

[FR Doc. 80-22549 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-CL-26]

Proposed Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of this federal action is to designate controlled airspace near Greenwood, Indiana, to accommodate a new instrument approach into Skyway Airport, Greenwood, Indiana, established on the basis of a request from the local airport officials to provide that facility with instrument approach capability. The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions from other aircraft operating under visual conditions.

DATES: Comments must be received on or before August 24, 1980.

ADDRESSES: Send comments on the proposal to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 80-CL-26, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedures necessitates the FAA to lower the floor of the controlled airspace to insure that

the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 80-GL-26, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before August 24, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request ot the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700-foot controlled airspace transition area near Greenwood, Indiana. Subpart G of Part 71 was republished in the the Federal Register on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, the FAA proposes to amend Subsection 71.181 of part 71 of the Federal Aviation Regulations as follows:

In Section 71.181 (45 FR 445) the following transition area is added:

Greenwood, Ind.

That airspace extending upward from 700' above the surface within a 6.5 mile radius of Skyway Airport, Greenwood, Indiana (latitude 39°38'00"N, longitude 86°05'15"W), excluding that portion that overlies the Indianapolis transition area.

This amendment is proposed under the authority of Section 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 80-GL-26, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on July 10, 1980.

Wm. S. Dalton,

Director, Great Lakes Region.

[FR Doc. 80-22550 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-GL-25]

Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of this federal action is to designate additional controlled airspace near Cambridge, Ohio, to accommodate a new instrument approach procedure into the Cambridge Municipal Airport, Cambridge, Ohio, established on the basis of a request from the local airport officials to provide that airport with an additional instrument approach procedure. The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions from other aircraft operating under visual weather conditions.

DATE: Comments must be received on or before August 24, 1980.

ADDRESSES: Send comments on the proposal to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 80-GL-25, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace will be lowered from 1200 feet above surface to 700 feet for a distance of approximately 8 miles beyond that now depicted. The development of the proposed procedure necessitates the FAA to alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes for this procedure may be established below the floor of th 700-foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicare to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 80-GL-25, Federal Aviation Administration 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before August 24, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of

Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Cambridge, Ohio. Subpart G of part 71 was republished in the Federal Register on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, the FAA proposes to amend Subsection 71.181 of Part 71 of the Federal Aviation Regulation as follows:

In Section 71.181 (45 FR 445) the following transition area is amended to read:

Cambridge, Ohio

That airspace extending upward form 700 feet above the surface within a 7.5 miles radius of the Cambridge Municipal Airport, Cambridge, Ohio (latitude 39°58'33"N, longitude 81°34'37"W), and within 5 miles each side of the 030° bearing from the Cambridge, Ohio, NDB extending from the 7.5 mile radius to 13.8 miles northeast of the NDB.

This amendment is proposed under the authority of Section 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 80-GL-25, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on July 10, 1980.

Wm. S. Dalton,

Director, Great Lakes Region.

[FR Doc. 80-22551 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-CE-17]

Transition Area, Atchison, Kans.; Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Atchison, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Amelia Earhart Airport, Atchison, Kansas, utilizing the St. Joseph OMNI Directional Range as a navigational aid.

DATES: Comments must be received on or before September 1, 1980.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William W. Buck, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before September 1, 1980 will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR Section 71.181) by designating a 700-foot transition area at Atchison, Kansas. To enhance airport usage, a new instrument approach procedure is being developed for the Amelia Earhart Airport, Atchison, Kansas, utilizing the St. Joseph OMNI Directional Range as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Atchison, Kansas, at and above 700 feet above ground level (AGL), within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445) by adding the following new transition area:

Atchison, Kans.

That airspace extending upward from 700' above the surface within a 5-mile radius of the Amelia Earhart Airport (Latitude 39° 34' 15"N, Longitude 95° 10' 47"W) and within 3 miles each side of the St. Joseph VORTAC (Latitude 39° 57' 38"N, Longitude 94° 55' 30"W) R207° extending to 5 miles northeast of the airport and within 2.5 miles each side of the SUMMR waypoint (Latitude 39° 42' 29"N, Longitude 95° 12' 02"W) 174° bearing extending from the 5-mile radius area to 6 miles northwest of the airport.

Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on July 17, 1980.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 80-22552 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-CE-18]

Transition Area, Monroe City, Mo.; Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This Notice proposes to alter the transition area at Monroe City, Missouri, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Monroe City, Missouri Airport, utilizing the Quincy, Illinois OMNI directional range as a navigational aid.

DATES: Comments must be received on or before September 1, 1980.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before September 1, 1980 will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 CFR Section 71.181) by altering the transition area at Monroe City, Missouri. To enhance airport usage, an additional instrument approach procedure is being established for the Monroe City, Missouri Airport utilizing the Quincy, Illinois OMNI directional range as a navigational aid. The establishment of an additional instrument approach procedure based on this navigational aid entails alteration of the transition area at Monroe City, Missouri, at and above 700 feet above ground level (AGL) to accommodate aircraft executing this additional instrument approach procedure. The intended effect of this action is to ensure segregation of aircraft using the approach procedures at Monroe City under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445) by altering the following transition area:

Monroe City, Mo.

That airspace extending upward from 700' above the surface within a 5-mile radius of Monroe City, Missouri Airport (Latitude 39°38'05"N, Longitude 91°43'40"W) and within 4 miles each side of the 239° radial of the Quincy, Illinois VORTAC, extending from the 5-mile radius area to 8 miles northeast of the airport; within 2.5 miles each side of the 090° bearing from the Monroe City, Missouri Airport extending from the 5-mile radius area to 7.5 miles east of the airport.

Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on July 17, 1980.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 80-22553 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-WA-9]

Alteration of V-133 Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend V-133 airway be extending the route from Thunder Bay VOR to International Falls VOR. The Canadian Government has advised the FAA that they intend to extend their portion of V-133. This proposal maintains the airway designation and continuity for the small airway segment within the United States.

DATES: Comments must be received on or before August 27, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Great Lakes Region, Attention: Chief, Air Traffic Division, Docket No. 80-WA-9, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. L. Jack Overman, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018. All communications received on or before August 27, 1980 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would extend VOR Federal Airway V-133 from Thunder Bay, Ontario to International Falls, Minnesota. This airway would be designated to be direct between Thunder Bay VORTAC and International Falls VORTAC to coincide with the airspace designations by the Canadian Government. This proposal maintains the airway designation and continuity for the small segment within the United States. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1980, (45 FR 307).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) by amending V-133 as follows:

Delete the words "Ontario, Canada. The airspace within Canada is excluded." and substitute for them "Ontario, Canada; International Falls, Minn. The airspace within Canada is excluded."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on July 22, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-22541 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 80-NE-23]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend VOR Federal Airway V-3 from Presque Isle, Maine, to Quebec, Canada, and designate VOR Federal Airway V-400 from Presque Isle, to Beauce, Quebec, Canada. These alterations would aid flight planning by designating airways in areas where aircraft presently proceed via direct routes in order to shorten distances between those points.

DATES: Comments must be received on or before August 27, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA New England Region, Attention: Chief, Air Traffic Division, Docket No. 80-NE-23, Federal Aviation Administration, 12 New England Executive Park, Burlington, Mass. 01803.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, New England Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Mass. 01803. All communications received on or before August 27, 1980 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C., 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart C of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would extend VOR Federal Airway V-3 from Presque Isle, Maine, to Quebec, Canada, and add VOR Federal Airway V-400 from Presque Isle, to Beauce, Quebec, Canada. Presently, aircraft proceeding to these points via Presque Isle are required to fly a circuitous routing if they desire airways to destinations; otherwise, aircraft proceed via direct routing which at times is below radar

coverage. Extension of V-3 and establishment of V-400 would designate VOR Federal Airways in a non-radar environment, thereby increasing safety and flight planning and reduce controller workload. Subpart C of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 307).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) as follows:

Under V-3, all after "Presque Isle, Maine." is deleted and "Presque Isle, Maine, to Quebec, Canada. The portion outside the United States has no upper limit except that portion of the E alternate between Jacksonville and Savannah extends up to but not including 18,000 feet MSL. The airspace within R-2916, R-2921, and R-2922, and within Canada is excluded." is substituted therefor.

"V-400 From Presque Isle, Maine, to Beauce, Quebec, Canada. The airspace within Canada is excluded." is added.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

Note. The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on July 22, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division, AAT-200.

[FR Doc. 80-22542 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

Airspace Docket No. 80-ANW-12]

Establishment of Jet Route No. 153

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a new Jet Route No. 153 between Rome, Oreg., and Spokane, Wash., via Baker, Oreg. The proposal would designate an established route to handle the increased traffic flow in this area. This would not only reduce controller workload and frequency congestion, but also provide more efficient air traffic service by reduced radar vectoring requirements.

DATES: Comments must be received on or before August 27, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Northwest Region, Attention: Chief, Air Traffic Division, Docket No. 80-ANW-12, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: L. Jack Overman, Airspace Regulations Branch (ATT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3715.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Northwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108. All communications received on or before August 27, 1980 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment of §75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) that would establish a jet route between Rome, Oreg., and Spokane, Wash. This Jet Route No. 153 would be from Rome, Oreg., direct to Baker, Oreg., direct to Spokane, Wash. Designation of this added route segment as a jet route would provide charted course radials and minimum altitudes where they may be required. Flight planning and communication time would be reduced by the use of a numbered jet route rather than radar vectoring that is presently required. Section 75.100 of Part 75 was republished in the Federal Register on January 2, 1980, (45 FR 732).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) by establishing Jet Route No. 153 as follows:

Jet Route No. 153 From Rome, Oreg., via Baker, Oreg., to Spokane, Wash.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on July 21, 1980.

B. Keith Potts.

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-22554 Filed 7-25-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 970

Deep Seabed Mining Advance Notice of Proposed Rulemaking for the Mining of Deep Seabed Minerals

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Public Law No. 96-283, the Deep Seabed Hard Mineral Resources Act (The Act), authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue to eligible United States citizen applicants licenses for exploration for, and permits for the commerical recovery of, deep seabed hard mineral resources. The Act also requires that NOAA issues regulations with respect to deep seabed mining licenses and permits.

This advance notice of proposed rulemaking pertaining to deep seabed mining activities is issued to provide interested persons with an early opportunity to contribute to the development of regulations. Interested persons are invited to submit such written data and views as they may desire.

DATE: Comments should be received by August 31, 1980.

ADDRESS: Submit communications, which should identify this notice, to: Martin H. Belsky, Assistant Administrator for Policy and Planning, National Oceanic and Atmospheric Administration, Room 5222, Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Martin H. Belsky, Assistant Administrator for Policy and Planning, National Oceanic and Atmospheric Administration, (202-377-4634).

SUPPLEMENTARY INFORMATION: Subsequent to evaluation of this new legislation and all comments, notice of proposed rulemaking will be issued. All comments submitted will be available for examination during normal business hours in Room 5222, Department of Commerce, Washington, D.C. 20230. In addition to comments, any person interested in receiving regulatory documents as they are developed in the future should so state and should furnish his or her name, address, affiliation, and phone number to the NOAA Assistant Administrator for Policy and Planning at the above address in order to be placed on the mailing list.

The Deep Seabed Hard Mineral Resources Act is intended to: encourage the successful conclusion of the Law of the Sea Treaty which will assure, among other things, non-discriminatory access to seabed minerals for all nations; establish an international revenue-sharing fund; establish an interim program to regulate exploration for and commercial recovery of seabed minerals by United States citizens; accelerate NOAA's seabed mining environmental assessment program; encourage the conservation of seabed mineral resources; protect the environment; promote safety of life and property at sea; and encourage the continued development of necessary seabed mining technology.

Comments are specifically requested on the following areas of interest which are expected to be addressed in the regulations. Under the Act, the scope of the regulations includes, but is not limited to:

(a) The form and the manner for submitting applications for licenses and permits (Sec. 103(a)(2)(A)), including prescription of:

—Necessary financial information about the applicant (Sec. 103(a)(2)(A));

—Necessary technical information about the applicant (Sec. 103(a)(2)(A));

—The contents of an exploration plan (Sec. 103(a)(2)(B)), comprising

—Proposed activities;

—Area to be explored (which must be of sufficient size to allow for intensive exploration);

—Exploration schedule and methods to be used;

—Development and testing of systems to take place under the license;

—Estimated schedule of expenditures;

—Measures to protect the environment and to monitor the effectiveness of environmental safeguards and monitoring systems of commercial recovery;

—Other information necessary and appropriate to carry out the Act;

—The contents of a recovery plan (Sec. 103(a)(2)(C)), comprising

—Proposed activities;

—Intended schedule of commercial recovery;

—Environmental safeguards and monitoring systems;

—Details of area or areas proposed for commercial recovery;

—Resource assessment of intended area or areas;

—Methods and technology to be used for commercial recovery and processing;

—Methods for disposal of wastes from recovery and processing;

—Other information necessary and appropriate to carry out the Act;

—The distinction between exploration and the activities excluded from license and permit requirements (Sec. 101 (a)(2));

—Reasonable time within which applications relating to existing exploration must be submitted (Sec. 101 (b)(1)(A));

—The definition of what constitutes substantial compliance of an application with filing requirements, to establish the priority of right for the applicant, and what constitutes a reasonable period to bring the application into full compliance (Sec. 103 (b));

(b) Certification of applications, which requires findings of:

—Financial responsibility of the applicant (Sec. 103(c)(1));

—Technological capability of the applicant (Sec. 103(c)(2));

—Satisfactory fulfillment of obligations under any previous license or permit (Sec. 103(c)(3));

—An exploration or recovery plan which meets the requirements of the Act and regulations (Sec. 103(c)(4));

—An acceptable size and location of the applicant's exploration or recovery plan area (Sec. 103(a)(2)(D)). This means

—It is a "logical mining unit" (Sec. 103(a)(2)(E)), and

—It would not result in significant adverse impacts on the quality of the environment which cannot be avoided by reasonable restrictions (Sec. 103(a)(2)(D));

—An administrative fee having been paid by the applicant (Sec. 104);

—Procedures for full consultation and cooperation, prior to certification of an application and prior to the issuance or transfer of a license or permit, with other Federal agencies or departments which have programs or activities within their statutory responsibilities which would be affected by the activities proposed in the application (Sec. 103(e));

(c) Eligibility for the issuance or transfer of a license or permit, which requires a finding that the proposed exploration or commercial recovery:

—Will not unreasonably interfere with the exercise of freedoms of the high seas by other states (Sec. 105(a)(1));

—Will not conflict with any international obligation of the United States (Sec. 105(a)(2));

—Will not lead to the breach of international peace and security involving armed conflict (Sec. 105(a)(3));

—Cannot reasonably be expected to result in a significant adverse effect on the quality of the environment (Sec. 105(a)(4));

—Will not pose an inordinate threat to the safety of life and property at sea (Sec. 105(a)(5)).

—If the subject of a request by the licensee or permittee for a revision to a license or permit, will comply with the requirements of the Act and regulations (Sec. 105(c)(2));

—If the subject of an application for a transfer, is in the "public interest" (Sec. 115(b));

(d) Terms, conditions and restrictions for licenses or permits, which may include:

—Special terms, conditions and restrictions for the conservation of natural resources, protection of the environment, or safety of life and property at sea where differing physical and environmental conditions so require (Sec. 105(b)(1));

—Use of best available technologies for the protection of safety, health or the environment, where appropriate (Sec. 109(b));

—Diligence requirements for miners, including periodic reasonable expenditures during the license period and the maintenance of commercial recovery throughout the period of a permit, but allowing for the temporary suspension of activities (Sec. 108);

—Conservation of natural resources, through the prevention of waste, and allowing for future opportunity for the recovery of the unrecovered balance of seabed minerals (Sec. 110);

—Prevention of interference with other uses of the high seas (Sec. 111);

—Safety of life and property at sea (Sec. 112);

—Monitoring by miners of the environmental effects of exploration and commercial recovery, and submitting related information to NOAA; also allowing monitoring by NOAA-designated observers (Sec. 114);

—Modification of terms, conditions and restrictions, in order:

—To avoid unreasonable interference with the interests of other states in the freedom of the high seas (Sec. 105(c)(1)(A));

—To protect the quality of the environment (Sec. 105(c)(1)(B));

—To promote the safety of life and property at sea (Sec. 105(c)(1)(B));

—To avoid conflict with any internation obligation of the U.S. (Sec. 105(c)(1)(C);

—To avoid any situation which would lead to a breach of international peace and security involving armed conflict (Sec. 105(e)(1)(D));

—Establishment of guidelines for the scale or extent of a proposed modification or revision for which application requirements and procedures apply (Sec. 105(c)(3));

—Recognition of and avoidance of interference with domestic and recognized foreign licenses and permits (Sec. 101(b));

—The requirement that a permittee's land processing site must be in the United States unless to locate elsewhere is necessary for its economic viability, and there is assurance of the return of resources to the U.S. for domestic use, if needed (Sec. 102(c)(5));

(e) Enforcement provisions under the Act (Secs. 302–307), including:

—Prescription of what constitutes substantial failure to comply with the Act, regulations or terms, conditions and restrictions of a license or permit, which may lead to the suspension or revocation of the license or permit, or suspension or modification of activities thereunder (Sec. 106(a)(2));

(f) Miscellaneous provisions, including:

—Criteria for when an immediate suspension of a license or permit, or of activities thereunder, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life and property at sea (Sec. 106(c));

—Description of what records must be kept by licensees or permittees, and what data and information they must submit to NOAA (Sec. 113);

—For amendments to regulations which provide for the conservation of natural resources, prescription of what would constitute serious or irreparable economic hardship to the holder of an existing license or permit, to which such amended regulations would not apply (Sec. 308(c)).

Although the Act specifies that proposed regulations should be promulgated within 270 days after enactment and final regulations promulgated within 180 days thereafter, certain issues may need to be addressed on a more expedited schedule. Therefore, NOAA also will be considering whether any form of preliminary regulations should be promulgated.

Because public participation in this rulemaking can reasonably be expected to promote a full and fair determination of the issues involved, $5,000 has been made available to compensate participants in the rulemaking pursuant to the provisions of NOAA regulations (15 CFR Part 904), if participants meet the eligibility criteria in such regulations.

This advance notice of proposed rulemaking is issued under the authority of Section 308 of Public Law No. 96–283 and pursuant to NOAA Directives Manual 21–24.

Dated: July 21, 1980.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems.

[FR Doc. 80-22033 Filed 7-25-80; 8:45 am]

BILLING CODE 3510-22-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35-21661; File No. S7-845]

Certain Acquisitions by Electric Utility Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is requesting comments concerning a proposed rule that would exempt from the requirements of sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 (the "Act") certain acquisitions by one or more electric utility companies of voting securities of a defined class of electric generation or transmission companies. The Commission is also proposing a related rule to clarify the availability of an exemption from regulation as a "holding company" under section 3(a)(2) of the Act for electric utility companies that make such acquisitions.

The proposed rules are intended to eliminate the need for case-by-case consideration of joint venture projects by electric utility companies that would not be subject to regulation under the Act but for the fact that they desire to use a separate entity as a means of acquiring additional capacity to generate electricity. The proposed rules would be applicable in situations where certain aspects of such acquisitions have been passed upon by other state and federal regulatory authorities.

DATE: Comments must be received on or before September 2, 1980.

ADDRESS: Comments should refer to File S7–845 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Grant G. Guthrie, Associate Director, Division of Corporate Regulation (202–523–5156), or Andrew F. MacDonald, Special Counsel (202–523–5683),

Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting comments concerning two proposed rules which would exempt acquisitions of voting securities of certain electric generation or transmission companies (hereinafter referred to as "power supply companies") from Commission review and approval under sections 9(a)(2) and 10 of the Act. A power supply company would be organized (and its voting securities acquired) by one or more electric utility companies (hereinafter referred to as sponsoring companies) which would purchase substantially all of the electric energy produced or transmitted by the power supply company.

Proposed Rule 14 would exempt acquisitions of voting securities of a power supply company by a sponsoring company if the following conditions are satisfied:

(a) Such acquisitions (and any agreement to provide capital funds to or guarantee the obligations of the power supply company) have been approved by state and federal regulatory authorities other than the Commission that have jurisdiction over the rates and service of the sponsoring company;

(b) All of the voting securities of the power supply company are owned by one or more sponsoring companies to which it sells all of the electric energy it produces or transmits (except for sales made to governmental authorities and cooperative electric associations); and,

(c) The issuance of all securities of such power supply company (other than short-term securities) are expressly authorized by a regulatory commission having jurisdiction over its rates and service.

Proposed Rule 15 will provide an exemption by rule with respect to the holding company status of an electric utility company which acquires an interest qualifying under proposed Rule 14, if the utility company meets the requirements of paragraph (2) of section 3(a) in that it is predominantly an electric utility company that operates in the state of its incorporation and one or more states contiguous thereto. The proposed rule further provides that the acquisition of an interest in a power supply company that is exempt under Rule 14 shall not affect the availability of an exemption under section 3(a)(2) of the Act.

Introduction

When one or more electric utility companies acquire the voting securities of a separate company established to construct or operate electric generation or transmission facilities, one or more of the acquiring electric companies may become "holding companies" within the meaning of section 2(a)(7)(A) of the Act.[1] In addition, such acquisitions may require Commission approval under sections 9(a)(2) and 10 of the Act if the acquiring company is an "affiliate" of another company within the meaning of section 2(a)(11) of the Act (by reason of its ownership of 5 per cent or more of the voting securities of another public utility) and is seeking to acquire 5 per cent or more of the voting securities of a power supply company.[2]

Discussion

Proposed Rules 14 and 15 are intended to facilitate organization of jointly-owned corporations or partnerships for the purpose of financing construction of new electric generation or transmission facilities which would sell electric power to the sponsoring electric utility companies.

Electric utilities are increasingly relying on joint ownership of large new base load generating facilities and related transmission equipment in an effort to spread the risks associated with escalating costs of plant and equipment, and to better adjust to changes in national fuel use and government policies. The joint ownership of such projects permits unaffiliated utilities to share the benefits of efficient new facilities that are too large for any one utility to construct or utilize for its own needs.

The Commission understands that some electric utility companies are interested in using jointly-owned corporations or partnerships to facilitate the financing of new generation and transmission facilities. The organization of a separate power supply company by one or more sponsoring utilities offers several advantages over joint ownership of undivided interests in a new facility. The principal advantage is the ability to utilize "project financing." This permits the sponsoring utilities to finance the facility through a power supply company's issuance of long-term securities that are not subject to the mortgage bond indentures of the sponsoring companies. It also provides flexibility with respect to the kind of security issued and the amount of debt used to finance the project. In addition, the proportionate interests of the participants in the new facility can be altered as load forecasts change and new participants in the project can be admitted by a transfer of the voting securities, which avoids the delay and expense of obtaining a release under a sponsoring utility's indenture, a step that is always necessary in cases involving the transfer of an undivided ownership interest.

Proposed Rule 14 would be adopted in part pursuant to section 3(d) of the Act.[3] The conditions contained in the proposed rule, which are set forth above, would assure that state or federal authorities evaluate certain public interest considerations associated with the establishment of power supply companies.

The Commission has previously given case-by-case approval to the organization of jointly-owned facilities and the acquisition of voting securities of separate power supply companies by sponsoring utilities.[4] On the basis of this experience, the Commission believes that case-by-case Commission approval may constitute an undue or unnecessary burden and may have the effect of deterring electric utility companies that are not presently subject to regulation under the Act from sponsoring power supply companies. For sample, an application for Commission review and approval under sections 9(a)(2) and 10 of the Act may require the Commission to duplicate the kind of determinations within the jurisdiction of the Federal Energy Regulatory Commission under

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[1] A "holding company" is defined in section 2(a)(7)(A) as "any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company * * *." A "holding company" and its subsidiaries must register under section 5 of the Act, unless they are entitled to an exemption under Section 3(a) of the Act.

[2] Section 9(a)(2) provides that:

"Unless the acquisition has been approved by the Commission under section 10, it shall be unlawful for any person to acquire, directly or indirectly, any security of any public-utility company, if such person is an affiliate * * * of such [public utility] company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate."

If an electric utility company owns 5 per cent or more of the voting securities of one public utility company or of a holding company, it is an "affiliate" of that company within the meaning of section 2(a)(11) of the Act.

[3] Section 3(d) provides: The Commission may, by rules and regulations conditionally or unconditionally exempt any specified class or classes of persons from the obligations, duties, or liabilities imposed upon such persons as subsidiary companies or affiliates under any provision or provisions of this title, and may provide within the extent of any such exemption that such specified class or classes of persons shall not be deemed subsidiary companies or affiliates within the meaning of any such provision or provisions, if and to the extent that it deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this title.

[4] *See, e.g., Ohio Valley Electric Corporation, et al.*, 34 SEC 323 (1952); *Yankee Atomic Electric Company*, 36 SEC 552 (1955).

section 203(a) of the Federal Power Act, as amended, 16 U.S.C. 824b, and of state authorities with jurisdiction over the rates and service of the sponsoring electric utility companies.

The Commission believes that the proposed exemption for acquisitions meeting the conditions mentioned above is in the public interest, will eliminate unnecessary and duplicative regulation of electric companies and, as a result, will expedite the efforts of electric utility companies to meet the nation's energy needs. In this regard, an acquisition of a proportionate interest in a power supply company by an electric utility is not typically the kind of acquisition Congress intended to regulate under sections 9 and 10 of the Act, nor does such an acquisition create a potential for the kind of abuses which Congress ascribed to holding companies at the time the Act was enacted. In essence, the acquisition of an interest in a power supply company permits the sponsoring company to secure a source of supply to serve existing or future needs. It does not enlarge the service area of an electric utility company, nor frustrate effective local regulation.

In addition, the Commission has been advised that some electric utility companies may be deterred from participating in ownership of a power supply company because the acquisition of an interest in such a company would make a sponsoring utility a "holding company" within the meaning of section 2(a)(7)(A) of the Act. A "holding company" and its subsidiaries must register under section 5 of the Act, unless they are entitled to an exemption under section 3(a) of the Act.

On the basis of its experience, the Commission believes that a sponsoring electric utility company that is not already a subsidiary of a registered holding company, or a subsidiary of a registered holding company, or a subsidiary of a holding company, will usually qualify for exemption under section 3(a)(2) of the Act [5] or Rule 2(a)(2) thereunder,[6] as a holding company that is "predominantly" an operating public utility company whose operations do not extend beyond the state in which it is incorporated and one or more contiguous states. In this regard, Proposed Rule 15 would make clear that the acquisition of an interest in a power supply company in an exempt transaction under Rule 14 shall not affect the availability of an exemption under section 3(a), provided that the sponsoring company and its subsidiaries otherwise satisfy the requirements for an exemption under section 3(a)(2) of the Act or Rule 2(a) thereunder.

Statutory Authority

The Commission proposes to adopt Rule 14 pursuant to sections 3(d) and 20(a) and Rule 15 pursuant to sections 3(a) and 20(a) of the Act. Under section 3(d) the Commission may, by rule or regulation, exempt any class or classes of persons from the duties, obligations and liabilities imposed upon such persons as "affiliates" under any provision or provisions of the Act. Section 3(a) authorizes the Commission to adopt rules and regulations that exempt certain classes of holding companies from some or all provisions of the Act. In addition, section 20(a) complements each of these provisions by providing that the Commission "shall have authority * * * to make * * * such rules and regulations as it may deem necessary or appropriate to carry out the provisions of * * *" the Act.

Text of the Proposed Rules

It is proposed to amend 17 CFR Part 250 by adding §§ 250.14 and 250.15 to read as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§ 250.14 Exemption from section 9(a)(2) with respect to certain acquisitions of interests in power supply companies.

(a) An electric utility company which is not an "affiliate" under clause (B) of section 2(a)(11) of any other company shall be exempt from section 9(a)(2) of the Act with respect to the acquisition of voting securities of a power supply company, either directly or through a wholly-owned company organized solely for that purpose, provided that:

(1) The acquisition of the voting securities of such power supply company and any agreement to provide capital funds to or a guarantee of any obligation of such power supply company have been authorized by the regulatory authorities having jurisdiction over the rates and service of such electric utility company;

(2) All of the voting securities of such power supply company are owned by the electric utility company or companies to which such power supply company sells all of its electric energy (exclusive of any electric energy which it sells to any person described in section 2(c) of the Act or to any rural electric cooperative association); and

(3) The issuance of securities by such power supply company (other than any security maturing not more than one year after the date of issuance thereof) is expressly authorized by a regulatory authority having jurisdiction over its rates and service.

(b) If the voting securities of a power supply company are acquired by more than one electric utility company, the requirements for exemption under this rule shall apply to each, except that paragraph (a)(1) shall not apply to any person referred to in section 2(c) of the Act or to any rural electric cooperative association.

(c) *Definitions.* (1) The term "electric utility company," as used in this rule, may include any person referred to in section 2(c) of the Act.

(2) The term "power supply company" means any company which owns and/or operates facilities for the generation or transmission of electric energy for sale to one or more electric utility companies or holding companies that have an ownership interest in the company, together with such other facilities as are incidental and functionally related thereto.

(3) The term "voting security" shall have the same meaning as in section 2(a)(17) of the Act, including any voting interest that serves the same defined purpose.

(4) The term "sale," as used in this rule, shall have the same meaning as in section 2(a)(23) of the Act.

§ 250.15 Exemption of holding company and subsidiaries under section 3(a)(2).

(a) When an electric utility company becomes a holding company with respect to a power supply company in a transaction exempt under § 250.14, the acquisition of an interest in such power supply company shall not affect the availability of an exemption under section 3(a) of the Act if the utility and its subsidiaries otherwise satisfy the requirements of paragraph (2) thereof by order or pursuant to § 250.2(a)(2).

(b) The exemption under paragraph (a) of this section also applies to an electric utility company which is not subject to section 9(a)(2) but whose acquisition satisfies all the requirements

[5] In this regard, section 3(a)(2) provides: "The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of [the Act], unless and except insofar as it finds the exemption detrimental to the public interest or the interests of investors or consumer, if * * * (2) such holding company is predominantly a public utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto * * *."

[6] The exemption under Rule 2, 17 CFR 250.2, is claimed by filing an annual statement on Form U-3A-2. No action is required by the Commission, and the applicant becomes exempt upon filing the statement in good faith. However, the Commission may take action to terminate the exemption under Rule 6, 17 CFR 250.6, if a question arises as to whether the claimant is entitled to the exemption.

provided by § 250.14 for an exempt acquisition.

By the Commission.
July 22, 1980.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-22629 Filed 7-25-80; 8:45 am]
BILLING CODE 8010-01-M

17 CFR Part 250

[Release No. 35-21662; File No. S7-846]

Statement of Beneficial Ownership of Securities of Registered Holding Companies and Their Subsidiaries

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment an amendment to Rule 72(b) to clarify that rules adopted under sections 16(a) and (b) of the Securities Exchange Act of 1934 ("1934 Act") shall apply equally to any reporting requirements or liability, and any exemption therefrom, imposed by sections 17(a) and (b) of the Public Utility Holding Company Act of 1935 ("1935 Act") with respect to any security of a registered holding company or subsidiary thereof. The amendment would eliminate an unnecessary and unintended distinction in the application of the reporting and liability provisions of section 16 of the 1934 Act and section 17 of the 1935 Act.

DATE: Comments must be received on or before August 25, 1980.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Caitol Street, Washington, D.C. 20549. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Grant G. Guthrie, Associate Director, Division of Corporate Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202)-523-5156.

SUPPLEMENTARY INFORMATION: The Commission is requesting comments on a proposed amendment to Rule 72(b), 17 CFR 250.72(b), under the 1935 Act. If adopted, the proposed amendment would provide that rules adopted under sections 16(a) and (b) of the 1934 Act, which require the filing of reports of beneficial ownership of equity securities registered under section 12 of the 1934 Act and provide a remedy for imputed short-swing trading profits in transactions involving such securities, and any exemptions therefrom, shall apply equally to the reporting requirements and liabilities imposed under sections 17(a) and (b) of the 1935 Act with respect to any security of a registered holding company and its subsidiaries.

General Background

Section 17(a) of the 1935 Act requires officers and directors of a registered holding company to file statements of beneficial ownership of any security of such holding company and its subsidiaries, and section 17(b) provides a remedy for short-swing trading profits realized by the officers and directors in transactions involving any such securities, but authorizes the Commission to exempt, by rule, transactions not comprehended within its purpose. These sections are substantially identical to sections 16(a) and (b) of the 1934 Act.

Historical differences in the application of the two statutes have been eliminated by subsequent amendments to the 1934 Act, except that section 17 applies to transactions in non-convertible debt securities of registered holding companies and their subsidiaries.

On March 9, 1961 (HCA Rel. No. 14383), the Commission adopted Rule 72 to eliminate duplication of reporting requirements by prescribing Forms 3 and 4 as common reporting forms and incorporating by reference whatever rules might be adopted under section 16(a) of the 1934 Act. Rule 72 provides:

> (a) Initial statements of beneficial ownership of securities required by section 17(a) of the Act shall be filed on Form 3. Statements of changes in such beneficial ownership required by that section shall be filed on Form 4. All such statements shall be prepared and filed in accordance with the requirements of the applicable form.
>
> (b) The rules under section 16(a) of the Securities Exchange Act of 1934 shall apply to statements filed pursuant to paragraph (a) of this section to the extent that such rules are pertinent.

The rules under section 16(a) of the 1934 Act [1] include rules which also exercise the Commission's exemptive authority under section 16(b). The Commission has received requests for advice whether a transaction which is exempt from the reporting requirements of section 17(a) of the 1935 Act and Rule 72(a) thereunder by virtue of a rule under section 16(a) of the 1934 Act would similarly be exempt from section 17(b) of the 1935 Act. The status of exemptive rules adopted directly under section 16(b) of the 1934 Act and the effect of the equity security context of these sections of the 1934 Act on the slightly broader coverage of the parallel sections of the 1935 Act also raise potential questions of interpretation.

It appears that a transaction which is exempt under either section 16 (a) or (b) of the 1934 Act does not involve any greater opportunity for abuse under section 17 of the 1935 Act than under section 16 of the 1934 Act, and that it would be in the public interest to eliminate unnecessary distinctions between sections 16 and 17. Accordingly, the Commission is inviting comments on a proposed amendment to Rule 72(b) that would expressly apply the rules under sections 16 (a) and (b) of the 1934 Act to a transaction involving any security of a holding company or subsidiary thereof.

Text of Proposed Rule

It is proposed to amend Part 250 of Chapter II of Title 17 of the Code of Federal Regulations by amending paragraph (b) of § 250.72 as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§ 250.72 Filing of statement pursuant to section 17(a).

* * * * *

(b) The rules under sections 16 (a) and (b) of the Securities Exchange Act of 1934, including any rules which exempt a transaction from the duties or liabilities of section 16 (a) or (b), shall apply to any duty or liability imposed with respect to a transaction involving any security of a registered holding company or subsidiary thereof under section 17 (a) or (b) of the Act.

Authority: The Commission hereby publishes for comment a proposed amendment to Rule 72 pursuant to the provisions of sections 17 (a) and (b) and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*).

By the Commission.

George A. Fitzsimmons,

Secretary.

July 22, 1980.

[FR Doc. 80-22628 Filed 7-25-80; 8:45 am]
BILLING CODE 8010-01-M

[1] Rules 16a-1 to 16a-11, 17 CFR 240.16a-1 to 16a-11.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3 and 12

[Docket No. RM80-31]

Regulations Governing Safety of Water Power Projects and Project Works; Extension of Time for Comment on Proposed Rule

Issued July 23, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Extension of Time for Comment on Proposed Rule

SUMMARY: On June 16, 1980, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking (Regulations Governing Safety of Water Power Projects and Project Works, 45 *Fed. Reg.* 41608, June 19, 1980). The notice prescribed a comment period ending August 1, 1980. The comment period on this rulemaking is hereby extended to August 15 1980.

DATE: Comments are due on or before August 15, 1980.

ADDRESS: Comments should be filed with the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-22558 Filed 7-25-80; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 884 and 913

Abandoned Mine Lands Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Notice of intent and proposed rule: Receipt of the Abandoned Mine Lands Reclamation Plan submission from the State of Illinios.

SUMMARY: On July 22, 1980, the State of Illinois submitted to OSM its proposed abandoned mine land reclamation plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the State plan.

DATES: Written comments on the plan must be received on or before 9:00 p.m., August 27, 1980. Written comments on whether OSM should hold a public hearing on the plan must be received by 5:00 p.m., August 12, 1980. A public hearing will be held on August 27, 1980 from 10:00 a.m. to 12:00 noon and 7:00 p.m. to 9:00 p.m. or until all discussions has been completed the hearing may be cancelled, as discussed under Supplementary Information below.

ADDRESS: The public hearing, if held will be at the Capitol Building, Room 114, Springfield, Illinois. The hearing may be cancelled, as discussed under Supplementary Information, below. Copies of the full text of the proposed Illinois plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region III, Administrative Record Center, Public Review Facility—Room 512, Federal Building and U.S. Court House, 46 East Ohio Street, Indianapolis, Indiana 46204.

Illinois Department of Mines and Minerals, 704 Stratton Building, 400 S. Spring Street, Springfield, Illinois 62706.

Written comments should be sent to: Edgar A. Imhoff, Regional Director, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Court House, 46 East Ohio Street, Indianapolis, Indiana 46204.

The Administrative Record will be available for public review at the OSM Region III office above, on Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

FOR FURTHER INFORMATION, CONTACT: Richard D. McNabb, Assistant Regional Director, AML, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Court House, 46 East Ohio Street, Indianapolis, Indiana 46204, Telephone: 317/269-2647.

SUPPLEMENTARY INFORMATION: On July 22, 1980, OSM received a proposed abandoned mine reclamation plan from the State of Illinois. The purpose of this submission is to demonstrate both the intent and capability to assume responsibility for administering and conducting the provisions of SMCRA and OSM's Abandoned Mine Lands (AML) Reclamation Program (30 CFR Chapter 7, Subchapter R) as published in the Federal Register (FR) on October 25, 1978, 44 FR 49932-49952.

This notice describes the nature of the proposed program and sets forth information concerning public participation in the Director's determination of whether or not the submitted plan may be approved. The public participation requirements for the consideration of a State AML Reclamation Plan are found in 30 CFR 884.13 and 884.14 (44 FR 49948). Additional information may be found under corresponding sections of the preamble to OSM's AML Reclamation Program Final Rules (44 FR 149932-49940).

The receipt of the Illinois submission is the first step in the process which will result i nthe establishment of a comprehensive program for the reclamation of abandoned mine lands in Illinois.

By submitting a proposed plan, Illinois has indicated that it wishes to be primarily responsible for this program. If the submission as hereafter modified, is approved by the Director of OSM, the State will have primary responsibility for the reclamation of abandoned mine lands in Illinois. If the program is disapproved and the State does not choose to revise the plan, a Federal AML program will be implemented and OSM will have primary responsibility for these activities.

All written comments must be mailed or hand carried to the Regional Director's Office above or may be hand carried to the public hearing, if a public hearing is found to be necessary and submitted as exhibits to the proceedings.

If the Regional Director finds that the State has given the public adequate notice and opportunity to comment in public hearings, and that the record of such hearing does not reflect major unresolved controversies and there are not a significant number of requests during the 15-day period to comment on the need for a hearing, the hearing will be cancelled by a notice published in the Federal Register cancelling the scheduled hearing.

Written comments on the issue of waiver of the public hearing must be received by 5:00 p.m., August 12, 1980.

The comment period will close at the conclusion of the public hearing, if any, or at 9:00 p.m. on August 27, 1980, whichever is later. Comments received after that time will not be considered. Representatives of the Regional Director's Office will be available to meet between 8:00 a.m. and 4:00 p.m. at the request of members of the public to receive their advice and recommendations concerning the proposed State AML reclamation program.

Persons wishing to meet with representatives of the Regional

Director's Office during this time period may place such request with J. Ron Lennard, Public Information Officer, telephone 317/269-2603 at the Regional Director's Office above.

Meetings may be scheduled between 9 a.m. and noon and 1 p.m. and 4 p.m. Monday through Friday excluding holidays at the Regional Director's Office.

The Department intends to continue to discuss the State's plan with representatives of the State throughout the review process. All contacts between Departmental personnel and representatives of the State will be conducted in accordance with OSM's guidelines on contacts with States published September 19, 1979 at 44 FR 54444.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed program. The approval of State AML reclamation plans does not have significant environmental impact, but is only a procedural change in terms of the governmental entity that will be performing the work.

The Director has determined that this is not a significant rule within the meaning of 43 CFR Part 14 and no regulatory analysis is being prepared on the Director's decision relating to the Illinois AML plan.

The Illinois AML Reclamation Plan can be approved If:

1. The Director finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure to carry out the plan.

4. The plan meets all the requirements of the OSM, AML Reclamation Program Provisions.

5. The State has an approved Regulatory Program, and

6. Determined that the plan is in compliance with all applicable State and Federal laws and regulations.

The following constitutes a summary of the contents of the Illinois submission:

The Illinois Department of Mines and Minerals, Abandoned Mined Lands Reclamation Council has been designated by the Governor of the State of Illinois to implement and enforce the Illinois Abandoned Mined Lands Program in accordance with SMCRA (P.L. 95-87). The Abandoned Mined Lands Reclamation Council has developed State regulations to carry out State mandate. Contents of the State Plan submission include:

(a) Designation of authorized State Agency to administer the program.

(b) State's Chief Legal Officers opinion of designated Agency to operate the program.

(c) Description of the policies and procedures to be followed in conducting the program including:

(1) Goals and objectives.

(2) Project ranking and selection procedures.

(3) Coordination with other reclamation programs.

(4) Land acquisition, mangement and disposal.

(5) Reclamation on private land.

(6) Rights of Entry.

(7) Public participation in the program.

(d) Description of the Administrative and Managment structure to be used in the program including:

(1) Description of the organization of the designated agency and its relationship to other organizations that will participate in the program.

(2) Personnel staffing policies.

(3) Purchasing and procurement systems and policies.

(4) Description of the accounting system including specific procedures for operation of the reclamation fund.

(e) Description of the public's participation in preparation of the plan.

(f) A general description of activities to be conducted under the reclamation plan including:

(1) Known or suspected eligible lands and water requiring reclamation, including a map.

(2) General description of the problems identified and how the plan proposes to deal with them.

(3) General description of how the lands to be reclaimed and proposed relate to the surrounding lands and land uses.

(4) A table summarizing the quantities of land and water affected and an estimate of the quantities to be reclaimed during each year covered by the plan.

(5) General description of the social, economic, and environmental conditions in the different geographic areas where reclamation is planned, including:

(i) The economic base.

(ii) Sociologic and demographic characteristics.

(iii) Significant esthetic, historic or cultural, and recreational values.

(iv) Hydrology including water quality and quantity problems associated with past mining.

(v) Flora and fauna including endangered or threatened species and their habitat.

(vi) Underlying or adjacent coal beds and other minerals and projected methods of extraction.

(vii) Anticipated benefits from reclamation.

Dated: July 23, 1980.

Walter N. Hein,

Director.

[FR Doc. 80-22615 Filed 7-25-80; 8:45 am]

BILLING CODE 4310-05-M

POSTAL RATE COMMISSION

39 CFR Ch. III

[Docket No. RM80-2]

Erratum Notice (July 22, 1980); Notice of Proposed Rulemaking (July 21, 1980)

AGENCY: Postal Rate Commission.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This Erratum is to correct the Notice of Proposed Rulemaking contemplating an addition to the Commission's Rules of Practice and Procedure (39 CFR § 3001 *et seq.*) to streamline procedures for cases filed by the Postal Service as experiments under § 3623 of the Postal Reorganization Act. (39 U.S.C. § 3623).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, Suite 500, 2000 L Street, N.W., Washington, D.C. 20268; (202) 254-3824.

SUPPLEMENTARY INFORMATION: In FR Doc. 80-21883 appearing at pages 48663-48667 in the Federal Register of Monday, July 21, 1980, the following changes should be made:

1. On page 48663, column 2, Postal Rate Commission, under the title "Proposed Rulemaking", change date to read "July 17, 1980" in lieu of "July 21, 1980".

2. On page 48667, column 2, second line, change line to read "§ 3641 of the Act." in lieu of "§ 3651 of the Act."

David F. Harris,

Secretary.

[FR Doc. 80-22530 Filed 7-25-80; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL 1550-5; Docket No. OMSAPC-79-1]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures; Evaporative Emission Regulation and Test Procedure for Gasoline-Fueled Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of Comment Period.

SUMMARY: On April 30, 1980, EPA proposed an evaporative emission standard and test procedure for 1983 and later model year gasoline-fueled heavy-duty vehicles (45 FR 28922). A public hearing was held June 25, 1980 in Ann Arbor, Michigan at which interested parties orally presented data, views and arguments relating to the April 30 proposal. After the public hearing, letters were received from General Motors, the Motor Vehicle Manufacturers Association, and International Harvester requesting that the comment period be extended so that they could more fully develop their final written comments. This notice extends the comment period from July 28, 1980 to August 18, 1980.

DATES: All relevant comments postmarked on or before August 18, 1980 will be considered.

ADDRESS: Interested persons may participate in this rulemaking by submitting written comments (in duplicate if possible) to: U.S. Environmental Protection Agency, Central Docket Section, (A-130), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460, ATTN: Docket No. OMSAPC-79-1. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Timothy D. Mott, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Phone: (313) 668-4462.

SUPPLEMENTARY INFORMATION: On April 30, 1980 EPA proposed an evaporative emission standard and test procedure for 1983 and later model year gasoline-fueled heavy-duty vehicles. A Notice of Public Hearing was published in the Federal Register on May 30, 1980 (45 FR 36437) which stated that the public hearing would be held on June 25, 1980 and the close of comments would occur on July 28, 1980.

In a letter dated two days after the public hearing (i.e., June 27, 1980) the General Motors Corporation (GM) requested that the comment period be extended. GM claimed the extension was necessary in order to supply EPA with the additional detailed information EPA requested at the hearing. In a letter dated July 8, 1980 the Motor Vehicle Manufacturers Association (MVMA) also requested an extension of the close of comment date. MVMA's reason for the extension was the same as GM's. International Harvester Company (IH) requested an extension of the comment period (letter dated July 9, 1980) in order to gather more test data to better assess the control hardware technology, the stringency of the standard, and background emission levels. The letters from GM, MVMA, and IH are contained in the public docket for this rulemaking (Docket No. OMSAPC-79-1).

After due consideration EPA believes that an extension of the comment period is in the best interest of all parties. EPA realizes that some of the issues brought up at the hearing are complex and additional time may be required to fully address these issues. EPA believes that additional time to submit final comments could significantly enhance the development of the best possible final rule. Therefore, EPA is extending the comment period to August 18, 1980. All relevant comments postmarked on or before August 18, 1980 will be considered during final rulemaking.

Dated: July 21, 1980.

Edwin Tuerh,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 80-22569 Filed 7-25-80; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 54

Grants for Community Mental Health Centers; Provisional Nature of Amounts of Initial Operation and Staffing, Conversion, and Financial Distress Grants Under the Community Mental Health Centers Act

Correction

In FR Doc. 80-21405 appearing at page 48507 in the issue for Friday, July 18, 1980 make the following changes:

1. In the second column, the first sentence of the first full paragraph should read as follows:

"The Department believes it should administer the entire program of grants under the Act on an equivalent basis, simplify administrative requirements for the mangement of the program, and promote sound fiscal management of Federal funds consistent with the 'deficit' basis for computing grant awards under the Act."

2. In the third column, § 54.108(c)(1), in the fourth line, "302(e)(1)" should read "203(e)(1)".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 55

[Docket No. FEMA-FIA55]

Statewide FAIR Plans; Depopulation Program

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA)

ACTION: Proposed rule.

SUMMARY: The FAIR Plans were originally established to provide a source of reasonably-priced property insurance to deserving property owners, who, because of environmental conditions surrounding their properties, cannot secure such coverage in the voluntary insurance market. There is a need to consider those owners who are insured by the FAIR Plans and establish a program to assist those FAIR Plan insureds who are insurable in the voluntary insurance market to secure such coverage.

The purpose of this amendment is to revise the Regulations concerning operation of Statewide FAIR Plans under the Urban Property Protection and Reinsurance Act of 1968, to require each FAIR Plan to develop and implement a depopulation program.

DATE: All comments received on or before September 1, 1980 will be considered before final action is taken on the proposed rule.

ADDRESSES: Persons wishing to comment should submit comments in duplicate to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 451—7th Street, S.W., Room 5126, Washington, D.C. 20472, Telephone Number (202) 755-6580.

SUPPLEMENTARY INFORMATION: The FAIR Plans were originally established to provide a source of reasonably-priced property insurance to deserving property owners, who, because of environmental conditions surrounding

their properties, cannot secure such coverage in the voluntary insurance market. They were a response to highly volatile urban conditions of the sixties which made insurers apprehensive about insuring properties in areas where the risk of riot was significant.

Over the years, the FAIR Plans have, in many instances, been used to insure properties which satisfy all reasonable underwriting standards, including those dealing with environmental conditions, but which, nevertheless, cannot obtain coverage in the voluntary market. This situation has contributed to the continued growth of the FAIR Plan population to the point where the Plans now insure more properties than at any time in their history, despite the fact that the urban conditions requiring the FAIR Plans' establishment have abated.

For this reason, there is a need to consider those owners who are insured by the FAIR Plans and establish a program to assist those FAIR Plan insureds who are insurable in the voluntary insurance market to secure such coverge. The State of Illinois has launched such a "depopulation" effort, and the Commissioner has stated that "full long-term solution can be arrived at only when the facts are exposed to the light of day."

In order to effect this type of full disclosure, the following amendment to the FAIR Plan Regulations is proposed. It requires that FAIR Plans report to the state insurance authorities their policy writing activities by zip code or census tract on a quarterly basis. The National Committee on Property Insurance is currently preparing a Depopulation Report which will delineate a series of alternatives which can be referenced when a depopulation procedure is sought for a given jurisdiction. This industry report is to be presented to the National Association of Insurance Commissioners so that the states individually can select a method for implementing the requirement set forth in this amendment.

Accordingly, Subchapter B of Chapter 1 of Title 44 is amended as follows:

Section 55.11(e) is added, as follows:

§ 55.11 Coding and Reports under the Plan.

* * * * *

(e) The Plan shall provide for the submitting to the state insurance authority and the Administrator a Depopulation program for zip code areas or census tracts that have a high concentration of FAIR Plan policies. For purposes of this section, areas of high concentration shall include zip code areas or census tracts where the FAIR Plan is one of the top twenty writers of property insurance. These depopulation programs must include a disclosure of FAIR Plan activity in these areas. Such reports under the depopulation program shall be due to the state insurance authority and the Administrator 90 days after the end of each quarter. The quarterly reports shall include data on cancellations, non-renewals, new and renewal business by zip code or census tracts and an assessment of the voluntary market availabilty status in these areas. The Administrator may waive compliance with any requirement of this part with respect to any state, temporarily or indefinitely, and in whole or in part, if the state insurance authority certifies that compliance is unnecessary or inadvisable under local conditions or state law and the Administrator concurs in such certification.

(Title XII of the Housing and Urban Development Act of 1969 (Pub. L. 90-448, 88 Stat. 476); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and Delegation of Authority to Federal Insurance Administrator)

Issued at Washington, D.C., June 11, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-23005 Filed 7-24-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Acceptance of Petition and Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Acceptance of Petition and Status Review.

SUMMARY: The Service has accepted a petition to add the Key Largo woodrat and Key Largo cotton mouse to the U.S. List of Endangered and Threatened Wildlife. These two small mammals occupy a restricted range in the Florida Keys and are in immediate jeopardy because of destruction of suitable habitat. The Service now is assembling supporting information and as soon as possible will issue a proposal in the Federal Register to list the Key Largo woodrat and cotton mouse.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (703-235-2771).

SUPPLEMENTARY INFORMATION: On 19 May 1980, Dr. Stephen R. Humphrey (Associate Curator in Mammalogy, Florida State Museum, University of Florida, Gainesville, Florida 32611) submitted a petition requesting that the Key Largo woodrat (*Neotoma floridana smalli*) and the Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*), two small mammals, be added to the U.S. List of Endangered and Threatened Wildlife, pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). The petition included a detailed report ("Status and Habitat of Eight Kinds of Endangered and Threatened Rodents in Florida," Special Scientific Report, No. 2, Office of Ecological Services, Florida State Museum) that had been prepared by Dr. Humphrey and Mr. D. Bruce Barbour, under contract to the Florida Game and Fresh Water Fish Commission, and partially financed by Federal grant-in-aid funds provided through the Endangered Species Act.

According to the report, and other information available to the Service, both of the species in question formerly occurred throughout Key Largo in mature tropical hammock type forest. Both are now restricted to that part of Key Largo northeast of the point where U.S. Highway 1 enters the key from the mainland. Both species also have been artificially introduced on Lignum Vitae Key, a much smaller island to the southwest of Key Largo. The major problem on Key Largo has been destruction of native tropical forest for commercial and residential development. This factor already has eliminated the woodrat and cotton mouse from the southern part of the island. The northern part has seen less development, mainly because of an insufficient supply of fresh water. Recently, however, the Farmers Home Administration approved a loan to the Florida Keys Aqueduct Authority, partly for the construction of a new fresh water pipeline from the mainland through northern Key Largo. It is anticipated that this pipeline would contribute to intensive development in the area, which would result in the loss of the last significant blocks of habitat for the woodrat and cotton mouse on Key Largo, and the possible extinction of both species. Even if the pipeline is not constructed, these mammals would remain in jeopardy, as they are now restricted to only a few hundred acres of suitable habitat and are vulnerable to various environmental disruptions.

The Service has determined that this petition presented substantial evidence warranting a proposal to add the Key

Largo woodrat and cotton mouse to the List of Endangered and Threatened Wildlife. The Service now is assembling supporting information needed to list the species and determine their Critical Habitat, and will issue a proposed rulemaking as soon as possible.

The primary author of this notice is Ronald M. Nowak, Office of Endangered Species (703/235–1975).

Dated: July 9, 1980.

Robert S. Cook,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 80–22627 Filed 7–25–80; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 45, No. 146
Monday, July 28, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL AERONAUTICS BOARD

[Docket 38449; Order 80-7-144]

Air Micronesia, Inc., and Continental Air Lines, Inc., Against the Japan Civil Aeronautics Board and Japan Air Lines Co., Ltd.

July 23, 1980.

Order

On July 9, 1980, Air Micronesia, Inc., and Continental Air Lines, Inc. filed a complaint against the Japan Civil Aeronautics Bureau (JCAB) and Japan Air Lines Co., Ltd. (JAL). The complainants state that the JCAB has imposed unjustifiable and unreasonable restrictions on the access of Air Micronesia to Japan, and has unjustly discriminated against Air Micronesia and in favor of its flag carrier, Japan Air Lines; and that the actions of the JCAB and JAL violate the Federal Aviation Act (Act) and the International Air Transportation Fair Competitive Practices Act of 1974 [IATFCPA].

In support of their complaint, Air Micronesia and Continental allege that the JCAB has denied Air Micronesia authority to offer additional frequencies between Tokyo and Saipan and new frequencies between Osaka and Guam; that Air Micronesia is entitled to the authority it seeks under the United States-Japan Bilateral Transport Agreement, as amended by the Memorandum of Consultation of October 2, 1969; that the JCAB authorized JAL to increase service between Tokyo and Saipan and capacity between Osaka and Guam at the same time it denied Air Micronesia's request; that the activities of the JCAB have resulted in serious financial losses for Air Micronesia which have impaired the economic growth of Micronesia; and that the Board has the authority under section 402 (f) of the Federal Aviation Act and section 2 of IATFCPA, as amended by the International Air Transportation Competition Act of 1979, to grant the relief requested.

Air Micronesia and Continental urge the Board to impose restrictions on JAL's operations until Air Micronesia is granted the authority it seeks from Japan. They suggest the prompt suspension of JAL's operations between Tokyo and New York via Anchorage, since this route is one of the two routes that Japan received in exchange for Saipan-Tokyo/Osaka authority granted to the United States.

The Board has received an answer from the Government of the Northern Mariana Islands and a memorandum from the Government of the Federated States of Micronesia which support the efforts of the complainants to secure additional access to Japan.[1]

Procedures

We have a number of options that we may invoke under the IATFCPA, as amended, and the Federal Aviation Act, as amended (Act). First, section 402(f)(1) of the Act gives us the power to alter, modify, amend, suspend, cancel or revoke a foreign air carrier permit, after notice and hearing, whenever we find it to be in the public interest. Pursuant to section 402 (h) of the Act we have promulgated rules to implement this power that provide for notice and an opportunity to file written evidence and argument, but do not require oral evidentiary hearings. (Subpart Q, 14 C.F.R. section 302.1701, et seq.).

Second, section 402(f)(2) of the Act was added by the International Air Transportation Competition Act of 1979. It gives us the power to summarily—without hearing—suspend "or alter, modify, amend, condition, or limit operations under" foreign air carrier permits if we find such action to be in the public interest. The Board must find that governments or foreign carriers have impaired, limited or denied air carrier operating rights or engaged in unfair, discriminatory or restrictive practices with substantial adverse competitive impact upon air carriers, over the objections of the U.S. Government.

Finally, section 2 of IATFCPA, as amended, empowers the Board to "take such action as it deems to be in the public interest" to eliminate discriminatory, predatory or anticompetitive practices, or unjustifiable or unreasonable restrictions on access of an air carrier to foreign markets. Such actions "may include, but are not limited to" our powers to affect foreign air carrier permits or tariffs under the Federal Aviation Act. This section may be triggered by a complaint, or upon our own initiative. Certain procedural strictures apply, including a requirement that the Board take either substantive or procedural action within 60 days after receipt of a complaint. We may extend this limit in increments of 30 days for an aggregate of up to 180 days, if we conclude "that it is likely that the complaint can be satisfactorily resolved through negotiations" during the additional period. Procedurally, section 2 of IATFCPA requires us to solicit the views of the Departments of State and Transportation, and provide the affected air carrier or foreign air carrier with "reasonable notice and such opportunity to file written evidence and argument as is consistent with acting on the complaint within the time limits" imposed.

Since we wish to keep our options open, and considering the 60-day requirement of the IATFCPA, we invite all interested persons to answer the complaint of Air Micronesia/Continental. Answers shall include all data, evidence, and argument upon which persons rely to support their position, and cover all substantive and procedural issues that they wish the Board to consider. We will also provide an opportunity to reply to the answers.

Answers shall be filed no later than 20 days from the service date of this order, and replies no later than 10 days from the answer date.

After receipt and consideration of these pleadings and any evidence submitted, we will issue a further order in this proceeding. As is evident from our discussion of our statutory options, we may either provide for further procedures, defer action for 30 days, or grant, dismiss, or deny the complaint in whole or in part.

Accordingly,

1. We invite any interested person to file, and serve upon persons named in paragraph 3, below, no later than August 12, 1980 answers to the joint complaint

[1] On July 18, 1980, JAL moved to extend the time within which it "may file a responsive pleading or take such other action it may deem appropriate for a period of thirty (30) days." We shall dismiss the motion in view of our decision to invite comments and to establish a procedural schedule that will permit prompt action on the issues raised in the complaint.

of Air Micronesia and Continental in Docket 38449. If comments are filed replies may be filed and must be served as above, but no later than August 22, 1980;

2. If timely and properly supported requests are filed, we will give consideration to the matters and issues raised by the requests before we take further action, provided that we may order further procedures within the statutorily determined time period;

3. We are serving this order upon Air Micronesia, Inc., Continental Air Lines, Inc., Japan Air Lines Co., Ltd., the Ambassador of Japan in Washington, D.C., the representative to the United States Commonwealth of the Northern Mariana Islands in Washington, D.C., the Micronesian Liaison Office of the Federated States of Micronesia in Washington, D.C., the President of the Marshall Islands, the Speaker of the Palau Legislature, the Governors of Guam, Kusai, Ponape, Truk, and Yap, and the Departments of the Interior, State and Transportation; and

4. We dismiss the motion of JAL in Docket 38449 for an extension of time.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-22596 Filed 7-25-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 37867]

Boston-London Service Case; Hearing

Notice is hereby given that a hearing in the above-titled matter will be held on August 26, 1980 at 10:00 a.m. (local time) in Room 1003, Hearing Room D, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., July 22, 1980.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 80-22609 Filed 7-25-80; 8:45 am]

BILLING CODE 6320-01-M

[Dockets 33363, 37942, and 38399]

Former Large Irregular Air Service Investigation Phase III and Application of Jet Charter Service, Inc.; Postponement of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding now assigned to be held on August 4, 1980, at 10:00 a.m. (local time) (45 FR 46145, July 9, 1980), is postponed until August 25, 1980, at 10:00 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., July 22, 1980.

William A. Pope II,

Administrative Law Judge.

[FR Doc. 80-22610 Filed 7-25-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38511 and Docket 38488; Order 80-7-142]

People Express Fitness Investigation; Order Instituting Hearing

July 22, 1980.

Application of People Express, Inc. for (1) a determination of fitness, (2) a certificate of public convenience and necessity (New York/Newark markets) and (3) approval of interlocking relationships.

On July 18, 1980, People Express, Inc., a newly-organized air carrier, filed an application under our expedited procedures (14 CFR 302.1701 *Et seq.*) for a determination of initial fitness [1] and a certificate of public convenience and necessity in 27 New York/Newark markets.[2] People Express asks that its application be processed by show-cause procedures.

In support of its request for a fitness determination, People Express filed exhibits [3] in accordance with the requirements of Part 204 of our Economic Regulations.[4] It alleges that it possesses the managerial skills and technical ability to run a successful airline; [5] a credible financial plan with which to mount its operations; a reasonable service proposal; [6] and a clear compliance record of its key personnel.

In addition, People Express states that certification would be consistent with the public convenience and necessity because the carrier plans to provide the public with benefits such as high frequency service in the eastern portion of the country; unrestricted, deep discount fares; and service from "underutilized, uncongested, and highly accessible Newark International Airport." [7] With regard to Newark service, People Express points out that its proposal is consistent with our policy to develop the resources available at Newark as an alternative to Kennedy and LaGuardia Airports.[8]

People Express further seeks approval under section 409 of the Act of the interlocking relationship of Mr. Larry J. Lawrence between People Express and Federal Express. It explains that Mr. Lawrence currently serves on the Board of Directors of Federal Express Corp. and serves as Chairman of its Compensation Committee. He has also been appointed to the Board of Directors of People Express and wishes to retain his position on both boards. People Express contends that the two carriers are not competitive, and that Mr. Lawrence's relationship with both air carriers will not be adverse to the public interest.[9]

People Express urges us to utilize show-cause procedures to process its application on an expedited basis. It points out that the public interest benefits of its proposed service, extensive submissions and sound financial plan warrant expeditious treatment. In addition, People Express believes that prompt Board action is consistent with our policy to encourage service at Newark.

We have decided to institute an oral evidentiary hearing on the issue of People Express' fitness to receive a 401 certificate, as well as the antitrust issue raised by the interlocking relationship of Mr. Lawrence between People Express and Federal Express. Although People Express has submitted extensive exhibits which comport with the requirements set down in Part 204 of our Economic Regulations, it has been our consistent policy to deal with the fitness aspects of requests for initial certification through oral evidentiary hearings.

However, People Express correctly notes that it is our policy to encourage new entry as well as to develop the facilities at the underutilized Newark International Airport. We, therefore, emphasize the desirability of expedition and direct that this matter be heard

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[1] People further requests that we approve the interlocking relationship of Mr. Larry J. Lawrence between People Express and Federal Express Corp.

[2] The New York/Newark markets at issue in People Express' application include Atlanta, Baltimore, Birmingham, Boston, Buffalo/Niagara Falls, Charlotte, N.C., Chicago, Cincinnati, Cleveland, Columbia, S.C., Columbus, Ohio, Dayton, Detroit, Greensboro, N.C., Greenville, S.C., Indianapolis, Jacksonville, Fla., Louisville, Ky., Milwaukee, Norfolk, Pittsburgh, Raleigh/Durham, N.C., Richmond, Va., Rochester, N.Y., Savannah, Ga., Syracuse, and Washington, D.C.

[3] PX-100 through PX-411.

[4] ER-1180, June 17, 1980; effective date, August 24, 1980.

[5] Each of People Express' key personnel was previously associated with Texas International Airlines, Inc.

[6] People Express plans to operate with DC-9 or B-737 aircraft. PX-212.

[7] Application of People Express, Inc., Docket 38488, Introduction, pp. 2-3.

[8] Orders 79-12-78, December 13, 1978; 79-6-79, June 11, 1979.

[9] Application of People Express, Inc., Docket 38488, Introduction, pp. 20-27, filed in compliance with 14 CFR 251.3.

before an Administrative Law Judge of the Board as soon as possible.[10]

The prime issue to be resolved is whether People Express, Inc., is fit, willing and able within the meaning of section 401(d)(1) of the Act to perform the transportation which it has proposed. In addition, the hearing will include the issue of whether we should approve the interlocking relationship of Mr. Larry J. Lawrence between Federal Express and People Express as not adversely affecting the public interest. We have been employing the evidentiary requirements of Part 204 as an evidence request; [11] since People Express has submitted the exhibits required by Part 204, we see no need for an evidence request here. Interested persons who wish to request additional evidence should file their responses within 10 days of the date of service of this order. In addition, petitions for leave to intervene should be filed within 10 days of the service date of this order. We believe that these measures will expedite the proceeding, and we urge the Administrative Law Judge to take such other measures in the interest of expedition as he considers appropriate.

People Express has included in its exhibits illustrative service proposals for 27 New York/Newark markets. It has provided detailed financial data for three of these markets which it believes to be representatives. In accordance with our policy in fitness cases,[12] the hearing need not involve an examination of the applicant's service proposals with regard to finances beyond these three representative markets for which detailed financial data have been submitted. The applicant is not required to demonstrate that the three "representative" markets will in fact be the first three markets in which it will commence service or to demonstrate the feasibility of simultaneously providing service in all or any number of the markets for which it seeks authority.[13]

Accordingly: 1. We institute the *People Express Fitness Investigation*, Docket 38511, and set it for hearing before an Administrative Law Judge of the Board, on an expedited basis, at a time and place to be determined later, on the issues of whether People Express is fit, willing and able to perform the services described in its application and comply with the Act and our rules, regulations and requirements, and whether we should approve under section 409 the interlocking relationship of Mr. Larry J. Lawrence between Federal Express and People Express, as not adversely affecting the public interest;

2. We waive the answer period required by section 1720(d) of our expedited procedures with regard to the above two issues;

3. We direct all interested persons to file requests for additional evidence no later than August 4, 1980; and

4. We direct all interested persons who request leave to intervene to file petitions for leave to intervene no later than August 4, 1980.

We will publish this Order in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-22611 Filed 7-25-80; 8:45 am]

BILLING CODE 6320-01-M

[10] By this Order, we waive the 28-day answer period required by 14 CFR 302.1720(d) with regard to the fitness and section 409 issues only. Interested persons will have ample opportunity to respond to those issues at the hearing. We will deal with the public convenience and necessity issues in accordance with our expedited procedures.

[11] *See, e.g.*, Orders 80-3-90, March 14, 1980; 79-11-8, November 1, 1979; 79-5-243, May 31, 1979.

[12] *See* Orders 80-5-93, March 14, 1980; 80-3-74, March 14, 1980; 79-12-151, November 28, 1979; 79-11-200, November 28, 1979.

[13] *See* Order 79-1-7, January 2, 1979, p. 6.

[Docket 38067; Order 80-7-129]

Provincetown-Boston Airlines, Inc.; Order Denying Application

July 21, 1980.

Application of Provincetown-Boston Airlines, Inc. for an exemption pursuant to Section 416(b) of the Federal Aviation Act, as amended.

By application filed April 21, 1980, Provincetown-Boston Airlines, Inc. (PBA), a commuter air carrier, requests the Board to exempt it and other commuters from section 298.11(b) of our Regulations, which currently precludes air taxi operators from filing tariffs under section 403 of the Act for other than, *inter alia*, "... through rates, fares, and charges filed jointly by air taxi operators with air carriers or foreign air carriers...." [1] If granted the requested exemption, PBA states it would then be able to establish joint fares with other commuters "in the public interest."

PBA cites at length various reasons why the requested exemption should be granted by which in essence, reduce to one problem. The carrier argues that, absent the opportunity to join in the industry's [2] joint fares tariffs, which are on file with the Civil Aeronautics Board and are distributed to all scheduled airline and travel agent ticket offices, the public has no way of knowing that joint fares exist between any given air taxi and another commuter.[3]

Upon consideration of the application the Board will deny the request. While PBA may be experiencing difficulty in bringing all of its services to consumers' attention, the requested change in Board policy is not a necessary part of the solution and would contravene other valid Board objectives.

At the outset, it should be noted that the Board's policy against the filing of tariffs by commuters is longstanding. In 1970 (in Docket 22700), Air Wisconsin, then an air-taxi operator, applied for a three-year waiver from the tariff-filing exemption granted in Part 298 of the Board's Economic Regulations, which the Board denied by Order 71-10-1, dated October 1, 1971. We reasoned that bringing commuters within the ambit of the tariff system would be inefficient in light of their size, need for flexibility, and the costs of meeting regulatory requirements. Permitting piecemeal or optional entry into the system could be confusing to consumers and industry alike. We are still of the same view insofar as the filing by air taxi of binding tariffs, within the meaning of section 403 of the Act, is concerned. The thrust of deregulation and the 1983 sunset of domestic tariff requirements both militate against a change in policy now.

Nevertheless, we are anxious to contribute to some solution to the commuters' problem. Our second reason for denying PBA's request is that we believe we can provide the commuters with what appears to be a workable alternative. At the present time, as part of the official "CAB" tariffs filed with the Board for domestic certificated passenger service (local and joint fares and rules), ATP files joint fares and rules tariffs covering passenger service between air taxi commuters on the one hand, and certificated air carriers on the other, as permitted by section 298.11(b). Though domestic air freight tariffs are no longer filed with the board, ATP publishes air freight "books" (*e.g.*, memorandum tariffs), which bear no CAB filing number. Plans are nearly complete to do the same for PBA and other air taxi commuter local passenger fares.

All of the foregoing are sent to standard mailing lists of public

[1] Although section 298.11(b) is silent as to joint rules tariffs, the cited exclusion has been construed to include governing joint rules.

[2] Virtually all of the domestic passenger tariffs are published by Airline Tariff Publishing Company (ATP), Washington, D.C., a corporation wholly owned by the U.S. scheduled airlines.

[3] This conclusion is supported by a letter dated April 29, 1980, addressed to the Board by Scenic Airlines. Technically, this letter was not properly filed as a response to PBA's application. However, inasmuch as this application is unopposed, we will consider Scenic's letter as an answer in this Docket.

subscribers, airline passenger and freight offices, and travel and cargo agent offices.[4] Thus, one apparent solution to PBA's desire to publicize joint commuter-commuter fares and rules is to publish them in memo/book form, without the burden of regulatory review and sanctions, and distribute them either within the industry CAB tariffs, or separately. We see no reason why such joint memo tariffs, or additional tariff section, could not be distributed to the same mailing list as the joint tariffs which are filed with the Board. We note that the Chief of our Tariff Division addressed a letter on January 4, 1980, to the Commuter Airline Association of America, Washington, D.C., where he stated, with respect to the inclusion of commuter local fares in the CAB tariffs of certificated air carriers, "we believe such a publication may be possible if the commuter fares are clearly identified as being for information only." We confirm this view, and additionally, we are prepared to accept joint commuter-commuter fares and rules information-only tariffs as well.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a) and 416 thereof,

It is ordered that:

1. The application of Provincetown-Boston Airlines, Inc., in Docket 38067 is hereby denied.

2. Commuter airlines will be permitted to file information-only tariffs with the Board covering local or joint (between two or more commuters) fares and rules.

3. A copy of this order will be served upon Provincetown-Boston Airlines, Inc., the Commuter Airline Association of America, Scenic Airlines, and all other commuter air carriers.

This order will be published in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-22608 Filed 7-25-80; 8:45 am]

BILLING CODE 6320-01-M

[4] See also Order 80-6-3, dated June 2, 1980, concerning the distribution of ATP's tariffs to travel agents.

CIVIL RIGHTS COMMISSION

Alabama Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Alabama Advisory Committee (SAC) of the commission will convene 1:30 pm and will end at 4:30 pm, on August 22, 1980, at 710 North 20th Street, Birmingham, Alabama 32503.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office, Citizens Trust Bank Bldg., Rm. 362, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303.

The purpose of this meeting is to discuss the National Voting Rights Project and planning of Advisory Committee participation in project.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-22592 Filed 7-25-80; 8:45 am]

BILLING CODE 6335-01-M

Georgia Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Georgia Advisory Committee (SAC) of the Commission will convene at 2:00 pm and will end at 5:30 pm, on August 15, 1980, at 85 Beachview Drive, Quarter Deck, Jekyll Island 31520.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office, Citizens Trust Bank Building, Rm. 362, 75 Piedmont Avenue NE, Atlanta, Georgia 30303.

The purpose of this meeting is to plan a meeting for possible inclusion of selecting two counties in South Georgia in the voting rights project.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 21, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-22595 Filed 7-25-80; 8:45 am]

BILLING CODE 6335-01-M

Massachusetts Advisory Committee; Amendment

Notice is hereby given pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a planning meeting of Massachusetts Advisory Committee (SAC) of the Commission originally scheduled for August 8, 1980, at Boston, Massachusetts (FR Doc. 80-21177 on page 47717) has been changed.

The meeting now will be held on August 6, 1980, beginning at 2:30 pm and will end at 5:30 pm, at the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110.

Dated at Washington, D.C., July 22, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-22594 Filed 7-25-80; 8:45 am]

BILLING CODE 6335-01-M

Vermont Advisory Committee; Amendment

Notice is hereby given pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a planning meeting of the Vermont Advisory Committee (SAC) of the Commission originally scheduled for August 8, 1980, at Burlington, Vermont, (FR Doc. 80-21177 on page 47718) has been changed.

The meeting now will be held on August 11, 1980, beginning at 7:00 pm and will end at 9:00 pm, at the Hoff and Powel, P.C., 192 College St., Burlington, Vermont.

Dated at Washington, D.C., July 22, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer

[FR Doc. 80-22593 Filed 7-25-80; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Cost Comparison Reviews Scheduled for Commercial or Industrial Activities Performed by Government Personnel in the Bureau of Economic Analysis

Notice is hereby given that pursuant to Office of Management and Budget (OMB) Circular A-76 and Department of Commerce Adminstrative Order 201-41, the Bureau of Economic Analysis intends to conduct cost comparisons of the following commercial or industrial activities performed by Government personnel in the Bureau of Economic Analysis and to issue an invitation for bids or request for proposals after the start date scheduled for each review:

Description of activity and location	*Review start*	*Review completion*
Computer operations, Washington, D.C.	04-01-81	03-31-82
Data entry, Washington, D.C.	01-01-81	03-31-82

Each invitation for bids or request will be announced in the Commerce Business Daily.

A contract or contracts may or may not result from the cost comparison of each activity. Results of the cost comparison of an activity will be made

available to responding bidders or offerors, and other interested parties.

FOR FURTHER INFORMATION CONTACT: Vincent C. Finelli, Chief, Computer Systems and Sevices Division, Bureau of Economic Analysis, Department of Commerce, Washington, 20230 (202–523–0981).

Dated: July 18, 1980.

Allan H. Young,

Deputy Director, Bureau of Econimic Analysis.

[FR Doc. 80-22561 Filed 7-25-80; 8:45 am]

BILLING CODE 3510-06-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $5.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usuall be made available to serious prospective licensees upon execution of a non-disclosure agreement.

Requests for information on the licensing of particular inventions should be directed to the addresses cited for the agency-sponsors.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

U.S. Department of the Air Force AF/JACP, 1900 Half Street SW., Washington, DC 20324.

Patent Application 6–088,503: Broad Spectrum Vibration Damper Assembly Fixed Stator Vanes of Axial Flow Conpressor; filed Oct 26, 1979.

Patent Application 6–105,362: Surface Acoustic Wave Substrate Having Orthogonal Temperature Compensated Propagation Directions and Devise Applications; filed 19 Dec 79.

Patent Application 6–115,514: Instantaneous Opening Positive Lock Mechanism; filed 25 Jan 80.

Patent Application 6–115,646: Long Time Constant Clutter Tracker for Radar System; filed 28 Jan 80.

Patent Application 6–115,847: Radial and Axial Flow Variable Exhaust Nozzle for a Gas Turbine Engine; filed 28 Jan 80.

Patent Application 6–118,007: Windscreen Angular Deviation Beam Position Locator; filed 4 Feb 80.

Patent Application 6–119,345: Signal Injection Circuit for Radar Gain and Noise Tests; filed 7 Feb 80.

Patent Application 6–120,809: High Power Microwave Generator Apparatus; filed 12 Feb 80.

Patent Application 6–123,334: Digital Integrating/Auto-correlator Apparatus; filed 21 Feb 80.

Patent Application 6–123,335: High Speed Frequency Acquisition Apparatus for Microwave Synthesizers; filed 21 Feb 80.

Patent Application 6–123,612: Coupler for Feeding Extendible Transmission Line; filed 22 Feb 80.

Patent Application 4,187,675: Compact Air-to-Air Heat Exchanger for Jet Engine Application; filed 14 Oct 77, patented 12 Feb 80. Not available NTIS.

Patent Application 4–191,561: Method for the Production of Trialuminum Nickelide Fibers; filed 12 Dec 78, patented 4 Mar 80. Not available NTIS.

Patent Application 4–193–032: High Speed Transmitter Pluser; filed 8 May 69, patented 11 Mar 80. Not available NTIS.

Patent Application 4–193,047; Frequency Selective Ferrimagnatic Power Limiter; filed 2 May 78, patented 11 May 80. Not available NTIS.

Patent Application 4–193,066: Automatic Bias Adjustment Circuit for a Successive Ranged Analog/Digital Converter; filed 20 Apr 78, patented 11 Mar 80. Not available NTIS.

Patent Application 4–194,186: Digital Hysteresis Circuit; filed 20 Apr 78, patented 18 Mar 80. Not available NTIS.

Patent 4–194–924: Process for Reclaiming Aircraft Fuel Tank Purging Fluids; filed 13 Dec 78, patented 25 Mar 80. Not available NTIS.

Patent Application 4–194–983: Perfluorinated Polyalkylether Based Lubricant Composition; filed 6 Feb 79, patented 25 Mar 80. Not available NTIS.

U.S. Department of the Navy, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, VA 22217.

Patent Application 6–039,990: Camera Jig for Underwater Stereoscopic Photography; filed 16 May 79.

Patent Application 6–045,375: Cavity Dumper; filed 31 May 79.

Patent Application 6–109,011: Insulated Gate Field-Effect Transistors; filed 31 Dec. 79.

Patent Application 6–109,692: Solvent Having High Flash Point; filed 4 Jan. 80.

Patent Application 6–110,428: Frequency Adjustment of Surface Acoustic Wave Devices through Crystal Rotation; filed 7 Jan 80.

Patent Application 6–113,865: Synthesis of Hexanitrobenzene; filed 18 Jan 80.

Patent Application 6–114,783: Wire Rope Lubricator Cleaner; filed 24 Jan 80.

Patent Application 6–115,631: Overlay Data Entry Device for Automated Data Systems; filed 28 Jan 80.

Patent Application 6–121,937: A Method for Determining In Situ the Absorption Coefficient of Particulate Media Using Pulsed Laser Technique; filed 15 Feb 80.

Patent Application 6–122,648: High Sensitivity, Low Noise, Remote Optical Fiber; filed 19 Feb 80.

Patent Application 6–122,944: Ablative-Resistant Dielectric Ceramic Articles; filed 20 Feb 80.

Patent Application 6–122,945: A Method of Forming Thin Niobium Carbonitride Superconducting Films of Exceptional Purity; filed 20 Feb 80.

Patent Application 6–124,204: Regenerative CO_2 Absorbent; filed 2 Feb 80.

Patent Application 6–125,299: A Scattered-Light Imaging System; filed 27 Feb 80.

Patent Application 6–125,426: Ion-Implanted Evaporated Germaniun Layers as n+ Contacts to GaAs; filed 28 Feb 80.

Patent Application 6–125,427: An Improved Laser Technique for Accurately Determining the Compensation Density in n-Type Narrow Gap Semiconductor; filed 28 Feb 80.

Patent Application 4–156,863: Conical Beam Transducer Array; filed 28 Apr 78, patented 29 May 79. Not available NTIS.

National Aeronautics and Space Administration, Assist. Gen. Coums. for Pat. Matters, NASA Code GP–2, Washington, DC 20546.

Patent Application 6–111,438: Automated Syringe Sampler; filed 11 Jan 80.

Patent Application 6–119,334: Method of Forming Dynamic Membrane on Stainless Steel Support; filed 7 Feb 80.

Patent Application 6–119,335: High Temperature Penetrator Assembly with Bayonet Plug and Ramp-Activated Lock; filed 7 Feb 80.

Patent Application 6–119,336: A Linear Magnetic Motor/Generator; filed 7 Feb 80.

Patent Application 6–122,965: Thermocouple, Multiple Junction Reference Oven; filed 22 Feb 80.

Patent Application 6–122,966: Coupled Cavity Traveling Wave Tube with Velocity Tapering; filed 20 Feb 80.

Patent Application 6–058,658: Flexible Formulated Plastic Separators for Alkaline Batteries; filed 19 Jul 79.

Patent Application 6–079,914: Flexible Formulated Plastic Separators for Alkaline Batteries; filed 28 Sep 79.

[FR Doc. 80-22454 Filed 7-25-80; 8:45 am]

BILLING CODE 3510-04-M

National Telecommunications and Information Administration

Satellite Teleconference on Increasing Participation of Minorities and Women in Public Telecommunications; Solicitation for Grant Proposals

The National Telecommunications and Information Administration solicits proposals to conduct a Satellite Teleconference on Increasing

Participation of Minorities and Women in Public Telecommunications to be held between September 30 and December 1, 1980. Purpose of the conference is to provide opportunity for interaction and sharing of information among a widely-dispersed audience of persons interested in increasing the involvement in public telecommunications of minorities and women. The major topics would address media options and sources of technical, financial, and orgainizational assistance for minorities and women. NTIA is seeking proposals from public and private non-profit and for-profit organizations to organize and conduct the proposed teleconference.

Background

NTIA is mandated to coordinate Federal assistance and provide appropriate information which will help to increase the control and involvement of minorities and women in telecommunications, under the Administration's January 1978 initiative establishing the Minority Telecommunications Development Program. In the field of public telecommunications, NTIA also has the particular responsibility for taking affirmative steps to provide such information and assistance as may be appropriate to increase public telecommunications services and facilities available to, operated by, and owned by minorities and women. (Pub. L. 95-567, Sec. 390 and 392 (f)).

Previous meetings conducted for purposes similar to the conference here proposed have established the existence of a large and widely-dispersed audience with a strong interest in obtaining information and making personal contact with sources of assistance. However, many people in this audience who would benefit the most from the information and contacts afforded by a conference do not have access to funds for travel to a distant site, and could take advantage of an opportunity to attend only if a conference were held near their homes. NTIA wishes to support and activity which will be of maximum service to the minorities and women who would otherwise be denied access to the information to be made available. Innovatives and cost-effective approaches which will fulfill the conference purpose are welcomed. On such concept is as follows: A one-way video signal would originate in a site central to a number of agencies and organizations which provide services and funding for the target groups, with two-way audio to perhaps twenty sites located in strategic communities throughout the United States. The format for the conference would consist of two or three 15-30 minute panel presentations which would include visuals illustrating projects, programs and practices exemplifying telecommunications options and issues of special interest to minorities and women. Time would be allowed for questions and comments telephoned in from the various sites. The total elapsed time would be about two hours. The time of day and date selected would be done in cooperation with key participants and to avoid conflict with other events of interest to the audience.

It is anticipated that the approach selected will require the grantee to develop program concepts, visuals and supporting program materials, and to provide technical and administrative services to arrange for satellite time, telephone hookup, origination studio, production assistance, facilities and crew, and receive site facilities coordination. Travel or honoraria for up to 30 participants are eligible costs.

In order for the site selection process to be most responsive to participant interest, the proposer should consider suggesting means by which flexibility in adding or substituting sites may be achieved. A preliminary review of sites has been made by NTIA staff, based upon demography, local leadership, and geographic balance. The 20 most promising sites, with 14 alternates, are listed below in order of anticipated participant response:

1. Washington, DC
2. New York City, NY
3. Los Angeles, CA
4. Chicago, IL
5. San Francisco, CA
6. Philadelphia, PA
7. Detroit, MI
8. Houston, TX
9. Miami, FL
10. St. Louis, MO
11. Cleveland, OH
12. Dallas, TX
13. New Orleans, LA
14. Atlanta, GA
15. Memphis, TN
16. El Paso, TX
17. Denver, CO
18. Seattle, WA
19. Kansas City, MO
20. Boston, MA

Other Sites of Interest:

21. San Antonio, TX
22. Birmingham, AL
23. Phoenix, AZ
24. San Diego, CA
25. Minneapolis/St. Paul, MN
26. Oklahoma City, OK
27. Jacksonville, FL
28. Lincoln, NE
29. Salt Lake City, UT
30. Columbia, SC
31. Chapel Hill, NC
32. Jackson, MS
33. Knoxville, TN
34. Dayton, OH

A. Applicable Regulations

Regulations applicable to this grant program are:

1. *41 FR 148 (Friday, July 30, 1976),* Uniform Administrative Requirements for Grants to Hospitals, Educational Institutions and Nonprofit Organizations, OMB Circular A-110.

2. *42 FR 176 (Monday, September 12, 1977)* Uniform Administration Requirements for Grants-In-Aid to State and Local Governments, OMB Circular A-102.

3. Proposals must not violate or abridge pertinent Federal Communications Commission (FCC) regulations. The applicant assumes full responsibility for compliance with FCC regulations, tariff filings, rulemakings, and procedures throughout the term of the grant.

4. *44 FR 185 (Friday, September 21, 1979)* Proposed Order on Grants Administration for the U.S. Department of Commerce.

Effective Date and Duration

1. It is intended that grant awards be made on or about August 29, 1980.

2. To avoid unnecessary delays in the preparation and receipt of proposals, this notice is effective immediately. Applications will be accepted no later than 5:30 PM EDT, August 15, 1980.

3. The grant program remains in effect no longer than three months, commencing on the date of the grant award. Inasmuch as the information to be presented is timely and urgent to the intended audience, the planning and execution of the teleconference should be completed no later than December 1, 1980.

C. Statement of Funds Availability

1. A maximum of $16,000 is available for all expenses necessary to the conduct of the teleconference.

D. Eligible Applicants

1. Proposals are solicited from non-federal entities that are public or private, for-profit or non-profit organizations, under limitations described below.

2. *Limits on Eligibility*—In July, 1980, NTIA is announcing the winners of a competitive procurement to identify Public Telecommunications Service (PTS) organizations to aggregate public service agencies and procure for them communications services at affordable rates. NTIA's mission under Presidential Directive 42 is, to "* * * formulate policy, *to assist in market aggregation,* technology transfer, and possible

development of domestic and international public satellite services * * *." (emphasis supplied). There is substantial reason for NTIA to encourage applicants to use the networks and services being established under the competition for Public Telecommunications Service (PTS) organizations. The PTS grantees themselves are eligible to apply, but others may propose to use their facilities on a resale basis if such arrangements can be negotiated. While NTIA will entertain proposals from entities proposing the use of telecommunications systems other than the identified PTS organizations, there must be compelling evidence of a cost savings before a grant could be made to an organization proposing to use a network not developed under the PTS competition.

E. The Application

1. Standard OMB Application Form 424 must be completed and submitted.

2. *Proposal Summary:* Each proposal should begin with a brief (1-page) summary of its contents. The summary should immediately state the essence of the proposal. It should describe the proposed approach, the major credentials of the proposer, and the full direct costs for providing the proposed services.

3. *Procedures for Planning and Organizing a Satellite Teleconference on Increasing Participation of Minorities and Women in Public Telecommunications:* Following are five sections which must comprise the body of the proposal and which reflect the criteria by which the proposals will be weighed. Adherence to the prescribed format is recommended, since failure to respond to all requirements may result in disqualification. The criteria that reviewers will employ in evaluating and selecting proposals, and their relative weights, are indicated below. Applicants should be certain that proposals are closely responsive to these criteria.

(a) *Teleconference scope and content* (15 percent).

This section should identify the major themes and organization of the proposed teleconference, the concepts and material to be covered, and outcomes the teleconference will seek to achieve.

(b) *Demonstrated competence and technical reliability* (30 percent).

Proposer should briefly describe any previous experience in planning and managing satellite teleconferences and similar activities, and provide references which may be contacted to verify cited activities.

(c) *Quality of organizational planning for management of the conference* (20 percent).

This section must describe the general approach in sufficient detail so that reviewers have a clear and concrete concept of how the proposed teleconference will accomplish the purpose stated. Where appropriate, alternative approaches may be discussed. This section should also identify tasks to be carried out, a timetable of activities, the nature of the services to be provided, and the organizational structure for providing technical and administrative services. These services should include but not be limited to the following:

(1) arrange for satellite time, origination studio, production assistance, facilities and crew;

(2) Arrange for telephone hookup for participants to use at all sites;

(3) arrange for receive site facilities;

(4) Preparation of visuals, scripting, and teleconference management.

(d) *Ability to provide on-side support* (15 percent).

This section should describe the arrangements and agreements for assuring that adequate organizational support and facilities are provided at local sites to encourage the broadest possible participation. Flexibility in substituting and adding sites will be considered here.

(e) *Statement of estimated costs* (20 percent).

Applicants must submit an itemized budget. While matching contributions are not required, any matching funds provided by an alternative source should be described. If any teleconference costs are being quoted at less than the full direct cost to the applicant, it *must* be indicated here.

F. Applications Review Process

1. Applications will be reviewed by a panel of experts from the field of public telecommunications.

2. Nothing in this Solicitation shall be construed as committing the Assistant Secretary, or delegated authorities, to dividing available funds among qualified applicants.

G. Reporting Requirements

Within 30 days of the teleconference, the grantee will provide a short report. The major purpose of the report is to improve the planning and management of future teleconferences. Content of the report should include but not be limited to the following:

1. A statement assessing the effectiveness of the teleconference and impact on participants, as perceived by the grantee.

2. A listing of all participants and the groups or institutions they represent, and any available evidence of their reactions to the teleconference and its subject matter.

3. A description and documentation of factors which contributed to or were detrimental to the effective planning, management and conduct of the teleconference.

H. Proposals Sent by Mail

Applications sent by mail will be considered to be on time by the Grants Program Administrator if the applications were sent by registered or certified mail and mailed not later than August 15, 1980, as evidenced by the U.S. Postal Service. It may be necessary to ask Postal Officials for a date stamp.

I. Hand Delivered Proposals

Hand-delivered proposals must be taken to the Grants Officer at the address listed at the end of this Solicitation. These will be accepted daily between 9:00 AM and 5:30 PM (EDT), except Saturdays and Sundays, or Federal holidays. Proposals will NOT be accepted after 5:30 PM EDT on the closing date.

J. Disposition of Proposals

Applicants are required to fill out a self-addressed postcard, included with proposal materials, so NTIA may notify applicants of receipt of proposals within ten working days.

K. Proposal Instructions and Forms

1. An original and five copies of the proposal and supporting materials must be submitted.

2. Questions concerning the preceding information and applications materials shall be addressed to: Mary W. Dinota or Pauline M. Masterton, Grants Program Administrators, Public Telecommunications Facilities Program, Office of Telecommunications Applications, National Telecommunications and Information Administration, U.S. Department of Commerce, 608 13th Street, N.W. Suite 803, Washington, D.C. 20004 (202) 724-3307.

L. Authorizing Signature

This solicitation is issued with the authority of the Assistant Secretary of

Commerce for Communications and Information and/or delegated officials.

Dr. William A. Lucas,

Associate Administrator for Telecommunications Applications, National Telecommunications and Information Administration.

[FR Doc. 80-22597 Filed 7-25-80; 8:45 am]

BILLING CODE 3510-60-M

National Oceanic and Atmospheric Administration

Transfer of a Fishing Vessel to Foreign Ownership

Notice is hereby given that the Maritime Administration of the Department of Commerce has received an application from Baywaters, Inc., 565-150th Avenue N., Madeira Beach, Florida 32340, for approval of the sale of the 41.9' registered length fishing vessel HEIDY M, Offical Number 545654, to N and M Fish Corporation, 247 Rex Place, Apartment 4, Madeira Beach, Florida 32340. Such approval is required by Section 9 of the Shipping Act, 1916, as amended (46 U.S.C. 808) by reason that N and M Fish Corporation, a corporation organized under the laws of the State of Florida, is not a citizen of the United States within the meaning of Section 2 of the Act because more of its directors than a minority of the number necessary to constitute a quorum are non-citizens (Ryszard Malek, who holds 49 percent of the Corporation's stock and is one of its two directors, is a Polish citizen).

Baywaters, Inc., operated HEIDY M in the fishery for grouper and snapper in the Gulf of Mexico. N and M Fish Corporation proposes to continue operating the vessel in the same fishery.

The Maritime Administration is the Federal Agency responsible for the approval or disapproval of applications submitted pursuant to Section 9 of the Shipping Act. However, the Maritime Administration customarily solicits the views of the National Marine Fisheries Service before deciding on applications relating to fishing vessels, and has sought the views of the Service in regard to this application.

Accordingly, the Service solicits the written comments of interested persons concerning the subject sale. Such comments should be addressed to the Chief, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235, and received not later than August 27, 1980. All communication received by such date will be considered before action is taken on this application. No public hearing is contemplated at this time.

Dated: July 21, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-22625 Filed 7-25-80; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards; List of Members

Notice is hereby given of the names of all the eligible members of the Performance Review Boards for Department of the Air Force.

In accordance with Section 4314(c) (1) through (5) of Title 5 U.S.C., the Department of the Air Force will have five Performance Review Boards as follows: (1) Office, Secretary of the Air Force; (2) Air Staff, (3) HQ Air Force Systems Command, (4) HQ Air Force Logistics Command, (5) Vice Chief of Staff for organizations not listed above. Eligible members are:

Secretariat

Antonia H. Chayes, Under Secretary of the Air Force
Robert J. Hermann, Asst Secy (Research, Development, and Logistics)
Joseph C. Zengerle, Asst Secy (Manpower, Reserve Affairs and Installations)
Charles W. Snodgrass, Asst Secy (Financial Management)
Boyd W. Allen, Jr., Asst General Counsel (International Matters and Civil Affairs), SAF
Walter R. Beam, Deputy for Advanced Technology
Nancy Dyke, Principal Deputy Asst Secy for Manpower Resources and Military Personnel
Clarence E. Bergman, Deputy Director—SHAPE Technical Center
James F. Boatright, Deputy for Installations Management
John W. Boddie, Deputy for Accounting and Internal Audit
Charles W. Cook, Deputy Asst Secy for Space, Plans and Policy
Henry F. Cooper, Jr., Deputy for Strategics and Space Systems
Robert Crittenden, Deputy Administrative Assistant
Thomas Falatko, Deputy for Transportation and Civil Aviation
Oscar A. Goldfarb, Deputy for Supply and Maintenance
Harvey J. Gordon, Deputy for Acquisition
Donald J. Haas, Deputy Under Secretary (Space Systems)
Jimmie D. Hill, Director Office of Space Systems
Carroll G. Jones, Deputy for Programs and Production
Eugene H. Kopf, Principal Deputy Assistant Secretary (Research, Development, and Logistics)
Jerry A. Lebo, Chief Communications Division—SHAPE Technical Center
George N. McWilliams, Deputy Assistant Secretary for Reserve Affairs
Joe F. Meis, Principal Deputy Assistant Secretary for Manpower, Reserve Affairs and Installations
Willard H. Mitchell, Principal Deputy Assistant Secretary Programs and Budget
Lloyd K. Mosemann II, Deputy Assistant Secretary (Logistics)
Riner C. Payne, Deputy for Financial Systems and Analysis
Phillip L. Radoff, Deputy General Counsel
Daniel S. Rak, Assistant General Counsel, Procurement
Stuart R. Reichart, General Counsel
Grant C. Reynolds, Assistant General Counsel, Installations
John O. Rittenhouse, Assistant Deputy for Base Utilization
Carlos D. Stern, Deputy for Environment and Safety
Gail B. West, Deputy for Equal Opportunity
James E. Williams, Deputy Assistant Secretary (Program/Acquisition)
Walter A. Willson, Assistant General Counsel, (Personnel and Fiscal)

Air Staff

Leroy T. Baseman, Associate Director of Management Analysis
Thomas G. Belden, Scientific and Technical Advisor
J. Craig Cumbey, Deputy Assistant Secretary (Civilian Personnel Policy) and Director of Civilian Personnel
Joseph E. Del Vecchio, Associate Director for Logistics Plans and Programs
Bernard Dove, Associate Director for Programs
Frank A. Fishburne, Deputy Comptroller
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John T. Nethery, Chief, Investment Appropriations Division
John D. Pafenberg, Special Advisor
Joseph P. Popple, Assistant Director of Budget (Management)
Donald F. Rellins, Director, Office of Small and Disadvantaged Business
Harry P. Rietman, Associate Director for Engineering and Services
Joseph E. Rusz, Chief Patents Division
Robert N. Schwartz, Assistant for Special Studies
Edwin B. Stears, Chief Scientist
Clayton J. Thomas, Scientific and Technical Advisor
Jack K. Umphrey, Chief, Operating Appropriations Division
Sylvia I. Waller, Scientific and Technical Advisor
Howard A. Zwemer, Scientific and Technical Advisor
Major General William Usher, Director, Personnel Plans, DCS/MP HQ USAF
Brigadier General Richard D. Murray, Deputy Director of Budget, HQ USAF/AC
Brigadier General Clifton D. Wright, Jr., Deputy Director, Engineering and Services, DCS/LE HQ USAF
Brigadier General Joseph H. Connolly, Director of Contracting and Acquisition Policy, DCS/RD&A, HQ USAF

Brigadier General Milton, R. Peterson, Director for Program Integration, DCS/RD&A, HQ USAF

Air Force Logistics Command (AFLC)

William N. Akin, Assistant Deputy Chief of Staff—Comptroller
Robert E. Darling, Assistant Deputy Chief of Staff, Maintenance
Morris F. Ezell, Deputy Director of Materiel Management, WRALC
Claude J. Farinha, Deputy Director for Materiel Management, SMALC
Ralph C. French, Chairman AF Logistics Command Procurement Committee, AFLC
Donald K. Jones, Assistant Deputy Chief of Staff/Logistics Operations, AFLC
Earvin Joyner, Deputy Director of Maintenance
Ferdinand E. Maese, Deputy Director of Materiel Management, SAALC
Richard G. McKenzie, Deputy Director of Maintenance
Aristides Sarris, Assistant Deputy Chief of Staff/Plans and Operations, AFLC
Robert Scott, Director of Civilian Personnel, AFLC
Wayne D. White, Assistant Deputy Chief of Staff/Contracting and Manufacturing, AFLC
MG Lynwood E. Clark, Commander, San Antonio ALC, AFLC
MG Jay T. Edwards III, Commander, Oklahoma City ALC, AFLC
MG William J. Kelly, Chief of Staff, AFLC
MG Dewey K. K. Lowe, Commander, Sacramento ALC, AFLC
MG John J. Murphy, Commander, Ogden ALC, AFLC
MG Earl T. O'Loughlin, DCS Maint, AFLC
MG John R. Paulk, Commander, Warner Robins ALC, AFLC
MG (Sel) Marc C. Reynolds, Vice Commander, AFALD, AFLC
MG Jack W. Waters DCS/Log Ops, AFLC
BG (Sel) America P. Bruno, Vice Commander, Ogden ALC, AFLC
BG Lewis G. Curtis, Vice Commander, San Antonio ALC, AFLC
BG (Sel) James C. Dever, Jr., DCS/Contracting and Mfg, AFLC
BG (Sel) David M. Hall, DCS/Compt, AFLC
BG Charles W. Lamb, DCS/Engrg & Svcs, AFLC
BG Donald P. Litke, Vice Commander, Oklahoma City ALC, AFLC
BG Joseph R. Lowry, Stf Judge Advocate, AFLC
BG Leo Marquez, DCS/Plans & Prgms, AFLC
BG James R. McCarthy, Dep for Strat Msls, Space & Electronic Prgms, AFALD, AFLC
BG (Sel) Bernard P. Randolph, VC, Warner Robins ALC, AFLC
BG Graham W. Rider, Commander, Intl Log Cen, AFLC
BG (Sel) Larry N. Tibbetts, DCS/Manpwr & Pers, AFLC
BG (Sel) Marion F. Tidwell, Vice Commander, Sacramento ALC, AFLC

Air Force Systems Command (AFSC)

Jules Aarons, Senior Scientist (Radio Astronomy)
Charles W. Adams, Deputy Comptroller
Joseph Anderson, Director of Manufacturing
Petras V. Avizonis, Technical Director (Physical Optics, Lasers, Prototype)
Donald L. Ball, Director of Chemical Sciences
Morton L. Barad, Director, Meteorology Division
Robert E. Best, Assistant Deputy for Procurement and Manufacturing
Robert N. Braswell, Technical Director for Armament Systems
John S. Burgess, Research and Development Executive (Chief Scientist, RADC)
Harris M. Burte, Director, Metals and Ceramics Division
Anthony J. Cacioppo, Chief Scientist
Kenneth S. W. Champion, Chief Atmospheric Structure Branch
Keith I. Collier, Research and Development Executive (Deputy Director—AF Flight Dynamics Lab)
Charles R. Cooke, Director, Solid Rocket Division
Carlo P. Crocetti, Director (Plans)
Charles D. Cullom, Systems Engineering Director
John H. Darrah, Senior Advisor (Radiation Effects)
Fred I. Diamond, Technical Director (Communications and Control)
Howard L. Dimmig, Technical Advisor
Robert B. Doane, Deputy—Command and Management Systems
William C. Eppess, Jr., Director, Air Force Avionics Lab
Ronald W. Ewing, Technical Director (Electromagnetic Threat)
Maurice L. Fowler, Assistant Deputy—Procurement and Manufacturing
C. T. Lynch, Senior Scientist, Environmental Management, SAALC
Joseph R. Mayersak, Technical Director, Office of the Commander
John S. McCollom, Technical Director (Systems)
Robert T. McLean, Director of Civilian Personnel for AFSC
James A. Means, Technical Director, Space and Missile Test Center
Carl W. Miller, Technical Director (Electronic Warfare)
Gale E. Myers, Financial Management Assistant to the Deputy Chief of Staff/Comptroller
George P. Peterson, Deputy Director, AF Wright Aeronautical Labs
Alfred D. Phillips, Technical Director, Test Engineering and Services
John E. Pickering, Research Director
Frank F. Pilotte, Assistant Technical Director
Frederick T. Rall, Jr., Technical Director, Deputy for Engineering
B. A. Reese, Chief Scientist, AEDC
Jesse C. Ryles, Research and Development Executive (Chief Scientist, AF Avionics Lab)
Allan C. Schell, Director Electromagnetic Sciences Division
Ralph Shapiro, Chief Climatology Dynamics Branch
Walter Singlevich, Assistant Technical Director
Chistos G. Stergis, Director Aeronomy Division
Frederick N. Stoliker, Technical Director
Robert E. Supp, Research and Development Executive (Deputy Director, AF Aero Propulsion Lab)
Norman M. Tallan, Research and Development Executive (Chief Scientist, AF Materials Lab)
Christ Tamborski, Senior Scientist Organic Chemistry
Dr. Roy K. Frick, Technical Director (Aerospace Systems), Foreign Technology Division
John S. Garing, Director Optical Physics Division
Arthur H. Guenther, Research and Development Executive (Chief Scientist Air Force Weapon)
Don A. Hart, Research and Development Executive (Deputy Director, AF Rocket Propulsion)
Bryce O. Hartman, Research Director (Crew Technology)
Urban A. Hinders, Systems Engineering Director (Advanced Systems)
John N. Howard, Research and Development Executive (Chief Scientist, AFGL)
Harry M. Hughes, Research Director, Biometrics
Patsy F. Iampietro, Director Life Systems
Ralph C. Johnston, Technical Advisor (Systems Development and Acquisition)
Raymond L. Johnson, Systems Engineering Director
Adolph S. Jursa, Director Space Physics Division
Eugene Kalkman, Chief Engineer
Nicholas L. Karmele, Technical Director (Sensor Data)
Thomas W. Kelly, Director, Aerospace Instrumentation Division
Eugene W. Kirchmer, Assistant Deputy for Procurement and Manufacturing
Edward G. Koepnick, Technical Director (Propulsion System)
Lawrence Kravitz, Research and Development Executive (Director AF Office of Scientific Research)
Bernard A. Kulp, Research and Development Executive (Chief Scientist, Directorate of Science and Testing)
William J. Laubendorfer, Technical Director (Avionics and Strike Projects)
William L. Lehmann, Research and Development Executive (Director AF Weapons Laboratory)
Gerard Leies, Technical Director
Anthony A. Thomas, Director, Toxic Hazard Division
Chankey N. Touart, Senior Scientist Heat-Transfer
Richard K. Trask, Technical Director (Mission Analysis)
Stanley A. Tremaine, Assistant Deputy (Development Planning)
Edward J. Trusela, Principal Assistant Deputy Chief Staff for Procurement and Manufacturing
Stephen W. Tsai, Senior Scientist Mechanical and Surface Interactions Branch
Louis J. Urban, Technical Director (Avionics Control)
Richard L. Van Deusen, Senior Scientist Polymer Branch
Henning E. Von Gierke, Director, Biodynamics and Bionics Division
Thomas E. Walsh, Director Electronic and Solid State Sciences
Richard R. Weiss, Chief Scientist, Air Force Rocket Propulsion Laboratory
Billy E. Welch, Deputy Director USAF School of Aerospace Medicine
John A. Zoellner, Deputy Director, Electromagnetic Compatibility Analysis

MG James A. Abrahamson, DSC/Systems, AFSC
MG Merton W. Baker, Commander, AFCMD, AFSC
MG Robert M. Bond, Commander, Armament Division, AFSC
MG John T. Buck, Dep for AWACS, ESD, AFSC
MG Philip J. Conley, Jr., Commander AF Flt Test Cen, AFSC
MG Gerald K. Hendricks, Vice Commander, SD, AFSC
MG John W. Hepfer, Commander, Ballistic Missile Ofc, AFSC
MG Forrest S. McCartney, Vice Commander, Ballistic Missile Ofc, AFSC
MG John W. Ord, Commander AMD, AFSC
MG Robert A. Rushworth, Vice Commander, ASD, AFSC
MG Richard K. Saxer, Dep for Tac Sys, ASD, AFSC
MG James W. Stansberry, DCS/Contrg & Mfg, AFSC
BG Kenneth R. Bell, Dep for Comm & Info Sys, ESD, AFSC
BG Robert E. Chapman, Vice Commander, Armament Div, AFSC
BG Melvin F. Chubb, Jr., Strat Sys Prgm Dir, ASD, AFSC
BG Titus C. Hall, Dep for Recon & EW Sys, ASD, AFSC
BG (Sel) Elbert E. Harbour, Dep for Alft & Trainer Sys & C-X SPD, ASD, AFSC
BG Delbert H. Jacobs, DCS/Plans & Prgms, AFSC
BG Donald L. Lamberson, Dep Commander, Dev & Acq, AD, AFSC
BG Joseph D. Mirth, Dep for Space Launch & Con Sys, SD, AFSC
BG George L. Monahan, Jr., Dep for F-16, ASD, AFSC
BG Peter W. Odgers, DSC/Test & Eval, AFSC
BG Casper T. Spangrud, Vice Commander, ESD, AFSC
BG John H. Storrie, Inspector General, AFSC
BG Chester D. Taylor, Jr., Stf Judge Advocate, AFSC
BG William T. Twinting, Commander, SAMTO, AFSC
BG Kermit Q. Vandenbos, Commander, Wilford Hall USAF Med Cen, AFSC
BG (Sel) Wilma L. Vaught, DCS/Compt, AFSC
BG Brien D. Ward, Dir of Science & Tech, AFSC

Other

Robert D. Castater, Chief Science and Research, SAC
Roy E. Donegon, Director of Analysis, NORAD ADC
Robert N. Faiman, Director of Academic Affairs, ATC
Bernard A. Gardetto, Jr., Director, Acquisition and Logistics Systems, AFAA
Thomas Giammo, Scientific and Technical Advisor, AFCC
Donald L. Giadrosich, Director, Operations Analysis, USAFE
Charles H. Ham, Chief Scientist Tactical Air Warfare Center, TAC
Frank W. Heilenday, Chief Systems Evaluation Division, SAC
Robert F. Hiller, Chief, Operation Analysis, PACAF
Morton Herman Marks, Technical Assistant to Commander Data System Design Center, AFCC
Bernard C. Meredith, Technical Director, AFESC
George Mullins, Director of Civilian Personnal, USAFE
Janusz Przemieniecki, Dean School of Engineering, ATC
John K. Scott, Deputy Director, Accounting and Finance, AFAFC
John F. Shea, Assistant Deputy Chief of Staff for Plans, MAC
Gordon W. Sommers, Assistant to the Commander, Security Service
Jerome H. Stolarow, Auditor General, Audit Agency
Howard J. Talley, Jr., Chief, Operations Analysis, HDQS, TAC
Lynn D. Wolaver, Associate Dean for Research, School of Engineering, ATC
Thomas Yium, Chief Operations Analysis, AFCC
Major General Donald W. Bennett, Deputy Chief of Staff, Logistics, MAC
Brigadier General Robert F. McCarthy, Vice Commander, Air Force Communications Command
Brigadier General John E. Catlin, Jr., Deputy Chief of Staff, Engineering and Services, SAC
Brigadier General Thomas G. Darling, Deputy Chief of Staff, Personnel, SAC
Brigadier General John L. Pickitt, Assistant DCS/Plans, TAC
Brigadier General (Sel) William J. Breckner, Jr., Deputy Chief of Staff, Logistics, ATC
Brigadier General William M. Charles, Jr., Deputy Chief of Staff, Plans, ATC
Brigadier General William J. Mall, Jr., Deputy Chief of Staff, Personnel, MAC

Carol M. Rose,
Air Force Federal Register, Liaison Officer.

[FR Doc. 80-22455 Filed 7-25-80; 8:45 am]
BILLING CODE 3910-01-M

DEFENSE DEPARTMENT

Department of the Army

Reduced Maintenance Dredging of Navigation Channels

AGENCY: U.S. Army Corps of Engineers, DOD, New Orleans District.

ACTION: Notification of channel conditions and reduced maintenance dredging due to funding limitations.

SUMMARY: The Corps of Engineers is experiencing severe funding shortages in Fiscal Year 1980. This funding shortfall has required a reduction in the level of maintenance which can be performed. During Fiscal Year 1980 the following projects may be affected.

Project	Reach	Impact
Atchafalaya River, Morgan City to the Gulf of Mexico, LA.	Entrance channel.	Reduced channel depths.
Barataria Bay Waterway, LA and Bayou Rigaud.	Entrance channel main stem westerly 4.3 miles.	Reduced channel depths all 3 reaches.
Bayou Bonfouca, LA.....	Entrance channel.	Reduced channel depths.
Bayou Lacombe, LA.....	Entrance channel.	Reduced channel depths.
Chefuncte River and Bogue Falia, LA.	Entrance channel.	Reduced channel depths.
Freshwater Bayou, LA.....	Entrance channel to lock.	Reduced channel depths.
Houma Navigation Canal, LA.	Entrance channel and through Terrebonne Bay.	Reduced channel depths in both reaches.
Mississippi River Gulf Outlet, LA.	Breton Sound....	Reduced channel depths and width.
Mississippi River Outlets, Venice, LA.	Mississippi River to Gulf of Mexico and entrance channels through Grand-Tiger Pass and Baptiste Collette Bayou.	Reduced channel depths.

Information regarding actual channel conditions will be provided as appropriate by Navigation Bulletins and other means.

The above list of navigation projects will be revised from time to time as funds or other conditions warrant.

ADDRESS: Questions concerning the reduced maintenance program can be directed to Mr. E. F. Schilling, III, US Army Corps of Engineers, Waterways Maintenance Section (LMNOD-NM), P.O. Box 60267, New Orleans, LA 70160, telephone (504) 838-2304.

Dated: July 16, 1980.

Thomas A. Sands,
Colonel, CE, District Engineer.

[FR Doc. 80-22582 Filed 7-25-80; 8:45 am]
BILLING CODE 3710-84-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Gasoline Marketing Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

TITLE: Gasoline Marketing Advisory Committee.

DATE AND TIME:

Wednesday, August 20, 1980, 9:00 a.m.-5:00 p.m.

Thursday, August 21, 1980, 9:00 a.m.-approximately 5:00 p.m.

PLACE: Los Angeles Bonaventure, Fifth and Figueroa Streets, Los Angeles, California (Room locations will be posted in lobby of Hotel).

CONTACT: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy-Room 8G087, 1000 Independence Avenue, S.W., Washington, D.C. 20585; telephone: 202-252-5187.

PURPOSE OF COMMITTEE: To provide the Department of Energy with expert and technical advice concerning the wholesale and retail selling of gasoline.

TENTATIVE AGENDA: *August 20, 1980:*

- Old Business
- Gasoline Price and Allocation Regulations
- Gasoline Supply Outlook
- Transition to Decontrol

August 21, 1980

- Divorcement Legislation
- Credit Terms
- Special Report Orders (SRO's)—Documents used in preparation and issuance of Formal Enforcement Actions
- A discussion of the Exceptions and Appeals Process
- Committee Membership
- New Business Public Comment (10 minute rule)

PUBLIC PARTICIPATION: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

TRANSCRIPTS: Available for public review and copying at the Public Reading Room, Room 5B180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

EXECUTIVE SUMMARY: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C. on July 21, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-22834 Filed 7-25-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Environment R&D Subpanel of the Energy Research Advisory Board; Open Meeting

Notice is hereby given of the following meeting:

NAME: Environment R&D Subpanel of the Energy Research Advisory Board (ERAB). ERAB is a Committee constituted under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770).

DATE AND TIME: July 29-30, 1980—9:00 a.m. to 4:00 p.m.

PLACE: Department of Energy, Forrestal Building, Room 7E-083, 1000 Independence avenue, S.W., Washington, D.C. 29585.

CONTACT: Eudora M. Taylor, Staff Assistant, Energy Research Advisory Board, Department of Energy, Forrestal Building, MS 3F-032, 1000 Independence Avenue, S.W., Washington, D.C. 20585; telephone: 202/252-8933.

PURPOSE OF THE PARENT BOARD: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-guidance in these areas to the Department.

TENTATIVE AGENDA:

—Review of DOE documents on the technology base component of DOE's Environment R&D programs

—Initial discussions on Environment R&D Subpanel input into ERAB Technology Base Report

PUBLIC PARTICIPATION: The meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Energy Research Advisory Board at the address or telephone number listed above. Requests must be received prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Notification of this meeting could not have been made earlier because this is a newly formed Subpanel of the R&D Panel of the Energy Research Advisory Board. This Subpanel must have input to the R&D Panel which is meeting on July 30-31, 1980.

TRANSCRIPTS: Available for public review and copying at the Freedom of Information Public Reading Room, 5B-180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:00 p.m. Monday through Friday, except Federal Holidays.

Issued at Washington, D.C. on July 21, 1980.

N. D. Pewitt,

Deputy Director of Energy Research.

[FR Doc. 80-22720 Filed 7-25-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1550-8]

National Air Pollution Control Techniques Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the National Air Pollution Control Techniques Advisory Committee will be held on August 26 and 27, 1980, at the Philadelphia Sheraton Hotel, Pennsylvania Ballroom, 1725 Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The commerical telephone number is (215) 568-3300.

The tentative agenda for the meeting is as follows:

August 26 (Tuesday)—9:00 a.m.

Coke Ovens—Charging, Topside Leaks, and Door Leaks for Wet-Coal-Charged Batteries, National Emission Standards for Hazardous Air Pollutants, (Section 112)

Coke Ovens—Battery Stacks, New Source Performance Standards (Section 111)

August 27 (Wednesday)—8:30 a.m.

Continuation of August 26—As Required. Particulate Control Techniques Document (Section 108 of the Clean Air Act).

All meetings are open to the public. Anyone wishing to make a presentation should contact Mrs. Mary Jane Clark at the Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, by August 20, 1980. The commercial telephone number is (919) 541-5271, and the FTS number is 629-5271.

The dockets containing material relevant to the coke ovens—charging, topside leaks, and door leaks for wet-coal-charged batteries (A-79-15) and coke ovens—battery stacks (A-80-36) are located in the U.S. Environmental

Protection Agency, Central Docket Section, West Tower Lobby—Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for coping.

Dated: July 21, 1980.

Edward Tuerk,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 80-22604 Filed 7-25-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1551-3]

Notice of Intent To Prepare a Draft Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA), Region V, Chicago, Illinois.

ACTION: Notice of intent to prepare a draft environmental impact statement (EIS).

PURPOSE: In accordance with Section 102(2)(C) of the National Environmental Policy Act, the EPA has identified a need to prepare an EIS and therefore publishes this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION CONTACT: Gene Wojcik, Chief, EIS Section, Environmental Engineering Branch (5WEE), 230 South Dearborn Street, Chicago, Illinois 60604, 312-353-2157.

SUMMARY:

1. Description of Proposed Action:

The proposed EPA action is the approval of a facilities plan and the issuance of grant funds pursuant to Section 201 of the Clean Water Act for the design and construction of interceptor sewers and wastewater treatment facilities in Genesee County, Michigan.

2. Descripton of Alternatives:

A. Sewerage Alternatives—

There are six alternatives, including the no action alternative, being evaluated for the Genesee County system. Three of the alternatives are various configuration of improvements to existing pumping stations and force mains, elimination of excess inflow and construction of an equalization basin.

The other alternatives are based on the construction of a new interceptor directing flows from two existing interceptors, abandoning seven pumping stations and elimination of excess inflow. The difference between these is the design life of the two sewers.

B. Treatment Alternatives—

Alternatives being considered for wastewater treatments needs include the no action alternative, land application, upgrading the existing Montrose Wastewater Treatment Plant (WWTP), dry weather storage, flow augmentation and use of the reserve capacity of the Flint WWTP.

3. Public and Private Participation in the EIS process:

To ensure that the public and other interested Federal, State and local agencies have an opportunity to understand official actions, and give input concerning issues that affect them, participation in the planning process is invited. Opportunities for public involvement will be developed and participation encouraged through various means. All requirements of the Public Participation Regulations will be fulfilled.

4. Some Significant Issues to be addressed in the EIS:

Induced growth and secondary impacts including significant changes in agricultural or residential land use concentrations or distributions. Adverse economic impacts upon the citizens of the planning area will also be considered.

The impact of the potential loss of significant amounts of prime agricultural land.

The adverse effects on surface and ground water quality as well as the effects on quality or quantity of fish and wildlife and their natural habitats.

Controversy among local and state governmental units and private citizens.

Possibility of combining open space and recreational uses with the wastewater management program.

5. Scoping:

Region V will hold a scoping meeting to discuss the alternatives and the scope of the draft EIS. For additional information, contact the person indicated above. Public notice will be given prior to the scoping meeting and all subsequent meetings.

6. Timing:

The EPA estimates the draft EIS will be available for public review and coment in the fall of 1981.

7. Requests for copies of the Draft EIS:

All interested parties are encouraged to submit their name and address to the person indicated above for inclusion on the mailing list for the draft EIS, newsletters and other related public notices.

Dated: July 22, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

[FR Doc. 80-22603 Filed 7-25-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1551-4; OPP-30000/10d]

Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration of Pesticide Products Containing Lindane; Availability of Position Document 2/3; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This document corrects the telephone number for the contact person named in the notice of availability of a position document in support of Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration of Pesticide Products Containing Lindane that appeared at page 45362 in the Federal Register of July 3, 1980 (FR Doc. 80-20008).

FOR FURTHER INFORMATION CONTACT: John A. Richards, Chief, Federal Register Section, Chemical Information Division (TS-793), Rm: EB-42, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202-426-2432).

SUPPLEMENTARY INFORMATION: In FR Doc. 80-20008 appearing in the Federal Register of July 3, 1980 (45 FR 45362) the phone number in line 6 under the heading **FOR FURTHER INFORMATION CONTACT** should read (703-557-7420).

Dated: July 21, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-22622 Filed 7-25-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1551-5; OPTS-53015]

Premanufacture Notices Status for June, 1980

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to publish a list in the Federal Register at the beginning of each month reporting the premanufacture notices (PMN's) pending before the Agency and the PMN's for which the review period has expired since publication of the last monthly summary. This is the report for June, 1980.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on a specific chemical substance.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: Paige Beville, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-426-8816.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA (90 Stat. 2012 (15 U.S.C. 2604)) requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the Federal Register on May 15, 1979 (44 FR 28558). The requirement to submit PMN's for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has 90 days to review a PMN once the Agency receives it (section 5(a)(1)). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

The monthly status report published in the Federal Register as required under section 5(d)(3), will identify: (a) PMN's received during the month; (b) PMN's received previously and still under review at the end of the month; (c) PMN's for which the notice review period has ended during the month; and (d) chemical substances that EPA has added to the Inventory during the month. Therefore, EPA is publishing the June, 1980 PMN Status Report.

Interested persons may submit written comments on the specific chemical substance no later than 30 days before the applicable notice review period ends to the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–53015]" and the specific PMN number. Nonconfidential portions of the PMN's written comments received on individual PMN's, and other documents in public record may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

Dated: July 21, 1980.

Marilyn C. Bracken,

Deputy Assistant Administrator for Program Integration and Information.

Premanufacture Notices Status Report for June 1980

PMN No.	Identity/generic name	FR citation	Expiration date
I. Premanufacture Notices Received During the Month			
80-26	Generic name: Substituted heteromonocycle derivative of 1,4-hexadiene, polymer with ethene and 1-propene.	45 FR 44397 (7/1/80)	Aug. 4, 1980
80-27	Generic name: Substituted heteromonocycle derivative of 1,4-hexadiene, polymer with ethene and 1-propene.	45 FR 44397 (7/1/80)	Aug. 4, 1980
80-117	Generic name: Salt form of acrylic acid-acrylate copolymer.	45 FR 41064 (6/17/80)	Aug. 26, 1980
80-118	Generic name: A polymer of styrene, hydroxy functional monomers, esters of acrylic and methacrylic acid.	45 FR 42017 (6/23/80)	Aug. 27, 1980
80-119	Generic name: 2-(di-(dimethyl, substituted-carbonomonocyclic)alkyl) (methyl, carboxysubstituted)benzene, (methylsubstituted)ethyl ester.	45 FR 42013 (6/23/80)	Aug. 27, 1980
80-120	Generic name: Methyl, trisubstitutedheteropolycycle	45 FR 42013 (6/23/80)	Aug. 27, 1980
80-121	Generic name: 1-Substituted-3,5-dimethyl-4-substitutedbenzene	45 FR 42013 (6/23/80)	Aug. 27, 1980
80-122	Generic name: 2-(5-(3,5-dimethyl-4-substitutedphenyl)hydroxy- alkyl)-(methyl, carboxysubstituted)benzene, (methylsubstituted)ethyl ester.	45 FR 42013 (6/23/80)	Aug. 27, 1980
80-123	Generic name: 2-(di-(3,5-dimethyl-4-substitutedphenyl)hydroxy- alkyl)-(methylsubstituted) benzene.	45 FR 42013 (6/23/80)	Aug. 27, 1980
80-124	Generic name: Amine disalts of aliphatic dicarboxylic acids	45 FR 44396 (7/1/80)	Aug. 27, 1980
80-125	Isophthalic acid, terephthalic acid, dimer acid, propylene glycol, and neopentyl glycol polyester	45 FR 42016 (6/23/80)	Aug. 27, 1980
80-126	Resin from tall oil fatty acids, trimethylolpropane, trimethylolethane, phthalic anhydride, and benzoic acid.	45 FR 43866 (6/30/80)	Aug. 27, 1980
80-127	Generic name: Polymer product of an acrylate ester and a polyhydroxy compound.	45 FR 42012 (6/23/80)	Aug. 27, 1980
80-128	Generic name: Polyester resin CR1214-1	45 FR 44396 (7/1/80)	Aug. 31, 1980
80-129	Generic name: Poly(amide-ester) resin X2-669	45 FR 44394 (7/1/80)	Sept. 3, 1980
80-130	Generic name: Poly(amide-ester) resin X2-600	45 FR 44394 (7/1/80)	Sept. 3, 1980
80-131	2-[2-[4-(2-hydroxyethoxy)phenyl] ethenyl]-4,6-bis(trichloromethyl)-1,3,5-triazine.	45 FR 43461 (6/27/80)	Sept. 3, 1980
80-132	Generic name: Acidic phenyltetrazole derivative	45 FR 43864 (6/30/80)	Sept. 10, 1980
80-133	Generic name: Substituted nitroaromatic	45 FR 43864 (6/30/80)	Sept. 10, 1980
80-134	Generic name: Nitro acid	45 FR 43864 (6/30/80)	Sept. 10, 1980
80-135	Generic name: Substituted propane	45 FR 43864 (6/30/80)	Sept. 10, 1980
80-136	Generic name: 12-Molybdosilicic acid	In preparation	Sept. 15, 1980
80-137	Generic name: Benzeneamine, 4,4'-methylene bis [*N*-(1-methylhexylidene)].	In preparation	Sept. 15, 1980
80-138	Generic name: Benzeneamine, 4,4'-methylene bis [*N*-(1-methylbutylidene)]	In preparation	Sept. 15, 1980
80-139	Generic name: Epon 1004, soya fatty acid, styrene acrylic acid, and di-tertiary butyl peroxide.	In preparation	Sept. 15, 1980
80-140	Generic name: Polymer of: Epoxy resin, styrene, diallyl amine, dimethyl amino propyl methacrylamide, 2-ethyl hexyl methacrylate, and isobutoxy methylacrylamide.	In preparation	Sept. 15, 1980
80-141	Generic name: Substituted-(substituted-alkenyl)-heteropolycyclic salt.	In preparation	Sept. 17, 1980
80-142	Generic name: Neopentyl glycol, dimerized fatty acid polymer.	In preparation	Sept. 21, 1980
80-143	Generic name: Complex of *p*-phenylphenol and an alkyl amine.	In preparation	Sept. 21, 1980
80-144	Generic name: Amineextended aopha-w-hydroxypoly[oxy-(methyl-1,2-ethanediyl)]polymer with 1,3-diisocyanatomethylbenzene.	In preparation	Sept. 21, 1980
80-145	Generic name: Methyl-(substituted)-(disubstituted)carbomonocycle.	In preparation	Sept. 21, 1980
80-146	Phosphorodithoic acid, *O,O'*-di [isohexyl, isoheptyl, isooctyl, isodecyl] mixed esters, zinc salt.	In preparation	Sept. 23, 1980
80-147	Phosphorodithoic acid, *O,O'*-di (isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters.	In preparation	Sept. 23, 1980
80-148	Supra castor fatty acid, tall oil fatty acid, trimethylolpropane, pentaerythritol, phthalic anhydride, and para-tert butylbenzoic acid alkyd polymer.	In preparation	Sept. 24, 1980
80-149	Generic name: Soya fatty acid, supra castor fatty acid, benzoic acid, phthalic anhydride, maleic anhydride, and pentaerythritol alkyd polymer.	In preparation	Sept. 24, 1980
80-150	Generic name: Safflower fatty acid type, phthalic anhydride, maleic anhydride, trimethylolpropane, pentaerythritol alkyd polymer	In preparation	Sept. 24, 1980
80-151	Generic name: Substituted-(substitutedvinyl)-heteropolycyclic salt.	In preparation	Sept. 25, 1980
80-152	Poly(vinylacetate-co-butyl acrylate, tert-octylacrylamide)	In preparation	Sept. 25, 1980
II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month			
80-34	Generic name: Phosphorodithoic acid, dialkyl ester, C_{12-13} tert-alkylamine salts.	45 FR 35001 (5/23/80)	July 23, 1980
80-35	Generic name: Substituted phenol, reaction products with C_{12-20} alkenes.	45 FR 35001 (5/23/80)	July 23, 1980

II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

80-73	Generic name: Salt of: Formaldehyde, 4-(phenylamino)-substituted-benzene polymer and 2-butenedioic acid, 1,4-cyclohexane-dimethanol,2,4-diisocyanato-1-methylbenzene, 1,2-enthanediol,2-oxepanone, and 5-substituted-1,3-benzenedicarboxylic acid polymer.	45 FR 30127 (5/7/80)	July 2, 1980
80-75	Polymer of: 12-hydroxy stearic acid and epoxy resin	45 FR 30127 (5/7/80)	July 2, 1980
80-76	Generic name: Alkyd resin TV79-0777	45 FR 30127 (5/7/80)	July 2, 1980
80-77	Generic name: Alkyd resin X4—779	45 FR 30127 (5/7/80)	July 2, 1980
80-78	Generic name: Bis(Substituted alkyl) 1,2-cyclohexanedicarboxylate.	45 FR 30131 (5/7/80)	July 7, 1980
80-80	Amides from diethylenetriamine and methyl tallowate compounds with diethylsulfate.	45 FR 30130 (5/7/80)	July 7, 1980
80-81	Generic name: Methylphenylsubstituted-heteromonocyclic salt	45 FR 30131 (5/7/80)	July 8, 1980
80-82	Polymer of: Epoxy resin, diallylamine, 2-ethyl hexyl methacrylate, hydroxy ethyl acrylate, dimethylamino propyl methacrylamide, and dimethylolpropionic acid.	45 FR 31489 (5/13/80)	July 17, 1980
80-83	Generic name: Unsaturated polyester resin based on six monomers including maleic anhydride, phthalic anhydride, an alkylene glycol, and an alkylene ether glycol.	45 FR 32772 (5/19/80)	July 28, 1980
80-84	Generic name: Polyester reaction product with isophorone diisocyanate and hydroxypropyl acrylate.	45 FR 30132 (5/7/80)	July 20, 1980
80-85	Generic name: Copolymer of substituted ethenylheterocycle and substituted ethenylbenzene.	45 FR 31489 (5/13/80)	July 21, 1980
80-86	Generic name: Alkene dicarboxylic acids, alkane dicarboxylic acid, resin, pentaerythritol, and diaminoalkane polyamide.	45 FR 30687 (5/9/80)	July 21, 1980
80-87	Generic name: Alkene dicarboxylic acid, alkane dicarboxylic acid, alkane carboxylic acid, and diaminoalkanes polyamide.	45 FR 30687 (5/9/80)	July 21, 1980
80-88	Generic name: Cyanoalkyl carbomocyclic-sulfonate	45 FR 32772 (5/19/80)	July 22, 1980
80-89	Copolymer of isononanoic acid, phthalic anhydride, maleic anhydride, and pentaerythritol polymer (subject of PMN 80-55) and formaldehyde; butylated and 2-ethylhexylated urea polymer.	45 FR 32426 (5/16/80)	July 22, 1980
80-90	Generic name: Dimethyl(substituted)-heteromonocyclic salt...	45 FR 32426 (5/19/80)	July 23, 1980
80-91	Generic name: 1,3-Naphthalenedisulfonic acid, 6,6'-[1,2-ethenediylbis [(3-sulfo-4,1-phenylene)azo]]bis-[4-amino-5-hydroxy, compounded with tris-(substituted ethyl)-ammonium hydroxide (1:6).	45 FR 32772 (5/19/80)	July 30, 1980
80-92	Polymer of: Tall oil fatty acid, styrene-allyl alcohol copolymer, acrylic acid, and styrene.	45 FR 32771 (5/19/80)	July 30, 1980
80-93	4,7-Methano-1H-inden-5-ol-3a, 4,5,6,7,7a-hexa-hydro-dimethyl.	45 FR 34999 (5/23/80)	Aug. 3, 1980
80-94	Generic name: Monosubstitutedbenzene-sulfonamide	45 FR 34999 (5/23/80)	Aug. 3, 1980
80-95	Generic name: Monosubstitutedbenzene sulfonyl chloride	45 FR 34999 (5/23/80)	Aug. 3, 1980
80-96	Generic name: Monosubstitutedbenzenediazonium chloride	45 FR 34999 (5/23/80)	Aug. 3, 1980
80-97	Generic name: Trisubstitutedtriazine	45 FR 34999 (5/23/80)	Aug. 3, 1980
80-98	Generic name: Monosubstituted alkanimidic acid, alkyl ester.	45 FR 34999 (5/23/80)	Aug. 3, 1980
80-99	Generic name: Hydroxy functional acrylic	45 FR 37280 (6/2/80)	Aug. 5, 1980
80-100	Dimethyl 1,4-benzenedicarboxylate, polymer with 1,6-hexane- diol, 2,2-dimethyl-1,3-propanediol, 1,3-benzene dicarboxylic acid, and 1,6-hexanedioic acid.	45 FR 37280 (6/2/80)	Aug. 5, 1980
80-101	1,3-Isobenzofurandione, polymer with 1,6-hexanediol, 2,2-dimethyl-1,3-propanediol,2-ethyl-2-hydroxymethyl-1,3-propanediol, and 2,2-dimethyl-3-hydroxypropyl-2,2-dimethyl-3-hydroxypropionate.	45 FR 37280 (6/2/80)	Aug. 5, 1980
80-102	Generic name: 5-[6-(3-substituted phenyl-amino)-4-chloro-(1.3.5-triazin-2-yl)-amino]-3-(3-substituted-2-hydroxy-5-sulfophenylazo)-4-hydroxy-napthalene-2,7-disulfonic acid, copper complex, salt.	45 FR 37279 (6/2/80)	Aug. 12, 1980
80-103	Generic name: Styrene-maleic anhydride-methyl methacrylate polymer.	45 FR 41058 (6/17/80)	Aug. 17, 1980
80-104	Generic name: Polymer of cyclo aliphatic diisocynate, 2-oxohexanethyleneimine, hydroxy alkyl alkyl alkanediol.	45 FR 37727 (6/17/80)	Aug. 17, 1980
80-105	Monoethanolamine salt of 1-hydroxyethylidene-1,1-diphosphonic acid.	45 FR 37727 (6/17/80)	Aug. 19, 1980
80-106	Diethanolamine salt of 1-hydroxyethylidene-1,1-diphosphonic acid.	45 FR 37727 (6/17/80)	Aug. 19, 1980
80-107	Triethanolamine salt of 1-hydroxyethylidene-1,1-diphosphonic acid.	45 FR 37727 (6/17/80)	Aug. 19, 1980
80-108	Hydrogenated petroleum hydrocarbon resin	45 FR 41060 (6/17/80)	Aug. 20, 1980
80-109	Generic name: 3-(1-Amino-2-sulfo-4-anthra-quinonylamino)-benzene sulfon-3-substituted anilide.	45 FR 41063 (6/17/80)	Aug. 20, 1980
80-110	Generic name: 2-((2-Methylsubstituted) ethyloxycarbonylsubstituted) phenyl, disulfo, diheteropolycyclic heteropolycycle.	45 FR 42018 (6/23/80)	Aug. 25, 1980
80-111	Generic name: 2-((2-Methylsubstituted) ethyloxycarbonylsubstituted) phenyl, disulfo, diheteropolycyclic heteropolycycle.	45 FR 42018 (6/23/80)	Aug. 25, 1980
80-112	Generic name: 2-((2-Methylsubstituted) ethyloxycarbonylsubstituted) phenyl, disulfo, diheteropolycyclic heteroppolycycle.	45 FR 42018 (6/23/80)	Aug. 25, 1980
80-113	Generic name: (2-(Methylsubstituted)phenyl) diheteropolycyclic heteropolycycle.	45 FR 42018 (6/23/80)	Aug. 25, 1980

II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

80-114	Dioxo, (methylheteropolycyclic), diheteropolycyclic heteropolycycle.	45 FR 42018 (6/23/80)	Aug. 25, 1980
80-115	Generic name: (Dioxoheteropolycyclic), diheteropolycyclic heteropolycycle.	45 FR 42018 (6/23/80)	Aug. 25, 1980
80-116	Generic name: (2-Substitutedphenyl), diheteropolycyclic heteropolycycle.	45 FR 42018 (6/23/80)	Aug. 25, 1980

III. Premanufacture Notices for Which the Notice Review Period has Ended During the Month

[Expiration of the notice review period does not signify that the chemical has been added to the inventory]

80-45	5-Carboxyhydroxy-(4-sulfophenyl)-heteromonocyclic-2,4-pentadienylidene dihydrooxo-(4-sulfophenyl heteromonocycle carboxylic acid, tetra potassium salt.	45 FR 21023 (3/31/80)	June 2, 1980
80-46	Generic name: Alkyl substituted phenol (Received in February, 1980; completed in March 1980).	45 FR 28199 (4/28/80)	June 19, 1980
80-49	Generic name: Alkyl salicylaldoxime	45 FR 21701 (4/2/80)	June 4, 1980
80-50	Polymer of: Methyl methacrylate, 2-hydroxy-ethyl methacrylate, 2-ethylhexyl acrylate, acrylamide.	45 FR 21023 (3/31/80)	June 5, 1980
80-51	Polymer formed from phenol formaldehyde resin and diazo oxonaphthalene sulfonyl chloride.	45 FR 21023 (3/31/80)	June 5, 1980
80-52	Generic name: Alkyl salicylaldehyde	45 FR 21702 (4/20/80)	June 8, 1980
80-53	Polymer of: Ester diol 204, neopentyl glycol, isophthalic acid, tetrahydrophthalic anhydride, and trimellitic anhydride.	45 FR 24696 (4/10/80)	June 9, 1980
80-54	Polymer of: Supra castor fatty acid, tall oil fatty acid, isononanoic acid, phthalic anhydride, adipic acid, benzoic acid, and pentaerythritol.	45 FR 24696 (4/10/80)	June 9, 1980
80-55	Polymer of: Isononanoic acid, phthalic anhydride, maleic anhydride, and pentaerythritol.	45 FR 24696 (4/10/80)	June 9, 1980
80-56	Polymer of: Propylene glycol, neopentyl glycol, phthalic anhydride, trimethylolpropane, and empol 1022 dimeric fatty acid.	45 FR 24696 (4/10/80)	June 9, 1980
80-57	Generic name: Alkyl biphenyls	45 FR 24696 (4/14/80)	June 11, 1980
80-59	Polymer of methyl methacrylate, methyl acrylate, styrene, 2-ethylhexyl acrylate, and 2-hydroxyethyl acrylate.	45 FR 25131 (4/14/80)	June 17, 1980
80-60	Polymer of butyl acrylate, 2-hydroxyethyl acrylate, and methyl methacrylate.	45 FR 25131 (4/14/80)	June 17, 1980
80-61	Polymer of acrylonitrile, butyl acrylate, methyl acrylate, and 2-hydroxyethyl acrylate.	45 FR 25131 (4/14/80)	June 17, 1980
80-62	Generic name: Polyester resin of aliphatic polyols, mixed aromatic diacids and aliphatic diacid.	45 FR 24700 (4/10/80)	June 17, 1980
80-63	Generic name: Alkyl substituted cyclic peroxyketal	45 FR 28199 (4/28/80)	June 24, 1980
80-64	Generic name: Alkyl substituted cyclic peroxyketal	45 FR 28199 (4/28/80)	June 24, 1980
80-65	Poly(oxy(methyl-1,2-ethanediyl)), alpha-(di-3,3'-carboxy-1-oxosulfopropyl)-omega-2-propanol-1,1'-((1-methylethylidene) bis(4,1-phenoxy))bis-, disodium salt.	45 FR 28199 (4/28/80)	June 25, 1980
80-66	Poly(oxy(methyl-1,2-ethanediyl)), alpha-(3,3'-dicarboxy-1-oxosulfopropyl)-poly (oxy(methyl-1,2-ethanediyl))-hydroxy-, C_{16-18} alkyl, disodium salt.	45 FR 28199 (4/28/80)	June 25, 1980
80-67	Generic name: Polymer of styrene, vinyl heteromonocycle, and vinyl (substituted) heteromonocyclic salt.	45 FR 27007 (4/22/80)	June 26, 1980
80-68	ε-Caprolactone, ethyl acrylate, hydroxypropyl-methacrylate, styrene, and acrylic polymer acid.	45 FR 27007 (4/22/80)	June 30, 1980
80-69	Generic name: Salt of hydroxy(((((((methoxy(sulfophenyl)azo)phenyl)-amino)-carbonyl)amino)- phenyl)-azo)benzoic acid.	45 FR 27006 (4/22/80)	June 30, 1980
80-70	Generic name: Sulfonic acid salt of ureylenebis-(hydroxy-[(sulfonaphthyl)azo])-naphthalene.	45 FR 27006 (4/22/80)	June 30, 1980
80-71	Generic name: Sulfonic acid of a ureylenebis(hydroxy-[(sulfonaphthyl)azo])-naphthalene compound.	45 FR 27006 (4/22/80)	June 30, 1980
80-72	Generic name: Salt of (ethenediyl) bis [(hydroxyphenyl)azo]-, benzenesulfonic acid.	45 FR 27006 (4/22/80)	June 30, 1980
80-74	Generic name: Polyester	45 FR 27817 (4/24/80)	June 18, 1980

IV. New Chemical Substances that EPA has Added to the Inventory During the Month

PMN No.	Submitter	Chemical identification	FR citation
5AHQ-1079-0095	Schenectady Chemicals, Inc.	2-tert-butyl-4-sec-butyl-phenol	45 FR 69954 (10/17/79)
5AHQ-0180-0137	Polaroid	Copolymer of methacrylic acid and diacetone acrylamide	45 FR 12898 (2/27/80)
80-53	CBI	Polymer of: Ester 204; neopentyl glycol; isophthalic acid; tetrahydro phthalic anhydride, and trimetallic anhydride.	45 FR 24696 (4/10/80)
80-54	CBI	Polymer of supra castor oil fatty acid; isononanoic acid; phthalic anhydride; adipic acid; benzoic acid, and pentaerythritol.	45 FR 24696 (4/10/80)
80-55	CBI	Polymer of isononanoic acid; phthalic anhydride; maleic anhydride; and pentaerythritol.	45 FR 24696 (4/10/80)
80-56	CBI	Polymer of propylene glycol; neopentyl glycol; phthalic anhydride; trimethylol-propane, and Empol 1022 dimeric fatty acid.	45 FR 24696 (4/10/80)

[FR Doc. 80-22823 Filed 7-25-80; 8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket Nos. 80-308, 80-309; Files Nos. BP-20,577, BP-780728AK]

Car-Mel Broadcasting and Erin Broadcasting Co., Inc.; Hearing Designation Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: June 4, 1980.

Released: July 11, 1980.

In re applications of Carl Como Tutera, Janice Redeagle Cummings and Ruben Guzman d/b/a Car-Mel Broadcasting, Sun Prairie, Wisconsin, BC Docket No. 80-308, File No. BP-20,577; Req: 1190 kHz, 500 W, DA, Day; Erin Broadcasting Co., Inc., Sun Prairie, Wisconsin, BC Docket No. 80-309, File No. BP-780728AK; Req: 1190 kHz, 1 kW, DA, Day; for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Carl Como Tutera, Janice Redeagle Cummings and Ruben Guzman d/b/a Car-Mel Broadcasting (Car-Mel) and Erin Broadcasting Co., Inc.

2. *Car-Mel Broadcasting.* Analysis of the financial data Car-Mel submitted reveals that at least $39,778 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment:	
Cash	$4,250
Down payment	9,198
Principal and interest	3,089
Land	1,000
Building	1,200
Legal expenses	800
Other costs	4,500
Operating costs (three months)	15,741
Total	39,778

Car-Mel plans to finance construction and operation with $1,000 existing capital, $2,000 new capital, and a $110,000 loan from Mr. Tutera.

3. However, this applicant has not established the availability of these funds. First, Car-Mel's balance sheet does not segregate current and long-term liabilities, so the availability of the claimed existing capital cannot be verified. Second, since neither of the partners contributing new capital has submitted a balance sheet in accordance with the requirements of paragraph 4b, Section III, FCC Form 301, no funds have been shown available from them. Third, Tutera's balance sheet does not identify his stock holdings or show all his liabilities, contrary to the instructions of paragraph 4b of Section III, so his capacity to make the proposed loan cannot be determined. Finally, the basis

of the projected equipment costs is not satisfactorily explained, and the amount designated for legal costs incident to a comparative hearing is clearly insufficient. In light of the several deficiencies cited, a general financial issue will be specified.

4. Car-Mel has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). First, its study of the composition of Sun Prairie does not indicate the minority, racial or ethnic breakdown of the community, as required by Question and Answer 9 of the *Primer*. Further, from the information before us, it appears that this applicant has not surveyed minority leaders in Sun Prairie, though 1970 Census figures indicate minorities comprise a small—but not insignificant—segment of the population. (See note 1, *infra*.) Accordingly, a limited ascertainment issue will be specified.

5. Car-Mel also failed to comply satisfactorily with paragraph 16 of Section IV-A of Form 301, which requires the applicant to state its policy with respect to making time available for the discussion of public issues. This paragraph essentially requires an applicant to indicate that it will comply with the Fairness Doctrine, *i.e.*, that a reasonable opportunity will be afforded for the presentation of contrasting viewpoints on controversial issues of public importance. Car-Mel's response is not appropriately responsive. Accordingly, an issue will be specified.

6. *Erin Broadcasting Co., Inc.* Analysis of the financial data Erin submitted indicates that $159,330 will be required to construct its proposed station and operate for three months. Erin relies chiefly on a $200,000 bank loan, but the loan is conditioned on grant of a construction permit. To pay pre-grant expenses, then, including the legal expenses of a comparative hearing (budgeted at $5,000), Erin claims only $6,000 existing capital. However, its balance sheet does not segregate current and long-term liabilities, and is not sufficiently detailed to show that any of the listed prepaid expenses represent prepaid hearing expenses. Thus, we cannot conclude that Erin has the resources to prosecute its application through hearing, and a limited financial issue must be specified.

7. Erin has also failed to comply with the requirements of the ascertainment *Primer*, by failing to survey leaders of all significant population groups in Sun Prairie. From the information before us, it appears Erin failed to interview leaders representing consumer services, labor, and minorities.[1] Accordingly, a limited ascertainment issue will be specified.

8. Erin's corporate by-laws authorize two directors and no vice presidents. However, Table I of Section II of its application reports three directors and one vice president. Erin should file an amendment to clarify this apparent discrepancy.

9. *Other matters.* Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive primary service, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

11. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Car-Mel Broadcasting is financially qualified to construct and operate the proposed station.

2. To determine with respect to the efforts of Car-Mel Broadcasting to ascertain the needs of its proposed service area:

a. Whether the applicant adequately determined the minority, racial and ethnic composition of Sun Prairie.

b. Whether the applicant interviewed leaders of significant minority groups in Sun Prairie.

3. To determine whether Car-Mel Broadcasting has proposed a policy with respect to making time available for the discussion of public issues which complies with the Fairness Doctrine.

4. To determine whether Erin Broadcasting Co., Inc. has the financial ability to pay legal fees incident to a comparative hearing, and whether, in light of the evidence adduced, the applicant is financially qualified.

5. To determine whether Erin Broadcasting Co., Inc. interviewed leaders of consumer services, labor, and minorities in connection with its ascertainment effort.

6. To determine which of the proposals would, on a comparative basis, better serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

12. It is further ordered, that Erin Broadcasting Co., Inc. shall file the amendment specified in paragraph 8 above within 30 days after this Order is published in the Federal Register.

13. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

14. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing (either individually or jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-22533 Filed 7-25-80; 8:45 am]

BILLING CODE 6712-01-M

[1] According to 1970 Census figures, blacks constitute slightly more than one percent of the population in Sun Prairie, and there are small numbers of other minority groups. Therefore, minorities constitute a significant group.

[BC Docket Nos. 80-396; File No. BP-780714AL]

Laurinburg Broadcasting Co.; Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re application of George W. Phillips tr/as Laurinburg Broadcasting Company, WLNC, Laurinburg, North Carolina, BC Docket 80-396, File No. BP-780714AL, Has: 1300 kHz, 500 W, Day, Req: 1300 kHz, 5 kW, 500 W-LS, DA-N, U, for construction permit.

Adopted: June 20, 1980.

Released: July 15, 1980.

1. The above-captioned application of George W. Phillips tr/as Laurinburg

Broadcasting Company (LBC) seeks to add nighttime operation for station WLNC. The original technical proposal was the subject of a petition to deny filed by The Baltimore Radio Show, Inc. (BRS), licensee of co-channel station WFBR, Baltimore, Maryland. BRS argued on the basis of clipping studies that the proposal would cause interference to WFBR. In response to the petition LBC amended its proposal to resolve the problem. Staff studies confirmed that there would be no clipping, and since BRS did not comment on the amended proposal, on February 26, 1980 the Chief, Broadcast Bureau, dismissed the petition and granted the application pursuant to delegated authority.

2. The Commission now has before it for consideration (i) BRS's petition for reconsideration of those actions,[1] (ii) LBC's opposition, and (iii) BRS's reply.[2] BRS submits a computerized stability study and argues for the first time that with minor parameter variations, the proposal would radiate in excess of the standard radiation values specified in the direction of WFBR, thereby causing prohibited interference within the WFBR nighttime service area. LBC's opposition to the petition is based primarily on procedural arguments, and is unsupported by engineering statements. It therefore affords no technical basis to support its contention that objectionable interference will occur.

3. As we noted in *Home Service Broadcasting Corp.* (WGTR), 68 FCC 2d 1135 (1978), while we do not rely exclusively on computerized stability studies, they are useful tools in determining the stability of directional antenna arrays. Using our computerized stability study and that adopted in *Home Service,* we find that the proposal exhibits a condition of inherent instability. For example, we find that with parameter variations as small as 0.5 percent current ratio deviation and 0.5 degree phase deviation, radiation in the direction of WFBR would exceed the specified standard radiation values. It has been our policy to consider as being generally stable directional antenna arrays which do not exceed their radiation limits with 1.0 percent current ratio and 1.0 degree phase deviation. We consider those arrays which exceed their radiation limits with parameter variations of 0.1 percent and 0.1 degree highly unstable. Arrays which exceed their radiation limits with parameter variations between these extremes are considered on a case-by-case basis, taking into consideration other factors which bear on the stability of an array.

4. A determination of stability involves consideration of factors both internal and external to an array. Since computerized studies indicate that the proposed directional antenna array is inherently sensitive to minor parameter variations, and there are other indications of instability (an RSS/RMS ratio of 1.984 and proximity—less than 0.1 mile—of the array to a high-voltage transmission line), we are unable to determine that the proposed array can be adjusted and maintained with the proposed standard pattern. Therefore, exploration of the proposed operation at hearing is required.

5. In light of our view of the merits of this matter, LBC's procedural arguments are insubstantial. While it is correct that BRS could have raised the stability question earlier and thus does not meet the test of § 1.106(c)(1) of our rules,[3] we have determined that consideration of the facts now pleaded is required in the public interest, to protect the integrity of the AM allocation system. Therefore, reconsideration pursuant to § 1.106(c)(2) properly lies.

6. Except as indicated by the issue specified below, the applicant is qualified to construct and operate as proposed. However, in view of the foregoing, the Commission is unable to conclude that grant of the captioned application would serve the public interest, convenience, and necessity, and is of the opinion that the application must be designated for hearing.

7. Accordingly, it is ordered, that the action of the Chief, Broadcast Bureau, on February 26, 1980 granting the captioned application is set aside.

8. It is further ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the application is designated for hearing at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the proposed antenna system can be adjusted and maintained within the proposed limits of radiation.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, whether a grant of the application would serve the public interest, convenience, and necessity.

9. It is further ordered, that the petition for reconsideration filed by The Baltimore Radio Show, Inc. is granted to the extent indicated.

10. It is further ordered, that The Baltimore Radio Show, Inc. is made party to the proceeding.

11: It is further ordered, that, in the event of a grant of the application, the construction permit shall contain the following conditions:

1. An antenna monitor of sufficient accuracy and repeatability, and having a minimum resolution of 0.1 degree phase deviation and 0.1 percent sample current ratio deviation, shall be installed and continuously available to indicate the relative phase and magnitude of the sample currents of each element in the array to insure maintenance of the radiated fields within the authorized values of radiation.

2. Upon receipt of operating specifications and before issuance of a license, permittee shall submit the results of observations made daily of the base currents and their ratios, relative phases, sample currents and their ratios, and sample current ratio deviations for each element of the array, along with the final amplifier plate voltage and current, the common point current, and field strengths of each monitoring point for both nondirectional and directional operations for a period of at least 30 days to demonstrate that the array will be maintained within the specified tolerances.

12. It is further ordered, that to avail themselves of the opportunity to be heard, the parties herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall within 20 days of the mailing of this Order file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

13. It is further ordered, that the applicant herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-22534 Filed 7-25-80; 8:45 am]

BILLING CODE 6712-01-M

[1] BRS's request for stay of the effectiveness of the construction permit, filed with the petition for reconsideration, was denied by the Chief, Broadcast Bureau, on April 8, 1980.

[2] The reply was filed late pursuant to an unopposed motion for extension of time. For good cause shown, the motion is granted and the reply is accepted.

[3] Section 1.106(c)(1) essentially requires that new facts raised in a petition for reconsideration be shown to have been not reasonably known to petitioner until after his last opportunity to present them to the decisionmaker whose decision he seeks reconsideration of.

[Report No. A-14]

TV Broadcast Applications Accepted for Filing and Notification of Cutoff Date

Released: July 25, 1980.

Cutoff Date: September 8, 1980.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. They will be considered to be ready and available for processing after September 8, 1980. An application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on September 8, 1980 which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C. no later than September 8, 1980.

Petitions to deny any application on this list must be on file with the Commission not later than the close of business on September 8, 1980. Applications for a new station may not be filed in conflict with any application on this list designated by an asterisk (*).

Federal Communications Commission.

William J. Tricarico,

Secretary.

BPCT-800303KG (WABG-TV), Greenwood, Mississippi, Mississippi Telecasting Company, Inc., Channel 6, Change site; increase HAAT to 1962 feet.

BPCT-800310KF (New), Richardson, Texas, Buena Vista Telecasters of Texas, Inc., Channel 23, ERP: Vis. 328 kW; HAAT: 307 feet.

BPCT-800318KE (New), Jackson, Tennessee, Golden Circle Broadcasting, Inc., Channel 16, ERP: Vis. 229 kW; HAAT: 398 feet.

*BMPCT-800324KE (WWSG-TV), Philadelphia, Pennsylvania, Radio Broadcasting Company, Channel 57, Increase ERP Vis. to 887 kW; decrease, HAAT to 1156 feet.

BPCT-800402KE (New), Hopkinsville, Kentucky, Doxa Communications, Inc., Channel 51, ERP: Vis. 255 kW; HAAT: 372 feet.

BPCT-800409KF (New), Everett, Washington, Oak Television of Everett, Inc., Channel 16, ERP: Vis. 5000 kW; HAAT: 1275 feet.

BPCT-800411KK (New), LaCrosse, Wisconsin, Quarterview, Inc., Channel 25, ERP: Vis. 1154 kW; HAAT: 1026 feet.

BPCT-800425KE (New), San Jose, California, Donald B. Thomson, Channel 65, ERP: Vis. 1120 kW; HAAT: 3000 feet.

BPCT-800429KF (New), Tallahassee, Florida, Vencap Investment Company, Channel 40, ERP: Vis. 290 kW; HAAT: 338 feet.

*BMPCT-800326KF (WTKK-TV), Manassas, Virginia, National Capital Christian Broadcasting, Inc., Channel 66, Change site; decrease ERP: Vis. to 2140 kw, increase HAAT to 940 feet.

*Applications for a new station may not be filed against applications designated by an asterisk (*).

[FR Doc. 80-22532 Filed 7-25-80; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1239]

Petitions for Reconsideration of Actions in Rulemaking Proceedings Filed; Correction

July 21, 1980.

Docket or RM No.	Rule Sec.	Subject	Date received
21039	21	Amendment of Part 21, of the Rules to reflect the availability of land mobile channels in the 470-512 MHz band in thirteen urbanized areas of the United States. (Filed by Robert H. Pintell, Director of Engineering for Interelectronics Corp., Pagex Radio Phone Division).	June 2, 1980.[2]
Application for Review of Actions in Rulemaking Proceedings Filed			
RM-3021	73.606(b)	Request amendment TV Table of Assignments to reassign commercial Ch. 8 from Selma, Alabama to Tuscaloosa, Alabama and reserve it for non-commercial educational use and delete Ch. 12 from Montgomery, Alabama and assign it in lieu of Ch. 38 at Columbus, Georgia. (Filed by Vincent A. Pepper and James J. McGillan, Attorneys for WCOV, Inc. (WCOV-TV)).	June 12, 1980.

[1]Oppositions to petitions for reconsideration and applications for review must be filed on or before August 12, 1980. Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-22531 Filed 7-25-80; 8:45 am]

BILLING CODE 6712-01-M

[Report No. B-9]

TV Broadcast Applications Accepted for Filing and Notification of Cutoff Date

Cutoff Date: September 8, 1980.

Released: July 25, 1980.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. Because the applications listed are in conflict with applications which were accepted for filing and listed previously as subject to a cut-off date for conflicting applications, no application which would be in conflict with any application on the attached list will be accepted for filing.

Petitions to deny the applications on the attached list and minor amendments thereto must be on file with the Commission not later than the close of business on September 8, 1980. Any application previously accepted for filing and in conflict with any application on the attached list may also be amended as a matter of right not later than the close of business on September 8, 1980. Amendments filed pursuant to this notice are subject to the provisions of Section 73.3572(b) of the Commission's Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

BPCT-791011KE (new) Hartford, Connecticut, Golden West Broadcasters, Channel 61, ERP: Vis. 2090 kW; HAAT: 1490 feet.

BPCT-800521KK (new) Hartford, Connecticut, Hartford Television, Inc., Channel 61, ERP: Vis. 5000 kW; HAAT: 1015 feet.

BPCT-800521KL (new) Middletown, Connecticut (Hartford allocation), Community Television of Connecticut, Inc., Channel 61, ERP: Vis. 4046 kW; HAAT: 723 feet.

BPCT-800409KF (new) Roanoke, Virginia, Roanoke Christian Broadcasting, Inc., Channel 27, ERP: Vis. 1242 kW; HAAT: 2049 feet.

BPCT-800516KE (new) Kannapolis, North Carolina, Focus Broadcasting of Kannapolis, Inc., Channel 64, ERP: Vis. 1049 kW; HAAT: 1200 feet.

BPCT-800516KJ (new) Mobile, Alabama, Providence Journal Broadcasting Corp., Channel 21, ERP: Vis. 2937 kW; HAAT: 1629 feet.

BPCT-800520KF (new) Utica, New York, Manning Telecasting, Inc., Channel 33, ERP: Vis. 3041 kW; HAAT: 1000 feet.

BPCT-800521KM (new) Stockton, California, Manning Telecasting, Inc. Channel 58, ERP: Vis. 5000 kW; HAAT: 1800 feet.

BPCT-800521KO (new) Florence, Alabama, Alabama Management Company, Channel 26, ERP: Vis. 701 kW; HAAT: 759 feet.

BPCT-800521KP (new) Birmingham, Alabama, Birmingham Family Television, Inc., Channel 68, ERP: Vis. 754 kW; HAAT: 705 feet.

BPCT-800521KQ (new) Birmingham, Alabama, Celtic Media, Inc., Channel 68, ERP: Vis. 1297 kW; HAAT: 935 feet.
BPCT-800229KH (new) Nacogdoches, Texas, Dogwood Broadcasting Corporation, Channel 19, ERP: Vis. 2500 kW; HAAT: 1501 feet.
BPCT-800430KE (new) Miami, Florida, Florida Broadcasting Ministry, Inc., Channel 39, ERP: Vis. 3041 kW; HAAT: 1018 feet.
BPCT-800430KF (new) Miami, Florida, 39 Broadcasting Company, Channel 39, ERP: Vis. 3280 kW; HAAT: 580 feet.
BPCT-800430KG (new) Miami, Florida, Sun Belt Broadcasting, Inc., Channel 39, ERP: Vis. 5000 kW; HAAT: 1017 feet.
BPCT-800430KI (new) Dayton, Ohio, Dayton Telecasting, Inc., Channel 45, ERP: Vis. 2393 kW; HAAT: 1169 feet.
BPCT-800521KN (new) Syracuse, New York, Comark Television, Inc., Channel 62, ERP: Vis. 2489 kW; HAAT: 956 feet.

[FR Doc. 80-22535 Filed 7-25-80; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-4-TN-1]

Tennessee: Radiological Emergency Plan

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Receipt of Plan.

SUMMARY: This is a notice that the State of Tennessee has submitted a radiological emergency plan to the Federal Emergency Management Agency (FEMA) for its review and approval. The Plan includes local governments near to the Tennessee Valley Authority's Sequoyah Nuclear Power Facility located in Hamilton County.

DATE: June 25, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Newton, Regional Director, FEMA Region IV, 1375 Peachtree Street NW, Atlanta, Georgia 30309, (404) 881-2400.

NOTICE: This provides notice, pursuant to 44 CFR 350.8 of the proposed FEMA Regulation, "Review and Approval of State Radiological Emergency Plans and Preparedness," 44 FR 42341, that the State Radiological Emergency Plan for the State of Tennessee was received on June 25, 1980, by the Federal Emergency Management Agency Region IV Office. The Plan includes plans of Bradley and Hamilton Counties, and host county plans for Sequatchie, Rhea, and Miegs Counties. Copies of the Plan are available for review and copying at the FEMA Region IV Office.

Copies will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests. This schedule which covers exemptions from the fee, is set out in subpart C of 44 CFR Part 5. Reproduction fees are $.10 a page for this document. There are 566 pages in the document. (As the cost will be over $25.00, the fee is to be paid in advance.)

Comments on the Plan may be submitted in writing to Mr. Frank Newton, Reigonal Director, at the above address within thirty days.

FEMA Proposed Regulation 44 CFR 350.10 calls for a public meeting in advance of FEMA approval. This meeting was conducted in Chattanooga, Tennessee, on June 10, 1980.

Sheldon A. Schwartz,

Acting Director, Radiological Emergency Preparedness Division, Office of Population Preparedness.

[FR Doc. 80-22575 Filed 7-25-80; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. T-3907]

Notice of Availability of Finding of No Significant Impact

Agreement No. T-3907 was filed for Commission action pursuant to section 15 of the Shipping Act, 1916. Under this agreement, American President Lines, Ltd. will provide stevedoring and terminal services for the vessels of Johnson Scanstar Line at the Port of Seattle. The Federal Maritime Commission's Office of Environmental Analysis prepared an environmental assessment on this agreement. It found that this Commission action pursuant to section 15 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.* and that the preparation of an environmental impact statement is not required under section 4332(2)(c) of NEPA.

The environmental assessment is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725. Interested parties may comment on the environmental assessment on or before August 18, 1980. Such comments are to be filed with the Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573. If a party fails to comment within this period, it will be presumed that the party has no comment to make.

Francis C. Hurney,

Secretary.

[FR Doc. 80-22613 Filed 7-25-80; 8:45 am]
BILLING CODE 6730-01-M

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.: New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before August 18, 1980. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-3914.

Filing Party: John E. Nolan, Assistant Port Attorney, Port of Oakland, 66 Jack London Square, Oakland, California 94604.

Summary: Agreement No. T-3914 between the Port of Oakland (Port) and Sea-Land Service, Inc. (Sea-Land), grants Sea-Land the preferential non-exclusive assignment of a 43.74068 acre parcel, including 3 container cranes, and the lease of two additional parcels consisting of 9.62575 acres (Parcel "A") and 10.6230 acres (Parcel "B") located at the port's Outer Harbor Terminal Area. The term of the Agreement is to commence on August 1, 1980, or the first day of the next month in the event the effective date is later than August 1, 1980, and will continue until March 31, 2000. The primary use of the assigned premises is the operation of a containership terminal. Parcel "A" is to be

used for general offices and a truck and drayage terminal, Parcel "B" is to be used for general offices and a truck and rail terminal. The monthly rentals for the assigned premises are $227,500 until March 31, 1985; $291,666.67 from April 1, 1985 to March 31, 1990; $358,333.34 from April, 1990 to March 31, 1995; and $425,000 from April 1, 1995 to March 31, 2000. The initial monthly rentals for the leased premises are $10,858 for Parcel "A" and $20,247.10 for Parcel "B". Additionally, for each year of the agreement term in which revenue tons of cargo handled at the premises exceeds 1,500,000 revenue tons, exclusive of secondary use, Sea-Land shall pay to the Port 50 percent of wharfage charges accruing on the excess tonnage. Agreement No. T-3914 terminates Agreements Nos. T-1768, T-5-1 and T-2270 between the parties.

Agreement No. 6080-27.

Filing Party: Seymour H. Kligler, Esq., Brauner Baron Rosenzweig Kliger Sparber, & Bauman, 120 Broadway, New York, N.Y. 10005.

Summary: Agreement No. 6080-27 amends the basic agreement of the United States Atlantic and Gulf/Santo Domingo Conference to provide for a right of independent action by the member lines on any freight rates and other charges (but not any classification, rules and regulations), after at least 48 hours prior written notice to the Conference.

Agreement No.: 8770-10

Filing Party: Howard A. Levy, Attorney at Law, 17 Battery Place—Suite 727, New York, New York 10004.

Summary: Agreement No. 8770-10 would amend the U.K./U.S.A. Gulf Westbound Rate Agreement to provide that members may agree on various rates, charges, classifications and related tariff matters, including those relating to the positioning, prior to stuffing by shippers, and the repositioning subsequent to stripping by consignees, of empty containers.

Agreement No.: 9988-11

Filing Party: Howard A. Levy, Attorney at Law, 17 Battery Place—Suite 727, New York, New York 10004.

Summary: Agreement No. 9988-11 would amend the Continental/U.S. Gulf Freight Association Agreement to provide that members may agree on various rates, charges, classifications and related tariff matters, including those relating to the positioning, prior to stuffing by shippers, and the repositioning subsequent to stripping by consignees, of empty containers.

Agreement No.: 10396.

Filing Party: Manuel J. Garcia, Contraalmirante (R.E.) Presidente, Empresa Lineas Maritimas Argentinas S.A., Corrientes 389, Buenos Aires, Argentina.

Summary: Agreement No. 10396, between Empresa Lineas Maritimas Argentinas S.A. and A. Bottacchi S.A. de Navigacion C.F.I.I., is an association agreement of the Argentine-flag carriers in the Brazil/U.S. Gulf Coast trade. The agreement provides for the distribution of participation within the Argentine-flag share and the minimum sailing requirements under the Brazil/U.S. Gulf Pool Agreement on a 50-50 basis. Agreement No. 10396 supersedes Agreement No. 10343, previously under consideration.

Agreement No.: 10397.

Filing Party: Manuel J. Garcia, Contraalmirante (R.E.) Presidente, Empresa Lineas Maritimas Argentinas S.A., Corrientes 389, Buenos Aires, Argentina.

Summary: Agreement No. 10397, between Empresa Lineas Maritimas Argentinas S.A. and A. Bottacchi S.A. de Navegacion C.F.I.I., is an association agreement of the Argentine-flag carriers in the Brazil/U.S. Atlantic Coast trade. The agreement provides for the distribution of participation within the Argentine-flag share and the minimum sailing requirements under the Brazil/U.S. Atlantic Pool Agreement on a 50-50 basis.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 80-22614 Filed 7-25-80; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

[E-80-18]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the North Carolina Utilities Commission involving electric utility rates.

2. *Effective date.* This delegation is effective July 17, 1980.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the North Carolina Utilities Commission involving the application of the Carolina Power and Light Company for an increase in its electric rates.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: July 17, 1980.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-22580 Filed 7-25-80; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control

Reevaluate Guidelines for Cathetered Associated Urinary Tract Infections; Identify Major Work Functions of Infection Control Nurses; Reevaluate Guidelines for Environmental Control Infections; Open Working Groups

The following meetings will be convened by the Center for Disease Control (CDC) and will be open to the public for observation and participation, limited only by space available:

Working Group To Reevaluate Guidelines for Cathetered Associated Urinary Tract Infections

Date: August 4, 1980.
Time: 8:30 a.m. to 5:00 p.m.
Place: Peachtree Plaza Hotel (Tower Suite No. 5), Peachtree at International Boulevard, Atlanta, Georgia 30343.
Purpose: The working group will reevaluate guidelines for cathetered associated urinary tract infections. These guidelines are designed to provide the most reasonable and practical guidance to infection control committees in hospitals throughout the United States.
Additional information may be obtained from: Edward S. Wong, M.D., Hospital Infections Branch, Bacterial Diseases Division, Bureau of Epidemiology, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephones: Commercial: 404/329-3805; FTS: 236-3805.

Working Group To Identify Major Work Functions of Infection Control Nurses

Dates: August 4 and August 8, 1980.
Times: August 4: 8:30 a.m. to 5:00 p.m.; August 8: 2:00 p.m. to 5:00 p.m.
Place: Peachtree Plaza Hotel (Tower Suite No. 18), Peachtree at International Boulevard, Atlanta, Georgia 30343.
Purpose: The working group will identify the major work functions which should be performed by infection control nurses. This information will be used in the development of a criterion-referenced instruction course for infection control nurses.
Additional information may be obtained from: Ms. Susan Shelton, Bureau of Training, CDC, 1600 Clifton Road, NE. (PFy-417), Atlanta, Georgia 30333, Telephones: Commercial: 404/262-6661; FTS: 236-6661.

Working Group To Reevaluate Guidelines for Environmental Control Infections

Date: August 8-9, 1980.
Time: August 8: 2:00 p.m. to 5:00 p.m.; August 9: 8:30 a.m. to 5:00 p.m.
Place: Peachtree Plaza Hotel (Tower Suite No. 2), Peachtree at International Boulevard, Atlanta, Georgia 30343.
Purpose: The working group will reevaluate guidelines for environmental control infections. These guidelines are designed to provide the most reasonable and practical

guidance to infection control committees in hospitals throughout the United States.

Additional information may be obtained from: Bryan P. Simmons, M.D., Hospital Infections branch, Bacterial Diseases Division, Bureau of Epidemiology, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephones: Commercial: 404/329-3805; FTS: 236-3805.

Dated: July 21, 1980.

William C. Watson, Jr.,

Acting Director, Center for Disease Control.

[FR Doc. 80-22612 Filed 7-25-80; 8:45 am]

BILLING CODE 4110-86-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Carlos Irrigation Project, Arizona; Fiscal Year Operation and Maintenance Charges

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Public notice.

SUMMARY: The purpose of this public notice is to change the per acre assessment rate for the operation and maintenance of the irrigation facilities of the Joint Works of the San Carlos Irrigation Project to properly reflect the cost of labor, materials, equipment and services. The change is from $9.57 to $11.79 per acre per year.

EFFECTIVE DATE: This public notice shall become effective July 7, 1980.

FOR FURTHER INFORMATION CONTACT: Henry Dodge, Acting Project Engineer, San Carlos Irrigation Project, P.O. Box 456, Coolidge, Arizona 85228, 602-723-5439.

SUPPLEMENTARY INFORMATION: An analysis of the costs of operation and maintenance of the Joint Works of the San Carlos Irrigation Project was made and on June 11, 1980, was presented to the fact finding committee which is made up of representatives from the San Carlos Irrigation and Drainage District, San Carlos Irrigation Project, Gila River Indian Community, Pima Agency, and the Phoenix Area office. There was no objection to the increase in the assessment rate.

Pursuant to § 191.1(e) of Part 191, Chapter 1, subchapter R of Title 25 of the Code of Federal Regulations, this public notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3.

The principal author of this document is George Knoll, Bureau of Indian Affairs, Phoenix, Arizona 85011, telephone 602-241-2285. The authority to issue this regulation is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 385.

The Public Notice shall read as follows: San Carlos Irrigation Project, Assessment, Joint Works.

Pursuant to the act of Congress approved June 7, 1924 (43 Stat. 476), and supplementary acts, the repayment contract of June 8, 1931, as amended, between the United States and the San Carlos Irrigation and Drainage District, and in accordance with applicable provisions of the order of the Secretary of the Interior of June 15, 1938, the cost of the operation and maintenance of the Joint Works of the San Carlos Irrigation Project for the fiscal year 1982 is estimated to be $1,179,000 and the rate of assessment for the said fiscal year and subsequent fiscal years until further order, is hereby fixed at $11.79 for each acre of land.

Note.—It is hereby certified that the economic and inflationary impacts of this public notice have been evaluated in accordance with Executive Order 11821.

William P. Ragsdale,

Assistant Area Director.

[FR Doc. 80-22579 Filed 7-25-80; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Lewistown District Multiple Use Advisory Council Meeting

In accordance with Section 309 of Pub. L. 94-579, The Federal Land Policy and Management Act, Notice is hereby given of the following meeting:

Name: Lewistown District Multiple Use Advisory Council.
Date: August 27 and 28, 1980.
Place: Lewistown District Office, Airport Road, Lewistown, MT.
Time: 1 p.m. to 4:30 p.m. August 27; 8 a.m. to 12 noon August 28.

Proposed Agenda

August 27, 1980.

1 p.m. to 1:30 p.m.—District Manager's Welcome.
1:30 p.m. to 2:30 p.m.—Organizational Meeting—Election of Officers.
2:30 p.m. to 2:45 p.m.—Break.
2:45 p.m. to 4:30 p.m.—Overview of Lewistown District.

August 28, 1980.

8 a.m. to 10 a.m.—Emerging Issues and Programs.
10 a.m. to 10:15 a.m.—Break.
10:15 a.m. to 11:30 a.m.—Council's Role in Lewistown District Operation.
11:30 a.m. to 12 noon—Determination of next meeting.

A public comment period will follow each agenda item.

This meeting will acquaint the council with the Lewistown District so that it can offer advice to the District Manager concerning land use planning or the management of the public lands in the Lewistown District.

G. L. "Buck" Damone,

Acting District Manager.

[FR Doc. 80-22453 Filed 7-25-80; 8:45 am]

BILLING CODE 4310-84-M

Geological Survey

Known Recoverable Coal Resource Area; Keene, N. Dak.

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and Section 8A of the Mineral Leasing Act of February 25, 1920, as added by Section 7 of the Federal Coal Leasing Amendments Act of 1976 (Pub. L. 94-377, August 4, 1976, as amended by Pub. L. 95-554, October 30, 1978), Federal lands within the State of North Dakota have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(34) North Dakota

Keene (North Dakota) Known Recoverable Coal Resource Area; December 3, 1979; 165,737.59 acres.

A diagram showing the boundaries of the area classified for leasing has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colorado 80225.

Dated: July 15, 1980.

H. William Menard,

Director.

[FR Doc. 80-22583 Filed 7-25-80; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

[Federal Lease Nos. M-061685 and M-057934; Also Pending Lease Application No. M-37604 for short term lease]

Availability for Public Review of a Major Modification to a Mining and Reclamation Plan for a Surface Coal Mine Proposed by Decker Coal Co.; for the West Decker Mine Bighorn County, Mont.

AGENCY: Office of Surface Mining, Reclamation and Enforcement, Department of the Interior.

ACTION: Availability for Public Review of Proposed Major Modification to a Coal Mining and Reclamation Plan and Permit Application.

SUMMARY: Pursuant to Sections 741.17(b) and 786.11 of Title 30 and Section 1500.2 of Title 40, Code of Federal Regulations (CFR), notice is hereby given that the Office of Surface Mining (OSM) has received an application from Decker Coal Company to continue mining Federal coal at the West Decker Mine.

A brief description of the location follows:

Applicant: Decker Coal Company.
Mine Name: West Decker Mine.
State: Montana.
County: Big Horn.
Section, Township, Range: Section 16, and portions of Sections 8, 9, 10, 15, 17, 18, 19, 21, 22, Township 9 South; Range 40 East.
U.S. Geological Survey Maps showing location: Decker Montana Quadrangle (7.5 minute quadrangle).
Office of Surface Mining Reference No. MT 0011.
Name and Address of Applicant: Decker Coal Company, P.O. Box 12, Decker, MT 59025.

The mine is located in Montana, approximately 25 miles northeast of Sheridan, Wyoming, or ½ mile north of Decker, Montana, immediately west of the Tongue River Reservoir and off State Highway 314. The mine is currently operating under State permit, and a mine plan approval from the Department of the Interior pursuant to the Coal Mining Operating Regulations (30 CFR Part 211). The Decker Coal Company is presently mining on Federal coal leases M-0961685, and M-057934A and State Lease No. 537. The current mining operation covers about 1,300 acres, not including associated disturbance on adjacent acres.

The applicant submitted a five-year plan on January 29, 1979 and has now updated that plan pursuant to Montana's permanent regulatory program (which was approved by the Secretary on April 1, 1980) and the permanent regulatory program for Federal lands. Thus action on the plan will be considered pursuant to Chapter VII, Subchapter D of Title 30 (30 CFR 740 et seq.).

The applicant's proposed 5-year plan and permit application addresses mining and reclamation of 63 acres of land that have been applied for under the short term lease criteria. Application for this lease was filed with the Bureau of Land Management on June 15, 1977. If the short term lease is not issued, an alternative mining and reclamation plan will be followed which is also included in the plan.

The area proposed for additional mining and disturbance is about 670 acres and, if the short term lease application is approved, this would increase to about 770 acres. The proposed production rate through year 2002 is 8,000,000 tons of coal per year, which is about the same as present production.

The mining and reclamation plan has been determined to be sufficiently complete for public review. This notice is issued to inform the public of the availability of the plan for review in the offices of the regulatory authority. The Office of Surface Mining and the State of Montana will prepare a technical analysis (TA) to determine whether the proposed plan meets the requirements of SMCRA and an environmental assessment (EA) which will evaluate the impacts of actions the Department of the Interior and the Montana Department of State Lands may take on the plan. During the analytical review, it is possible that the regulatory authority will request additional information from the company. Any further information received would also be available for public review.

No action on the modifed plan will be taken by the Regional Director for a period of 30 days after publication of this notice in the Federal Register. The Decker Coal Company published a notice of filing the proposed modification to the mining and reclamation plan in the "Sheridan Press" on May 23 and 30 and June 6 and 13. Prior to making a final decision on this proposed modification, OSM will issue a Notice of Availability of the TA and EA pursuant to Section 1506.6 of Title 40, Code of Federal Regulations.

This plan is available for public review in the Office of Surface Mining, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado 80202, the Montana Department of State Lands, Capitol Station, Helena, Montana 59601, the Decker Coal Company, Decker, Montana 59025, and the County Courthouse, Hardin, Montana.

Comments on the proposed mine plan application may be addressed to the Regional Director, Office of Surface Mining, at the above Denver address, to the State Land Commission at the Montana Department of State Lands at the indicated Helena address, or to both.

FOR FURTHER INFORMATION CONTACT:

Mike Bishop or John Hardaway, Office of Surface Mining, Brooks Towers, 1020 15th Street, Denver, Colorado 80202 or Dennis Hemmer, Montana Department of State Lands, Capitol Station, Helena, Montana 59601.

Donald A. Crane,
Regional Director.

[FR Doc. 80-22456 Filed 7-25-80; 8:45 am]
BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Decision-Notice

Correction

In FR Doc. 80-19693, appearing at page 44409 in the issue for Tuesday, July 1, 1980, make the following correction:

On page 44410, in the first column, in the paragraph "MC-F-4376F" filed for VanWyk, Inc., the MC number should read "MC-F-14376F".

BILLING CODE 1505-01-M

Finance Applications

Correction

In FR Doc. 80-20390, appearing at page 46220 in the issue for Wednesday, July 9, 1980, please make the following correction:

In the paragraph beginning with "MC-S-13963F" for AMERICAN HOLIDAY VAN LINES, INC., the MC designation should be corrected to read "MC-F-13963F".

BILLING CODE 1505-01-M

Long- and Short-Haul Application for Relief (Formerly Fourth Section Application)

July 21, 1980.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before August 12, 1980.

No. 43844, Southwestern Freight Bureau, Agent (No. B-82), rates on ethylene alcohol or glycol in tank carloads, from points in Louisiana and Texas, to Greer, SC, as published in Supplement 54 to its Tariff ICC SWFB 4615, to become effective August 17, 1980. Grounds for relief—rate relationship and market competition.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-22562 Filed 7-25-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided July 22, 1980.

In our decisions of May 13, 20, 27; June 3, 10, 17, 24, July 1, 8, and 15, 1980, a 13-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all most-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 13.5 percent. We are authorizing that the 13-percent surcharge for this traffic remain in effect. All owner-operators are to receive compensation at this level. No change is authorized in the 2.3-percent surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators, the 1.3-percent surcharge for United Parcel Service, nor in the 5.0-percent surcharge for the bus carriers.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It is ordered:

This decision shall become effective Friday, 12:01 a.m. July 25, 1980.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis, and Gilliam, Chairman Gaskins and Commissioners Clapp and Gilliam absent and not participating.

Agatha L. Mergenovich,

Secretary.

Appendix Fuel Surcharge

Base date and price per gallon (including tax)

January 1, 1979 ..... 63.5¢

Date of current price measurement and price per gallon (including tax)

July 21, 1980 ..... 114.1

	Transportation performed by—			
	Owner operator[1] (1)	Other[2] (2)	Bus carrier (3)	UPS (4)
Average Percent Fuel Expenses (Including Taxes) of Total Revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	13.5	2.3	5.0	*2.1
Percent surcharge allowed	13.0	2.3	5.0	*1.3

[1] Apply to all truckload rated traffic.

[2] Including less-than-truckland traffic.

[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to the UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent)

[4] The developed surcharge figure is reduced 0.8 percent to reflect fuel related increases already included in UPS rates.

[FR Doc. 80-22567 Filed 7-25-80; 8:45 am]

BILLING CODE 7035-01-M

[No. 31098; No. 33447; No. 36491 (Sub-No. 1)]

Nueces County Navigation District No. 1 Versus Abilene & Southern Railway Co., et al.; Nueces County Navigation District No. 1 Versus the Atchison, Topeka & Santa Fe Railway Co., et al.; Wheat, Oklahoma and Kansas to Texas Gulf Ports [1]

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision on reopening.

SUMMARY: Common control element of proof of unreasonable discrimination under § 10741(b) is explained. Actual control of joint rates and not network of controls found to be the proper standard. In Nos. 31098 and 33447, prior port equalization orders involving Corpus Christi, TX, based on network theory is vacated due to change in control analysis. In No. 36491 (Sub-1), actual control analysis is affirmed; discussion of rate prescriptions in the absence of common control is modified.

FOR FURTHER INFORMATION CONTACT: Richard Felder (202) 275-7693.

FOR COMPLETE COPIES OF THIS DECISION CONTACT: Agatha L. Mergenovich, Secretary, Interstate Commerce Commission, Room 2215, (202) 275-7428.

SUPPLEMENTARY INFORMATION: By notice served November 15, 1979 and published in the Federal Register on November 26, 1979, we reopened No. 31098, *Nueces County Nav. District No. 1* v. *Abilene & S. Ry. Co.*, 291 I.C.C. 459 (1954) and No. 33447 *Nueces County Nav. District No. 1* v. *Atchison, T. & S. F. Ry. Co.*, 315 I.C.C. 155 (1961) (the *Corpus Christi* cases) to determine if port equalization orders entered in these proceedings should be modified. We limited our re-examination of these cases to the issue of actual control of rates to the Gulf ports and how control of these rates influences the Commission's authority to order relief in cases arising under 49 U.S.C. 10741 (formerly section 3 (1) of the Interstate Commerce Act). We also stated that we would explore the circumstances, if any, in which a violation of 49 U.S.C. 10741 might exist without common control.

We find that as a matter of fundamental fairness and in keeping with court interpretations, actual control and not network common control is necessary in finding the common source of discrimination for a section 10741 violation. Actual control may be determined by the "good faith offer of divisions" test, enunciated in *Wheat, Oklahoma and Kansas to Texas Gulf Ports*, 359 I.C.C. 592, 603-607 (1979) (the *Wheat* case). As the network common control standard was used in the *Corpus Christi* cases, we vacate our outstanding orders in these proceedings. We also affirm the *Wheat* case's anaylsis of actual control and the good faith test.

We reject the argument that a rate prescription may be ordered as a remedy for a section 10741 violation if there is no common control shown. Thus, while there are two available remedies for a violation (alternative order or prescription), both depend on a finding of actual control of the rates. We modify the *Wheat* case to the extent it indicates approval of rate prescriptions under 49 U.S.C. 10704 absent common control.

Copies of the complete decision are available from the Secretary's Office.

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

Authority: 49 U.S.C. 10321 and 10741 (the Interstate Commerce Act) and 5 U.S.C. 553 and 559 (the Administrative Procedure Act).

Decided: July 21, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis, and Gilliam. Commissioner Stafford concurring in the result. Vice Chairman Gresham not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-22560 Filed 7-25-80; 8:45 am]

BILLING CODE 7035-01-M

[1] This proceeding (359 ICC 592 (1979)) is on remand from the Fifth Circuit for the purpose of coordinating this change in analysis.

[Volume No. 23]

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, Intrastate Applications, Gateways, and Pack and Crate

Petitions for Modification, Interpretation, or Reinstatement of Motor Carrier Operating Rights Authority

The following petitions seek modification or interpretation of existing motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the Federal Register with a copy being furnished the applicant. Protests to these applications will be rejected.

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under rule 247(k) may file a petition for leave to intervene under rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277.

Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 11207 (Subs-362 and 448) (M1F) (Notice of filing of petition to modify certificates, filed April 4, 1980. Petitioner: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Petitioner holds motor *common carrier* certificates in No. MC-11207 (Sub-362), issued October 8, 1976, authorizing transportation, over irregular routes, of *steel doors, steel door frames,* and *brass, bronze, copper* and *steel hardware,* from the plantsite of Ceco Corporation, at or near Milan, TN, to points in AL; and in MC-11207 (Sub-448), issued March 26, 1979, authorizing transportation, over irregular routes, of *steel doors, steel door frames,* and *hardware,* from the facilities of Ceco Corporation, at or near Milan, TN, to points in FL, GA, MS, NC, SC, and TN. By the instant petition, petitioner seeks to modify both certificates by substituting the same commodity description in each certificate. As modified, the commodity description of both certificates would read as follows: (1) *doors, door frames, door frame assemblies,* and *hardware,* and (2) *materials, supplies,* and *components* used in the construction, assembly, and installation of the commodities in (1) above.

MC 30114 (M1F), filed April 28, 1980 (Notice of filing of petition to modify the territorial description). Petitioner: MOLA TRUCKING, INC., d.b.a. MITCHKO TRUCKING, 650 Myrtle Ave., Boonton, NJ 07005. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Petitioner holds *common carrier* authority in MC 30114, served October 5, 1976, over irregular routes. MC 30114 authorizes, as pertinent, the transportation of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), between Boonton, NJ, on the one hand, and, on the other, points in the New York, NY, Commercial Zone as defined by the Commission in 1 M.C.C. 665. By the instant petition, petitioner seeks to modify the above territorial description to read: "between points in NJ, on the one hand, and, on the other, points in the New York, NY, Commercial Zone as defined by the Commission in 1 M.C.C. 665."

MC 64808 (Sub-12) (M1F) (notice of petition to modify certificate), filed June 20, 1980. Petitioner: W. S. THOMAS TRANSFER, INC., 1854 Morgantown Ave., Fairmont, WV 26554. Representative: Robert H. Thompson (same address as petitioner). Petitioner holds a motor *common carrier* Certificate in MC 64808 Sub 12 issued February 18, 1972, authorizing transportation over regular routes, of (A) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from Baltimore, MD, to Parkersburg and Elkins, WV, serving the intermediate points of Romney, Grafton, Landes, and Clarksburg, WV, and those between Landes and Elkins, for delivery only as follows: (1) from Baltimore over U.S. Hwy 40 (Interstate Hwy 70) to Frederick, MD, then over U.S. Hwy 340 to junction VA Hwy 7 (formerly portion U.S. Hwy 340), thence over VA Hwy 7 to Winchester, VA, and thence over U.S. Hwy 50 via Junction, WV, and Redhouse, MD, to Parkersburg, and (2) from Baltimore to Junction, WV, as specified in (1), thence over U.S. Hwy 220 to Franklin, WV, and thence over U.S. Hwy 33 to Elkins; (3) from Baltimore to Franklin, WV, as specified above, thence over U.S. Hwy 33 to junction WV Hwy 28, thence over WV Hwy 28 to junction U.S. Hwy 250, thence over U.S. Hwy 250 to Elkins; and (4) from Baltimore to Redhouse, MD, as specified above, thence over U.S. Hwy 219 to Elkins; and (B) *eggs* and *returned or rejected merchandise,* from Parkersburg and Elkins, WV, to Baltimore, MD, serving Grafton, Landes, Romney, and Clarksburg, WV, and those between Landes and Elkins, for pickup only as follows: from Parkersburg and Elkins, WV, over the respective routes specified in (A) above, to Baltimore, MD. By the instant petition, petitioner seeks to modify the above authority to read as a regular route *"between* Baltimore, MD and Parkersburg and Elkins, WV, serving all intermediate points, and serving points in WV as off-route points" in lieu of the above regular one-way movement, and delete part (B) from the above authority.

MC 106222 (Sub-5) (M2F) (notice of petition for modification of certificate), filed October 31, 1979. Petitioner: WALLACE FREIGHT LINES, INC., 65 Court Street, Copiague, NY 11726. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ

08904. Petitioner holds a motor *common carrier* certificate in MC 106222 Sub 5, issued July 14, 1980, authorizing transportation in interstate or foreign commerce, over irregular routes, transporting *general commodities,* (except conduit, carbonated beverages, carbonated beverage containers and empty bottles, classes A and B explosives, commodities in bulk, those of unusual value, and commodities requiring special equipment, between New York, NY, and points in Farifield County, CT, on the one hand, and, on the other points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, and Union Counties, NJ.

By the instant petition, petitioner seeks to modify the authority by adding another exception, *and those injurious or contaminating to other lading* to the exceptions following general commodities, and adding to the territorial description; on the one hand, and, on the other, Burlington, Camden, Gloucester City, and Palmyra, NJ, and points in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, and Union Counties, NJ.

MC 106398 and Subs 17, 19, 23, 25, 27, 28, 31, 32, 36, 40, 43, 44, 45, 47, 49, 50, 51, 52, 58, 65, 69, 70, 72, 73, 76, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 91, 95, 107, 108, 110, 111, 112, 117, 122, 130, 131, 133, 139, 142, 161, 162, 169, 179, 182, 189, 196, 199, 200, 202, 210, 220, 223, 226, 233, 236, 239, 240, 245, 251, 259, 261, 263, 265, 268, 310, 311, 312, 313, 315, 317, 319, 320, 322, 323, 325, 327, 328, 330, 332, 336, 339, 340, 345, 347, 348, 352, 355, 356, 359, 366, 368, 369, 370, 371, 372, 373, 374, 375, 377, 378, 379, 381, 383, 384, 385, 386, 387, 389, 391, 393, 400, 401, 402, 403, 404, 405, 408, 411, 412, 413, 417, 419, 422, 423, 426, 427, 428, 432, 433, 434, 435, 436, 437, 438, 440, 441, 442, 444, 447, 449, 450, 451, 452, 456, 462, 465, 466, 474, 475, 476, 477, 492, 496, 497, 499, 501, 502, 503, 504, 506, 509, 512, 514, 517, 518, 522, 523, 524, 525, 528, 538, 539, 541, 542, 546, 547, 549, 550, 554, 555, 557, 558, 560, 562, 563, 565, 566, 567, 574, 582, 583, 584, 586, 589, 594, 596, 601, 602, 603, 605, 609, 613, 615, 617, 618, 620, 625, 631, 639, 644, 650, 651, 655, 656, 657, 659, 660, 663, 671, 672, 680, 684, 697, 698, 700, 703, 706, 709, 712, 744, 747, 750, 756, and 780 (MIF) (Notice of Petition To Modify Certificates), filed May 1, 1980. Petitioner: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Box 3329, Tulsa, OK 74101. Representative: Leonard A. Jaskiewicz, 1730 M St., NW., Suite 501, Washington, DC. Petitioner holds motor *common carrier* authority in MC 106398 and the above-numbered subs authorizing transportation over irregular routes, of, among other things, (1) *Commercial trailers, designed to be drawn by passenger automobiles, house trailers, cabin trailers, bungalow trailers and trailers containing special equipment and special purpose trailers,* restricted to secondary movements in truckaway service, between points in the United States (except Alaska and Hawaii); (2) *trailers designed to be drawn by passenger automobiles,* in initial movements, in truckaway service, or undercarriages, frames, and items related to trailers designed to be drawn by passenger automobiles, generally from points in AL, AK, AZ, Bigelow, Camden, Midway, Manila, Fort Smith, Van Buren, Hazen, Newport and points in Izard and Hampstead Counties, AR, points in CA, Loveland, LaJunta, Denver, Filt, Grand Junction, Flagler, Berthoud, Greeley and points in Pueblo and Morgan Counties, CO, points in FL, GA, ID, Chicago, Galva, Dixon, Momence, Aurora, East St. Louis, and points in McDonough Counties, IL, points in IN, Burlington, Guttenburg, Belmond, Des Moines, Grinnel and points in Woodbury, Koffuth, Washington, and Linn Counties, IA, points in KS, Guthrie, Henderson, Middlesboro, and points in Christian County, KY, Shreveport, Ruston, Bossier City, Natchitoches, Vivian, and points in Franklin, Madison, East Feliciana, Caldwell, Bienvill, Ouchita, DeSoto, Rapides, and East Carroll Parishes, LA, Windham and Oxford, ME, Baltimore, Rockville, Elkton, White Marsh, and points in Baltimore, Washington, and Frederick Counties, MD, Wakefield and points in Plymouth County, MA, points in MI, MN, Sherman, Houston, Noff, Yazoo City, Clarksdale, Greewood, Vicksburg, Brookhaven, Tupelo and points in Lowndes, Tippah, Humphreys and Holmes Counties, MS, points in MO, points in Gallatin, Natrona, and Flathead Counties, MT, points in NE, Springfield, NV, Nashaua and points in Rockingham and Merrimack Counties, NH, Thorofare, NJ, Hobbs and points in Bernalillo and Chaves Counties, NM, Buffalo, Latham, Sangerfield, Canona, Binghampton, Whitehall, Saratoga Springs, Batavia, and points in Otsego, Ontario, Madison, Columbia, Niagra, and Wayne Counties, NY, Wadesboro, Durham, Bunn, Smithfield, Fairmont, Richfield, Robbins, Whiteville, Wilmington, Lillington, Harrisburg, Maxton, Shelby, Newport, and points in Nash, Rowan, Grandville, Rockingham, Davie, Chatham, Wilkes, Guilford, Moore, Gaston, Union and Lee Counties, NC, Jamestown and Petersburg, ND, points in OH, Bristow, Tulsa, El Reno, Lawton, Chickasha, Broken Arrow, Ponca City, Mannford, and points in Washington, McCurtain, Pontotoc and Garvin Counties, OK, points in OR, PA, Providence, RI, Orangeburg, Lamar, Chapin, Charleston Heights, Williston, Kershaw, Donalson Center, Sumter, Clinton, and points in Clarendon, Marlboro, Cherokee, and Richland Counties, SC, Rapid City, Madison, Canton, Watertown and points in Minnehaha, Counties, SD, Chapel Hill, Gallatin, Bristol, Greenfield, and points in Marshall, Giles, Maury, Henderson, McNairy, Campbell, Sumner, Henley, Claiborne, Glen and Granger Counties, TN, points in TX, Salt Lake City, Logan and points in Box Elder and Utah Counties, UT, Rutland County, VT, Alexandria, Norfolk, Petersburg, Remington, Lawrenceville, Wylliesburg, Fredericksburg, South Hill, Winchester, Abingdon and points in Shenandoah, Franklin, Pittsylvania and Hanover Counties, VA, points in WA, Summerville, and Ripley WV, West Bend, Tilton, Newton, Hurley, Spencer, Stratford, Grantsburg, Milwaukee, and points in Admas, Clark, Crawford, Columbia, Grant and Wood Counties, WI, to specified points within the United States; (3) *buildings, in sections, when transported on wheeled undercarriages equipped with hitch-ball connectors,* from origins which are points of manufacture, from or between points in AL, AK, AZ, Bigelow, Van Buren, Hazen, and Camden, AR, Cucamonga, Cyprus, Santa Clara, Anaheim, La Habra, Costa Mesa, and points in Los Angeles and Riverside Counties, CA, Silt, Fort Collins, Berthoud, Loveland, LaJunta, Denver, Flagler, and points in Morgan County, CO, Waterbury, CT, points in FL, GA, ID, Chicago, Momence, Galva, Aurora, Dixon and East St. Louis, IL, points in IN, Burlington and Guttenburg, IA, points in KS, Middlesboro and Elizabethton, KY, Shreveport, and points in De Soto, East Carroll and Rapides Parishes, LA, Rockville, Baltimore, and Elkton, MD, Wakefield, MA, points in MI, MN, Brookhaven, MS, points in MO, points in Gallatin and Flathead Counties, MT, NE, Hooksett and Westville, NH, Hobbs and points in Chaves County, NM, Avon, Buffalo, Batavia, Latham and points in Wayne County, NY, points in Rowan, and Nash Counties, NC, Petersburg, ND, points in OH, Tulsa, Broken Arrow, Ponca City, El Reno, Lawton, and Chickasha, OK, points in OR, Clearfield, Shamokin, Selinsgrove, Clarion, Montoursville, Camp Hill, Chambersburg, West Pittston, Irwin, Mansfield, Meadville, State College, Avis, and West Hazelton, PA, Providence, RI, Clinton, Sumter, and

Donaldson Center, SC, Aberdeen, Canton, Watertown, Rapid City, and points in Minnehaha County, SD, Bristol, Johnson City, Chapel Hill, and Gallatin, TN, points in TX, Salt Lake City, and Logan, UT, Alexandria, Norfolk, Petersburg, and points in Hanover County, VA, points in WA, and West Bend, Tilton, Newton, Hurley, and points in Clark and Adams Counties, WI; and (4) *buildings in sections, when transported on wheeled undercarriages equipped with hitch-ball connector,* other than from origins which are points of manufacture, between points in the United States (except AK and HI), and between points in AK, on the one hand, and, on the other, points in the United States, (except AK and HI). By the instant petition, petitioner seeks to modify the authority above in the following ways: (1) Delete from the commodity description in paragraph (1) and (2) above, the languate "designed to be drawn by passenger automobiles," and "house" and "mobile" and "mobile home" and "camping and travel." (2) Delete from the commodity description in paragraphs (3) and (4) above, the language "when transported on wheeled undercarriages equipped with hitch-ball connectors." and "designed to be equipped with hitch-ball or pintle hook connectors" and "mounted on vehicled undercarriages" and "mounted on wheeled undercarriages with hitch-ball connector" and "equipped with hitch-ball connector" and "on wheeled undercarriages with hitch-ball connector" and "transported on wheeled undercarriages" and "when transported on wheeled undercarriages."

Note.—This notice describes, in summary fashion, the operating rights involved. An exact description of each certificate of existing authority and the proposed modifications have been attached to the Petition for Modification.

MC 108407 (M1F) (notice of filing of petition to modify certificate), filed February 25, 1980. Petitioner: RUTHIG TRANSP. CORP., P.O. Box 174, Vineland, NJ 08360. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Petitioner holds motor common carrier authority in MC-108407, issued July 6, 1964, authorizing operations, over irregular routes, as pertinent, *general commodities* (except those of unusual value, classes A and B explosives, liquors, lumber and lumber mill products, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Philadelphia, PA and Camden, NJ, on the one hand, and, on the other, points in NJ and those in PA within 30 miles of the City Hall, Philadelphia, PA. By the instant petition, petitioner seeks to modify the territorial description above so as to read: "between Philadelphia, PA and Camden, NJ, on the one hand, and, on the other, points In NJ and those in PA within 100 miles of the City Hall, Philadelphia, PA."

MC 109148 (Sub-6) (M1F) (notice of petition to modify certificate), filed May 19, 1980. Petitioner: LAS VEGAS-TONOPAH-RENO STAGE LINE, INC., 101 N. Mojave Rd., P.O. Box 42130, Las Vegas, NV 89104. Representative: John C. Russell, 1545 Wilshire Blvd., Los Angeles, CA 90017. Petitioner holds a motor *common carrier* Certificate in MC 109148 Sub 6, issued September 12, 1949, authorizing transportation over regular routes, of *passengers and their baggage, and express, mail and newspapers* in the same vehicle with passengers, between Las Vegas, NV and Boulder City, NV: From Las Vegas over U.S. Hwy 93 to Boulder City, and return over the same route, serving all intermediate points except those between Las Vegas and Henderson, NV, including Henderson. By the instant petition, petitioner seeks deletion of restriction against service to and from intermediate points between Las Vegas and Henderson, NV, including Henderson.

MC 110325 (Sub-1) M1F, filed March 17, 1980, (notice of filing of petition to remove restrictions). Petitioner: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Kansas City, MO 64105. Petitioner holds common carrier authority in MC 110325 Sub 1, served September 1, 1965. Petitioner seeks to delete the restrictions which appear in parenthesis on the territorial description. MC 110325 Sub 1 authorizes general commodities (except classes A and B explosives, livestock, grain, petroleum products in bulk, household goods as defined by the Commission, and commodities requiring special equipment), over regular routes, as pertinent, (1) between Kansas City, MO, and Chicago, IL, serving the off-route points of Coal City, IL, (unrestricted), and serving all intermediate points, (off-route points in the Kansas City, MO-Kansas City, KS, Commercial Zone, as defined by the Commission, off-route points in the Chicago, IL, Commercial Zone as defined by the Commission, and) the off-route point of Atchison, KS (restricted as follows: said carrier shall not transport any traffic between Kansas City, off-route points in the Kansas City Commercial Zone, and intermediate points between Kansas City and Chicago, except those in the Chicago Commercial Zone, except that the intermeidate points of Monroe City, MO, and Springfield, IL, may be served for purposes of joinder only): over specified routes, (2) between Kingdom City, MO, and Chicago, IL, serving all intermediate points (and off-route points in the Chicago, IL, Commercial Zone, as defined by the Commission, restricted to traffic moving to or from Chicago and points in the Chicago Commercial Zone): over specified routes, (restricted to traffic moving between Chicago and points in the Chicago, IL., Commercial Zone, as defined by the Commission, on the one hand, and, points in MO (except St. Joseph, Kansas City, and points in the Kansas City, MO-KS Commercial Zone as defined by the Commission), on the other, is restricted to truckload shipments), (3) between Wenona, IL, and Dwight, IL, serving all intermediate points, over IL Hwy 17, (restricted to said carrier shall render no service between any two points, both of which are located in IL or IN, as part of its operation over the above specified route), and (4) between St. Joseph, MO, and Concordia, KS, serving the intermediate point of Hiawatha, KS, and the off-route points of Linn and Sabetha, KS, (restricted to traffic moving to or from Chicago, IL, points in the Chicago, IL, Commercial Zone, as defined by the Commission, and points east of IL-IN State line): from St. Joseph over U.S. Hwy 36 to Belleville, KS, then over U.S. Hwy 81 to Concordia, and return. By the instant petition, petitioner seeks to delete the restrictions which appear in parenthesis in the territorial descriptions above.

MC 110325 (Sub-25) M1F, filed March 17, 1980, (notice of filing of petition to remove a restriction). Petitioner: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Kansas City, MO 64105. Petitioner holds common carrier authority in MC 110325 Sub 25, served February 18, 1980. MC 110325 Sub 25 authorizes, as pertinent, over regular routes, the transportation of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Oklahoma City, OK and Los Angeles, CA, serving all intermediate points in OK, and all intermediate and off-route points in CA within 30 miles of Los Angeles, unrestricted; and all intermediate points in NM, AZ, and CA except those within 30 miles of Los Angeles, restricted to traffic moving from or to Oklahoma City or points beyond: from Oklahoma City over U.S. Hwy 66 to El Reno, OK, then

over U.S. Hwy 81 to junction U.S. Hwy 64 to Guymon, OK, (also from El Reno over U.S. Hwy 270 to junction OK Hwy 3, and then over OK Hwy 3 to Guymon), then over U.S. Hwy 64 via Boise City, OK, to junction unnumbered OK Hwy east of Wheeless, OK, then over unnumbered OK and NM Hwys via Wheeless and Mexhoma, OK, to junction NM Hwy 18, then over NM Hwy 18 to Clayton, NM, then over NM Hwy 58 to Springer, NM, then over U.S. Hwy 85 to Las Cruces, NM, then over U.S. Hwy 80 to Road Forks, NM, then over NM Hwy 14 via Steins, NM, to the NM-AZ State line, then over AZ Hwy 86 to Benson, AZ, then over U.S. Hwy 80 to Tucson, AZ, then over AZ Hwy 84 to Picacho, AZ, then over AZ Hwy 87 to Mesa, AZ, then over U.S. Hwy 60 to Los Angeles, and return over the same route. By the instant petition, petitioner seeks to modify the intermediate and off-route points. The pertinent authority would read: "between Oklahoma City, OK, and Los Angeles, CA, serving all intermediate points and all off-route points in CA within 30 miles of Los Angeles." The route description remains the same.

MC 110525 (Sub-75) (M1F), filed March 17, 1980, (notice of filing of petition to delete restrictions). Petitioner: TRANSCON LINES, a Corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Kansas City, MO 64105. Petitioner holds *common carrier* authority in MC-110325 Sub 75, served November 25, 1977. Part (A) of the Certificate authorizes the transportation of *general commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment). Those restrictions which appear in parenthesis below are those restrictions which petitioner seeks deletion. (Restriction: In connection with all regular route operations in Section (A) carrier shall only transport shipments (1) between points south of the VA-NC State line, on the one hand, and, on the other, points north of said State line, subject to the specific restrictions hereinafter imposed on service at points on the routes applicable, and (2) between points in NC, on the one hand, and, on the other, points south of the NC-SC State line, not subject to the specific restrictions hereinafter imposed on service at points on the routes applicable.) (1) Between junction U.S. Hwy 52 and NC State Rd. 1669 near Stanleyville, NC, and junction NC Hwy 66 and U.S. Hwy 421, near Kernerville, NC, serving no intermediate points and serving junction U.S. Hwy 52 and NC State Rd. 1669 for the purpose of joinder only, over specific routes, (2) between New York, NY and North Augusta, SC, serving the intermediate points of Jersey City, Newark, and Trenton, NJ, points in NJ between Newark and the Mercer-Middleesex County line; Philadelphia, PA, points in the Philadelphia, PA, Commercial Zone as defined by the Commission, Baltimore, MD, Raleigh, Cary, Sanford, and Albemarle, NC, points between Raleigh and Cary, NC, points between Albemarle, NC, and North Augusta, SC, and the off-route points of Bound Brook, Dunellen, Clifton, and Lodi, NJ, BRistol, PA, points in the New York, NY, and Philadelphia, PA Commercial Zones as defined by the Commission, Oakboro, Stanfield, and Midland, NC, points in Aiken and Barnwell Counties, SC, also and in connection with this route, serving the off-route points of Whitmire and Newberry, SC, and those in Spartanburg, Greenville, Pickens, Anderson, Abbeville, Greenwood, and Laurens Counties, SC, (restricted to shipments from points in these counties to points north of the VA-NC State line, and from points north of said State line to points in these counties): Specific restriction: Service at the intermediate and off-route points named, following the route description immediately below, is subject to the specific restrictions applicable: From New York over specific routes to North Augusta, SC, service at the intermediate points of Trenton, NJ, and those in NJ between Newark and the Mercer-Middlesex County line; and the off-route points of Round Brook, Dunellen, Clifton, and Lodi, NJ (is restricted to pickup of southbound shipments of general commodities, with the above-specified exceptions, and to the delivery of northbound shipments of textiles, textile products, and knit goods. Service at the off-route point of Bristol, PA., is restricted to the pickup of southbound shipments of zinc dust destined to Greensboro, NC.) (3) between Henderson, NC, and Durham, NC, serving no intermediate points, and serving Henderson for the purpose of joinder only, over specific routes, (4) between junction U.S. Hwy 1 and U.S. hwy 130, near Milltown, NJ, and Easley, SC, serving the intermediate points of Paulsboro and Carneys Point, NJ, points in Philadelphia, PA, Commercial Zone, as defined by the Commission, Baltimore, MD, Reidsville, NC, points between Reidsville, NC and Easley, SC, and the off-route points of Milltown, Hightown, Beverly, and Riverside, NJ, points in the Philadelphia, PA, Commercial Zone as defined by the Commission, and New Castle, DE, also, and in connection with this route, serving the off-route points of Whitmire and Newberry, SC, and those in Spartanburg, Greenvile, Pickens, Anderson, Abbeville, Greenwood, and Laurens Counties, SC, and those in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC, (restricted to shipments from points in these counties to points north of the VA-NC State line, and from points of said State line to points in these counties). Specific restriction: Service at the intermediate and off-route points named, following the route description immediately below, is subject to the specific restriction applicable: From junction U.S. Hwy 1 and U.S. Hwy 130 over U.S. hwy 130 to junction NJ Hwy 44 (formerly portion U.S. Hwy 130, near Thorofare, NJ), then over NJ Hwy 44 to junction U.S. Hwy 130, near Bridgeport, NJ, then over U.S. Hwy 130 to junction U.S. Hwy 40, then over U.S. Hwy 40 to Baltimore, MD, then over U.S. Hwy 1 to Washington, DC, then over U.S. Hwy 29 to junction U.S. Hwy 29A (formerly portion U.S. Hwy 29) at or near Greensboro, NC, then over U.S. Hwy 29A to junction U.S. Hwy 29 at or near High Point, NC, then over U.S. Hwy 29 to Greenville, SC, then over U.S. Hwy 123 to Easley, and return over the same route. Specific restriction: Service at the intermediate and off-route points named, following the route description immediately below, is subject to the specific restriction applicable: (Service at the intermediate point of Paulsboro, NJ, is restricted to the pickup of southbound shipment of general commodities with the above specified exception. Service at the intermediate point of Carneys Point, NJ, and the off-route point of New Castle, DE, is restricted to the pickup of southbound shipments of chemicals and dyes. Service at the off-route point of Milltown, NJ, is restricted to the pickup of southbound shipments of general commodities, with the above-specified exceptions, and to the delivery of northbound shipments of textiles, textile products, and knit goods. Service at the off-route points of Hightown, Beverly, and Riverside, NJ, is restricted to the delivery of northbound shipments of textiles, textile products, and Knit goods.). (5) Between Richmond, VA and Danville, VA, serving no intermediate points and serving each terminal only for the purpose of joinder, over specific routes. (6) Between Raleigh, NC and

Greensboro, NC, serving all intermediate points, and the off-route points of Elon College, Gibsonville, and McLeansville, NC, over specified routes. (7) Between Hanes, NC and Siler City, NC, serving all intermediate points, over specified routes. (8) Between Greensboro, NC, and Siler City, NC, serving all intermediate points and the off-route points of Cedar Falls, Central Falls, Franklinville, and Worthville, NC, over specific routes. (9) Between junction U.S. Hwys 29 and 29A, near China Grove, NC, and Charlotte, NC, serving all intermediate points, over specific routes. (10) Between Shelby, NC, and Kings Mountain, NC, serving all intermediate points, also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC (restricted to the transportation of shipments from points in these counties to points north of the VA-NC State line, and from points north of said State line to points in these counties), from Shelby over Alternate U.S. Hwy 74 to junction U.S. Hwy 74, then over U.S. Hwy 74 to Kings Mountain, and return. (11) Between Charlotte, NC, and Monroe, NC, serving all intermediate points, over specified routes. (12) Between Maiden, NC, and junction U.S. Hwy 74 and NC Hwy 15, near Shelby NC, serving all intermediate points; also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC (restricted to shipments from points in these counties to points north of the VA—NC State line, and from points north of said State line to points in these counties:) over specified routes. (13) Between Charlotte, NC, and Lincolnton, NC, serving all intermediate points; also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC, (restricted to the transportation of shipments from points in these counties to points north of the VA-NC State line, and from points north of said State line to points in these counties:) over NC Hwy 27. (14) Between Charlotte, NC, and Clover, SC, serving all intermediate points, over specified routes. (15) Between Charlotte, NC; and Statesville, NC, serving all intermediate points, over specified routes. (16) Between Pineville, NC, and Lancaster, SC, serving all intermediate points, over U.S. Hwy 521. (17) Between Monroe, NC, and Chester, SC, serving all intermediate points, and the off-route points of Waxhaw and Mineral Springs, NC, and Great Falls, SC, over specified routes. (18) Between Cleveland, SC, and Simpsonville, SC, serving all intermediate points; also, and in connection with this route, serving the off-route points of Whitmire, and Newberry, SC, and those in Spartanburg, Greenville, Pickens, Anderson, Abbeville, Greenwood, and Laurens Counties, SC, (restricted to shipments from points in these counties to points north of the VA-NC State line, and from points north of said State line to points in these counties), over U.S. Hwy 276. (19) Between Blacksburg, SC and Gaffney, SC, serving all intermediate points, over specified routes. (20) Between Clearwater, SC, and Augusta, GA, serving all intermediate points, Specific restriction: Service at Augusta is subject to the specific restriction applicable, following the route description immeidately below: From Clearwater over SC Hwy 421 to junction U.S. Hwy 1, then over U.S. Hwy 1 to Augusta, and return, (Service at Augusta is restricted to the delivery of southbound shipments of general commodities, with the above-specified exceptions, moving from points authorized in Section (A) in NY, NJ (except Highstown, Beverly, and Riverside), PA (except Bristol), and DE, and to the pickup of northbound shipments of textiles, textile products, and knit goods, moving to points authorized in Section (A) in NY, NJ (except Paulsboro and Carneys Point); and PA (except Bristol)). (21) Between Albemarle, NC, and Badin, NC, serving no intermediate points, over specified routes. (22) Between Lincolnton, NC and Gastonia, NC, serving all intermediate points, also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC, (restricted to shipments from points in these counties to points north of the VA-NC State line, and from points north of said State line to points in these counties), over U.S. Hwy 321. (23) Between Maiden, NC and Hickory, NC, serving all intermediate points, also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC, (restricted to shipments from points in these counties to points north of the VA-NC State line, and from points north of said State line to points in these counties) over U.S. Hwy 321. (24) Between Hickory, NC, and Asheville, NC, serving all intermediate points, also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC, (restricted to shipments from points in these counties to points north of the VA-NC State line, and from points north of said State line to points in these counties) over specified routes. (25) Between Asheville, NC, and Tuxedo, NC, serving all intermediate points, also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC, (restricted to shipments from points in these counties to points north of the VA-NC State line, and from points north of said State line to points in these counties), over U.S. Hwy 25. (26) Between Henderson, NC and Tryon, NC, serving all intermediate points, also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC, (restricted to shipments from points in these counties to points north of the VA-NC State line, and from points north of said State line to points in these counties), over U.S. Hwy 176. (27) Between Hendersonville, NC and Bat Cave, NC, serving all intermediate points, also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC, (restricted to shipments from points in these counties to points north of the VA-NC State line, and from points north of said State line to points in these counties:), over U.S. Hwy 64. (28) Between Bat Cave, NC, and Shelby, NC, serving all intermediate points, also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC, (restricted to shipments from points in these counties to points north of the VA-NC State line, and from points north of said State line to points in these counties), over U.S. Hwy 74. (29) Between Forest City, NC, and Henrietta, NC, serving all intermediate points, also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC, (restricted to the transportation of shipments from

points in these counties to points north of the VA–NC State line, and from points north of said State line to points in these counties), over Alternate U.S. Hwy 221. And (30) Between Shelby, NC, and Lawndale, NC, serving all intermediate points, also, and in connection with this route, serving the off-route points in Gaston, Lincoln, Catawba, Caldwell, Burke, McDowell, Buncombe, Henderson, Polk, Rutherford, and Cleveland Counties, NC, (restricted to shipments from points in these counties to points north of the VA–NC State line, and from points north of said State line to points in these counties), over specified routes. By the instant petition, petitoner seeks to delete the territorial restrictions which appear in parenthesis.

MC 112668 (Subs-10, 21, 22, 27, 32, 39, 44, 47, 52, 57, and 59F) (M1F) (Notice of Petition to Modify Certificates), filed June 6, 1980. Petitioner: HARVEY R. SHIPLEY & SONS, INC., P.O. box 266, Finksbury, MD 21048. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Petitioner holds motor *common carrier* certificates (1) in MC 112668 Sub 10 issued January 29, 1958, authorizing transportation over irregular routes, of *ground limestone,* in bulk, in dump vehicles, from Texas, MD, to points in DE, NJ, VA, PA (except points in Erie, Crawford, and Mercer Counties), and DC, and points in that part of WV east of a line beginning at the WV–PA State line (near Mount Morris, PA) and extending along U.S. Hwy 19 through Clarksburg and Beckley, WV, to the WV–VA State line (near Bluefield, WV); (2) in MC 112668 Sub 21 issued November 14, 1961, authorizing transportation over irregular routes, of *sand,* washed and dry, in drump vehicles, from White Marsh, MD, to points in DE, NJ (except points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Countiees, NJ), points in WV east of U.S. Hwy 19, points in PA (except points in Erie, Crawford, and Mercer Counties, PA), and points in VA (except points within 125 miles of the District of Columbia); (3) in MC 112668 Sub 22 issued November 5, 1962, authorizing transportation over irregular routes, of *sand,* washed and dry, in bulk, in dump vehicles, from White Marsh, MD, to points in DC and points in VA within 125 miles of DC; (4) in MC 112668 Sub 27 issued July 8, 1964, authorizing transportation over irregular routes, of *limestone,* in bulk, in dump vehicles, and *gravel,* in bulk and in bags, from Texas, MD, to points in NY and OH; (5) in MC 112668 Sub 32 issued November 24, 1964, authorizing transportation over irregular routes, of *stone, sand, and gravel,* in bulk, in dump vehicles, from White Marsh and Texas, MD, to points in CT; (6) in MC 112668 Sub 39 issued January 5, 1966, authorizing transportation over irregular routes, of *ground limestone,* in bulk, in dump vehicles, from Texas, MD, to Greenville, PA; (7) in MC 112668 Sub 44 issued May 29, 1967, authorizing transportation over irregular routes, of *limestone, sand and gravel,* in bulk, in dump vehicles, and *limestone, sand and gravel,* in containers when moving at the same time and in the same vehicle with limestone, sand and gravel, in bulk, from Texas, MD, and White Marsh, MD, to points in MI; (8) In MC 112668 Sub 47 issued January 17, 1968, authorizing transportation over irregular routes, of (A) *sand,* in bulk, from points in Adams County, PA (except the Borough of Gettysburg), to points in Carroll, Frederick, and Washington Counties, MD, and (B) *crushed stone, (a) from points in Carroll County, MD, to points in Adams County, PA (except the Borough of Gettysburg), (b) from points in Adams County, PA (except the Borough of Gettysburg), to points in Washington County, MD, and (c) from points in Adams County, PA, to points in Carroll and Frederick Counties, MD; (9) in MC 112668 Sub 52 issued October 28, 1971, authorizing transportation over irregular routes, of (A) fertilizer,* in bulk, in tank vehicles, (a) from Hagerstown, MD, to points in that part of PA bounded on the west and north by a line beginning at the MD–PA State line and extending along U.S. Hwy 220 to its junction with the Susquehanna River at or near Williamsport, PA, then on the east of the Susquehanna River to its junction with the MD-PA State line, then on the south by the MD-PA State line, (b) from Hagerstown, MD, to points in that part of VA north of U.S. Hwy 60 and west of Interstae Hwy 95, and (c) from Hagerstown, MD, to points in that part of WV east of U.S. Hwy 19 and north of U.S. Hwy 60, (B) *stone products,* from Millville, WV, to points in GA, NY, OH (except in bulk), and SC, (C) *slag,* in bulk, in tank vehicles, from Sparrows Point, MD, to points in Fiarfax, Loudoun, Arlington, Clarke, Frederick, Fauquier, Prince William, Warren, Orange, Culpeper, Madison and Rappahannock Counties, VA, points in DE, points in Jefferson, Berkeley, and Morgan Counties, WV, and points in Fulton, Franklin, Adams, York, Lancaster, Chester, Delaware, Cumberland, and Dauphin Counties, PA, (D) *Sand* (except in tank vehicles), from Chase, MD, to points in DE, NJ (except Cumberland, Salem, Cloucester, Cape May, Atlantic, Camden and Burlington Counties, NJ), WV, VA, PA, NY, CT, MD, and DC and (E) *sand,* in packages, from White Marsh, MD, to points in DE, NJ (except Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden and Burlington Counties, NJ), WV, VA, PA, NY, CT, MD, and DC; (10) in MC 112668 Sub 57 issued August 28, 1974, authorizing transportation over irregular routes, of (A) *stone,* in bulk, in dump vehicles, from the facilities of Harry T. Campbell Sons' Co., Division of the Flintkote Co., at or near Gettysburg, PA, to points in OH, NY, CT, WV, MD, VA, DE, NJ (except points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Counties, NJ), and DC, (B) *Gravel,* in bulk, in dump vehicles, from the facilities of Harry T. Campbell Sons' Co., Division of the Flintkote Co., at or near White Marsh, MD, to points in OH, NY, CT, PA, WV, VA, DE, and DC, (C) *lightweight aggregate,* from DC, to the facilities of Harry T. Campbell Sons' Co., at or near Baltimore, White Marsh, and Marriottsville, MD, and (D) *aragonite limestone,* from Perth Amboy, NJ, to the facilities of Harry T. Campbell Sons' Co., Division of the Flintkote Co., at or near Baltimore, White Marsh, and Marriottsville, MD; and (11) in MC 112668 Sub 59 F issued February 14, 1979, authorizing transportation over irregular routes, of (A) *gravel,* in bulk, in dump vehicles, from White Marsh, MD, to points in NJ, (B) *stone and stone products,* in bulk, in dump vehicles, from Medford, MD, to points in CT, NJ, and OH, (C) *stone,* in bulk, in dump vehicles, from the facilities of Harry T. Campbell Sons' Company, Campbell-Grove Division of the Flintkote Company at or near Gettysburg, PA, to points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden and Burlington Counties, NJ, (D) *sand,* in dump vehicles, from White Marsh, MD, to points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlinton Counties, NJ, and (E) *stone,* in bulk, in dump vehicles, from Marriottsville, MD, to points in OH and CT, and Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Counties, NJ. By the instant petition, petitioner seeks to delete the "in bulk, in dump vehicles, or in package" restrictions from each of the commodities in each of the above certificates.

MC 113271 (Sub-24) (M1F) (notice of filing of petition to modify certificate), filed April 18, 1980. Petitioner: TRANSYSTEMS, INC., P.O. Box 2644, Great Falls, MT 59401. Representative: Ray F. Koby, 314 Montana Bldg., Great

Falls, MT 59401. Petitioner holds motor *common carrier* authority certificated in MC 113271 Sub 24, issued July 3, 1968, authorizing transportation, over irregular routes of *commodities* in bulk, except petroleum and petroleum products, between ports of entry on the US-Canada boundary line in ND, MT, and ID, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NM, ND, OK, OR, SD, TN, TX, UT, WA, WI, and WY. By the instant petition, petitioner seeks to modify the authority by deleting the specific described ports of entry in ND, MT and ID.

MC 113678 (Sub-525) (M1F) (notice of petition to modify certificate), filed May 16, 1980. Petitioner: CURTIS, INC., P.O. Box 16004, Stockyards Station, Denver, CO 80216. Representative: Roger M. Shaner (same address as applicant). Petitioner holds a motor *common carrier* Certificate in MC 113678 Sub 525 issued June 25, 1975, authorizing transportation over irregular routes, of *confectionery* (except in bulk), in vehicles equipped with mechanical refrigeration, from the plant sites and storage facilities of M & M Mars, Division of Mars, Inc., at Albany, Atlanta, Decatur, and Doraville, GA, to points in CO, NE, MO, and KS, restricted to shipments originating at the named origins. By the instant petition, petitioner seeks (a) to delete the above commodity and substitute in lieu thereof "foodstuffs (except in bulk)", (b) delete the equipment restriction, and (c) delete the named origin shipper and substitute in lieu thereof "M & M/Mars, Snack Master, Division".

MC 113678 (Sub-669) (M1F) (notice of petition to modify certificate), filed June 10, 1980. Petitioner: CURTIS, INC., P.O. Box 16004, Stockyards Station, Denver, CO 80216. Representative: Roger M. Shaner (same address as applicant). Petitioner holds a motor *common carrier* Certificate in MC 113678 Sub 669 issued June 22, 1979, authorizing transportation over irregular routes, of (A)(1) *foodstuffs*, (2) *pharmaceutical materials, supplies and products*, (3) *chemicals*, (4) *alcoholic beverages*, (5) *tobacco products*, (6) *pet foods*, and (7) *such commodities* as are dealt in by distribution or consolidation warehouses for the commodities described in (1) through (6), when moving in the same vehicle at the same time as the commodities described in (1), (2), (3), (4), or (6) (except commodities in bulk), in (1) through (7), in vehicles equipped with mechanical refrigeration, (a) from Denver, CO, to points in the U.S. in and west of MN, IA, MO, AR, and LA (except AK and HI), restricted to traffic originating at (or moving from storage-in-transit at) Denver, CO, or the facilities of Nobel, Inc., at Albuquerque, NM, and destined to points in the U.S. in and west of MN, IA, MO, AR and LA (except AK and HI), and (b) from points in the U.S. in and west of MN, IA, MO, AR and LA (except AK and HI), to Denver, CO, restricted to traffic originating at points in the U.S. in and west of MN, IA, MO, AR, and LA (except AK and HI), and destined to (or moving to storage-in-transit at) Denver, CO, or the facilities of Nobel, Inc., at Albuquerque, NM, provided that parts (a) and (b) may be tacked in connection with shipments which originate at or are destined to the facilities of Nobel, Inc., at Albuquerque, NM; and (B) *foodstuffs* (except in bulk), between the facilities of Packers' Cold Storage, at Laramie, Wy, on the one hand, and, on the other, points in the U.S. in and west of MN, IA, MO, AR, and LA (except Ak and HI), restricted to traffic originating at and destined to points in the U.S. in and west of MN, IA, MO, AR, and LA (except AK and HI). By the instant petition, petitioner seeks (a) in Part (A) above to delete (i) the originating at and destined to restriction, (ii) the named shipper, (iii) the mechanically refrigerated equipment restriction, and (iiii) the in transit provisions; and (b) in part (B) above to delete (i) the originating at and destined to restriction, and (ii) the shippers name.

MC 117940 (Sub-281) (M1F) (notice of filing of petition to modify certificate), filed April 25, 1980. Petitioner: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359. Petitioner holds a motor *common carrier* certificate in MC-117940 Sub 281F, issued October 9, 1979, authorizing transportation, over irregular routes, of *such commodities* as are dealt in by retail stores (except commodities in bulk, in tank vehicles), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Montgomery Ward & Company, Inc. By the instant petition, petitioner seeks to modify the authority by deleting the restriction.

MC 119789 (Sub-22) (M1F) and Sub 2 (M1F) (notice of petition to modify certificates), filed May 27, 1980. Petitioner: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as petitioner). Petitioner holds motor *common carrier* certificates (1) in MC 119789 Sub 22 issued February 29, 1968, authorizing transportation over irregular routes, of *canned foodstuffs*, from St. Francisville and Belledeau, LA, to points in CA, AZ, ID, NM, NV, OR, and TX; and (2) in MC 119789 Sub 27 issued May 29, 1969, authorizing transportation over irregular routes, of *canned and bottled foodstuffs*, (a) from St. Francisville, LA, to points in MS (except points within the Memphis, TN Commercial zone, as defined by the Commission), AL, FL, GA, SC, NC, VA, MD, DE, PA, NJ, NY, RI, CT, MA, TN (except Memphis and points in the Commercial zone of Memphis, as defined by the Commission), KY, WV, OH, IN (except points in Lake County), MI, and WI, and (b) from Belledeau, LA, to points in MS, AL, FL, GA, SC, NC, VA, MD, DE, PA, NJ, NY, RI, CT, MA, TN, KY, WV, OH, IN, MI, IL, and WI. By the instant petition, petition seeks to modify its above certificates by deleting the commodity descriptions and substituting in lieu thereof "foodstuffs, in container".

MC 120298 (Sub-2) (M1F) (Notice of petition to modify certificate), filed April 8, 1980. Petitioner: LARRY L. FENNER TRANSPORT, INC., 101 First Ave., Moline, IL 61265. Representative: Elisabeth A. DeVine (same address as applicant). Petitioner holds a motor *common carrier* Certificate in MC 120298 Sub 2 issued November 14, 1978, authorizing transportation over irregular routes, of (1) *machinery, machinery parts, agricultural implements, and farm machinery and farm tractors*, between points in IL, and (2) *iron and steel articles* and *building materials* (except cement), between points within 50 miles of Silvis, IL. By the instant petition, petitioner seeks to *add* the following commodity descriptions to part (1) of the above authority: (1) *commodities*, the transportation of which because of size or weight requires the use of special equipment, and of related machinery parts and related contractors' materials and supplies, when their transportation is incidental to the transportation of by applicant of commodities which by reason of size or weight require special equipment, and (2) *self-propelled articles*, each weighing 15,000 pounds or more, related to machinery, tools, parts, materials and supplies when the transportation is incidental to the transportation of self-propelled articles each weighing 15,000 pounds or more.

MC 121781 (Sub-1) (M1F) (Notice of filing of petition to modify certificate) filed April 8, 1980. Petitioner: ROBERT E. SMITH, d.b.a. ALCAL MAIL SERVICE, 5565 Black Ave., Pleasanton, CA 94566. Representative: J. H. Gulseth, 100 Bush St., San Francisco, CA 94104. Petitioner holds motor *common carrier* certificate in MC 121781 Sub-1 issued

November 9, 1978, authorizing transportation, over irregular routes, of *uncrated electronic equipment,* between points in that part of CA in and north of Inyo, Tulare, Kings and Monterey Counties. By the instant petition, petitioner seeks to substitute "office machines and equipment" in lieu of the present commodity description.

MC 123111 (Sub-8) (M1F) (Notice of filing of petition to modify certificate), filed April 14, 1980. Petitioner: QUEENSWAY TANK LINES LIMITED, 635 Industrial Ave., Ottawa, Ontario Canada K1G OZ1. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., N.W., Washington, DC 20005. Petitioner holds a motor *common carrier* certificate in MC 123111 Sub-8 issued September 29, 1972, authorizing transportation, over irregular routes, in foreign commerce only, of (1) *asphalt,* in bulk, (a) from ports of entry on the international boundary line between the U.S. and Canada at Highgate and Rock Island, VT, to points in VT, and (b) from ports of entry on the international boundary line between the U.S. and Canada at Champlain and Rouses Point, NY, to points in NY, restricted in (a) and (b) to traffic originating at points in the Province of Quebec, and (2) *Asphalt and asphalt products,* in bulk, from ports of entry on the international boundary line along the Saint Lawrence River to points in NY, restricted to traffic originating at points in the Province of Ontario, Canada. By the instant petition, petitioner seeks to modify the authority by deleting the restrictions in (1) and (2) above.

MC 128409 (Sub-5F) (M1F) (Notice of petition to modify permit), filed May 29, 1980. Petitioner: HAROLD A. MILLER, P.O. Box 623, Moorhead, MN 56560. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. Petitioner holds a motor *contract carrier* permit in MC 128409 Sub-5F, issued April 30, 1980, authorizing transportation over irregular routes, of (1) *sugar* (except inedible sugar), in bulk, in tank vehicles, from Hillsboro and Drayton, ND and East Grand Forks, Chaska, Moorhead and Crookston, MN to points in MN, IA, WI, and IL, and (2) *materials and supplies* used by sugar beet processing plants (except liquid commodities, in bulk, in tank vehicles), between those points in ND on and east of ND Hwy 18, on the one hand, and, on the other, points in MN, under a continuing contract(s) with American Crystal Sugar Co., of Moorhead, MN. By the instant petition, petitioner seeks to add ND as an additional destination state in part (1) of the above authority.

MC 133841 (Sub-2) (M3F) (Notice of filing of petition to modify certificate) filed April 29, 1980. Petitioner: DAN BARCLAY, INC., 362 Main St., P.O. Box 426, Lincoln Park, NJ 07035. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Petitioner holds motor *common carrier* certificate in MC 133841 Sub-2 issued August 14, 1978, authorizing transportation, over irregular routes, of *air pollution control, solar cooling, and heating units, and equipment materials, and supplies* used in the manufacture and installation thereof (except commodities in bulk), between the facilities of the Edwards Engineering Corporation located at or near Pompton Plains, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI). By the instant petition, petitioner seeks to modify the commodity description by adding "wheeled vehicles" to the present description.

MC 135148 (Sub-3) (Notice of petition to modify Permit), filed June 2, 1980. Petitioner: MARTIN R. NEUMANN, d.b.a. SWANSON FUEL, 157 S. Vista Way, Kelso, WA 98626. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. Petitioner holds a motor *contract carrier* Permit in MC 135148 Sub-3, issued November 6, 1975, authorizing transportation over irregular routes, of *wood residuals* (a) between points in OR west of the Summit of the Cascade Range, on the one hand, and on the other points in WA, and (b) between points in WA west of the Summit of the Cascade Range, on the one hand, and, on the other, points in OR under a continuing contract(s) with Stan Witty Land, Inc. of Kalama, WA. By the instant petition petitioner seeks to add Moclips Cedar Manufacturing Co., as an additional contract shipper.

MC 136318 (Sub-56) (M1F) (Notice of filing of petition to modify commodity description), filed May 14, 1980. Petitioner: COYOTE TRUCK LINE, INC., 501 Sam Ralston Road, Lebanon, IN 46052. Representative: James P. Beck, 717 17th Street, Suite 2600, Denver, CO 80202. Petitioner holds a motor *contract carrier* Permit in MC 136318 (Sub-56), issued November 16, 1979, authorizing transportation over irregular routes, of *New furniture, new furnishings, and new furniture and new furnishings accessories,* (1) from points in AL, GA, MS, NC, SC, TN, TX, and VA to points in AZ, CA, CO, IL, IN, IA, MD, MI, MN, MO, NV, NY, OH, OK, OR, PA, VA, and TX; and (2) from points in CA to those points in the United States in and east of MN, IA, MO, AR, and LA, under continuing contract with Montgomery Ward & Company, of Chicago, IL. By the instant petition, petitioner seeks to modify the commodity description above so as to read: "*Such commodities as are dealt in by retail department and catalog stores*".

MC 139009 (Sub-1) (M1F) (Notice of filing of petition to modify certificate), filed May 19, 1980. Petitioner: R & W EXPRESS, INC., 6861 Main St., Lithonia, GA 30058. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Petitioner holds a motor *common carrier* Certificate in MC 139009 Sub-1, issued October 16, 1978, authorizing transportation over irregular routes, of *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Conyers, Doraville, Lithonia, Stone Mountain and Tucker, GA, on the one hand, and, on the other, points in De Kalb, Gwinnett, Newton, Rockdale and Walton Counties, GA, restricted to traffic having a prior or subsequent movement by rail in trailer-on flatcar service. By the instant petition, petitioner seeks to eliminate Tucker, GA as a base point in the above territorial description and substitute in lieu thereof Atlanta, GA.

MC 141628 (M1F) (Notice of filing of petition to modify certificate), filed May 15, 1980. Petitioner: OVEROAD CONTAINER SERVICE, INC., 14011 S. Central Avenue, Los angeles, CA 90059. Representative: Jeffrey A. Vogelman, Suite 400, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. Petitioner holds a motor *common carrier* certificate No. in MC 141628, issued March 23, 1977, authorizing transportation over irregular routes, of (1) *general commodities* (except classes A and B explosives, household goods as defined by the Commission, motor vehicles, and commodities which because of their size and weight require special equipment), in containers, and (2) *empty containers,* between ports of entry located in CA, OR, and WA, on the one hand, and, on the other, points in the United States (including AK, but excluding HI), restricted to the transportation of traffic having a prior or subsequent movement by water. By the instant petition, petitioner seeks to modify the commodity description so as to read: (1) *general commodities* (except classes A and B explosives, household goods as defined by the Commission, motor vehicles, and commodities which because of their size and weight require special equipment), in containers or in trailers, and (2) *empty containers and empty trailers.*

MC 142268 (Sub-3) (M2F) (Notice of petition to modify certificate), filed June

6, 1980. Petitioner: GORSKI BULK TRANSPORT, INC., R.R. No. 4, Harrow, Ontario, CD N0R 1G0. Representative: William H. Shawn, 1730 M St., NW., Washington, DC 20036. Petitioner holds a motor *common carrier* Certificate in MC 142268 Sub-3, issued November 25, 1977, authorizing transportation over irregular routes, of *alcoholic beverages*, in bulk, in tank vehicles, from Bardstown, NY, to points on the U.S.-Canada Boundary line, located in MI, NY, NH, and VT, restricted to traffic destined to Montreal, Quebec, Canada. By the instant petition, petitioner seeks to modify the territorial description to read as a radial movement in lieu of a from and to movement.

MC 142516 (Sub-19) (MIF) (notice of filing of petition to modify permit), filed December 27, 1979. Petitioner: ACE TRUCKING CO., INC., 1 Hackensack Ave., Kearny, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Petitioner holds a motor *contract carrier* Permit in MC 142516 Sub 19, issued December 5, 1979, authorizing transportation, over irregular routes, of (1) *titanium dioxide*, and (2) *materials and supplies* used in the manufacture and sale of titanium dioxide, (except commodities in bulk), between the facilities of Titanium Pigment Division/NL Industries, Inc., of Sayreville, NH, On the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Titanium Pigment Division/NL Industries, Inc., of Sayreville, NJ. By the instant petition, petitioner seeks to modify the authority herein so to read: "(1) titanium dioxide and industrial chemicals, and (2) materials, equipment, and supplies used in the sale and manufacture of the commodities in (1) above, (except commodities in bulk), between points in NJ and the New York, NY, commercial zone, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with NL Chemical/Div. of NL Industries, of Sayreville, NJ.

MC 143218 (MIF) and (Sub-2) (MIF) (notice of petition to modify permits), filed April 1, 1980. Petitioner: DONALD SANTISI TRUCKING COMPANY, 1024 North Main St., Niles, OH 44446. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. Petitioner holds motor *contract carrier* Permits (1) in MC 143218 issued June 13, 1978, authorizing transportation over irregular routes, of (a) *hardware*, from Youngstown, OH, to those points in that part of the U.S. in and west of ID, UT, and AZ, under contract with The Steel City Corporation of Youngstown, OH; and (b) strip steel, from Warren, OH to points in CA, WA, and OR under contract with Steel Strip Corporation of Warren, OH; and (2) in MC 143218 Sub 2F issued October 24, 1979, authorizing transportation over irregular routes, of *books, magazines, periodicals, and advertising matter* (except commodities in bulk), from Canton, OH to points in AZ, CA, CO, MN, NM, OR, TX, UT and WA, under contract with Danner Press Corp. of Canton, OH. By the instant petition, petitioner seeks (I) to modify the territorial description in part (1) above by adding the additional destination states of CO, TX, MN, GA, NC, SC, FL, NJ, CT, RI, and MA to part (a), and CO, TX, GA, FL, VT, ID, and AZ to part (b), and (II) to modify the territorial description in part (2) above by adding the additional destination states of GA, FL, and NV.

Republication of Grants of Operating Rights Authority Prior to Certification; Notice

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this Federal Register notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 989 (Sub-30F) (republication), filed July 14, 1978, published in the FR issue of August 22, 1978, and republished this issue. Applicant: IDEAL TRUCK LINES, INC., P.O. Box 330, Norton, KS 67654. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. A Decision of the Commission, Division 2, decided June 16, 1980, and served June 23, 1980, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over regular routes, transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Wichita, KS, and North Platte, NE, (1) from Wichita over U.S. Hwy 81 to junction U.S. Hwy 24, then over U.S. Hwy 24 to junction U.S. Hwy 281, then over U.S. Hwy 281 to junction U.S. Hwy 36, then over U.S. Hwy 36 to junction U.S. Hwy 83, then over U.S. Hwy 83 to North Platte, and return over the same route; and (2) from Wichita over U.S. Hwy 81 to junction U.S. Hwy 24, then over U.S. Hwy 24 to junction U.S. Hwy 281, then over U.S. Hwy 281 to junction U.S. Hwy 36, then over U.S. Hwy 36 to junction U.S. Hwy 283, then over U.S. Hwy 283 to junction Interstate Hwy 80, then over Interstate Hwy 80 to North Platte, and return over the same route, serving in (1) and (2) above, the intermediate points of Beloit, Smith Center, Phillipsburg, Norton, and Oberlin, KS, McCook, NE, and all intermediate points in Nebraska on U.S. Hwy 283 and Interstate Hwy 80. This authority may be tacked or joined with applicant's otherwise existing authority for the purpose of performing a through movement, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

MC 145411 (Sub-2F) (republication), filed January 29, 1979, previously noticed in the FR issue of April 30, 1979. Applicant: WILLIAM V. THOMAS, P.O. Box 554, Ojo Caliente, NM 87549. Representative: Roger V. Eaton, P.O. Box 965, Albuquerque, NM 87103. By the Commission, Review Board Number 1, decided April 4, 1980, and served April 15, 1980, finds that operation by applicant, as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, transporting *gypsum products and materials used in the manufacture and distribution of gypsum products*, (1) from Rosario, NM, to Colorado Springs, Loveland, Denver, and Grand Junction, CO, and (2) from Hutchinson, KS, Pryor, OK, and Lebanon, OR, to Rosario, NM, under continuing contract with Western Gypsum Company, of Rosario, NM, will be consistent with the public interest and the national transportation policy. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose

of this republication is to broaden the commodities sought by applicant.

Motor Carrier Operating Rights Applications; Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the Federal Register with a copy being furnished the applicant. Protests to these applications *will be rejected.*

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 Fed. Reg. 50908, as modified at 43 Fed. Reg. 60277. Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 87909 (Sub-32F), filed October 5, 1979. Applicant: KROBLIN TRANSPORTATION SYSTEMS, INC., P.O. Box 5000, Waterloo, IA 50704. Representative: Thomas J. Beener, One State Street Plaza, New York, NY 10004. Authority sought to operate as a *common carrier* by motor vehicle, over regular and irregular routes, transporting: *General commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), Between Akron, OH and Boston, MA, serving the intermediate points of Warren and Cleveland, OH, Schenectady and Troy, NY, and those in MA: From Akron over OH Hwy 8 to Cleveland, OH then over U.S. Hwy 20 to Conneaut, OH (also from Akron over OH Hwy 5 to Kinsman, OH, then over OH Hwy 7 to Conneaut), then over U.S. Hwy 20 to junction NY Hwy 78, then over NY Hwy 78 to junction NY Hwy 5, then over NY Hwy 5 to Avon, NY, (also from Conneaut over U.S. Hwy 20 to Avon), then over NY Hwy 5 to Utica, NY, (also from junction NY Hwy 78 and U.S. Hwy 20 over NY Hwy 78 to junction NY Hwy 33, then over NY Hwy 33 to junction NY Hwy 33A, then over NY Hwy 33A to Rochester, NY, then over NY Hwy 31 to junction NY Hwy 365, then over NY Hwy 365 to Rome, NY, and then over NY Hwy 49 to Utica), then over NY Hwy 5 to Schenectady, NY, then over NY Hwy 7 to Troy, NY, then over NY Hwy 2 to the NY-MA State Line, then over MA Hwy 2 to junction MA Hwy 2A near Westminster, MA, then over MA Hwy 2A to junction MA Hwy 2 near Concord, MA, and then over MA Hwy 2 to Boston, and return over the same routes. Between Akron, OH and Troy, NY, serving the intermediate points of Canton and Youngstown, OH, Newark, NY, New York, NY, and points on U.S. Hwy 9W and U.S. Hwy 9: From Akron over OH Hwy 18 to Youngstown, OH (also from Akron over OH Hwy 8 to Canton, OH, then over U.S. Hwy 30 to junction OH Hwy 7, and then over OH Hwy 7 to Youngstown), then over U.S. Hwy 422 to New Castle, PA, (also from Akron over U.S. Hwy 224 to New Castle), thence over U.S. Hwy 422 to Ebensburg, PA, then over U.S. Hwy 22 to Newark, NJ, then over U.S. Hwy 9 to junction U.S. Hwy 9W, and then over U.S. Hwy 9W to Albany, NY, (also from Newark over U.S. Hwy 9 to Albany), and then over NY Hwy 32 to Troy, and return over the same routes. Between Deerfield, OH, and the OH-PA State line, serving the intermediate points of Salem and Columbiana, OH, and serving the termini for purpose of joinder only: From Deerfield over OH Hwy 14 to the OH-PA State line, and return over the same route. Between Columbiana, OH, and Ashtabula, OH, serving no intermediate points, and serving Ashtabula for purpose of joinder only: From Columbiana over OH Hwy 46 to Ashtabula, and return over the same route.

Between Salem, OH and Warren, OH, serving no intermediate points: From Salem over OH Hwy 45 to Warren, and return over the same route. Between Danbury, CT and junction U.S. Hwys 202 and 9W, serving no intermediate points, and serving said junction for purpose of joinder only: from Danbury over U.S. Hwy 202 to junction U.S. Hwy 9W, and return over the same route. Between Albany, NY and Boston, MA, serving all intermediate points in MA: From Albany over U.S. Hwy 20 to Boston and return over the same route. Between New Lebannon, NY and junction U.S. Hwy 20 and MA Hwy 102, serving no intermediate points, and serving New Lebannon for purpose of joinder only, in connection with the route described immediately above: From New Lebannon over NY Hwy 22 to junction unnumbered NY Hwy, thence over unnumbered NY Hwy to the NY-MA State line, then over MA Hwy 102 via West Stockbridge and Stockbridge, MA, to junction U.S. Hwy 20, and return over the same route. Between Williamstown, MA and Norwalk, CT, serving all intermediate points: From Williamstown over U.S. Hwy 7 to Norwalk, and return over the same route. Between Salisbury, MA and Newark, NJ serving no intermediate points except as otherwise authorized: From Salisbury over U.S. Hwy 1 to New York, NY, then across the Hudson River (also via Hudson vehicular tunnel) to Jersey City, NJ, and then over city streets and connecting highways to Newark, and return over the same route. Between Greenfield, MA and New Haven, CT, serving all intermediate points: From Greenfield over U.S. Hwy 5 to New Haven, and return over the same route. Between West Becket, MA and Stratford, CT, serving all intermediate points: From West Becket over MA Hwy 8 to the MA-CT State line, then over CT Hwy 8 to Bridgeport, CT, and then over U.S. Hwy 1 to Stratford and return over the same route. Between Orange, MA and Danbury, CT serving all intermediate points: From Orange over MA Hwy 2 to junction U.S. Hwy 202, then over U.S. 202 to Danbury, and return over the same route. Between New London, CT and Athol, MA serving all intermediate points: From New London over CT Hwy 32 to the CT-MA State line, and then over MA Hwy 32 to Athol, and return over the same route. Between Fitchburg, MA and Groton, CT serving all intermediate points: From

Fitchburg over MA Hwy 12 to the MA-CT State line, and then over CT Hwy 12 to Groton, and return over the same route. Between West Boylston, MA and Amesbury, MA serving all intermediate points: From West Boylston over MA Hwy 110 to Amesbury, and return over the same route. Between Providence, RI and Westerly, RI serving all intermediate points: From Providence over RI Hwy 30 to Westerly, and return over the same route. Between Providence, RI and Barre, MA, serving all intermediate points: From Providence over RI Hwy 122 to the RI-MA State line, and then over MA Hwy 122 to Barre, and return over the same line. Between New Haven, CT, and Sturbridge, MA, serving all intermediate points: From New Haven over CT Hwy 17 to junction CT Hwy 17A at Portland, CT, then over CT Hwy 17A to junction CT Hwy 17, then over CT Hwy 17 to junction CT Hwy 2 near Glastonbury, CT, then over CT Hwy 2 to junction CT Hwy 30 near Burnham, CT, then over CT Hwy 30 to junction CT Hwy 20, then over CT Hwy 20 to junction CT Hwy 19, at Stafford Springs, CT, then over CT Hwy 19 to junction CT Hwy 15, then over CT Hwy 15 to the CT-MA State line (formerly CT Hwy 15), then over MA Hwy 15 to Sturbridge, and return over the same route. Between Poughkeepsie, NY and Plymouth, MA serving all intermediate points: From Poughkeepsie over U.S. Hwy 44 to junction U.S. Hwy 6 (formerly Alternate U.S. Hwy 44) near East Hartford, CT, then over U.S. Hwy 6 (formerly Alternate U.S. Hwy 44) to junction Alternate U.S. Hwy 44, then over Alternate U.S. Hwy 44 to junction U.S. Hwy 44 near West Ashford, CT, and then over U.S. Hwy 44 to Plymouth, and return over the same route. Between junction U.S. Hwys 202 and 6 near Farmington, CT, and Sagamore, MA, serving all intermediate points: From junction U.S. Hwys 202 and 6 near Farmington, CT, over U.S. Hwy 6 to Sagamore, and return over the same route. Between Springfield, MA and Hartford, CT, serving all intermediate points: From Springfield over Alternate U.S. Hwy 5 to Hartford and return over the same route. Between points in CT, serving all intermediate points, as follows: From junction U.S. Hwy 5 to CT Hwy 10 (near Plainville) over CT Hwy 10 to New Haven and return over the same route. From Granby over CT Hwy 9 to Old Saybrook, and return over the same route. From Glastonbury over CT Hwy 2 to Pawcatuck, and return over the same route. From Hebron over CT Hwy 85 to New London, and return over the same route. From Terryville over U.S. Hwy 6 to Hartford, and return over the same route. From Willimatic over U.S. Hwy 6 to junction Alternate U.S. Hwy 6, and then over Alternate U.S. Hwy 6 to junction U.S. Hwy 202, near Woodbury, and return over the same route. From Cornwall Bridge over CT Hwy 4 to junction unnumbered hwy, then over unnumbered hwy (formerly shown as CT Hwy 4) to Canton, and return over the same route. From Torrington over CT Hwy 25 to New Milford, and return over the same route. From Bridgeport over CT Hwy 58 to junction U.S. Hwy 202, and return over the same route. From Sandy Hook over CT Hwy 34 to New Haven, and return over the same route. Between points in MA, serving all intermediate points, as follows: From Northampton over MA Hwy 10 to junction U.S. Hwy 202, and return over the same route. From Lawrence over MA Hwy 28 to junction U.S. Hwy 6, near Wareham and return over the same route.

From Boston over MA Hwy 138 to Fall River, and return over the same route. From Lowell over U.S. Hwy 3 to Boston, MA then over MA Hwy 3 to junction U.S. Hwy 6, near Sagamore, and return over the same route. From Newburyport over MA Hwy 1A to Wrentham, and return over the same route. From New bedford over MA Hwy 140 to junction MA Hwy 122, near Grafton, and return over the same route. From New Bedford over MA Hwy 18 to junction U.S. Hwy 44, and return over the same route. From Pittsfield over MA Hwy 9 to Boston, and return over the same route. From Marlboro over MA Hwy 85 to junction MA Hwy 117, then over MA Hwy 117 to Boston, and return over the same route. From South Gardner over MA Hwy 68 to junction MA Hwy 122A, then over MA Hwy 122A to Worcester, and return over the same route. From Beverly over MA Hwy 127 to Gloucester, and return over the same route. From Ipswich over MA Hwy 121 to junction MA Hwy 127, and return over the same route. Serving intermediate and off-route points within 15 miles of Akron, OH; Warren, Warwick, and West Warwick, RI; Ansonia, Manchester, Milford, New Britain, New Canaan, Ridgefield, Rockville, Thompsonville, and West Haven, CT; Attleboro, Chicopee, Chicopee Falls, Gardner, Indiana Orchard, Milford, North Brookfield, Southboro, Southbridge, Wareham, Whitinsville, MA, and points within 15 miles of Boston, MA; points in that part of NJ north and east of a line beginning at Sea Bright and extending along Monmouth County Hwy 520 via Little Silver, Lincroft and Holmdel to junction NJ Hwy 34, then along NJ Hwy 34 to junction NJ Hwy 18, then along NJ Hwy 18 to Bound Brook, then along NJ Hwy 28 to Somerville and then along U.S. Hwy 202 to the NJ-NY State line, including points on the indicated portions of the hwy specified; Glens Falls, NY; points on Long Island, NY; points in the New York, NY, Commercial Zone, as defined by the Commission; and points in that part of NY bounded by a line beginning at Suffern, NY, and extending along U.S. Hwy 202 to junction U.S. Hwy 9W, then along U.S. Hwy 9W to the NY-NJ State line, and then along the NY-NJ State line to point of beginning, including points on the indicated protions of the hwys specified. Restriction: Service to and from the termini, intermediate points, and off-route points in connection with all the above described routes, is limited to the transportation of traffic moving between points in OH at which service is specifically authorized, on the one hand, and, on the other, those points in CT, MA, NJ, NY and RI at which service is specifically authorized. Serving Farrell, Sharon and Wheatland, PA, as off-route points in connection with carrier's regular route operations, restricted to the pick-up of iron and steel mill products destined to points in CT, MA, and RI. *Foodstuffs,* Between Norwalk, OH and Akron, OH serving Akron for purpose of joinder only: From Norwalk over OH Hwy 18 to Akron, and return over the same route. *Paint,* Between Alliance, OH and Canton, OH serving Canton for purpose of joinder only: From Alliance over U.S. Hwy 62 to Canton, and return over the same route. *Plumbing goods,* Between Mansfield, OH and Akron, OH serving Akron for purpose of joinder only: From Mansfield over U.S. Hwy 42 to Lodi, OH then over U.S. Hwy 224 to Akron and return over the same route. *General commodities,* except those of unusual value, livestock, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading. Serving Princeville, IL, as an off-route point in connection with carrier's regular-route operations authorized herein between Youngstown, OH and Peoria, IL. Between Youngstown, OH and Peoria, IL, serving the off-route point of Pekin, IL: From Youngstown, over U.S. Hwy 422 to junction OH Hwy 169, then over OH Hwy 169 to Warren, OH, then over OH Hwy 5 to Akron, OH, then over OH Hwy 18 to Medina, OH, then over U.S. Hwy 42 to Mansfield, OH, then over U.S. Hwy 30S to Lima, OH, then over U.S. Hwy 25 to Wapakoneta, OH, then over U.S. Hwy 33 to St. Marys, OH, then over OH Hwy 29 to the OH-IN

State line, then over IN Hwy 67 to Indianapolis, IN, then over Interstate Hwy 74 (formerly IN Hwy 34) to Crawfordsville, IN (also from the OH-IN State line over IN Hwy 67 to junction unnumbered hwy approximately 2 miles east of Anderson, IN, then over unnumbered hwy to junction IN Hwy 32, then over IN Hwy 32 to Crawfordsville), then continuing over Interstate Hwy 74 (formerly IN Hwy 34) to the IN-IL State line, then over IL Hwy 10 to Danville, IL, and then over U.S. Hwy 150 to Peoria, and return over the same routes. Between Youngstown, OH and Peoria, IL, serving the off-route points of Alliance, Massillon, Hartville, Mogadore, East Canton and Spencer, OH, and Pekin, IL: From Youngstown over U.S. Hwy 62 via Salem, OH, to Canton, OH, thence over OH Hwy 800 (formerly portion OH Hwy 8) to Akron, OH (also from Youngstown over OH Hwy 18 to Akron; also from Salem over OH Hwy 14A (formerly portion OH Hwy 14) to junction OH Hwy 14, then over OH Hwy 14 to Edinburg, OH, then over OH Hwy 18 to Akron), then to Mansfield, OH as specified above, then over U.S. Hwy 30N to Delphos, OH, then over U.S. Hwy 30 to Van Wert, OH, then over U.S. Hwy 224 to Huntington, IN, and then over U.S. Hwy 24 to Peoria, and return over the same routes. Service over the above routes is authorized to and from the intermediate points of Salem, Canton, North Canton, Warren, Kent, Cuyahoga Falls, Akron, Ashland, Mansfield, and Lima, OH, Muncie, Anderson, Speedway, Noblesville, and Indianapolis, IN, and Bloomington and East Peoria, IL, restricted only as to OH points as indicated below; all other intermediate points restricted to delivery only except that service is not authorized to or from intermediate points on OH Hwy 18 or OH Hwy 14 or on IN Hwy 32 between Noblesville and Anderson, or on IN Hwy 32 between Noblesville and Crawfordsville. Between Fort Wayne, IN, and Huntington, IN: From Fort Wayne over U.S. Hwy 24 to Huntington, and return over the same route. Service on the immediately above specified route is authorized to Huntington and all intermediate points, restricted to delivery only Between Indianapolis, IN, and Chicago, IL: From Indianapolis over U.S. Hwy 52 to junction U.S. Highway 41, then over U.S. Hwy 41 to Chicago, and return over the same route. Service is not authorized to or from intermediate points except as otherwise authorized. (B) *General commodities,* except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, Between Cleveland, OH, and Medina, OH, serving no intermediate points: From Cleveland over U.S. Highway 42 to Medina, and return over the same route.

Between junction U.S. Hwy 250 and 224 (near Ruggles, OH), and Canton, OH, serving no intermediate points: From junction U.S. Hwys 250 and 224 over U.S. Hwy 250 to Jefferson, OH, and then over U.S. Hwy 30 to Canton, and return over the same route. Between Tiffin, OH, and Marion, OH, serving no intermediate points: From Tiffin over OH Hwy 100 to junction OH Hwy 19, then over OH Hwy 19 to Bucyrus, OH, and then over OH Hwy 4 to Marion, and return over the same route. Restriction: In the performance of service under Section (B) wholly within the State of Ohio, transportation may be performed only on traffic moving from Akron and Lima, OH to points in OH, except as modified by authority set forth in Section (C) below. (C) *General commodities,* except those of unusual value, livestock, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, Between Akron, OH, and Mansfield, OH, serving all intermediate points, and the off-route point of Massillon, OH: From Akron over Interstate Hwy 80S (formerly portion U.S. Hwy 224) to Lodi, then over U.S. Hwy 42 to Mansfield, and return over the same route. Between Akron, OH, and New Philadelphia, OH, serving all intermediate points, and the off-route point of Massillon, OH: From Akron over OH Hwy 800 (formerly portion OH Hwy 8) to Canton, OH, then over U.S. Hwy 62 to junction U.S. Hwy 21, then over U.S. Hwy 21 to New Philadelphia, and return over the same route. (D) *General commodities,* except those of unusual value, livestock, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, Between Mansfield, OH, and junction U.S. Hwys 250 and 21 (near Strasburg, OH), serving no intermediate points: From Mansfield over U.S. Hwy 30 to Wooster, OH, then over U.S. Hwy 250 to junction U.S. Hwy 21, and return over the same route. RESTRICTION: The operations authorized in Section (D) above are for operating convenience only. *General commodities,* except those of unusual value, livestock, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over *irregular routes.* From points in the Chicago, IL, Commercial Zone, as defined by the Commission, to Mason City, IA, Wooster, Columbus, Uhrichsville, New Philadelphia, Dover, and Mt. Vernon, OH, with no transportation for compensation on return expect as otherwise authorized. From Peoria and Pekin, IL, to Toledo and Columbus, OH, with no transportation for compensation on return except as otherwise authorized. From Indianapolis and Speedway, IN, to Rittman, Columbus, and Mt. Vernon, OH, with no transportation for compensation on return except as otherwise authorized. Any repetition in the statement of the authority granted herein shall not be construed as conferring more than one operating right.

MC 107478 (Sub-64F), filed March 14, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., 1791 Westchester Drive, P.O. Box 2006, High Point, NC 27261. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014, authority sought to operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities,* except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading. Regular Routes: (1) between Boston, MA and Albany, GA: From Boston over U.S. Hwy 1 to Washington, DC, then over U.S. Hwy 29 to LaGrange, GA, then over U.S. Hwy 27 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Albany, and return over the same routes. (2) between Boston, MA and Savannah, GA: From Boston over U.S. Hwy 20 to Springfield, MA, then over U.S. Hwy 5 to New Haven, CT, then over U.S. Hwy 1 to Richmond, VA, then over U.S. Hwy 301 to Summerton, SC, then over U.S. Hwy 15 to Walterboro, SC, then over Alternate U.S. Hwy 17 to junction U.S. Hwy 17, then over U.S. Hwy 17 to Savannah, and return over the same routes. (3) between Worchester, MA and Providence, RI over MA and RI Hwys 146. (4) between Hartford, CT and Providence, RI over U.S. Hwy 6. (5) between Jersey City, NJ and Baltimore, MD: From Jersey City over U.S. Hwy 1 to junction U.S. Hwy 130, then over U.S.

Hwy 130 via Camden, NJ to junction Interstate Hwy 295, then over Interstate Hwy 295 to junction Interstate Hwy 95, then over Interstate Hwy 95 to Baltimore, and return over the same routes. (6) between junction U.S. Hwys 22 and 202 and junction U.S. Hwys 1 and 202 over U.S. Hwy 202. (7) between Philadelphia, PA and Camden, NJ over U.S. Hwy 30. (8) between Norfolk and Martinsville, VA over U.S. Hwy 58. (9) between Norfolk, VA and Charlotte, NC: From Norfolk over U.S. Hwy 13 to junction U.S. Hwy 64, then over U.S. Hwy 64 to Ashboro, NC, then over NC Hwy 49 to Charlotte, and return over the same routes. (10) between Norfolk, VA and Asheville, NC: From Norfolk over U.S. Hwy 58 to junction U.S. Hwy 258, then over U.S. Hwy 258 to Lawrence, NC, then over NC Hwy 97 to Rocky Mount, NC, then over U.S. Hwy 64 to Raleigh, NC, then over U.S. Hwy 70 to Asheville, and return over the same routes.

(11) between Baltimore, MD and Norfolk, VA: From Baltimore over MD Hwy 3 to junction U.S. Hwy 301, then over U.S. Hwy 301 to Richmond, VA, then over U.S. Hwy 60 to Norfolk, and return over the same routes. (12) between Baltimore, MD and Winchester, VA: (A) From Baltimore over U.S. Hwy 1 to Washington, DC, then over U.S. Hwy 50 to Winchester, and return over the same routes. (B) From Baltimore over U.S. Hwy 40 to Frederick MD, then over U.S. Hwy 340 to junction VA Hwy 7, then over VA Hwy 7 to Winchester, and return over the same routes. (13) between Richmond, VA and Albany, GA: From Richmond over U.S. Hwy 1 to Augusta, GA, then over U.S. Hwy 278 to Atlanta, GA then over U.S. Hwy 19 to Albany, and return over the same routes. (14) between Norfolk and Petersburg, VA over U.S. Hwy 460. (15) between Richmond and Danville, VA over U.S. Hwy 360. (16) between junction U.S. Hwy 360 and VA Hwy 304 and South Boston, VA over VA Hwy 304. (17) between Wilmington and Asheville, NC over U.S. Hwy 74. (18) between Wilmington and Winston Salem, NC over U.S. Hwy 421. (19) between junction U.S. Hwys 117 and 301 and Wilmington, NC over U.S. Hwy 117. (20) between Charleston, SC and Asheville, NC over Interstate Hwy 26. (21) between Hickory, NC and Columbia, SC over U.S. Hwy 321. (22) between junction U.S. Hwys 76 and 74 and Columbia, SC: From junction U.S. Hwys 76 and 74 over U.S. Hwy 76 to Florence, SC, then over Interstate Hwy 20 to Columbia, and return over the same routes. (23) between junction NC Hwy 87 and U.S. Hwy 74 and junction VA Hwy 87 and U.S. Hwy 220 over NC and VA Hwys 87. (24) between Raleigh, NC and Georgetown, SC: From Raleigh over U.S. Hwy 70 to junction U.S. Hwy 301, then over U.S. Hwy 301 to junction U.S. Hwy 701, then over U.S. Hwy 701 to Georgetown, and return over the same routes. (25) between Durham and Oxford, NC over U.S. Hwy 15. (26) between junction U.S. Hwys 15 and 301 and Raleigh, NC: From junction U.S. Hwys 15 and 301 over U.S. Hwy 15 to Sumter, SC, then over U.S. Hwy 401 to Raleigh, and return over the same routes. (27) between Laurinburg, NC and junction U.S. Hwys 1 and 15 over U.S. Hwy 15. (28) between Winston-Salem and Murfreesboro, NC over U.S. Hwy 158. (29) between Winston-Salem, NC and junction U.S. Hwys 1 and 52 Over U.S. Hwy 52. (30) between Charleston, SC and Augusta, GA over U.S. Hwy 78. (31) between Myrtle Beach and Columbia, SC: From Myrtle Beach over U.S. Hwy 501 to Conway, SC then over U.S. Hwy 378 to Columbia, and return over the same routes. (32) between junction U.S. Hwy 276 and Interstate Hwy 26 and Greenville, SC over U.S. Hwy 276. (33) between Atlanta and Savannah, GA: From Atlanta over U.S. Hwy 23 to Macon, GA, then over U.S. Hwy 80 to Savannah, and return over the same routes. (34) between Savannah, GA and Winchester, VA over U.S. Hwy 17. (35) between Savannah and Albany, GA: From Savannah over U.S. Hwy 17 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Albany, and return over the same routes. (36) between junction U.S. Hwys 80 and 25 and Asheville, NC over U.S. Hwy 25. (37) between junction U.S. Hwys 17 and 321 and Martinsville, VA: From junction U.S. Hwys 17 and 321 over U.S. Hwy 321 to Columbia, SC, then over U.S. Hwy 21 to Statesville, NC, then over U.S. Hwy 64 to Mocksville, NC, then over U.S. Hwy 158 to Winston-Salem, NC, then over U.S. Hwy 311 to junction U.S. Hwy 220, then over U.S. Hwy 220 to Martinsville, and return over the same routes. (38) between Charleston, SC and Roanoke, VA: From Charleston over U.S. Hwy 52 to junction U.S. Hwy 1, then over U.S. Hwy 1 to junction U.S. Hwy 220, then over U.S. Hwy 220 to Roanoke, and return over the same routes. (39) between Boston, MA and Valdosta, Ga: From Boston over Interstate Hwy 90 to junction Interstate Hwy 86, then Interstate Hwy 86 to junction Interstate Hwy 84, then over Interstate Hwy 84 to junction U.S. Hwy 209, then over U.S. Hwy 209 to junction PA Hwy 33, then over PA Hwy 33 to junction U.S. Hwy 22, then over U.S. Hwy 22 to Harrisburg, PA, then over U.S. Hwy 11 to Chattanooga, TN, then over U.S. Hwy 41 to Valdosta, and return over the same routes. (40) between Jersey City, NJ and junction U.S. Hwy 22 and PA Hwy 33 over U.S. Hwy 22, serving junction U.S. Hwy 22 and PA Hwy 33 for purposes of joinder only. Serving in connection with Routes (1) through (5) the intermediate points of Providence, RI, Baltimore, MD and all intermediate points in MA, CT, NY, NJ, PA, DC, VA (except those on U.S. Hwy 29), NC, SC, and GA. Serving in connection with routes (6) through (38) all intermediate points except those in WV. Serving in connection with Routes (39) and (40) the intermediate points of Hagerstown, MD, Winchester and Roanoke, VA, all intermediate points in MA, NJ, and GA, those in CT on and east of U.S. Hwy 5 and serving the junction of U.S. Hwy 22 and PA Hwy 33 for purposes of joinder only. Serving in connection with Routes (1) through (40) above off-route points within a territory as follows: Points in MA and CT on and east of U.S. Hwy 5; Corning, NY and points in NY within 150 miles of Newark, NJ; points in NJ; points in that part of PA on, east and south of a line beginning at the MD–PA state line and extending along Interstate Hwy 83 to York, PA, then along U.S. Hwy 30 to junction U.S. Hwy 202, then along U.S. Hwy 202 to the PA–NJ state line; points in that part of MD bounded by a line (including points on that line) beginning at the DC–MD state line and extending along U.S. Hwy 1 to Baltimore, MD, then along MD Hwy 144 to junction U.S. Hwy 40, then along U.S. Hwy 40 to Frederick, MD, then along Alternate U.S. Hwy 40 to Hagerstown, MD, then along U.S. Hwy 40 to Frostburg, MD, then along U.S. Hwy 40 to the Garrett-Allegany County line, then in a southerly direction along the Garrett-Allegany County line to the MD–WV state line, then in an easterly direction along the MD—WV and the MD–VA state line to the MD–DC state line and the point of beginning; points in that part of VA on and east of a line beginning at the WV–VA state line and extending along U.S. Hwy 50 to junction U.S. Hwy 15, then along U.S. Hwy 15 to junction U.S. Hwy 522, then along U.S. Hwy 522 to junction Interstate Hwy 64, then along Interstate Hwy 64 to Richmond, VA, then along U.S. Hwy 360 to Danville, VA, then along U.S. Hwy 29 to the VA–NC state line (except points in Northamption and Accomac Counties); points in NC, SC, and GA; and all points within 25 miles of route (8) above. Hearing Sites: Washington, DC and Charlotte, NC and Atlanta, Ga.

Note.—Applicant, pursuant to a combination of regular and irregular-route grants, holds authority that duplicates in its

entirely the authority sought. The purpose of this application is to convert irregular-route authority to regular routes, to eliminate gateways and joinder points, and generally to vastly simplify and clarify applicant's existing general commodity certificates.

MC 121699 (Sub-10F), filed June 26, 1980. Applicant: VOLUNTEER EXPRESS, INC., 1220 Faydur Court, Nashville, TN 37211. Representative: Walter Harwood, Attorney, P.O. Box 15214, Nashville, TN 37215. Authority sought to operate as a *common carrier*, by motor vehicle (A) transporting *general commodities*, (except Classes A and B explosives, household goods, commodities in bulk, and articles requiring special equipment): 1. (a) From Nashville, TN via I-40 to junction with TN Hwy 22, thence via TN Hwy 22 to Weakley County Line, thence via any and all highways and roads in Weakley and Obion Counties, TN, serving all points in said counties, and return over the same route, (b) From Nashville, TN via U.S. Hwy 70 to Huntingdon, TN, thence via TN Hwy 22 to Weakley County Line, thence via any all highways and roads in Weakley and Obion Counties, TN, serving all points in said counties and return over the same route, and (c) Via any and all connecting roads and Highways between I-40 and U.S. Hwy 70 between Nashville, TN and TN Hwy 22, for operating convenience only in connection with routes (a) and (b) above. 2. (a) From Memphis, TN via U.S. Hwy 51 to the Obion County Line, thence via any and all highways and roads in Obion and Weakley Counties, TN, serving all points in said counties (but serving no intermediate points between Memphis and the said Obion County Line) and return over the same route, (b) From Memphis, TN via I-40 to junciton with U.S. Hwy 45 near Jackson, TN, thence via U.S. Hwy 45 to its junction with U.S. Hwy 45E, thence via U.S. Hwy 45E to the Weakley County Line, thence via any and all highways and roads in Weakley and Obion Counties, serving all points in said counties (but serving no intermediate points between Memphis and the said Weakley County Line) and return over the same route. Restriction: Restricted against tacking with carrier's authority held as of August 17, 1977. Routes (a) and (b) above shall be construed as conferring a single grant of authority and shall not be severable by sale or othewise. 3. (a) From Jackson, TN via U.S. Hwy 45 to its junction with U.S. Hwy 45W, thence via U.S. Hwy 45W to the Obion County Line, thence via and any all highways and roads in Obion and Weakley Counties, TN, serving all points in said counties (but serving intermediate points between Jackson and the said Obion County Line), and return over the same route; (b) From Jackson, TN via U.S. Hwy 45 to its junction with U.S. Hwy 45E, thence via U.S. Hwy 45E to the Weakley County Line, thence via any and all highways and roads in Weakley and Obion Counties, serving all points in said counties (but serving no intermediate points between Jackson and the said Weakley County Line) and return over the same route. *Restriction:* The authority in routes (a) and (b) above is restricted against the handling of traffic which originates at, is destined to, or interlined at Jackson, TN and points in its commerical zone, on the one hand, and, on the other, that which originates at, is destined to, or interlined at Nashvillle, TN and Memphis, TN and points in their respective commercial zones. The two routes granted herein shall be construed as conferring a single grant of authority and shall not be severable by sale or otherwise. (B) Transporting plastic and plastic products, and materials, equipment and supplies used in the manufacture and distribution thereof, except in bulk, over irregular routes, (a) between Bryan, OH and Kenton, TN, and (b) between Bryan, OH and Kenton, TN, on the one hand, and, on the other, points in the United States in and east of TX, AR, MO, KS, IA, and MN. *Hearing Sites:* Nashville, TN or Memphis, TN. Note: Authority sought in (A) above involves conversion of carrier's presently held certificates of registration.

Permanent Authority Decisions Volume; Decision-Notice

Decided: July 15, 1980.

The following broker, freight forwarder or water carrier applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Failure to file a protest within 30 days will be considered as a waiver of opposition to the application. A protest under these rules shall comply with Rule 247(e)(3) of the Rules of Practice which requires that is set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, as specifically noted below), and specify with particularity the facts, matters, and things relied upon. The protest shall not include issues of allegations phrased generally. A protesant shall include a copy of the specific portion of its authority which it believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use this authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission. A copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or (b) will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes

unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 12136 (Sub-7F), filed May 12, 1980. Applicant: COLLETTE TRAVEL SERVICE, INC., 124 Broad St., Pawtucket, RI 02860. Representative: Gerald A. Joseloff, 80 State St., Hartford, CT 06103. To engage in operations, in interstate or foreign commerce, as a *broker,* at Hartford, CT, in arranging for the transportation of *passengers and their baggage,* in special and charter operations, between points in the U.S. (including AK and HI).

MC 130467F, filed June 27, 1980. Applicant: DORIS AND PAMELA BRENNER, d.b.a. BRENNER TOURS, Rt. No. 1, 132nd Ave., Hopkins, MI 49328. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933. To engage in operations, in interstate or foreign commerce, as a *broker,* at Hopkins, MI, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in round-trip tours, in special or charter operations, between points in the U.S. (including AK but excluding HI), restricted to transportation of passengers and their baggage in tour service originating at or destined to points in Muskegon, Kent, Kalamazoo, Barry, Van Buren, Calhoun, Jackson, St. Joseph, Cass, and Berrien Counties, MI.

MC 130887F, filed May 7, 1980. Applicant's name and address are AMERICAN CONTAINER EXPRESS, INC., 2 North Riverside Plaza, Suite 1402, Chicago, IL 60606. The name under which operations will be performed is AMERICAN CARGO EXPRESS. Applicant is represented by Anthony E. Young in this proceeding, whose address is 29 South LaSalle St., Suite 350, Chicago, IL 60603. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Glenn W. Scherkenbach, President/Director and Shareholder, John C. Gillet, Secretary/Treasurer/Director, and Shareholder, and Geoffery Talbot, Shareholder, whose business addresses are the same as applicant. The daily operations will be managed by Glenn W. Scherkenbach, whose business address is the same as applicant. Applicant is affiliated with the following shipper or warehouse: None.

MC 130936F, filed June 2, 1980. Applicant: ARROW COACH LINES, 1021 Riverside Drive, Brownwood, TX 76801. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. To engage in operations, in interstate or foreign commerce, as a *broker,* at Brownwood and Killeen, TX, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* in charter or special operations, between points in the U.S.

MC 130944F, filed June 10, 1980. Applicant's name and address are WILLIAM V. THOMAS TRUCKING, INC., P.O. Box 10238, Albuquerque, NM 87184. The name under which operations will be performed is WILLIAM V. THOMAS TRUCKING, INC. Applicant is represented by Randall R. Sain in this proceeding whose address is the same as the applicant. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: William V. Thomas, President, Director, and Shareholder, Francis Thomas, Vice President, John P. Jennings, Vice President, Director, and Shareholder, Randall R. Sain, Vice President, Susan Jennings, Secretary, and E. M. McDowell, Director and Shareholder, whose addresses are the same as the applicant. The daily operations will be managed by John P. Jennings, whose address is the same as the applicant. Applicant is not affiliated with shippers or warehouses.

MC 130945F, filed June 10, 1980. Applicant's name and address are KAY FERRENBURG, d.b.a. SUPERIOR TRUCK CLEARING, P.O. Box 342, Ontario, OR 97914. The name under which operations will be performed is SUPERIOR TRUCK CLEARING. Applicant is represented by himself. Following are the names and business address for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Kay Ferrenburg, owner, whose address is same as the applicant. Applicant is not affiliated with shippers or warehouses.

MC 130947F, filed June 11, 1980. Applicant: RICHARD LEWIS TRAVEL SERVICE, Shillito's Department Store, Cincinnati, OH 45202. Representative: Bruce E. Mitchell, Suite 520, Lenox Towers South, 3390 Peachtree Rd., N.E. Atlanta, GA 30326. To engage in operations, in interstate or foreign commerce, as a *broker,* at Cincinnati, Columbus, and Dayton, OH, San Francisco, CA, and Louisville, KY, in arranging for the transportation by motor vehicle, of passengers and their baggage, in the same vehicle with passengers, in special and charter operations, in round-trip sightseeing or pleasure tours, between points in the U.S.

MC 130953F, filed June 11, 1980. Applicant: ASHBOURNE TRANSPORTATION, INC., d.b.a. ASHBOURNE TOURS, 827 E. Glenside Avenue, Wyncote, PA 19117. Representative: Anthony C. Vance, Esq., 1307 Dolley Madison Blvd., Suite 301, McLean, VA 22101. To engage in operations, in interstate or foreign commerce, as a *broker* at Philadelphia, Elkins Park, Wyncote, Cheltenham, and Fort Washington, PA, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at Philadelphia, Elkins Park, Wyncote, Cheltenham, and Fort Washington, PA, and extending to points in the US (except AK and HI).

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension—New York, NY,* 54, M.C.C. 291 (1952).

MC 130954F, filed June 23, 1980. Applicant: MARK YIMSUN LEUNG AND DON LEUNG, d.b.a. VICTORY TOURS, 1073 Saratoga Ave., Suite B, San Jose, CA 95129. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. To engage in operations, in interstate or foreign commerce, as a *broker,* at Daly City, Fremont, Oakland, Palo Alto, San Jose and San Mateo, CA, in arranging for the transportation by motor vehicle, of passengers and their baggage, in special and charter operations, between points in Alameda, San Francisco, San Mateo, and Santa Clara Counties, CA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY. (Hearing site: San Francisco, CA.)

MC 130955F, filed June 23, 1980. Applicant's name and address are

IVORY VANLINES, INC., 5601 Corporate Way, Suite 107, West Palm Beach, FL 33407. the name under which operations will be performed in IVORY VANLINES, INC. Applicant is represented by Martin J. Leavitt, whose address is 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. Following are the names and business addresses for all persons who are officers and directors, partners, (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Wood McComb, President/Director, whose address is the same as the applicant, Lawrence Martinelli, Secretary/Treasurer, whose address is the same as the applicant, C. Russell Wagstaff, Director, whose address is 20225 Goddard Rd., Taylor, MI, 48180, Gene E. Gann, Director, whose address is 300 South Livernois, Detroit, MI 48209, W. John Roberts, Director, whose address is 300 South South Livernois, Detroit, MI 48209, Lawrence Okonski, whose address is 20225 Goddard Rd., Taylor, MI 48180, and R–W Service System, Inc., whose address is 20225 Goddard Rd., Taylor, MI 48180, who owns 100% of the stock of the applicant. The daily operations will be managed by Wood McComb, whose address is the same as the applicant. Applicant is affiliated with the following shipper or warehouse: McLouth Steel Corporation, and Service Warehouse Corporation.

MC 130956F, filed June 24, 1980. Applicant's name and address are CORD MOVING & STORAGE CO., 4215 Shoreline Drive, Earth City, MO 63045. The name under which operations will be preformed is CORD MOVING AND STORAGE COMPANY. Applicant is represented by Robert J. Gallagher, in this proceeding, whose address is Suite 1112, 1000 Connecticut Ave., N.W., Washington, DC 20036. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Norman L. Anderson, Chairman/Director & Shareholder, Martin Ryan, President/Director & Shareholder Martin Clerc, Vice President/Director & Shareholder, all have the same address as applicant. The daily operations will be managed by Martin Ryan, whose business address is the same as applicant's. Applicant is affiliated with the following shipper or warehouse: None.

MC 130957F, filed June 19, 1980. Applicant: LANDSCAPE TOURS AND TRAVEL SERVICE, INC., 663 5th Ave., New York, NY 10022. Representative: Charles J. Williams, 1815 Front St., Scotch Plains, NJ 07076. To engage in operations, in interstate or foreign commerce, as a *broker,* at New York, NY, in arranging for the transportation by motor vehicle, of *passsengers and their baggage,* in special and charter operations, between points in the U.S., including AK and HI.

MC 130958F, filed July 1, 1980. Applicant's name and address are Wayne Rickey, P.O. Box 492, Galena, TX 77547. The name under which operations will be performed is Rickey Enterprises. Applicant is represented by himself. Following are the names and business addresses for all persons who are officers and directors: Wayne Rickey, P.O. Box 492, Galena Park, TX 77547; Virginia Rickey, P.O. Box 492, Galena, TX 77547. The daily operations will be managed by Virginia Rickey, P.O. Box 492, Galena, TX 77547. Applicant is not affiliated with any warehouse or shipper.

MC 130964F, filed November 13, 1979. Applicant's name and address are FOUR WINDS FORWARDING, INC., 7035 Convoy Court, P.O. Box 80771, San Diego, CA 92138. Applicant is represented by Robert J. Gallagher, in this proceeding whose address is Suite 1200 1000 Connecticut Ave., NW., Washington, DC 20036. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: R. W. Arendsee, President and Director, P.O. Box 80771, San Diego, CA 92138, F. W. Kircher, Executive Vice President and Director, P.O. Box 80771, San Diego, CA 92138, Han Helders, Vice President and Director, P.O. Box 80771, San Diego, CA 92138, Charles H. Purviance, Vice President and Director, P.O. Box 80771, San Diego, CA 92138, Hugh Crumpler, Vice President and Director, P.O. Box 80771, San Diego, CA 92138, Paul D. Smith, Vice President and Director, P.O. Box 80771, San Diego, CA 92138, and C. N. Sirpis, Secretary and Director, P.O. Box 80771, San Diego, CA 92138. Four Winds Van Lines, Inc., owns 100% of the stock of Four Winds Forwarding, Inc. The Daily operations will be managed by Ella Zaslansky, P.O. Box 80771, 7035 Convoy Court, San Diego, CA 92138. Applicant is affiliated with the following shipper or warehouse: Applicant is affiliated with agents who have warehouses in all 50 states.

MC 130965F, filed December 13, 1979. Applicant's name and address are FOUR WINDS VAN LINES, INC., 7035 Convoy Court, P.O. Box 81985, San Diego, CA 92138. The name under which operations will be performed is FOUR WINDS VAN LINES, INC. Applicant is represented by Robert J. Gallagher, in this proceeding whose business address is Suite 1200, 1000 Connecticut Ave., N.W., Washington, DC 20036. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: R. W. Arendsee, President, P.O. Box 80771, San Diego, CA 92138, F. W. Kircher, Executive Vice President, P.O. Box 80771, San Diego, CA 92138, Han Helders, Vice President, P.O. Box 80771, San Diego, CA 92138, Charles H. Purviance, Vice President, P.O. Box 80771, San Diego, CA 92138, Hugh Crumpler, Vice President, P.O. Box 80771, San Diego, CA 92138, Paul D. Smith, Vice President, P.O. Box 80771, San Diego, CA 92138, C. N. Sirpis, Secrtetary, P.O. Box 80771, San Diego, CA 92138. Four Winds Enterprises, Inc. owns 100% of the stock of Four Winds Van Lines, Inc. The daily operations will be managed by Thomas Rowley, whose business address is 7035 Convoy Court, P.O. Box 81985, San Diego, CA 92138. Applicant is affiliated with the following shipper or warehouse: Applicant is affiliated with agents who have warehouses in all 49 contiguous states.

MC 130966F, filed June 17, 1980. Applicant: NEW ADVENTURES IN TRAVEL LTD., 204 Sturtevant St., Norwich, CT 06360. Representative: Dolores F. Abreu (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker,* at Norwich, CT, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* between points in New London County, CT, on the one hand, and, on the other, points in the U.S., including AK and HI.

FF 526F, filed December 10, 1979. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. To operate as a *freight forwarder,* in interstate commerce of *general commodities,* between points in the U.S. (including AK and HI).

W–505 (Sub-2F), filed June 24, 1980. Applicant: PUGET SOUND FREIGHT LINES, a Corporation, P.O. Box 24526, Seattle, WA 98124. Representative: James F. Walker (same address as applicant). To operate as a *common carrier,* by water, in interstate or foreign commerce, transporting *paper, paper products, woodpulp, and recyclable materials,* between Alameda, Arcata, Eureka, Long Beach, Los Angeles, Oakland, Port Chicago, Port Hueneme,

Richmond, Sacramento, San Diego, San Francisco, and Stockton, CA, Astoria, Coos Bay, Portland, Wauna, and St. Helens, OR, and Bellingham, Kelso, Longview, Port Angeles, Port Townsend, Seattle, Tacoma, Everett, Anacortes, and Vancouver, WA.

Note.—Consideration has been given to the probable environmental and energy impacts associated with this class of action but no significant impacts have been found to exist.

Motor Carrier Alternate Route Deviations; Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)):

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this **Federal Register** notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

MC 5888 (Deviation No. 8), MID-AMERICAN LINES, INC., 127 West 10th Street, Kansas City, MO 64105, filed July 1, 1980. Carrier's representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From the junction of U.S. Hwy 12 and Interstate Hwy 69 at or near Coldwater, MI, then over Interstate Hwy 69 to Indianapolis, IN, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From the junction of U.S. Hwy 12 and Interstate Hwy 69 at or near Coldwater, MI, over U.S. Hwy 12 to Mottville, MI, then over MI Hwy 103 to the Michigan-Indiana State line, then over IN Hwy 15 to Bristol, IN, then over IN Hwy 120 to Elkhart, IN, then over U.S. Hwy 33 to South Bend, IN, then over IN Hwy 2 to junction U.S. Hwy 20, then over U.S. Hwy 20 to Chicago, IL, then over U.S. Hwy 41 to junction U.S. Hwy 231, then over U.S. Hwy 231 via Hebron, Kersey, Rensselaer, Remington and Wolcott, IN, to junction U.S. Hwy 52 at Montmorenci, IN, then over U.S. Hwy 52 to Lafayette, IN, then over U.S. Hwy 231 to Crawfordsville, IN, then over U.S. Hwy 136 to Indianapolis, IN, and return over the same route.

MC 5888 (Deviation No. 8), MID-AMERICAN LINES, INC., 127 West 10th Street, Kansas City, MO 64105, filed July 1, 1980. Carrier's representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From Detroit, MI over Interstate Hwy 75 to Cincinnati, OH and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) from Detroit, MI over U.S. Hwy 12 to Mottville, MI, then over MI Hwy 103 to the MI–IN State Line, then over IN Hwy 15 to Bristol, IN, then over IN Hwy 120 to Elkhart, IN, then over U.S. Hwy 33 to South Bend, IN, then over IN Hwy 2 to junction U.S. Hwy 20, then over U.S. Hwy 20 to Chicago, IL, (2) from Chicago, IL over U.S. Hwy 41 to junction U.S. Hwy 231, then over U.S. Hwy 231 to junction U.S. Hwy 52 at Montmorenci, IN, then over U.S. Hwy 52 to Lafayette, IN, then over U.S. Hwy 231 to Crawfordsville, IN, then over U.S. Hwy 136 to Indianapolis, IN, and (3) from Indianapolis, IN over U.S. Hwy 421 to junction U.S. Hwy 50, then over U.S. Hwy 50 to Cincinnati, OH and return over the same routes.

MC 112713 (Deviation No. 65), YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, 10990 Roe Ave., Overland Park, KS 66207, filed June 20, 1980. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over deviation routes as follows: (1) from junction Interstate Hwy 75 and U.S. Hwy 341 over U.S. Hwy 341 to junction U.S. Hwy 23, then over U.S. Hwy 23 to Jacksonville, FL, (2) from junction Interstate Hwy 10 and U.S. Hwy 301 over U.S. Hwy 301 to junction U.S. Hwy 24, then over U.S. Hwy 24 to junction Interstate Hwy 75, and (3) from junction U.S. Hwy 27 and U.S. Hwy 17 over U.S. Hwy 17 to junction U.S. Hwy 41, then over U.S. Hwy 41 to Ft. Myers, FL and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) from junction Interstate Hwy 75 and U.S. Hwy 341 over Interstate Hwy 75 to junction Interstate Hwy 10, then over Interstate Hwy 10 to junction Interstate Hwy 95, (2) from Lake City, FL over Interstate Hwy 75 to junction U.S. Hwy 27, then over U.S. Hwy 27 to Miami, FL, and (3) from Ft. Myers, FL over FL Hwy 80 to junction U.S. Hwy 441 and return over the same routes.

Motor Carrier Alternate Route Deviations; Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)). Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this **Federal Register** notice. Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

MC 2980 (Deviation No. 98), AMERICAN BUSLINES, INC., Trailways Inc., 315 Continental Avenue, Dallas, TX 75207, filed July 14, 1980. Carrier proposes to operate as a common carrier, by motor vehicle, of *passengers and their baggage,* and *express* and *newspapers* in the same vehicle with passengers, over deviation routes as follows: From Hannibal, MO over U.S. Hwy 36 to junction Hwy 79 then over Illinois Hwy 79 to junction Illinois Hwy 57 then over Illinois Hwy 57 to Quincy, IL, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property as described above over pertinent service route as follows: From Hannibal, MO over U.S. Hwy 61 to Taylor, MO, then over U.S. Hwy 24 to Quincy, IL.

Note.—Service is not authorized in the transportation of passengers and their baggage, and express, mail and newspapers in the same vehicle with passengers originating at or received through interchange at Galesburg, IL, and originating at or received through interchange at either Keokuk or Quincy and destined to Galesburg.

Permanent Authority Decisions, Decision-Notice

Sustitution Applications: Single-Line Service for Existing Joint-Line Service

Decided: July 15, 1980.

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2).

The rules provides, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission within 30 days of publication this decision-notice.

Petitions for intervention without leave (i.e. automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occured within the one-year period immediately proceeding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition; however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e. applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of the publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930 (a) (formerly section 210 of the Interstate Commerce Act).

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 4, Members Fitzpatrick, Fisher, and Dowell.

MC 61440 (Sub-179F), filed December 3, 1979. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 N. W. 63rd St., Oklahoma City, OK 73116. Representative: Richard H. Champlin, P.O. Box 12750, Oklahoma City, OK 73157. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Pittsburgh and Philadelphia, PA, from Pittsburgh over Interstate Hwy 376 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Philadelphia, and return over the same route, serving all intermediate points between Pittsburgh and Philadelphia, PA, and (2) between Harrisburg and Philadelphia, PA, from Harrisburg over Interstate Hwy 81 to Scranton, PA, then over PA Hwy 9 to Philadelphia, and return over the same route, serving all intermediate points, and serving those points in PA on and east of Interstate Hwy 81 as intermediate and off-route points. (Hearing site: Oklahoma City, OK, or Washington, D.C.)

Note.—Applicant intends to tack this authority with its existing regular route authority to serve Pittsburgh, PA. The purpose of this application is to substitute single-line for joint-line operations.

MC 142335 (Sub-13F), filed April 25, 1980. Applicant: C & E TRUCKING CO., INC., 11910 Greestone Ave., Santa Fe Springs, CA 90670. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *machinery, materials, supplies and equipment incidental to, or used in mining, milling, building construction, and highway building and maintenance*, between points in CA, on the one hand, and, on the other, points in AZ. Applicant intents to tack the authority sought with its existing authority.

Note.—The sole purpose of this application is to substitute single-line for joint-line operations.

Permanent Authority Notices

Substitution Applications: Single-Line Service for Existing Joint-Line Service

The following applications, filed on or after April 1, 1979, are governmed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2) These proposals are published as "service sought", (as opposed to decision-notices), because in each case it appears questionable as to whether all or part of the authority sought should be issued, weighing applicant's evidence under 49 CFR 1062.2. (For example, questions may be raised relating to applicant's contentions concerning why the involved joint-line service has been cancelled or is in a state of deterioration which warrant a decisions on the merits,

regardless of whether the application is opposed.)

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in oppositions. Petitions must be filed with the Commission within 30 days of publication of this decision-notice.

Petitions for intervention without leave (i.e., automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period immediately preceding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, however, must be limited to issue other than the public need for the proposed service. The appropriate basis for opposition, i.e., applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

MC 141364 (Sub-5F), filed February 25, 1980. Applicant: AFFILIATED VAN LINES, INC., 2124 Wasington, St., Box 209, Lawton, OK 73502. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Authority sought to operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *household goods* as defined by the Commission, between points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, WY, and DC. (Hearing site: Oklahoma City, OK.)

Note.—The sole purpose of this application is to substitute single-line for joint-line operations.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-22563 Filed 7-25-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-43

THE FOLLOWING APPLICATIONS WERE FILED IN REGION I.

SEND PROTESTS TO: REGIONAL AUTHORITY CENTER, INTERSTATE COMMERCE COMMISSION, 150 CAUSWAY ST.—RM. 501, BOSTON, MA 02114.

MC 144643 (Sub-1-2TA), filed July 15, 1980. Applicant: VINGI BROTHERS TRUCKING COMPANY, 28 Oakdale Avenue, Johnston, RI 02919. Representative: William F. Poole, 41 Bea Drive, N. Kingstown, RI 02852. *Contract carrier,* (1) *food stuffs, lime juice, grenadine, and cocktail mixes (non-alcoholic) (except in bulk),* from Warwick, RI to points in AL, AZ, AR, CA, CO, CT, DE, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, UT, VT, VA, WA, WV, WI, and WY, and (2) *food stuffs, lemon concentrate (non-alcoholic), materials, equipment, supplies and related accessory items (except in bulk),* used in the manufacture and distribution of the commodities set forth in (1) above from all points in the United States (except AK and HI) to the plant facilities of Cadbury Schweppes USA, Ltd., or its subsidiary, Jefferson Bottling Co., at or near Warwick, RI. Restriction: The authority requested herein is to be limited to a continuing contract or contracts with Cadbury Schweppes USA, Ltd., or its subsidiary Jefferson Bottling Co., of Warwick, RI.

MC 151272 (Sub-1-1TA), filed July 16, 1980. Applicant: FOOD HAULERS INC., 600 York Street, Elizabeth, NJ 07207. Representative: Philip J. Harter, 1101 Connecticut Avenue, N.W., Washington, DC 20036. *Common carrier,* irregular routes, *such merchandise as is dealt in by wholesale, retail and chain grocery stores, drug stores and food business houses, and in connection therewith equipment, supplies and materials used to conduct such businesses,* between all points in the states of NY and NJ and the facilities of Wakefern Food Corporation at Elizabeth and Edison, NJ, and Wallkill, NY for 270 days. Supporting shipper: Wakefern Food Corporation, 600 York Street, Elizabeth, NJ 07207.

MC 146440 (Sub-1-17TA), filed July 16, 1980. Applicant: BOSTON CONTRACT CARRIER, INC., P.O. Box 68, Brookline, MA 02167. Representative: Alan Bernson, Suite 32, 34 Market Street, Everett, MA 02149. *General Commodities, with the usual exceptions,* from points in Berkshire County, MA to points in AL, AR, AZ, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, VA, WA, WV, WI and WY. Supporting shipper: Stone

Marketing, Inc., 265 Third Street, Cambridge, MA 02142.

MC 30508 (Sub-1–3TA), filed July 16, 1980. Applicant: DEARBORN'S MOTOR EXPRESS, INC., 140 Epping Road, Exeter, New Hampshire 03833. Representative: Robert L. Cope, Esquire, Suite 501, 1730 M Street NW., Washington, D.C. 20036. *Common carrier* by motor vehicle over *regular routes. General Commodities* (except household goods as defined by the Commission, and Classes A and B explosives), between Greenfield, MA, and Claremont, NH, serving all intermediate points. From Greenfield, MA, over U.S. Hwy 5 to junction NH Hwy 103, thence over NH Hwy 103 to Claremont, NH, and return over the same route. Serving all points in Bennington, Rutland, Windham and Windsor Counties, VT, as off-route points in conjuction with carrier's regular or irregular route operations. permission to tack and interline is sought. (The statements of 22 shippers accompanying the application may be reviewed at the Boston offices of the Interstate Commerce Commission.)

MC 139330 (Sub-1–2TA), filed July 15, 1980. Applicant: FVT, INC., 106 Howard Drive, Williamstown Junction, NJ 08094. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Ave. and 13th St. NW., Washington, D.C. 20004. (1) *Fibrous glass products and materials, mineral wool, mineral wool products and materials, insulated air ducts, insulating products and materials, glass fiber rovings, yarn and strand, glass fiber mats and matting, and flexible air duct* (except commodities in bulk); and (2) *materials, equipment and supplies used in the manufacture of the commodities named in (1) above* (except in bulk), between the facilities of CertainTeed Products Corporation located at or near Williamstown Junction, NJ, on the one hand, and, on the other, points in ME, NH, VT, OH, KY, TN, NC, GA, SC, FL, TX, IA and WI. Supporting shipper: CertainTeed Corporation, P.O. Box 860, Valley Forge, PA 19482.

MC 145829 (Sub-1–8TA), filed July 15, 1980. Applicant: ETI CORP., P.O. Box 1, Keasbey, NJ 08832. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *Glass Containers, and materials, equipment, and supplies used in the manufacture and sale of Glass Containers (except commodities in bulk)* between Jeanette, PA, on the one hand, and, on the other, points in DE, MD, NJ, NY, VA, and DC. Supporting shipper: General Glass International Corporation, 270 North Avenue, New Rochelle, KY 10801.

MC 115180 (Sub-1–2TA), filed July 15, 1980. Applicant: ONLEY REFRIGERATED TRANSPORTATION, INC., 265 West 14th St., New York, NY 10011. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Molasses and Sweetener Compounds,* from points in MA and NY, to points in CO, IL, IN, IA, MI, MN, MO, NE, OH, PA, and WI. Supporting shipper(s): Ingredient Technology Corp., 280 Richards St., Brooklyn, NY 11231.

MC 151167 (Sub-1–1TA), filed June 30, 1980. Applicant: MAILWAY TRUCKING CORP., 180 Winifred Avenue, Yonkers, NY 10704. Representative: Harold L. Reckson, 33–28 Halsey Road, Fair Lawn, NJ 07410. Contract, irregular: *Used machinery, office fixtures and furniture, appliances and scrap metal.* From facilities of or used by IBM Corp., Beacon, East Fishkill, Kingston, Poughkeepsie and Saugerties, NY, to New Haven, CT, and points in its commercial zone. Supporting shipper: Michael Schiavone & Sons, Inc., New Haven, CT 06411.

MC 151265 (Sub-1–2TA), filed July 15, 1980. Applicant: JEROME J. ALEXANDER, P.O. Box 758, Prince Charles Drive, Welland, Ontario, Canada L3B 5R5. Representative: Robert D. Gunderman, Esq., Suite 710 Statler Bldg., Buffalo, NY 14202. *Passengers, limited to the transportation of not more than twelve passengers in one vehicle, not including the driver thereof and not including children under ten years of age who do not occupy a seat or seats, and baggage in the same vehicle with passengers,* Between ports of entry on the International Boundary line between the U.S. and Canada at the Niagara River, on the one hand, and, on the other, points in Erie and Niagara Counties, NY. There are 15 supporting shippers.

MC 151262 (Sub-1–1TA), filed July 15, 1980. Applicant: CAR CARE, INC., Bldg. 302, Port Newark, NJ 07114. Representative: Harold L. Reckson, 33–28 Halsey Rd., Fair Lawn, NJ 07410. Contract, irregular: *Automobiles and related accessories, in truckaway service,* between Port Newark, NJ, and points within five miles thereof, and Englewood, NJ, on the one hand, and, on the other, points in CT, MA, NJ, NY, OH, PA, RI, MI, IN, IL, WI, MN, IA, MO, VT, NH and ME, under contract with Peugeot Motors of America, Inc., Lyndhurst, NJ.

MC 93147 (Sub-1–3TA), filed July 15, 1980. Applicant: DELTA TRANSPORT CORPORATION, 840 Union Street, West Springfield, MA 01089. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. *(a) Business forms and (b) Paper and paper articles, and materials, equipment and supplies used in the sale, manufacture and distribution of commodities in (a) and (b) above,* between points in the contiguous 48 States, restricted to traffic originating at or destined to the facilities of New England Business Service, Inc. Supporting shipper(s): New England Business Service, Inc., Groton, MA. Send protests to: Complaint Authority Center, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114.

MC 112963 (Sub-1–4TA), filed July 15, 1980. Applicant: ROY BROS., INC., 764 Boston Road, Pinehurst, MA 01866. Representative: Leonard Murphy, 764 Boston Road, Pinehurst, MA 01866. *Sulfuric acid,* in bulk, in tank vehicles from Lawrence and Everett, MA, to Gaffney, SC. Supporting shipper: Monsanto Company, Everett Station, Boston, MA 02149.

MC 119443 (Sub-1–2TA), filed July 11, 1980. Applicant: P. E. KRAMME, INC., Main St., Monroeville, NJ 08343. Representative: Gerald A. Kramme, Main Street, Monroeville, NJ 08343. *Liquid Chocolate, in bulk, in tank vehicles* from Lititz, PA to the facilities of Paul F. Beich Company, at or near Bloomington, IL. Supporting shipper: Wilbur Chocolate Co., Inc., Lititz, PA.

MC 151200 (Sub-1–2TA), filed July 11, 1980. Applicant: H&D TRUCKING, INC., 3940 Nevada Ave., Highland Park, NY 11558. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. Robert Revogno, 118–21 Queens Blvd., Ste. 413, Forest Hills, NY 11375. *Auto parts,* between the plant site and warehouses of Questor Corporation at Philadelphia, PA on the one hand, and, on the other, points in NJ, CT, DE, MD, DC, New York, NY, and Nassau, Suffolk, Rockland, and West Chester Counties, NY. Supporting shipper: Questor Corporation, 801 Spielbusch Ave., Toledo, OH 43691.

MC 148632 (Sub-1–4TA), filed June 9, 1980. Applicant: DIXON LEASING CO., INC., a corporation, 2620 Old Egg Harbor Road, Lindenwold, NJ 08021. Representative: Gary V. Dixon, 2620 Old Egg Harbor Road, Lindenwold, NJ 08021. *Glass marbles,* in containers: From the facilities of Johns Manville Sales Corporation located at or near Parkersburg, WV to Penbryn (Williamstown Junction), NJ.

MC 93147 (Sub-1–4TA), filed July 17, 1980. Applicant: DELTA TRANSPORT CORPORATION, 840 Union Street, West Springfield, MA 01089. Representative: James M. Burns, 1383

Main Street, Suite 413, Springfield, MA 01103. *Hand blown glassware, machine made glassware and related products,* from Weston, WV, to North Dighton, MA. Supporting shipper(s): Princess House, Inc., North Dighton, MA 02764.

MC 106748 (Sub-1–1TA), filed July 17, 1980. Applicant: GODDARD'S TRANSPORTATION, INC., Route 4, Fair Haven, Vermont 05743. Representative: John P. Monte, Box 568, Barre, Vermont 05641. (1) *Ground crushed and broken limestone,* from points in Rutland County, VT, New Haven Junction, VT to points in CT, ME, MA, MI, NH, NY, OH, PA, RI and DC and, (2) *Ground Limestone Slurries,* from Rutland County, VT and New Haven Junction, VT to points in the State of Michigan. Supporting shippers: Amya, Inc., Proctor, VT and White Pigment Corporation, Florence, VT.

MC 148198 (Sub-1–1TA), filed July 18, 1980. Applicant: A. MATTEO TRUCK SERVICE, INC., 1465 Crown Point Road, Verga, NJ 08093. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107. *Cat litter, in bags,* from Pennsauken, NJ to Baltimore, MD, Milton and Forty Fort, PA, and Chester, VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Superior Pet Company, 470 Atlantic Ave., Boston, MA 02210.

MC 134806 (Sub-1–2TA), filed July 18, 1980. Applicant: B–D–R TRANSPORT, INC., P.O. Box 1277, Brattleboro, VT 05301. Representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, D.C. 20014. *Contract* carrier: irregular routes, *ski boots* from Essex, VT to points in CO, UT, AZ, CA, NV, NM, ID, MT, OR, WA, and WY. Supporting shipper: Beconta Manufacturing Corporation, 50 Executive Blvd., Elmsford, NY 10523.

MC 138304 (Sub-1–5TA), filed July 17, 1980. Applicant: NATIONAL PACKERS EXPRESS, INC., 1600 Clinton Street, Hoboken, NJ 07030. Representative: Craig B. Sherman, Attorney at Law, Broad and Cassel, Barnett Bank Building, 1108 Kane Concourse, Bay Harbor Islands, FL 33154. *Wire, wire rod, fasteners, nuts, bolts, and screws* between points in GA, MA, FL, OH, NC, SC, TN, MI, MN, IL, CT, PA, NY, NJ. Restriction: Restricted to transportation of traffic for the account of Brighton Best Socket Screw Mfg. Co., Green & North Streets, Teterboro, NJ 07608. Supporting shipper: Brighton Best Socket Screw Mfg. Co., Green & North Streets, Teterboro, NJ 07608.

MC 143127 (Sub-1–17TA), filed July 18, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Rd., Victor, NY 14564. Representative: Linda A. Calvo (same address as applicant). *Charcoal, charcoal briquets, hickory chips, fireplace logs and materials, supplies, and equipment used in the manufacture, sale and distribution of those commodities named above (except in bulk),* between all points in the United States in and east of ND, SD, NE, CO, OK, and TX. Restricted to traffic originating at or destined to the facilities of The Kingsford Company, for 180 days. Supporting shipper: Richard Parks, Dist. Mgr., The Kingsford Co., P.O. Box 1033, Louisville, KY 40201.

MC 151313 (Sub-1–1TA), filed July 16, 1980. Republication: Originally published in the Federal Register on March 26, 1980, p. 19630. Applicant: HARRAN TRANSPORTATION CO., INC., 1417 Jerusalem Avenue, North Merrick, NY 11565. Representative: Owen B. Katzman, 1800 M Street, N.W., Suite 800 South, Washington, D.C. 20036. *Contract Carrier,* irregular routes: *Passengers and their baggage,* between points in Queens, Nassau and Suffolk Counties, NY, on the one hand, and, on the other, the facilities of Resorts International, Inc., at Atlantic City, NJ, under a continuing contract with Resorts International, Inc., Supporting shipper: Resorts International, Inc., Atlantic City, NJ.

MC 149367 (Sub-1–3TA), filed July 17, 1980. Applicant: TRAFIK SERVICES, INC., 11 Newark Street, Providence, Rhode Island 02908. Representative: A. Joseph Mega (same address as applicant). *Contract Carrier,* irregular routes: *All Materials handled in a Drug Chain Operation viz (Freight All Kinds)* between the facilities of the Mark Stevens Service Merchandisers, Inc. at or near Woonsocket, Rhode Island and the facilities of the Mark Stevens Service Merchandisers, Inc. at or near Victor, New York. *Restriction:* The shipments are restricted to a transportation service to be provided under a continuing contract or contracts with the Mark Stevens Service Merchandisers, Inc. of Woonsocket, Rhode Island.

MC 42828 (Sub-1–1), filed July 17, 1980. Applicant: THEODORE ROSSI TRUCKING CO., INC., 9 South Vine Street, Barre, Vermont 05641. Representative: William L. Rossi, P.O. Box 332, Barre, Vermont 05641. Supporting shipper: Hayward Tyler Pump Co., 80 Industrial Parkway, So. Burlington, Vermont 05401. *Power pumps, power pump parts and materials and supplies used in the manufacture of power pumps,* between points in and east of TX, OK, MO, IA, and MN. Restricted to movements for the account of Hayward Tyler Pump Co., and Hayward Tyler, Inc.

MC 2860 (Sub-1–8TA), filed June 18, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Federal Register Publication of July 9, 1980, page 46223 is in error as T/A was correctly published in Federal Register of June 30, 1980.

MC 151298 (Sub-1–1TA), filed July 17, 1980. Applicant: REGILLES ST-ARNEAULT, P.O. Box 84, La Reine, Abitibi, Quebec, Canada JOZ 2LO. Representative: Richard H. Streeter, Wheeler & Wheeler, 1729 H Street, N.W., Washington, D.C. 20006. Irregular *contract lumber* between ports of entry along the Canadian-United States border at or near Sault Ste Marie, Port Huron and Detroit, MI on the one hand, and, on the other, points in MI under continuing contract with J. H. Normick, Inc., La Sarre, Quebec, CD.

MC 151269 (Sub-1–2TA), filed July 16, 1980. Applicant: FRONCKOWIAK BROS., INC., 1476 Harlem Road, Buffalo, New York 14206. Representative: William J. Hirsch, Attorney at Law, 1125 Convention Tower, 43 Court Street, Buffalo, New York 14202. *Contract,* irregular: *Office furniture, and materials, supplies and equipment used the manufacture thereof;* between all points in the US, except AK and HI. Supporting shipper: The Gunlocke Co. Inc.

MC 142995 (Sub-1–1TA), filed July 17, 1980. Applicant: AIRLIN TRUCKING CO., INC., Foot of Cutters Dock Road, Woodbridge, NJ 07095. Representative: George V. D'Agostino (same address as applicant). Contract, irregular: *Ground limestone, (bags and bulk), talc, talc tailings, play sand and slurry, marble and marble chips* between Rutland and Windsor Counties, VT on the one hand, and on the other hand, points in CT, DE, MD, MA, NJ, NY, OH, PA, RI, VA and DC. Supporting shipper: Omya, Inc. and/or Protexulate, Inc., 61 Main Street, Proctor, VT 05765.

Correction

MC 145702 (Sub-1–1TA), filed May 27, 1980. Applicant: TRANSURFACE CARRIERS, INC., P.O. Box 271, Northboro, MA 01532. Representative: Bernard P. Rome, 31 Milk Street, Boston, MA 02109. Correction to Federal Register, Volume 45, No. 114, appearing in issue of Wednesday, June 11, 1980 on Page 39549, middle column, paragraph 1, line 17, MN should be corrected to read NM.

MC 147331 (Sub-1–1TA), filed July 16, 1980. Republication: Originally

published in the Federal Register on January 16, 1980, p. 3145. Applicant: CARMICHAEL TOURS, INC., 117-07 New York Boulevard, Jamaica, NY 11434. Representative: Harold Sacks, Esq., 19 West 44th Street, New York, NY 10036. *Passengers, in charter operations,* from points beginning and ending in New York, NY, to the States of ME, NH, VT, MA, CT, NJ, PA, DE, MD, VA, NC, GA, and FL, for 180 days. Supporting shipper: Gloria Jackson Studio of Dance Music, Inc., Jamaica, NY 11433.

MC 120491 (Sub-1-1TA), filed July 16, 1980. Applicant: CONSTRUCTION HAULAGE CORP., Unit F, Foot of 46th Street, Brooklyn, NY 11322. Representative: Edward L. Nehez and Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. (1) *Stone blocks* from St. Peters, PA to Providence, RI (2) *Stone slabs* from Providence, RI to Brooklyn, NY. Supporting shipper: A. Ottavino & Company, Brooklyn, NY.

MC 118803 (Sub-1-3TA), filed July 16, 1980. Applicant: ATLANTIC TRUCK LINES, INC., 45 Gilpin Avenue, Hauppauge, New York 11787. Representative: Morton E. Kiel, 2 World Trade Center, Suite 1832, New York, NY 10048. Contract carrier, irregular routes: *Such commodities as are dealt in or used by a manufacturer and distributor of construction materials (except in bulk);* between the facilities of Maywood Manufacturing Corporation in Blacksburg, VA, on the one hand, and, on the other, points in the United States in and east of MN, IA, KS, NE, OK, and TX. Supporting shipper: Maywood Manufacturing Corporation, Blacksburg, VA 24060.

MC 59655 (Sub-1-4TA), filed July 16, 1980. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Road, Suffern, NY 10901. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Glass bottles, glassware, and materials, equipment, and supplies used in the manufacture, sale and distribution of Glass Bottles and Glassware (except commodities in bulk),* between Carteret and Jersey City, NJ on the one hand, and, on the other, Merrimack, NH. Supporting shipper: Metropak Containers, Lyndhurst, NJ 07071.

THE FOLLOWING APPLICATIONS WERE FILED IN REGION 2. SEND PROTESTS TO: ICC, FEDERAL RESERVE BANK BLDG., 101 N. 7TH ST., ROOM 620, PHILADELPHIA, PA 19106.

MC 143133 (Sub-II-1TA), filed July 9, 1980. Applicant: SHEPPARD ENTERPRISES, INC., 101 Philadelphia St., Hanover, PA 17331. Representative: Daniel M. Frey, 31 York St., Hanover, PA 17331. *Contract, irregular:* (1) Power steering units and related parts from Hanover, PA, to points in MI, IL, OH, KY, IN, VA, WV, MD and NJ; (2) Materials, equipment and supplies from points in MI, IL, OH, KY, IN, VA, WV, MD and NJ to Hanover, PA, under a continuing contract, or contracts, with R. H. Sheppard Co., Inc., 101 Philadelphia St., Hanover, PA, 17331. Supporting shipper: R. H. Sheppard Co., Inc., 101 Philadelphia St., Hanover, PA 17331.

MC 69052 (Sub-II-6TA), filed July 10, 1980. Applicant: REED TRUCKING CO., P.O. Box 216, Milton, DE 19968. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Ave. & 13th St., NW, Washington, DC 20004. *(1) Sugar (except in bulk)* from Philadelphia, PA, to points in Somerset, Wicomico and Dorchester Counties, MD; and *(2) flour (except in bulk)* from points in York County, PA, to points in Somerset, Wicomico and Dorchester Counties, MD, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Robinson Chemical Co., P.O. Box 264, Cambridge, MD 21613.

MC 150842 (Sub-II-1TA), filed July 10, 1980. Applicant: SPURGEON TRUCKING, INC., P.O. Box 33, Millville, WV 25432. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740 *Crushed stone and asphalt in dump vehicles,* from Jefferson County, WV, to points in Montgomery, Frederick, Prince Georges, Anne Arundel, Howard, Baltimore, and Harford Counties, MD; Loudoun, Frederick, Clarke, Arlington, and Fairfax Counties, VA; Alexandria, VA, and its commercial zone and Washigton, D.C., and its commercial zone for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Maloney Concrete Co., 6900 Wisconsin Ave., Chevy Chase, MD 20015. W & W Paving Co., Inc., P.O. Box 188, Millville, WV 25432. Shenandoah Quarry, Inc., P.O. Box C, Millville, WV 25432.

MC 109124 (Sub-II-6TA), filed July 10, 1980. Applicant: SENTLE TRUCKING CORP., P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus, OH 43215. (1) *Clay and clay products* from points in AL, GA, MD, TN, TX, and WV, to Cleveland and Huron, OH, Johnstown and Reading, PA, and Chicago, IL, and (2) *powdered metals* between points in OH and PA, for 270 days. Supporting shipper: SCM Corporation, 900 Union Commerce Bldg., Cleveland, OH 44115.

MC 146551 (Sub-II-3TA), filed July 7, 1980. Applicant: TAYLOR TRANSPORT, INC., P.O. Box 285, Grand Rapids, OH 43522. Representative: Owen B. Katzman, 1828 L Street, N.W., Suite 1111, Washington, DC 20036. *Foodstuffs and pet foods,* from the facilities of Ralston Purina Company at or near Dunkirk, NY, to points in CT, ME, MA, NH, RI, and VT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ralston Purina Co., Checkerboard Square, St. Louis, MO 63188.

MC 146807 (Sub-II-1TA), filed July 7, 1980. Applicant: S N W ENTERPRISES, INCORPORATED, P.O. Box 1131, Wilkes Barre, PA 18702. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. *Plastic film and sheeting and plastic bags,* from Pottsville, Norwegian Township PA to Chicago, IL, Fowler, IN, Muscatine, IA, Louisville, KY, Appleton, WI, Livonia, MI, Cleveland, Columbus & Cincinnati, OH & New Orleans, IA; materials and supplies on return for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Exxon Chem G.V.S.A., P.O. Box 395, Pottsville, PA.

MC 151015 (Sub-II-2TA), filed July 7, 1980. Applicant: DON SWART TRUCKING, INC., P.O. Box 42, Rt. 2, Wellsburg, WV 26070. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. *Contract: irregular* (1) *concrete block* from Tiltonsville, OH to Monogah, WV and (2) *cement, in bulk and in bags,* from Bessemer, PA to Monongah, WV for the account of Belot Concrete Industries, Inc. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Belot Concrete Industries, Inc., P.O. Box 68, Tiltonsville, OH 43963.

MC 2202 (Sub-II-8TA), filed July 10, 1980. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Blvd., Akron, OH 44309. Representative: William O. Turney, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. *Common, regular: General commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment).* 1. Between Canton, MO and Wentzville, MO, serving all intermediate points and points in their commerical zones between Canton and New London: From Canton over U.S. Hwy 61 to Wentzville and return. 2. Between Quincy, IL and Monroe City, MO, serving all intermediate points and points in their commercial zones: From Quincy over U.S. Hwy 23 to Monroe City and return. 3. Between Mexico, MO and Centralia, MO serving all intermediate points, the off-route points of Fayette and California, MO, and points in their commercial zones: From Mexico over

U.S. Hwy 54 to Jct U.S. Hwy 63, then U.S. Hwy 63 to Jct MO Hwy 124, then MO Hwy 124 to Centralia, and return. 4. Between Warrenton, MO and St. Clair, MO, serving all intermediate points and points in their commercial zones: From Warrenton over MO Hwy 47 to St. Clair, and return. 5. Between Hermann, MO and Jct MO Hwy 100 to IS Hwy 44, serving all intermediate points and points in their commercial zones: From Hermann over MO Hwy 100 to Jct IS Hwy 44, and return. 6. Between Owensville, MO and Jct U.S. Hwy 50 and IS Hwy 44, serving all intermediate points and points in their commercial zones: From Owensville over MO Hwy 28 to Jct U.S. Hwy 50, then U.S. Hwy 50 to Jct IS Hwy 44, and return for 270 days. Applicant proposes to tack authority sought herein with its existing regular routes. Applicant proposes to interline at existing gateways throughout its system. Supporting shippers: There are approximately 27 supporting shippers. The statements may be examined at the ICC Regional Office in Philadelphia.

MC 109124 (Sub-II-7TA), filed July 16, 1980. Applicant: SENTLE TRUCKING CORP., P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus, OH 43215. *Insulating material,* on flatbed trailers, from Newark, OH to points in the United States west of the Mississippi River, for 270 days. Supporting shipper: Owens-Corning Fiberglas Corp., Fiberglas Tower, Toledo, OH 43659.

MC 148443 (Sub-II-3TA), filed July 7, 1980. Applicant: SOUTH SHORE EQUIPMENT CORP., 1284 Miller Rd., Avon, OH 44011. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. (1) *Plastic pellets, granules and lumps* from the facilities of Arco Polymers, Inc., at or near Monaca and Kobuta, PA to Lithonia, GA, North Aurora, IL, Mason, MI, Corona, CA, Wacahachie, TX, and Horse Cave, KY. (2) *Plastic cups, lids, film, cutlery; dinnerware, and materials, equipment and supplies used in the manufacture, marketing and distribution thereof* between Mason, MI, Leola, PA, Lithonia, GA, North Aurora, IL, Corona, CA, Waxahachie, TX, and Horse Cave, KY, on the one hand, and, on the other, all points in the U.S., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Dart Container Corp., 432 Hogsback Rd., Mason, MI 48854.

MC 135170 (Sub-II-3TA), filed July 11, 1980. Applicant: TRI-STATE ASSOCIATES, INC., P.O. Box 188, Federalsburg, MD 21632. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Contract Carrier, Irregular Route: Glass Containers,* from Henderson, NC and Laurens, SC to Salisbury, MD, under a continuing contract or contracts with R. C. Crown Bottling Co. of Salisbury, Inc. and Pepsi Cola Bottling Co. for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: R. C. Crown Bottling Co. of Salisbury, Inc., 420 Snowhill Rd., Salisbury, MD 21801. Pepsi Cola Bottling Co., 432 Race St., Salisbury, MD 21801.

MC 114569 (Sub-II-25TA), filed July 14, 1980. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). *Coffee,* from the facilities of Chock Full O'Nuts at or near Brooklyn and Jamacia, NY to Vernon, Los Angeles, Union City, and San Francisco, CA and Portland, OR, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Chock Full O'Nuts, 425 Lexington Ave., New York, NY 10017.

MC 114569 (Sub-II-24TA), filed July 14, 1980. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). *Such commodities as are dealt in or used by food businesses* between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities utilized by the Hershey Foods Corp., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Hershey Foods Corp., 19 E. Chocolate Ave., Hershey, PA 17033.

MC 134156 (Sub-II-3TA), filed June 23, 1980. Applicant: AL SALEM, d.b.a. AL SALEM PRODUCE, 5136 Cherokee Hill Dr., Salem, VA 24153. Representative: Al Salem (same as applicant). *Paint and materials, supplies and equipment used in the manufacture of paint,* between the facilities of Evans Paint Div. at or near Roanoke, VA and points in the U.S., for 180 days. An underlying ETA seeks 90 days authority. Applicant intends to interline at various points depending on concurring carriers. Supporting shipper: Evans Paint Div., 1516 Cleveland Ave., Roanoke, VA 24015.

MC 121420 (Sub-II-2TA), filed July 17, 1980. Applicant: DART TRUCKING CO., INC., 61 Railroad St., Canfield, OH 44406. Representative: David J. Best (same address as applicant). *Coal,* in bulk, from Perry and Knott Cty., KY to points in Butler, Clark, Clearmont, Greene, Hamilton, Montgomery and Warren Cty., OH for 270 days. Supporting shipper: Airco Coals Inc., 5335 Farhills Dr., Suite 218, Dayton, OH 45429.

MC 114132 (Sub-II-1TA), filed July 17, 1980. Applicant: CHURN'S TRUCK LINES, INC., P.O. Box 188, Eastville, VA 23347. Representative: James F. Flint, Suite 600, 1250 Connecticut Ave. NW., Washington, DC 20036. *Malt Beverages,* (except in bulk), from Pabst, GA to points in VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Dominion Beverage Co. of Petersburg, 2nd & River Sts., Petersburg, VA 23803. S & L Straus Beverage Co., 1707 Summit Ave., Richmond, VA 23230. Associated Distributors, Inc., 3749 Progress Rd., Norfolk, VA 23502. A & N Beverage Co., Inc., King St. Extended, Belle Haven, VA 23306.

MC 148476 (Sub-II-7-TA), filed July 14, 1980. Applicant: BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 10005. *Contract carrier,* over irregular routes: *Such merchandise as is dealt in and distributed by wholesale, retail and chain grocery stores and food businesshouses* (except in bulk), from points in Florida to Elizabeth, NJ, and points in its commercial zone for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Wakefern Food Corporation, Elizabeth, NJ 07207.

MC 3114 (Sub-II-6-TA), filed July 14, 1980. Applicant: T. H. COMPTON, INC., R.F.D. #1, Berkeley Springs, WV 25411. Representative: Herbert Alan Dubin, 818 Connecticut Avenue, NW, Washington, DC 20006. *Aplite, in bulk,* from pts in Hanover County, VA to pts in IN, NY, NC, OK, TX, and Baltimore, MD for 270 days. Supporting shipper: Feldspar Corporation, P.O. Box 99, Spruce Pine, NC 28777.

MC 151277 (Sub-II-1-TA), filed July 15, 1980. Applicant: COCHRAN TRANSPORTATION SERVICE, INC., 75 Grosvenor Street, Athens, OH 45701. Representative: John L. Alden, 1329 W. Fifth Ave., Columbus, OH 43212. (1) *Paper, printed forms and boxes,* from Athens, OH, to Ogden, UT, and points in VA and WV, (2) *material, equipment* and supplies, used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), on return for 270 days. Supporting shipper: McBee System, Division of Litton Industries, Route 50 E, Athens, OH, 45701.

MC 1074 (Sub-II-1-TA), filed July 15, 1980. Applicant: ALLEGHENY FREIGHT LINES, INC., P.O. Box 2080, Winchester, VA 22601. Representative: Richard A. Mehley, 1000—16 Street, NW., Suite 502,

Washington, DC 20036. Common; regular—*General commodities (with usual exceptions),* serving the plant facility of Volkswagen of America, Inc., located in Westmoreland County, PA, as an off-route point in connection with applicant's regular route operations, for 270 days. An underlying ETA seeks 120 days authority. Applicant intends to tack authority sought herein with authority held under MC 1074. Applicant intends to interline at Cincinnati, OH; Charleston, Parkersburg and Clarksburg, WV; Winchester, VA; Baltimore, MD and Pittsburgh, PA. Supporting shipper: VDO-ARGO Instruments, Inc., 980 Brooke Road, Winchester, VA 22601.

MC 138438 (Sub-II-13-TA), filed July 14, 1980. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Avenue, Hagerstown, MD 21740. *Felt (dry, unsaturated),* from the facilities of Georgia Pacific Corporation located at or near Franklin, Warren County, OH, to the facilities of Georgia Pacific Corporation located at or near Hampton, Henry County, GA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Georgia Pacific Corporation, 1062 Lancaster Avenue, Rosemont, PA 19010.

Note.—Dual operations may be involved.

MC 108392 (Sub-II-1TA), filed July 14, 1980. Applicant: DISTRIBUTORS SERVICE COMPANY, INC., 30 Edgewood Park Dr., Parkersburg, WV 26101. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. *Malt beverages and used empty containers,* between Hammonton, NJ and Rochester, NY, on the one hand, and, on the other, New Martinsville and Parkersburg, WV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Parkersburg Distributing Co., P.O. Box 507, Parkersburg, WV 26101; J. C. Mensore Distributor, Inc., 134 N. Bridge St., New Martinsville, WV 26155.

MC 151264 (Sub-II-2TA), filed July 14, 1980. Applicant: CHESAPEAKE & NORTHERN TRANSPORTATION CORP., 5604 Copelle Rd., Portsmouth, VA 23703. Representative: James C. Riffe (same as applicant). *Passengers and their baggage in the same vehicle with passengers, in round-trip charter operations,* beginning and ending at Hampton, Norfolk, Chesapeake, Portsmouth and Virginia Beach, VA and extending to points in AK, CA, CO, DC, FL, GA, ID, IL, KY, LA, MD, MA, ME, MI, MS, MO, MT, NV, NH, NJ, NM, NY, NC, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, WA, WV, WI and WY for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): (1) American Travel Club, 428 Villanova Ave., Chesapeake, VA 23324; (2) Mr. Happy Travel Service, No. 1 Southern Shopping Ctr., Norfolk, VA 23505; (3) Isle of Wight Senior Citizens, Rt 1, Box 323, Carrollton, VA 23314; (4) Travel Club, Extension Homemakers; 2409 Gilmerton Rd., Chesapeake, VA 23323.

MC 2202 (Sub-II-6TA), filed May 27, 1980. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Blvd., Akron, OH 44309. Representative: William Turney, Suite 1010, 7101 Wisconsin Ave., Wash., DC 20014. Common regular: *General commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* between Indianapolis, IN and Bedford, IN, serving all intermediate points and points in their commercial zones: From Indianapolis over IN Hwy 37 to Jct IN Hwy 54, then IN Hwy 54 to Bedford, IN and return over the same route, for 270 days. An underlying ETA seeks 120 days authority. Applicant proposes to tack the authority sought herein with its regular routes at Indianapolis and Bedford, IN. Applicant proposes to interline at existing gateways throughout its system. Supporting shippers: Sabin Corp., 617 Curry Pike, Bloomington, IN 47401; Warehouse Carpet Center, 3103 Canterbury Dr., Bloomington, IN 47401.

MC 72069 (Sub-II-5TA), filed July 14, 1980. Applicant: BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St. NW., Washington, D.C. 20005. *Such commodities as are dealt in or used by wholesale, retail and chain grocery and food business houses* and *materials, equipment and supplies* used in the manufacture, processing or distribution thereof, between Vineland, NJ, on the one hand, and, on the other, points in the United States (except AK and HI). Restricted against the transportation of commodities in bulk and restricted to transportation originating at or destined to the facilities of Progresso Quality Foods. An underlying ETA seeks 120 days authority. Supporting shipper: Progresso Quality Foods, Vineland, NJ 08360.

MC 114569 (Sub-2-26TA), filed July 14, 1980. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). *Wood burning stoves and parts therefor,* from points in the U.S. to points in GA for 270 days. Applicant has also filed an underlying ETA R-22 seeking 5 days operating authority. Supporting shipper: Wood Power Co., Inc., 479 Atlanta St., Roswell, GA.

MC 2202 (Sub-2-9TA), filed July 14, 1980. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Blvd., Akron, OH 44309. Representative: William O. Turney, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Common, regular: *General commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* serving Snyder, TX and points in its commercial zone as off-route points in connection with applicant's regular route over U.S. Hwy 80, for 270 days. Applicant proposes to tack the authority sought herein with its regular routes. Applicant proposes to interline at existing gateways throughout its system. Supporting shippers: American Magnesium Co., Box 666, Snyder, TX 79549; Northern Electric Co., P.O. Box 469, Waynesboro, MS 39367.

MC 148400 (Sub-2-2TA), filed July 14, 1980. Applicant: ORVILLE E. VAUGHAN AND KATHLEEN V. VAUGHAN, t.d.b.a. SUN VALLEY TANK LINES, 64 Laporte Dr., Mars, Pa. 16046. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, Pa. 15219. *Contract, irregular; animal fats, tallow, grease, vegetable oils and fatty acids, in bulk, in tank vehicles* between Linville, VA on the one hand, and, on the other, points in OH and PA, under continuing contract(s) with Jacob Stern & Sons, Inc. of Jenkintown, PA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Jacob Stern & Sons, Inc., Benjamin Fox Pavillion, Jenkintown, Pa. 19046.

MC 2202 (Sub-2-11TA), filed July 16, 1980. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Blvd., Akron, OH 44309. Representative: William O. Turney, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Common, regular: *General commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* serving the facilities of Doehla, Inc. at or near Nashua, NH as an off-route point in connection with applicant's regular routes to and from North Reading, MA for 270 days. Applicant proposes to tack the authority sought herein with its regular routes at North Reading, MA. Applicant proposes to interline at existing gateways throughout its system.

Supporting shipper: Doehla, Inc., 1 Chestnut Street, Nashua, NH.

MC 138068 (Sub-2-2TA), filed July 14, 1980. Applicant: WAREHOUSE TRANSPORTATION COMPANY, INC., P.O. Box 84, Urbana, OH 43078. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215. *Contract;* Irregular; *Such commodities as are used, dealt in, or distributed by retail and wholesale department, hardware, drug and food stores and equipment, materials and supplies used in the conduct of the business described above* between Franklin, KY, and its commercial zone, on the one hand, and, on the other, Denver, CO; Elizabeth, NJ; Liverpool, NY; Charlotte, NC; Portland, OR; Philadelphia, PA; Saylesville, RI; and Dallas and Lubbock, TX, and their respective commercial zones, for 270 days. Supporting shipper: The Drackett Co., 5020 Spring Grove Ave., Cincinnati, OH 45232.

MC 21866 (Sub-2-25TA), filed July 14, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Syrups and dessert toppings* (except in bulk), from the facilities of R. W. Snyder, Inc. at Boyertown, (Berks County), PA to Ayer, MA, Halethorpe, MD, Manassas, VA and Stratford, CT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): R. W. Snyder Co., Inc., 73 South Monroe St., Battle Creek, MI 49016.

MC 150480 (Sub-2-1TA), filed July 14, 1980. Applicant: YOWELL TRANSPORTATION SERVICE, INC., 1840 Cardington Rd., Dayton, OH 45409. Representative: Andrew Jay Burkholder, 275 E. State St., Columbus, OH 43215. *Contract Carrier,* Irregular Route: *Analog and digital electronic machines and systems, and equipment, materials, supplies and accessories used in the manufacture and operation of analog and digital electronic machines and systems,* between points in the US for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Systems Engineering Laboratories, Inc., 6901 W. Sunrise Blvd., Fort Lauderdale, FL 33313.

MC 117565 (Sub-II-5TA), filed July 14, 1980. Applicant: MOTOR SERVICE CO., INC., P.O. Box 448, Coshocton, OH 43812. Representative: John R. Hafner (same as applicant). *(1) Roof Cement, Waterproofing Compounds, Paint, Caulking, Adhesives, Sealant, Coatings, AND (2) Accessories and supplies used in the installation, manufacture and maintenance of (1) above,* from the plant site and warehouse facilities of Perfection Industries Co. at or near Cleveland, OH to points in CA, CO, FL, GA, IL, IN, MA, MI, NC, NY, PA, TN, TX, and VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Perfection Industries Co., 8001 Franklin Blvd., Cleveland, OH 44102.

MC 136343 (Sub-II-10TA), filed July 11, 1980. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. *Such commodities as are dealt in by hardware stores and hardware dealers (except in bulk)* from Farmingdale, NY to pts. in CT, MA, RI, ME, NH, VT, PA, OH, IN, IL, MI, MD, KY, TN, DE, MO, VA, WV, NC, SC, GA, FL and DC for 270 days. An underlying ETA seeks 90 days authority. Supporting shipper: Duro Dyne Corp., Rt. 100, Farmingdale, NY 11735.

MC 151224 (Sub-II-1TA), filed July 10, 1980. Applicant: NORTHERN STEEL TRANSPORT CO., 6041 Benore Rd., Toledo, OH 43612. Representative: Keith D. Warner, 5732 W. Rowland Rd., Toledo, OH 43613. *Aluminum, steel and zinc, in ingots, roll, sheets and pigs; and, materials and supplies used in the manufacturing and preparation for transportation of such products,* between pts. in IL, IN, KY, lower peninsula of MI, OH, PA (on and west of US Rte. 219), WV, St. Louis, MO, and Buffalo, NY for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 18 supporting shippers. Their statements may be examined at the ICC Regional Office in Phila., PA.

MC 1239 (Sub-II-2TA), filed July 14, 1980. Applicant: PONY TRUCKING, INC., 501 State Route #7, Steubenville, OH 43952. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St. NW., Washington, DC 20005. *Contract;* irregular: *Refractories, refractory products, insulation, insulating materials, materials, equipment and supplies used in the manufacture, distribution and installation thereof,* between points in AL, GA, IL, MO, OH, PA, NJ, CO, OK, TX, and ID, on the one hand, and, on the other, points in the US (except AK and HI) for 270 days, under a continuing contract with the A.P. Green Refractories Co., Inc. Restricted to shipments which originate at or terminate at the facilities of the A. P. Green Refractories Co., Inc. Supporting shipper(s): A. P. Green Refractories Co., Inc., Green Blvd., Mexico, MO 65265.

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MC 19201 (Sub-II-1TA), filed June 19, 1980. Applicant: PENNSYLVANIA TRUCK LINES, INC., 49th Street and Parkside Ave., Philadelphia, PA 19131. Representative: S. Berne Smith, Robert H. Griswold, P.O. Box 1166, Harrisburg, PA 17108. *General commodities (except household goods in use, commodities in bulk, commodities of unusual value, classes A and B explosives, and commodities which because of size or weight require special equipment),* (1) between Cleveland, Columbus, and Toledo, OH, Detroit, MI, St. Louis, MO, Chicago, IL, Elkhart and Indianapolis, IN, Louisville, KY, and their commercial zones, on the one hand, and, on the other, points in IL, IN, KY, the lower peninsula of MI, OH, PA on and west of U.S. Hwy. 15, and WV; (2) between Cincinnati, OH, and its commercial zone, on the one hand, and, on the other, points in IL, the lower peninsula of MI, OH, PA on and west of U.S. Hwy. 15, and WV. Restricted in (1) and (2) above to traffic having a prior or subsequent movement via rail, or water. Applicant intends to interline. An undelrying ETA seeks 90 days authority. Supporting shippers: There are approximately 27 supporting shippers. Their statements may be examined at the ICC Regional Office in Philadelphia, PA.

MC 126881 (Sub-II-1TA), filed July 7, 1980. Applicant: RICHARD B. RUDY, INC., 203 Linden Ave., Frederick, MD 21701. Representative: H. Neil Garson, Garson, deMember and Weiner, 3251 Old Lee Highway, Suite 400, Fairfax, VA 22030. *Contract, irregular: Sweetners in bulk in tank vehicles,* from the site of the American Sugar Company (Amstar) Baltimore, MD to points in DE, MD, NJ, NY, OH, PA, NC, VA, WV, and DC under a continuing contract or contracts with J. A. Wilson d/b/a/ Potomac Foods, for 270 days. Supporting shipper: Potomac Foods, 833 S. Washington St., Alexandria, VA 22314.

MC 142485 (Sub-II-1TA), filed July 3, 1980. Applicant: KENDRICK MOTOR FREIGHT, INC. (formerly KENDRICK MOVING & STORAGE, INC.), P.O. Box 209, Lebanon, OH 45036. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. (1) *Mattresses, upholstered or stuffed furniture, batting, padding, frames, springs, or molds and (2) equipment, materials and supplies used in the manufacture or distribution of (1) above,* (A) between the facilities of Sterns & Foster Co., at or near

*The purpose of this republication is to show IN and KY in (1) destination territories and to include the entire scope in (2), both of which were omitted in the first publication.

Lockland and Mason, OH, on the one hand, and, on the other, points in WI; and (B) Between the facilities of Sterns & Foster Co., at or near Pontotoc, MS, on the one hand, and, on the other, points in AR, IL, IN, KY, MI, MO, NY, OH, PA, TN, WI, and WV; (3) *Equipment, materials and supplies used in the manufacture or distribution of (1) above* from points in AR, IL, IN, KY, MI, MS, MO, NY, PA, TN and WV to the facilities of Sterns & Foster Co., at or near Lockland and Mason, OH for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Sterns & Foster, Mill & Wyoming, Lockland, OH 45215.

MC 135524 (Sub-II-7TA), filed June 11, 1980. Applicant: G. F. TRUCKING COMPANY, 1028 W. Rayen Ave., P.O. Box 229, Youngstown, OH 44501. Representative: George Fedorisin, 914 Salts Springs Rd., Youngstown, OH 44509. *Iron and steel articles and materials, equipment and supplies used in the distribution, sales and manufacture of iron and steel articles* (except commodities in bulk), between the facilities of North Star Steel Co. at or near Wilton, IA, on the one hand, and, on the other, points in the U.S., for 270 days. Supporting shipper(s): North Star Steel Co., P.O. Box 43189, St. Paul, MN 55164.

MC 115181 (Sub-2-6TA), filed July 11, 1980. Applicant: HAROLD M. FELTY, INC., R.D. #1, Box 148, Pine Grove, PA 17963. Representative: John W. Dry, 541 Penn St., Reading, PA 19601. *Coal,* from points in Schuylkill County, PA, to Newark, NJ, and return. Supporting shipper: United Young Company, Inc., 1225 Broadway, New York, NY 10001.

MC 115181 (Sub-II-7TA), filed July 11, 1980. Applicant: HAROLD M. FELTY, INC., R.D. No. 1, Box 148, Pine Grove, PA 17963. Representative: John W. Dry, 541 Penn St., Reading, PA 19601. *Coal,* from points in Dauphin County, PA, to Newark, NJ, and return. Supporting shipper: United Young Company, Inc., 1225 Broadway, New York, NY 10001.

MC 115181 (Sub-II-8TA), filed July 11, 1980. Applicant: HAROLD M. FELTY, INC., R.D. No. 1, Box 148, Pine Grove, PA 17963. Representative: John W. Dry, 541 Penn St., Reading, PA 19601. *Coal,* from points in Lebanon County, PA, to Newark, NJ, and Baltimore, MD, and return. Supporting shipper: United Young Company, Inc., 1225 Broadway, New York, NY 10001.

MC 81908 (Sub-II-2TA), filed July 15, 1980. Applicant: GARNER TRUCKING, INC., Route No. 4, Findlay, OH 45840. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. (1) *Fertilizer* from Morral, OH, Clinton, IL, and Mt. Airy, MD, to points in DC, DE, IN, KY, MI, MO, NJ, NY, OH, PA, VA and WV, (2) *lawn care products, and materials, equipment and supplies used in the manufacture, distribution and application of lawn care products,* (except commodities in bulk), between points in AL, DC, DE, FL, GA, IA, IL, IN, KY, LA, MD, MI, MS, MO, NJ, NY, NC, OH, PA, SC, TN, VA and WV. (1) and (2) restricted to shipments originating at or destined to facilities used by Chem-Lawn Corporation. Supporting shipper: Chem-Lawn Corporation, 450 West Wilson Road, Worthington, OH 43085.

MC 147681 (Sub-II-10TA), filed July 14, 1980. Applicant: HOYA EXPRESS, INC., P.O. Box 543, West Middlesex, PA 16159. Representative: David M. O'Boyle, 2310 Grant Building, Pittsburgh, PA 15219. *Can ends, metal containers and tin plates,* from the facilities of Crown, Cork & Seal Company, Inc. at: (1) Lawrence, MA to points in IL, IN, KY, MD, NJ, OH, PA and VA; (2) North Bergen, NJ to points in CT, IL, IN, KY, MD, MA, NH, NY, OH, PA, RI and VA; (3) Philadelphia, PA to points in CT, IL, IN, KY, MA, NH, NY, OH and RI; (4) Baltimore, MD to points in CT, IL, IN, KY, MA, NH, NJ, NY, OH, PA and RI. Supporting shipper: Crown, Cork & Seal Company, Inc., 9300 Ashton Rd., Philadelphia, PA 14146.

MC 151295 (Sub-II-1TA), filed July 11, 1980. Applicant: HARBOUR TRUCKING, INC., P.O. Box 660, Route 7, Proctorville, OH 45669. Representative: Stephen C. Fitch, 155 E. Broad St., Columbus, OH 43215. *Contract,* irregular, *Coal,* in bulk, from Lawrence, Elliott, Morgan, Magoffin, Johnson, Martin and Floyd Counties, KY and Wayne, Kanawha, Lincoln, Mingo and Logan Counties, WV to the facilities of Harbour Marine, Inc., d.b.a. Riverside Coal Co., Proctorville, OH, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Harbour Marine, Inc., d.b.a. Riverside Coal Co., Route 7, Proctorville, OH 45669.

MC 150693 (Sub-2-2TA), filed July 16, 1980. Applicant: GENERAL MOTOR LINES, INC., P.O. Box 9583, Baltimore, MD 21237. Representative: Edward N. Button, 580 Northern Ave. Haggerstown, MD 21740. Contract; irregular: *lubricating oils and greases; carbon, gum or sludge removing compounds; automotive filters, valves and parts, fender covers; brake fluids and compressor oils; antifreeze and engine coolant preparations; cleaning, scouring, washing, buffing, or polishing compounds (exept in commodities in bulk), and materials, equipment and supplies used in the manufacture and distribution thereof,* between points in the US (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: STP Corporation 1400 W. Commercial Blvd., Ft. Lauderdale, FL 33310.

MC 119315 (Sub-II-4TA), filed July 14, 1980. Applicant: FREIGHTWAY CORPORATION, 131 Matzinger Rd., Toldeo, OH 43612. Representative: Andrew Jay Burkholder, 275 E. State St., Columbus, OH 43215. *Contract Carrier, Irregular Routes: General commodities (except commodities of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk),* between Lawrence, MA, on the one hand, and, on the other, Toledo, OH for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Textile Leather, Division of General Tire and Rubber Company, P.O.Box 4875, Toledo, OH 43612.

MC 14394 (Sub-II-8TA), filed July 14, 1980. Applicant: GENIE TRUCKING LINE, INC., 70 Carlisle Springs, P.O. Box 840, Carlisle, PA 17013. Representative: G. Kenneth Biship (same as applicant). *Contract:* Irregular: *Foodstuffs, Health and Beauty Aids, Cleaning Compounds, Kitchen Gadgets, Dog and Cat Food, Beverages (except alcoholic beverages), Plastic and Paper Products and Light Bulbs and equipment and supplies* used in the preservation, display and storage of the above listed commodities. From Crossett and Blytheville, AR; Stockton, CA; Auburndale, Jacksonville and Lake Wales, FL; Morrow, Decatur, Chemblee, Atlanta, Albany, Augusta and Stone Mountain, GA; Hopkinsville, KY; New Orleans, Weeks, Harvey, Alexandria, Three Oaks and Reserve, LA; Kansas City, MO; Ivorydale, OH; Fredonia, NY; Philadelphia and North East, PA; Chattanooga, Memphis, Newport, Jackson and Asheville, TN; and Paris and Sherman, TX to Mobile AL. *Meat and Meat Products* from Plant City, FL; Augusta, GA; West Point, MS; Memphis, TN and Dumas, TX to Mobile, AL. Under continuing contracts with Autry Greer and Sons, Inc., Mobile, AL. Listed origin point are to included the commercial zones. Supporting shipper: Autry Greer & Sons, Inc., W. Main At Greer Avenue, P.O. Box 13190, Mobile, AL 36613.

MC 143394 (Sub-II-7TA), filed July 16, 1980. Applicant: GENIE TRUCKING LINE, INC., 70 Carlisle Springs, P.O. Box 840, Carlisle, PA 17013. Representative: G. Kenneth Biship (same as applicant). *Contract; irregular: Unwoven carpets or carpeting, carpet or rug cushioning or padding, and materials and supplies used in the installation thereof* (1) from Philadelphia and Eddystone, PA,

Trenton and Camden NJ, Haverhill, MA, Dallas, TX and Fort Wayne, IN to points in the States of AL, AR, FL, GA, LA, MS, NC, SC, TN; (2) from Shelbyville, TN to points in the States of AL, AR, FL, GA, LA, MS, NC, SC; (3) from Greenboro, NC to points in the States of AL, AR, FL, GA, LA, MS, SC, TN; (4) from Tupelo, MS to points in the States of AL, AR, FL, GA, LA, NC, OK, SC, TN, TX; under continuing contracts with General Felt Industries, Inc., Saddle Brook, NJ. Supporting shipper(s): General Felt Industries, Inc., Park 80 Plaza West-One, Saddle Brook, NJ 07662.

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MC 73533 (Sub-II-4TA), filed June 23, 1980. Applicant: KEY WAY TRANSPORT, INC., 820 S. Oldham St., Baltimore, MD 21224. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. *Such merchandise as is dealt in by retail department and discount stores* (except commodities in bulk), from the facilities of Key Warehouse Services, Inc., at Baltimore, MD to Prince Frederick, MD, and points in VA, restricted to traffic having a prior movement by truck from King of Prussia or Philadelphia, PA, for 180 days. An underlying ETA seeks 90 days authority. Applicant intends to interline at Baltimore, MD. Supporting shipper(s): F. W. Woolworth Co., 162 Chelton Ave., Phila., PA 19144; K-Mart Corp., 645 Highway 18, E. Brunswick, NJ 08816. The purpose of this re-publication is to correct the interlining point at Baltimore, MD and to show the origin point which was omitted as Baltimore, MD.

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MC 150840 (Sub-II-1TA), filed June 30, 1980. Applicant: HERBERT G. STEPHENS, d.b.a. STEPHENS TOUR SERVICE, 710 Owens St., Rockville, MD 20850. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Passengers and their luggage* in special and charter operations in vehicles of not *more* than 15 passengers beginning and ending in the Washington, D.C. Commercial Zone and extending to points in the U.S., except AL and HI. There are 8 supporting shippers. Their statements may be examined at the Phila. office. The purpose of this republication is to show operations in vehicles of not *more* than 15 passengers.

MC 149034 (Sub-II-2-TA), filed July 14, 1980. Applicant: Vernon R. Hodge, d.b.a. DIXIE TRANSPORTATION AIDES, 11501 Allecingie Parkway Suite 9, Richmond, VA 23235. Representative: Richard Lee, 700 Bldg., 600 E. Main St., Richmond, VA 23219. *Contract Irregular: (1) Fire extinguishers, non-flammable gas, wheeled or charged, or liquid quantity charged, or hand portable, not charged, metal; Fire extinguisher charges or compounds; compressed gas; carbon dioxide, in steel cylinders; Steel cylinders, empty; Hardware, iron or steel; Horns or signals, sound warning; Ladders, fire escape, consisting of steel chain with tubular steel rungs and supporting brackets; Storage cabinets, fire extinguisher, or fire hoses; Totes or containers, empty; Fire hose nozzels, couplings, valves, fittings, castings, fire engine accessories and equipment, brass; Fire hose; Displays and (2) Materials, supplies and equipment used in the manufacture, sale or distribution thereof* between the facilities of ATO Inc., at or near Folsom, CA, Charlottesville, VA, and Ranson, WV, on the one hand, and on the other, points in CA, CT, DE, IL, KY, LA, MD, MA, MI, MN, NH, NJ, NY, OH, PA, RI, TN, TX, VT, VA, WV and WI. Supporting shipper(s): ATO Inc., 4420 Sherwin Rd., Willoughby, OH 44094.

MC 136343 (Sub-II-9TA), filed July 11, 1980. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. *Paper and paper products, and materials, equipment and supplies used in the manufacture of paper and paper products (except commodities in bulk and those which because of size or weight require the use of special equipment)* (1) Between the facilities of Hammermill Paper Co. at or near Oswego, NY, on the one hand, and, on the other, IA, IL, MN, MO and WI; (2) Between the facilities of Hammermill Paper Co. at or near Erie, PA, on the one hand, and, on the other, CT, DC, DE, IA, IL, IN, KY, MA, MD, ME, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VA, VT, WV and WI; (3) Between the facilities of Hammermill Paper Co. at or near Lock Haven, PA, on the one hand, and, on the other, IA, MN and MO for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Hammermill Paper Co., P.O. Box 1440, Erie, PA 16533.

MC 107012 (Sub-II-63TA), filed July 11, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Giftwrap paper, ribbon, bows and cards,* from the facilities of Plus Mark Inc. at Afton, TN to points in WA, ID, MT, WY, CO, UT, NV, CA, AZ, NM and OR for 270 days. Supporting shipper: Plus Mark Inc., P.O. Box 3306, Greenville, TN 37743.

Note.—Common control may be involved.

MC 107012 (Sub-II-62TA), filed July 11, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Heating and air conditioning ducts and fittings,* from the facilities of Sheet Metal Products near El Paso, TX to points in AL, ID, KY, MI, MT, OR, TN and WA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Sheet Metal Products, 1930 Magoffin Ave., P.O. Box 10094, El Paso, TX 79991.

Note.—Common control may be involved.

MC 128940 (Sub-II-T-3), filed July 11, 1980. Applicant: RICHARD A. CRAWFORD d.b.a., R. A. CRAWFORD TRUCKING SERVICE, P.O. Box 303, Gambrills, MD 21054. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Contract; irregular: *plastic bags, plastic film, materials, equipment and supplies (except in bulk) used in the manufacture and distribution thereof,* between Pottsville, PA, and its commercial zone, on the one hand, and, on the other, IL, TN, TX, OH, IN, NC, SC, KY, FL, WI, LA, MO, KS, OK, NE, IA, CA, MI, AL, GA, VA, CO, WV, and MD, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Exxon Chemical Co., U.S.A., an Operating Division of Exxon Chemical Co., A Division of Exxon Corporation, P.O. Box 395, Pottsville, PA 17901.

MC 146348 (Sub-2-1TA), filed July 10, 1980. Applicant: M. T. SERVICES, INC., P.O. Box 18402, Baltimore, MD 21237. Representative: Raymond P. Keigher, 1400 Gerard St., Rockville, MD 20850. *Contract: Irregular:* (1) *Drugs, medicines, cleaning compounds, insecticides, isopropyl alcohol, shampoo, and magnesium hydroxide,* and (2) *materials, equipment, and supplies* used in the manufacture or distribution of the commodities in (1) above (except commodities in bulk), between Baltimore, MD, on the one hand, and, on the other, points in CT, DE, MA, NH, NJ, NY, PA, and RI for 270 days under continuing contract(s) with Barre-National, Inc., of Baltimore, MD. An underlying ETA seeks 120 days authority. Supporting shipper: Barre-National, Inc., 4128 Hayward Ave. Baltimore, MD 21215.

MC 91811 (Sub-2-1TA), filed July 10, 1980. Applicant: MILTON K. MORRIS, INC., 3768 Sipler Lane, Huntingdon Valley, PA 19006. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Phila., PA 19107. *Contract: Irregular: Meats, meat products and meat by-products* from the facilities of

Acme Markets, Inc. at or near Greencastle (Franklin County) PA to the facilities of Acme Markets, Inc. at Baltimore, MD, South Kearny, NJ and Philadelphia, PA under continuing contract(s) with Acme Markets, Inc. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Acme Markets, Inc., 124 North 15th St., Phila., PA 19101.

MC 102616 (Sub-II-T-13TA), filed July 11, 1980. Applicant: COASTAL TANK LINES, INC., 250 N. Cleveland-Massillon Rd., Akron, OH. 44313. Representative: W. M. Kiefaber (same address as applicant). *Chemicals, in bulk,* from the facilities of Reichold Chemicals, Inc. at or near Charlotte and Concord, NC to points in AL, DE, FL, GA, KY, LA, MD, MS, PA, NC, SC, TN, TX, and VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Reichold Chemicals, Inc., Dover, DE

MC 75830 (Sub-II-1TA), filed July 7, 1980. Applicant: INTER-CITY TRANSPORT & MOTOR COMPANY, INC., P.O. Box 88, Buckhannon, W. Va. 26201. Representative: William A. Gray, 2310 Grant Building, Pittsburg, Pa. 15219. *Bakery goods and materials, supplies and equipment used in the manufacture, sale and distribution of bakery goods (except commodities in bulk),* between the facilities of Interbake Foods, Inc. located at or near Richmond, VA; Battle Creek, MI; and North Sioux City, SD, on the one hand, and, on the other, points in OH, PA, IN, IL, MO, KY, MI, WI, IA, SD, VA, and MN for 180 days. Restriction: The operations authorized herein are limited to a transportation service to be performed under a continuing contract, or contracts with Interbake Foods, Inc., Richmond, VA. Supporting shipper: Interbake Foods, Inc., 900 Terminal Place, Richmond, VA 23261.

MC 61619 (Sub-II-1TA), filed July 8, 1980. Applicant: L & H TRUCKING COMPANY, INC., Rd 3, Spring Grove, PA-17362. Representative: John E. Fullerton, 407 N. Front St., Harrisburg, PA 17101. *Liquid industrial waste,* in bulk, in tank trailers furnished by shipper, from points in MD, DE, NJ, NY, CT, OH, VA and VA to the facility of Liqwacon Corp., located at York, PA, under continuing contract(s) with Liqwacon Corp., for 270 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Liqwacon Corp., Blue Bell, PA 19422.

MC 140889 (Sub-II-1TA), filed July 10, 1980. Applicant: FIVE STAR TRUCKING, INC., 4720 Beidler Rd., Willoughby, OH 44094. Representative: David M. O'Boyle, 2310 Grant Bldg., Pittsburgh, PA 15219. Contract; irregular *Aluminum and zinc alloy ingots* from points in Cuyahoga, Summit, Lake, Medina, and Lorain Counties, OH to points in the U.S. in and east of IA, MN, MS, MO and TN, under contract(s) with Aluminum Smelting & Refining Co., Inc., for 270 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Aluminum Smelting & Refining Co., Inc., 5463 Dunham Rd., Maple Heights, OH 44137.

MC 142703 (Sub-II-4TA), filed July 10, 1980. Applicant: INTERMODAL TRANSPORTATION SERVICES, INC., 750 W. Third St., P.O.B. 14072, Cincinnati, OH 45214. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215. *Scrap metal,* except in dump vehicles, between Cincinnati, OH, and its commercial zone, on the one hand, and, on the other, points in Decatur, AL; Ft. Wayne, South Bend, and Terre Haute, IN; Chicago and E. St. Louis, IL; Berea and Lewisport, KY; Detroit, MI; St. Louis, MO; Philadelphia, Pittsburgh, and Zelienople, PA and Spartanburg, SC, and their respective commercial zones, for 270 days. Supporting shipper: I. Deutch & Sons, Inc., 311 Baymiller St., Cincinnati, OH 45203.

MC 150148 (Sub-II-2TA), filed June 27, 1980. Applicant: KANAWHA CARTAGE COMPANY, 85 East Gay St., Columbus, OH 43215. Representative; Homer W. Hanna, Jr., 1510 Kanawha Blvd., East, P.O.B. 2311, Charleston, WV 25328. Contract; irregular *Alcoholic liqueurs, store supplies, equipment, supplies, and other* unusual ordinary current supplies that are transported from the warehouse to stores and agencies, between Charleston, WV, on the one hand, and, on the other, points in WV traversing points and places in the States of MD, OH, VA and PA for 270 days. Supporting shipper(s): West Virginia Alcohol Beverage Control Commission, 310 57th St., SE, Charleston, WV 25304.

MC 4963 (Sub-II-14TA), filed July 2, 1980. Applicant: JONES MOTOR CO., INC., Bridge St. & Schuylkill Rd., Spring City, PA 19475. Representative: William H. Peiffer (same as address above). *General commodities (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission and those requiring special equipment)* between points in AL on and north of US Highway 278, points in GA on, north and east of a line beginning at the GA/SC border extending along I16 to Jct. I75 to the GA/TN border, points in SC, on the one hand, and, on the other NC. Applicant presently holds authority for all NC points and intends to *tack* at those points. Applicant seeks substitution of single line service for its existing joint line operations. There is no supporting shipper's statement to this application. Carrier has filed its verified statement.

MC 148986 (Sub-II-3TA), filed July 9, 1980. Applicant: PLYMOUTH TRANSPORT, INC., 2280 Butler Pike, Plymouth Meeting, PA 19462. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Scrap electric and communication cable, in dump vehicles, for recycling purposes, the transportation of which cable is incidental to the excavation and/or removal thereof, by mobile cable salvaging machines,* between pts. in and east of ND, SD, NE, OK, KS and TX for 270 days. Supporting shipper: Nassau Recycle Corp., P.O. Box 218, Gaston, SC 29053.

MC 148986 (Sub-II-2TA), filed July 9, 1980. Applicant: PLYMOUTH TRANSPORT, INC., 2280 Butler Pike, Plymouth Meeting, PA 19462. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Scrap electric and communication cable, in dump vehicles, for recycling purposes* from Natick, MA to Tottenville, NY for 270 days. Supporting shipper: Nassau Recycle Corp., P.O. Box 218, Gaston, SC 29053.

MC 107012 (Sub-II-61TA), filed July 10, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant). *General commodities which have had prior movement by water, (except household goods as defined by the Commission, and classes A and B explosives),* from Seattle, WA to Chattanooga, TN; Chicago, IL; Cincinnati, OH; Cleveland, OH; Columbus, OH; Denver, CO; Des Moines, IA; Detroit, MI; Indianapolis, IN; Kansas City, MO; Louisville, KY; Memphis, TN; Milwaukee, WI; Minneapolis, MN; Nashville, TN; Rock Island, IL; St. Louis, MO and St. Paul, MN for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Mares, Shreve and Associates, Inc., 6182 2nd Ave., Suite 717, Seattle, WA 98104. Ardan, Inc., 2320 Euclid Ave., Des Moines, IA 50310. A & D Transco, 1762 6th Ave. S., Suite 123, Seattle, WA 98134. Universal Distribution Center, 18700 80th Place S., Kent, WA 98031.

Note.—Common control may be involved.

MC 121599 (Sub-II-1TA), filed June 10, 1980. Originally published in Federal Register June 30, 1980. Applicant: LAKE FRONT LINES, INC., 2643 Narrows Road, P.O. Box 618, Painesville, OH

44077. Representatives: Edward G. Villalon and Lawrence E. Lindeman, 1032 Pennsylvania Building, Pennsylvania Ave. & 13th St., N.W., Washington, DC 20004. *Passengers and their baggage, express, mail, and newspapers over regular routes, in the same vehicle with passengers,* Between Cleveland, OH, and Erie, PA, from Cleveland over Interstate Hwy 90 to Interstate Hwy 79, then over Interstate Hwy 79 to Erie, and return, serving all intermediate points. An underlying ETA seeks 90 days authority. There are 35 supporting shippers that may be examined at the Phila. Regional Office.

Note.—This application is directly related to concurrently filed applications by Peter Pan Bus Lines, Inc., Adirondack Transit Lines, Inc., and Western New York Motor Lines, Inc., whereby the applicants are collectively seeking authority to conduct through-bus operations between Boston, MA, and Cleveland, OH. Applicant intends to interline at Erie, PA and Cleveland, OH. The purpose of this republication is to show that applicant intends to interline.

MC 2245 (Sub-2-1TA), filed May 27, 1980. Originally published in Federal Register on June 11, 1980. Applicant: THE O. K. TRUCKING CO., 3000 E. Crescentville Rd., Cincinnati, OH 45241. Representative: Robert H. Kinker, P.O. Box 464, Frankfort, KY 40602. *Common; regular: Iron and steel rough forgings and castings,* from Bushnell, IL to the facilities of Bendix Heavy Vehicle Systems Group at or near Frankfort, KY. From Bushnell, IL over IL Hwys 116 and 41 to Peoria, IL, then over Interstate Hwy 74 to Indianapolis, IN, then over Interstate Hwy 65 to Louisville, KY, then over Interstate Hwy 64 to the facilities of Bendix Heavy Vehicle Systems Group at or near Frankfort, KY. Applicant intends to tack authority sought herein with authority held under MC-2245. Supporting shipper(s): Bendix Heavy Vehicle Systems Group, 901 Cleveland St., Elyria, OH 44036. The purpose of this republication is to indicate applicant's intention to tack and to indicate *common; regular* authority is requested.

The following applications were filed in r egion 3. Send protests to ICC, Regional Authority Center, P.O. Box 7520, Atlanta, GA 30357.

MC 146282 (Sub-3-1TA), filed July 15, 1980. Applicant: BILL HEAD TRUCKING, INC., P.O. Box 9632, Birmingham, AL 35215. Representative: John R. Frawley, Jr., Attorney at Law, 5506 Crestwood Blvd., Birmingham, AL 35212. *Such commodities as are dealt in by grocery, food business houses and drugstores (except commodities in bulk);* between the facilities of Bruno's Inc. located in or near Birmingham, AL on the one hand, and, on the other, all points in the United States. Supporting shipper: Bruno's Inc., P.O. Box 2486, Birmingham, AL 35208.

MC 121600 (Sub-3-3TA), filed July 15, 1980. Applicant: AVERITT EXPRESS, INC., P.O. Box 7342, Nashville, TN 37210. Representative: Robert L. Baker, 618 United American Bank Building, Nashville, TN 37219. (1) *Appliances and hand tools and parts thereof;* (2) *materials, supplies, and equipment used in the manufacture, sale and distribution of these commodities (except commodities in bulk, in tank vehicles),* between the facilities of Oster, division of Sunbeam Corp., at Cookeville, TN, on the one hand, and, on the other, points in IL, IN, OH, NJ, PA, WI, MI, KY, NY, NC, SC, GA, VA, WV, MD, DE, MA, and CT. Supporting shipper: Oster, Division of Sunbeam Corp., 5055 N. Lydell Avenue, Milwaukee, WI 53217.

MC 107515 (Sub-3-38TA), filed July 14, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Road, N.E., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Foodstuffs (except commodities in bulk)* from facilities of General Foods Corporation at Evansville, IN to all points in the U.S. in and east of OH, KY, TN, and MS. Restricted to traffic originating at the named origin and destined to the named destination states. Supporting shipper: General Foods Corporation, 250 North St., White Plains, NY 10625.

MC 115654 (Sub-3-14TA), filed July 15, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Jackie Hastings (same address as above). *Foodstuffs, except in bulk,* from the facilities of Green Giant Company at Belvidere, IL, to points in MO, MS, and TN. Supporting shipper: Green Giant Company, 1100 North 4th Street, LeSueur, MN 56058.

MC 144688 (Sub-3-7TA), filed July 15, 1980. Applicant: READY TRUCKING, INC., 2717 Campbell Boulevard, Ellenwood, GA 30049. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. *New furniture and parts, materials, equipment and supplies used in the manufacture, sale and distribution of new furniture (except in bulk),* between the facilities of S. K. Products Corp. at or near Atlanta, GA; Alsip, IL; Clifton, NJ, and Houston, TX, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Supporting shipper(s): S. K. Products Corporation, 5355 Bucknell Drive, S.W., Atlanta, GA 30378.

MC 151215 (Sub-3-2TA), filed July 14, 1980. Applicant: FACTORY SERVICES, INC., 624 Kennedy St., Lexington, KY 40501. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* between Lexington, KY, and points in its commercial zone, on the one hand, and, points in Cincinnati, OH, and KY, on the other. Restricted to traffic having an immediately prior or subsequent movement by rail. Supporting shipper(s): American Tree and Wreath, 1454 Jinglebell Lane, Lexington, KY 40405; Baker Iron & Metal, P.O. box 11040, Lexington, KY 40512; Vogue Rattan, 454 Fairman Road, Lexington, KY 40577.

MC 128573 (Sub-3-1TA), filed July 14, 1980. Applicant: BARNETT TRUCK LINES, INC., 3404 Wheat Street, Kinston, NC 28501. Representative: Vaughn S. Winborne, 1108 Capital Club Building, Raleigh, NC 27601. *Fertilizer, fertilizer materials and fertilizer ingredients and insecticides, herbicides and soil fumigants* between points in VA, NC, SC, GA and TN. Supporting shipper(s): Smith Douglass Division of Borden Chemical, Borden, Inc., 5100 Virginia Beach Blvd., Norfolk, VA 23513; Daly-Herring Co., Division of the Prillman Co., Neuse River Road, Kinston, NC 28501.

MC 145637 (Sub-3-3TA), filed July 14, 1980. Applicant: B & B EXPRESS, INC., P.O. box 5552, Station B, Greenville, SC 29606. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. *Plastic film, tape and sheeting, stationary, reproduction, and data storage supplies used in the manufacture, sale and distribution of same,* between Greenville County and Spartanburg County, SC, on the one hand, and, on the other, points between AZ, CA, CO, AL, GA, and TX and (2) between Santa Clara, CA, on the one hand, and, on the other, points in SC. Supporting shipper(s): Recyco-C, Rt. 5, Box 111, E. Georgia Rd., Simponville, SC 29681; American Hoechst Corp., Film Division, Hood Road, Greer, SC 29651; Memorex Corporation, 2400 Condensa Street, Santa Clara, CA 95052.

MC 146293 (Sub-3-20TA), filed July 14, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30346. Representative: Richard M. Tettelbaum, 5th Floor, Lenox Towers S, 3390 Peachtree Rd., N.E., Atlanta, GA 30326. *Such commodities as are dealt in*

by manufacturers and distributors of materials handling and storage equipment (except commodities in bulk), between facilities of E.V.I. Equipment, Inc., East Point, GA, and points in the U.S. (except AK and HI). Supporting shipper(s): E.V.I. Equipment, Inc., 1014–A Sample, East Point, GA 30314.

MC 129063 (Sub-3–1TA), filed July 14, 1980. Applicant: JIMMY T. WOOD, P.O. Box 248, Ripley, TN 38063. Representative: Thomas A. Stroud, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Clay,* between Shelby County, TN and Madison County, TN. Supporting shipper(s): TenTex Marine Corp., 382 Klinke Rd., Memphis, TN 38127.

MC 52704 (Sub-3–5TA), filed July 15, 1980. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H", LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Machinery, materials, equipment and supplies (and parts therefor)* used in the manufacture and distribution of carpet backing and yarn from points in the U.S. in and east of MN, IA, NE, KS, OK and TX to the facilities of Amoco Fabrics Company at or near Roanoke (Randolph Cy.), AL. Supporting shipper(s): Amoco Fabrics Company, P.O. Box 836, Hazlehurst, GA 31539.

MC 124835 (Sub-3–3TA), filed July 15, 1980. Applicant: PRODUCERS TRANSPORT CO., P.O. Box 4022, Chattanooga, TN 37405. Representative: David K. Fox (same address as applicant). *Alcohol, in bulk, in tank vehicles,* from Chattanooga, TN. To all points in AL, CT, GA, MS and OK. Supporting shipper(s): Casting Materials, Inc., 2000 Chestnut Street, Chattanooga, TN 37408.

MC 115831 (Sub-3–1TA), filed July 14, 1980. Applicant: TIDEWATER TRANSIT CO., INC., P.O. Box 189, Kinston, NC 28501. Representative: Ralph McDonald, Attorney at Law, P.O. Box 2246, Raleigh, NC 27602. *Fertilizer and fertilizer materials* from points in New Hanover County, NC to points in DE, MD, PA, VA and WV. Supporting shipper(s): Southern States Cooperative, Inc., P.O. Box 26234, Richmond, VA 23260.

MC 147157 (Sub-3–1TA), filed July 16, 1980. Applicant: MARTIN TRANSFER AND STORAGE, INC., P.O. Box 3008, East Dublin, GA 31021. Representative: C. E. Walker, P.O. Box 1085, Columbus, GA 31902. *Contract* carrier: irregular: (a) *Paper, groundwood paper, and paper products (except in bulk)* from the plant site of Bowater Southern Paper Corp., McMinn County, TN to points in AL, FL, GA, MS, NC, SC, and VA. (b) *Waste paper, cores, and other supplies, materials and equipment used in the manufacture of paper and paper products described in (a) above (except commodities in bulk)* from points in AL, FL, GA, MS, NC, SC and VA to the plant site of Bowater Southern Paper Corp., McMinn County, TN. Restriction: Authority in A and B restricted to transportation performed under a continuing contract with Bowater Southern Paper Corp., of Calhoun, TN. Supporting shipper(s): Bowater Southern Paper Corporation, Calhoun, TN 37309.

MC 146646 (Sub-3–21TA), filed July 15, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same as above). *Paints, stains, varnishes, and caulking compounds, with related display and advertising materials, and materials, equipment, and supplies used in the manufacture of paints, stains, varnishes, and caulking compounds.* Between the facilities of United Coatings located at Charlotte, NC; Chicago, IL; Indianapolis, IN; Memphis, TN; and Los Angeles, CA, on the one hand, and, on the other hand, points in the U.S., except AK and HI. Supporting shipper: United Coatings, Inc., 3050 North Rockwell, Chicago, IL 60618.

MC 146293 (Sub-3–21TA), filed July 15, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, 5th Floor, Lenox Towers S, 3390 Peachtree Rd. NE., Atlanta, GA 30326. *Plastic scrap (except commodities in bulk),* between facilities of Trade Enterprises, Inc., Greenville, SC and points in the U.S. in and east of WI, IL, KY, TN & MS. Supporting shipper: Trade Enterprises, Inc., P.O. Box 16492, Greenville, SC 29606.

MC 149218 (Sub-3–9TA), filed July 15, 1980. Applicant: SUNBELT EXPRESS, INC., Hwy. 78, W., Breman, GA 30110. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. (1) *Paper and Paper Products;* and (2) *Materials and Supplies* used in the manufacture and distribution of paper and paper products. (1) from St. Marys and Newnan, GA; Darlington, SC and Naheola, AL to points in AL, AR, FL, GA, IL, IN, KY, LA, MO, MS, NC, OH, SC, TN, VA, and WV; and (2) materials and supplies used in the manufacture and distribution of paper and paper products from points in the destination states named in (1) above to the origin points named in (1) above. Supporting shipper: American Can Company, P.O. Box 1699, Meridian, MS 39301.

MC 145220 (Sub-3–2TA), filed July 15, 1980. Applicant: IREDELL MILK TRANSPORTATION, INC., Route 5, Box 242, Mooresville, NC 28115. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. *Molasses and syrup, and malt syrup, in bulk, in tank vehicles,* from Gretna, LA, and Boston, MA, to points in the U.S. Supporting shipper: Ingredient Technology Corporation—Colonial Molasses Division, P.O. Box 483, Gretna, LA 70054.

MC 144303 (Sub-3–3TA), filed July 15, 1980. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Charles Ephraim, 406 World Center Building, 918 16th Street, NW., Washington, D.C. 20006. *Contract carrier;* irregular; *(1) cellulose film, paper, and paper products; and (2) materials, equipment, and supplies used in the manufacture or distribution of the commodities in (1),* between points in the United States. Supporting shipper: Ecusta Paper and Film Group, Olin Corporation, Pisgah Forest, NC 28768.

MC 144688 (Sub-3–8TA), filed: July 14, 1980. Applicant: READY TRUCKING, INC., 2717 Campbell Blvd., Ellenwood, GA 30049. Representative: Lavern R. Holdeman, Peterson, Bowman & Johanns, 521 So. 14th St., Suite 500, P.O. Box 81849, Lincoln, Nebraska 68501. *Such commodities as are dealt in or used by grocery, drug and food business houses (except commodities in bulk and those requiring refrigeration)* from the facilities of A. E. Staley Manufacturing Company at or near Arlington, TX and Chicago, IL, to Forest Park, GA and points in its commercial zone. Supporting shipper: A. E. Staley Manufacturing Company, 2200 Eldorado Street, Decatur, Illinois 62525.

MC 111545 (Sub-3–4TA), filed: July 16, 1980. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road SE., Marietta, GA 30067. Representative: J. Michael May, 1425 Franklin Road SE., Marietta, GA 30067. *(1) Air conditioning equipment; (2) heat exchangers; and (3) parts and accessories for (1) and (2) above,* from the facilities of Trane Company in Montgomery County, TN, to points in CA. Supporting shipper: Trane Company, P.O. Box 1008, Clarksville, TN 37041.

MC 107515 (Sub-3–39TA), filed: July 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Road NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *(1) Batteries, and (2) Materials, Equipment and Supplies used in the manufacture, distribution and sale of batteries*

(except commodities in bulk) between points in the US (except AK and HI) restricted to traffic originating at or destined to the facilities of ESB Incorporated Division of Exide Corporation. Supporting shipper: ESB Incorporated Division of Exide Corporation, 101 Gibraltar Road, Horsham, PA 19044.

MC 111545 (Sub-3-5TA), filed: July 16, 1980. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road SE., Marietta, GA 30067. Representative: J. Michael May (same address as above). *Commodities, which because of size or weight require the use of special equipment, and self-propelled articles each weighing 15,000 pounds or more (except in driveaway service),* between points in CA, on the one hand, and, on the other, points in the U.S. in and east of TX, OK, KS, NE, IA and MN. Supporting evidence: Applicant's verified statement concerning joint-line operations.

MC 149218 (Sub-3-5TA), filed: May 21, 1980. Applicant: SUNBELT EXPRESS, INC., 118 Hamilton Circle, Bremen, GA 30110. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Foodstuffs (except in bulk),* from DuPage County, IL to points in GA and TN. Supporting shipper: Ovaltime Products, Inc., #1 Ovaltine Court, Villa Park, IL 60181.

MC 150988 (Sub-3-3TA), filed July 14, 1980. Applicant: A&B CARTAGE, INC., 2411 Robeson Street, Fayetteville, NC 28305. Representatives: Eric Meierhoefer and Joseph L. Steinfeld, Jr., Suite 423, 1511 K Street NW., Washington, DC 20005. *Paper products,* from Lumberton, NC, and points in its commercial zone, to points in SC, VA, MD, DE, PA, NJ, IN and OH. Supporting shipper: Universal Packaging Corp., P.O. Box 32, Lumberton, NC 28358.

MC 146281 (Sub-3-9TA), filed July 14, 1980. Applicant: SILVER FLEET EXPRESS, INC., 4521 Rutledge Pike, P.O. Box 6089, Knoxville, TN 37914. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004. Regular route. *General Commodities* (except commodities of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving points in Mobile County, AL as an off-route point in connection with applicant's presently authorized authority. Supporting shipper: None. Filed to eliminate interline.

The following applications were filed in Region 4. Send protests to: ICC, Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 151251 (Sub-4-1TA), filed July 16, 1980. Applicant: NATIONWIDE CARTAGE SERVICE, INC., 5434 So. Parkside Ave., Chicago, IL 60638. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. *Hospital supplies, drugs and sundry articles and food for human consumption,* between the Veterans Administration Supply Depot at or near Broadview (Hines), IL and the following states: WY, MO, OH, ND, AR, MI, SC, LA, WI, NB, MS, MT, CO, AL, TX, TN, OK, IL, KS, IN, KY, MN, IA, and other Government facilities throughout the United States. Supporting shipper: Veterans Administration, P.O. Box 27, Hines, IL 60141.

MC 151181 (Sub-4-1TA), filed July 16, 1980. Applicant: DAKOTA TRANSPORT, INC., P.O. Box 115, Pierre, SD 57532. Representative: Claude Stewart, P.O. Box 480, Sioux Falls, SD 57101. *Steel Pipe* from Clackamas, OR to Denver, CO. "An underlying ETA seeks 120 days authority." Supporting shipper: Northwest Pipe & Casting Company, 9200 SE Lawnfield Road, Clackamas, OR 97015.

MC 134477 (Sub-4-36TA), filed July 16, 1980. Applicant: SCHANNO TRANSPORTATION, INC., 5 W. Mendota Rd., West St. Paul, MN 55118. Representative: Thomas Fischbach, P.O. Box 43496, St. Paul, MN 55164. *Cleaning and washing compounds, buffing and polishing compounds, textile softener, lubricants, hypochlorite solution, deodorants, disinfectants, paints, plastic bags and filters (except commodities in bulk),* from the facilities of Economics Laboratory, Inc. at or near Pen Argyl, PA to points in the U.S. in and east of ND, SD, NE, CO, OK, and TX. An underlying ETA seeks 120 days authority. Supporting shipper: Economics Laboratory, Inc., Osborn Bldg., St. Paul, MN 55102.

MC 134477 (Sub-4-37TA), filed July 16, 1980. Applicant: SCHANNO TRANSPORTATION, INC., 5 W. Mendota Rd., West St. Paul, MN 55118. Representative: Thomas Fischbach, P.O. Box 43496, St. Paul, MN 55164. *Foodstuffs and such commodities as is dealt in by retail gift and curio shops and catalog distribution centers (except commodities in bulk),* from the facilities of The Swiss Colony and Swiss Colony Stores, Inc. at or near Madison and Monroe, WI to points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: The Swiss Colony, Inc. and Swiss Colony Stores, Inc., 1112 7th Ave., Monroe, WI 53566.

MC 2962 (Sub-4-1TA), filed July 15, 1980. Applicant: A. & H. TRUCK LINE, INC., 1111 E. Louisiana Street, Evansville, IN 47711. Representative: Robert H. Kinker, P.O. Box 464, Frankfort, KY 40602. *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Ferdinand, IN and St. Meinrad, IN and their commercial zones as off-route points in connection with carrier's authorized regular route authority. Supporting shippers: There are twenty statements in support. Applicant intends to tack and interline.

MC 139482 (Sub-4-13TA), filed July 15, 1980. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel, P.O. Box 877, New Ulm, MN 56073. *Paper and paper products,* from Broadview, IL to Fargo, ND. Supporting shipper: Burgess Envelope Company, 2525 Crescent Drive, Broadview, IL 601853.

MC 142310 (Sub-4-2TA), filed July 15, 1980. Applicant: H. O. WOLDING, INC., Box 56, Nelsonville, WI 54458. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. *Frozen foods* from the facilities of Foodways National, Inc., at Wethersfield, CT to Greenville, MI and Plover, WI. Underlying ETA seeks 120 day authority. Supporting shipper: Foodways National Inc., P.O. Box 41, Boise, ID 83707.

MC 115975 (Sub-4-3TA), filed July 14, 1980. Applicant: CBW TRANSPORT SERVICE, INC., P.O. Box 48, Wood River, IL 62095. Representative: Ernest A. Brooks, II, 1301 Ambassador Building, St. Louis, MO 63101. *Petroleum and petroleum products* (except petrochemicals), from the plantsite and shipping facilities of Mobil Oil Corp. located at or near St. Louis, MO to points in AL, IA, IL, IN, KS, KY, LA, MI, MN, NE, OH, OK, TN, TX, and WI, under continuing bilateral contract with Mobil Oil Corporation. Supporting shipper(s): Mobil Oil Corporation, 8350 N. Central Expressway, Dallas, TX 75206.

MC 133689 (Sub-4-28TA), filed July 14, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples St. NE, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Such merchandise as is dealt in by retail drug stores* from Elk Grove Village, IL to LaCrosse, WI. An underlying ETA seeks 120 day authority. Supporting shipper(s): Osco Drug, Inc., 2401 Lunt Ave., Elk Grove Village, IL 60007.

MC 144293 (Sub-4–3TA), filed July 14, 1980. Applicant: DUANE MCFARLAND, P.O. Box 1006, Austin, MN 55912. Representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Such commodities in bulk dealt in or used by meat packinghouses* between points in IL, IA, MN, NE and WI, restricted to traffic either originating at or destined to facilities of Geo. A. Hormel & Co. Supporting shipper(s): Geo. A. Hormel & Co., P.O. Box 800, Austin, MN.

MC 135154 (Sub-4–1TA), filed July 11, 1980. Applicant: BADGER LINES, INC., 3109 W. Lisbon Avenue, Milwaukee, WI 53208. Representative: Richard C. Alexander, 710 N. Plankinton Avenue, Milwaukee, WI 53203. *Malt beverages,* from St. Louis, MO, and Columbus, OH, to the facilities of Frank Beer Distributors, Inc., at Janesville and Madison, WI. An underlying ETA seeks 120 days authority. Supporting shipper(s): Frank Beer Distributors, Inc., 2921 Syene Road, Madison, WI 53713.

MC 69901 (Sub-4–2TA), filed July 14, 1980. Applicant: COURIER-NEWSOM EXPRESS, INC., P.O. Box 270, Columbus, IN 47201. Representative: Joel H. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *General commodities* between Lafayette, GA on the one hand, and, on the other, Kankakee, IL. (Restricted to traffic moving to or from the facilities of the Roper Corporation), for 270 days. An underlying ETA seeks 120-day authority. Supporting shipper(s): Roper Corporation, 1507 Broomtown Road, Lafayette, GA 30728.

MC 133967 (Sub-4–1TA), filed July 16, 1980. Applicant: JOHN R. McCORMICK, d.b.a. McCORMICK TRUCKING, Route 1, Kennan, WI 54537. Representative: Rolfe E. Hanson, 121 West Doty Street, Madison, WI 53703. *Contract: irregular; store fixtures, shelving, gondolas, counters, cabinets, cases, and materials, supplies and tools used in the construction of store fixtures* from Ladysmith, WI to points in the U.S. (except AK and HI) and return of materials and supplies used in the manufacture and distribution of the above commodities (except commodities in bulk and commodities which because of size or weight require special equipment or handling) from points in the U.S. to Ladysmith, WI. Restriction: Restricted to a transportation service to be performed under a continuing contract or contracts with B. J. Wood Products, Inc., Ladysmith, WI. Supporting shipper: B. J. Wood Products, Inc., 400 W. 9th South, Ladysmith, WI 54848.

MC 145371 (Sub-4–1TA), filed July 16, 1980. Applicant: MFCH, INC., Route 1, Kings, IL 61045. Representative: Daniel O. Hands, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. *(1) Cathode ray tubes and parts and (2) equipment, materials and supplies used in the manufacture and distribution thereof,* between the facilities of Clinton Electronics at Loves Park, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. Supporting shipper: Clinton Electronics Corporation, 6701 Clinton Road, Rockford, IL 61131.

MC 151271 (Sub-4–1TA), filed July 16, 1980. Applicant: JERRY OWEN'S TRUCKING CO., P.O. Box 371, Rice Lake, WI 54868. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. *Malt Beverages* from Detroit, MI, to Rice Lake, WI, under continuing contract or contracts with Decker Distributing, Inc., Rice Lake, WI. Supporting shipper: Decker Distributing, Inc., Rice Lake, WI 54868.

MC 133566 (Sub-4–2TA), filed July 15, 1980. Applicant: GANGLOFF & DOWNHAM TRUCKING CO. INC., P.O. Box 479, Logansport, IN 46947. Representative: Daniel O. Hands, Blanshan & Summerfield, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. *(1) Plastics, (2) Plastic products and (3) equipment, materials and supplies used in the manufacture and distribution thereof,* from the facilities of Sweetheart Plastics, Inc. at Conyers, GA, Lawrence, Somerville, Wilmington and Woburn, MA, and Manchester, NH to AL, AR, DC, FL, GA, IL, IN, KY, LA, MD, MI, MS, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA and WV, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. Supporting shipper: Sweetheart Plastics, Inc., Guildware Park, Wilmington, MA 01887.

MC 151270 (Sub-4–1TA), filed July 14, 1980. Applicant: BATESVILLE CASKET COMPANY, Batesville, IN 47006. Representative: Edward F. Schiff, 1333 New Hampshire Avenue NW., Washington, DC 20036. *General Commodities* (except those of unusual value, household goods as defined by the Commission, Classes A or B explosives and those requiring the use of special equipment), from Los Angeles, CA commercial zone to the commercial zone of Memphis, Nashville and Chattanooga, TN; Oklahoma City, and Tulsa, OK; Kansas City and St. Louis, MO; Dallas and Ft. Worth, TX; Columbus and Cincinnati, OH; Louisville, KY; Indianapolis, IN and Chicago, IL. Supporting shipper: ABC Transnational Transport, 110 East 9th, Suite A742, Los Angeles, CA 90015.

MC 118696 (Sub-4–22TA), filed July 14, 1980. Applicant: FERREE FURNITURE EXPRESS, INC., 252 Wildwood Road, Hammond, IN 46234. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204. *New furniture and materials, equipment and supplies* used in the manufacture, distribution and sale thereof, (1) between the facilities of Kimball International, Inc. at Fordsville, KY and Borden, IN on the one hand, and, on the other, points in the states of WY, MT, ID, OR, and WA; and (2) between the facilities of Kimball International, Inc. at Borden, IN, on the one hand, and, on the other, points in and east of the states of ND, SD, NE, KS, OK, and TX. Supporting shipper: Office Furniture, Division of Kimball International, 1549 Royal Street, P.O. Box 460, Jasper, IN.

MC 76266 (Sub-4–5TA), filed July 14, 1980. Applicant: ADMIRAL MERCHANTS MOTOR FREIGHT, INC., 215 South 11th Street, Minneapolis, Minnesota 55403. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minnesota 55118. Common; *regular; General Commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* between Cleveland, Ohio and Boston, Massachusetts, from Cleveland, Ohio over Interstate 90 and return over the same route, between Cleveland, Ohio and Philadelphia, Pennsylvania, from Cleveland, Ohio over Interstate Highway 77 to the junction of Interstate Highway 80 thence over Interstate Highway 80 to the junction of Interstate Highway 76, thence over Interstate Highway 76 to Philadelphia, Pennsylvania and return over the same route, between Cleveland, Ohio and New York, New York, from Cleveland, Ohio over Interstate Highway 77 to the junction of Interstate Highway 80, thence over Interstate Highway 80 to the junction of Interstate 280, thence over Interstate 280 to the junction of Interstate 95, thence over Interstate 95 to the junction of Interstate Highway 495, thence over Interstate Highway 495 to New York City, New York and return over the same route between Kansas City, Missouri on the one hand and Houston, Texas and San Antonio, Texas on the other hand; from Kansas City, Missouri over Interstate Highway 35 to Dallas, Texas thence over Interstate Highway 75 to Houston, Texas serving the intermediate points of Wichita, Kansas; Oklahoma City, Oklahoma; Dallas, Texas and Ft. Worth,

Texas and return over the same route, from Kansas City, Missouri over Interstate Highway 35 to San Antonio, Texas serving intermediate points of Austin, Texas and return over the same route, between Denver, Colorado and San Francisco, California: (1) From Denver, Colorado over U.S. Highway 40 to the junction of Interstate 80 near Salt Lake City, Utah, thence over Interstate 80 to San Francisco, California serving all intermediate points and return over the same route, between Denver, Colorado and Los Angeles, California: (1) From Denver, Colorado over Interstate Highway 70 and U.S. Highway 6 to the junction of Interstate Highway 15, thence over Interstate Highway 15 to the junction of Interstate Highway 10, thence over Interstate Highway 10 to Los Angeles, California serving all intermediate points and return over the same route; (2) From Denver, Colorado over Interstate Highway 25 to the junction of Interstate Highway 40, thence over Interstate Highway 40 to the junction of Interstate 15, to the junction of Interstate Highway 10, thence over Interstate Highway 10 to Los Angeles, California serving all intermediate points and return over the same route, between Denver, Colorado and Seattle, Washington; from Denver, Colorado over U.S. Highway 40 to the junction of Interstate 80 near Salt Lake City, Utah thence over Interstate 80 to Portland, Oregon, thence over Interstate 5 to Seattle, Washington and return over the same route serving all intermediate points, between Minneapolis/St. Paul, Minnesota and between Minneapolis/St. Paul and Portland, Oregon and their commercial zones serving no intermediate points, from: (a) Minneapolis/St. Paul, Minnesota over Interstate Highway 94 to its junction with Interstate Highway 90, thence over Interstate Highway 90 to Seattle and return over the same route, from: (b) from Minneapolis/St. Paul, Minnesota over Interstate Highway 94 to its junction with Interstate Highway 90, then over Interstate Highway 90 to its junction with U.S. Highway 395 at or near Ritzville, Washington, then over U.S. Highway 395 to its junction with Washington Highway 14 at or near Pasco, Washington, then over Washington Highway 14 to its junction with U.S. Highway 730 at or near the Washington/Oregon State Line, then over U.S. Highway 730 to its junction over Interstate Highway 80 N at or near Boardman, Oregon, then over Interstate Highway 80 N to Portland, Oregon, and return over the same route. An underlying ETA seeks 120 days authority. There are 23 supporting shippers.

MC 51146 (Sub-4-53TA), filed July 14, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid, Jr. (same address as applicant). *Insulating materials* from the facilities of Diamond Shamrock Corporation at or near Lockport, NY to points in the United States in and east of ND, SD, NE, CO, OK and TX. Supporting shipper: Diamond Shamrock Corporation, 1100 Superior Avenue, Cleveland, OH 44114.

MC 40978 (Sub-4-7TA), filed July 14, 1980. Applicant: CHAIR CITY MOTOR EXPRESS COMPANY, 3321 Business 141 South, Sheboygan, WI 53081. Representative: Daniel R. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. *Electric generators and internal combustion engines,* between points in Sheboygan County, WI, on the one hand, and, on the other, points in IA, IL, IN, KY, MI, MN, MO, and OH. Supporting shippers: Kohler Company, Kohler, WI 53044.

The following protests were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 24853 (Sub-5-1TA), filed July 11, 1980. Applicant: FRED STEWART COMPANY, P.O. Box 665, Magnolia, AR 71753. Representative: James M. Duckett, 411 Pyramid Life Building, Little Rock, AR 72201. *Ethylene, in bulk, in tank vehicles,* from Beaumont, Odessa and Seabrook, TX, to the facilities of Dow Chemical U.S.A., at or near Magnolia, AR. Supporting shipper: Dow Chemical U.S.A., P.O. Box 520 Magnolia, AR 71753

MC 33298 (Sub-5-2TA), filed July 14, 1980. Applicant: SCHOCK TRANSFER & WAREHOUSE CO. INC., 825 Armourdale Parkway, Kansas City, KS 66105. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Paper, Paper Products and Wallboard,* from the Commercial Zone of Kansas City, KS—Kansas City, MO to points in AR, KS, MO and OK. Restricted to traffic having an immediately prior movement by rail. Supporting shipper: Boise Cascade Corp., P.O. Box 2885, Portland, OR 97208.

MC 35320 (Sub-5-29TA), filed July 15, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX. 79408, Representative: Kenneth G. Thomas, (same address as applicant). Common, regular. *General commodities, except household goods as defined by the Commission, and Classes A and B explosives,* between San Antonio, TX. and Laredo, TX. and their commercial zones serving no intermediate points. From San Antonio, TX. over Interstate Hwy. 35 to Laredo, TX. and return over the same route.

Note.— Applicant intends to tack to its existing authority and any authority it may obtain in the future and interline with other carriers. Supporting shippers: Ten.

MC 41116 (Sub-5-20TA), filed July 15, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Byron Fogleman, P.O. Box 1504, Crowley, LA 70526. *Contract; irregular, (1) paper and paper products (except in bulk), and (2) materials and supplies used in manufacture, distribution or sale of (1) (except in bulk)* between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Manville Forest Products Corporation. Supporting shipper: Manville Forest Products Corporation, P.O. Box 488, West Monroe, LA 71291.

MC 42011 (Sub-5-2TA), filed July 15, 1980. Applicant: D. Q. WISE & CO., INC., P.O. Drawer L, Tulsa, OK 74112. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. *Construction materials, equipment, and supplies,* from the facilities of The Ortloff Corporation and Fabricated Industrial Systems, a division of The Ortloff Corporation, located at Midland, TX, to points in AL and MS, supporting shipper: The Ortloff Corporation, P.O. Box 3199, Midland, TX 79702.

MC 52460 (Sub-5-13TA), filed July 15, 1980. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: William L. Tipton, 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. *Tires, Pneumatic,* From the facility of Michelin Tire Corporation at Dothan, AL, to Dallas, TX., Houston, TX., New Orleans, LA., and Kansas City, KS. Restriction: Restricted to traffic originating at or destined to named points. Supporting shippers: Michelin Tire Corporation, Dothan, AL.

MC 52979 (Sub-5-1TA), filed July 14, 1980. Applicant: HUNT TRUCK LINES, West High Street, Rockwell City, IA 50579. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *General commodities, except Class A and B explosives, commodities in bulk and those requiring special equipment,* between Minneapolis-St. Paul, MN commercial zone on the one hand, and, on the other, points in Emmet, Winnebago, Hancock, Wright and Hamilton Counties, IA. Applicant intends to tack this authority to its present regular route operations and to

interline shipments with other carriers. Supporting shippers: 10.

MC 59117 (Sub-5–2TA), filed July 15, 1980. Applicant: ELLIOTT TRUCK LINE, INC., 101 East Excelsior, P.O. Box 1, Vinita, OK 74301. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Dry commodities, in bulk (except in dump vehicles),* between points in KS and OK located on the Chicago, Rock Island and Pacific Railroad on the one hand, and, on the other, points in AR, IL, KS, LA, MO, NE, NM, OK, TN and TX. Supporting shipper(s): Chamber of Commerce, P.O. Box 367, EL Reno, OK 73036, Weatherford Chamber of Commerce, Room 224—City Hall, P.O. Box 729, Weatherford, OK 73096, and Elk City Chamber of Commerce, 115 West 5th, P.O. Box 972, Elk City, OK 73644.

MC 60271 (Sub-5–4TH), filed July 15, 1980. Applicant: HARPER TRUCK LINE, INC., P.O. Box 288, Monroe, LA 71201. Representative: Sherri L. Roberts, P.O. Box 288, Monroe, LA 71201. Contract: Irregular. *Particleboard, Lumber and Plywood,* from the facilities of Olinkraft, Inc. plant sites in Winnfield, LA and Lillie, LA to points and places in AR, LA, and MS. Supporting shipper: Olinkraft, Inc., P.O. Box 488, West Monroe, LA 71291.

MC 95084 (Sub-5–4TA), filed July 14, 1980. Applicant: HOVE TRUCK LINE, Stanhope, IA 50246. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. *Such commodities as are dealt in or used by agricultural equipment and industrial equipment dealers and manufacturers (except foodstuffs, paper, paper products and commodities in bulk),* between points in the United States (except AK and HI). RESTRICTION: Restricted to traffic from, to or between the facilities of (1) Gehl Company and/or its dealers and distributors and (2) Hutchinson Division, Lear Siegler, Inc. and/or its dealers and distributors. Supporting shippers: Gehl Company, 915 SW 7th St., Madison, SD 57042; and Hutchinson Division, Lear Seigler, Inc., Box 33, West Crawford, Clay Center, KS 67432.

MC 106400 (Sub-5–6TA), filed July 16, 1980. Applicant: KAW TRANSPORT COMPANY, P.O. Box 8510, Sugar Creek, MO 64054. Applicant's Representative: Harold D. Holwick, Same as applicant. *No. 6 Fuel Oil, in bulk, in tank vehicle,* from Kansas City, KS to Omaha, AR. Supporting shipper: Consolidated Fuel Oil Company, Inc., 4550 W. 109th, Suite 208, Overland Park, KS 66211.

MC 107496 (Sub-5–26TA), filed July 14, 1980. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Silica, other than silica flour, in bulk,* from points in IA to Iowa City, IA. Supporting shipper: The Proctor & Gamble Manufacturing Co., P.O. Box 599, Cincinnati, OH 45201.

MC 111231 (Sub-5–9TA), filed July 16, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Avenue, Fort Smith, AR 72902. *Common Carrier,* regular routes *Plastic Pipe, Fittings Gaskets, Sealer and Accessories,* between plant site of Marathon Plastics, Inc., at or near Litchfield, IL, on the one hand, and on the other, AL, AR, FL, GA, IN, IA, KS, KY, MS, MI, MN, MO, NE, NC, ND, OH, OK, SC, SD, TN, VA, and WI. Supporting shipper: Marathon Plastics, Inc., P.O. Box 189, Litchfield Industrial Park, Litchfield, IL 62056.

MC 124174 (Sub-5–16TA), filed July 14, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *Iron and steel articles,* from New York, NY and Philadelphia, PA and their respective commercial zones to Chicago, IL; Minneapolis and St. Paul, MN; Laredo and Houston, TX; and Charlotte, NC. Supporting shipper(s): Thypin Steel Co., Inc., 49–49—30th Street, Long Island City, NY 11101.

MC 128883 (Sub-5–2TA), filed July 14, 1980. Applicant: NORTH IOWA EXPRESS, INC., 1921 N.E. 58th Avenue, Des Moines, IA 50313. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *General commodities, except Class A and B explosives, household goods, commodities in bulk, and those requiring special equipment* over regular routes, between Ft. Dodge, IA, and Burnsville and Albert Lea, MN, and La Crosse, WI, serving all intermediate points and the off-route points of Rochester and Winona, MN, from Ft. Dodge, IA, over U.S. Highway 169 to Minnesota Highway 101 then to Burnsville, MN, then from Burnsville, MN, on Interstate Highway 35 (U.S. Highway 65) to Interstate 90 then to LaCrosse, WI and return from LaCrosse, WI, over Interstate Highway 90 to U.S. Highway 65 then over U.S. Highway 65 to Mason City, IA, and return over the same route. The authority will be utilized in connection with the present authority held by the applicant and by interline with other carriers. Supporting shippers: 25.

MC 134134 (Sub-5–5TA), filed July 15, 1980. Applicant: MAINLINER MOTOR EXPRESS INC., 4202 Dahlman Avenue, Omaha, NE 68107. Representative: James F. Crosby, James F. Crosby & Associates, Oak Park Office Bldg., Suite 210B, 7363 Pacific St., Omaha, NE 68114. *Beer,* (1) from St. Louis, MO; Belleville and Peoria, IL; Milwaukee and LaCrosse, WI; St. Paul, MN; and Trenton, NJ to Omaha, NE, (and points in their respective commercial zones), and (2) from New York, NY and points in its commercial zone to Omaha, NE and points in IA. Supporting shippers: Stanek Distributing Co., Inc., 4623 So. 28th Street, Omaha, NE 68107; Doll Distributing, Inc., 3022 Second Avenue, Council Bluffs, IA 51501; and K & K Distributing, 3217 Nebraska Avenue, Council Bluffs, IA 51501.

MC 134405 (Sub-5–6TA), filed July 15, 1980. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Asphalt,* from Oklahoma City, OK to points in TX. Supporting shipper: Trumbull Asphalt Division of Owens-Corning Fiberglas Corp., 3400 N.E. 4th St., Oklahoma City, OK 73117.

MC 135283 (Sub-5–3TA), filed July 14, 1980. Applicant: GRAND ISLAND MOVING AND STORAGE COMPANY, INC., P.O. Box 2122, 432 S. Stuhr Road, Grand Island, NE 68801. Representative: Lavern R. Holdeman, Peterson, Bowman & Johanns, 521 So. 14th St., Suite 500, P.O. Box 81849, Lincoln, NE 68501. *Agricultural equipment, implements and machinery and parts, materials and supplies used in the manufacture, sale and distribution of agricultural equipment, implements and machinery (except in bulk)* between the facilities of Sperry Corporation, New Holland Division, at or near Columbus, NE, on the one hand, and, on the other, points in the U.S. (Except AK, HI and NE). Supporting shipper: Sperry Corporation, New Holland Division, 3445 W. Stolley Park Road, Grand Island, NE 68801.

MC 138634 (Sub-5–1TA), filed July 14, 1980. Applicant: MARSHALL MOTOR COACH, INC., 1409 East Anson, Marshalltown, IA 50158. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Foodstuffs, (except meat and frozen foods),* and *materials and supplies used in the distribution of foodstuffs,* between the facilities of Party Pac Popcorn Co. at Marshalltown, IA, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, WY, CO, NM and TX. Supporting shipper: Party

Pac Popcorn Co., 208½ East Main Street, Marshalltown, IA 50158.

MC 140553 (Sub-5–2TA), filed July 14, 1980. Applicant: ROGERS TRUCK LINE, INC., Box 28, Eagle Grove, IA 50533. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Malt beverages* from Detroit, MI, to Chicago, IL. Supporting shipper: Joseph Triner Corporation, 3900 South Union, Chicago, IL 60609.

MC 142672 (Sub-5–11TA), filed July 15,1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, Post Office Drawer F, Mulberry, AR 72947. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Meats, meat products and meat by-products and articles distributed by meat packinghouses, as described in sections a and c of appendix 1 to the report in descriptions in motor carrier certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk)* from the facilities of Sam Kane Beef Processors, Inc., at or near Corpus Christi, TX to points in CA, CT, MA, RI and Jackson, MS. Supporting shipper: Sam Kane Beef Processors, Inc. Post Office Box 9254 Corpus Christi, TX 74808.

MC 144622 (Sub-5–43), filed July 16, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *power pumps, working heads, or power pump or working head parts, and measuring power pumps, and materials and supplies used in the manufacture and distribution thereof* between Ft. Wayne, IN, on the one hand, and, on the other, Jasper and Newbern, TN. Supporting shipper: Tokheim Corporation, 1602 Wabash Avenue, Ft. Wayne, IN 46801.

MC 145441 (Sub-5–20TA), filed July 15, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72119. *General commodities, (except commodites in bulk),* from the facilities of Ohio Valley Shippers Association, Inc. in IN, KY, and OH to points in AZ, CA, DC, MD, NJ, NY, and PA. Supporting shipper: Ohio Valley Shippers Association, Inc., 1428 Dalton Street, Cincinnati, OH 45214.

MC 145441 (Sub-5–21TA), filed July 15, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72119. *Foodstuffs, (except in bulk),* from Hopkins County, TX, to points in AR, CO, LA, KS, MO, OK, and TN. Supporting shipper: Ocean Spray Cranberries, Inc., 7800 S. 60th St., Kenosha, WI 53142.

MC 145955 (Sub-5–7TA), filed July 14, 1980. Applicant: CENTRAL TRUCK SERVICE, INC., 4440 Buckingham Avenue, Omaha, NE 68107. Representative: Arlyn L. Westergren; Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Such commodities as are dealt in or used by producers and distributors of paper and plastic products (except commodities in bulk and commodities which because of size and weight require the use of special equipment).* From Chicago and Shelbyville, IL and their respective Commercial Zones to points in IA, KS, MO, and NE. Supporting shipper: Continental Group, Inc., Bondware Division, 800 East Northwest Highway, Palatine, IL 60067.

MC 146448 (Sub-5–5TA), filed July 15, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Tile and materials, equipment and supplies used in the installation, manufacture and sale thereof* from the facilities of American Olean Tile Co. at Lansdale, PA, to points in AZ, CA, ID, NV, OR, UT and WA. Supporting shipper: American Olean Tile Company, 1006 Cannon Avenue, Lansdale, PA 19446.

MC 147536 (Sub-5–4TA), filed July 15, 1980. Applicant: D. L. SITTON MOTOR LINES, INC., P.O. Box 1567, Joplin, MO 64801. Representative: David L. Sitton (same address as applicant). *Paper, paper products, materials and supplies used in the manufacture and distribution of paper and paper products* between the facilities of Gilman Paper Company, at or near Hazelwood, MO and Points in AR, IL, IN, IA, KS, KY, MI, MN, NE, ND, OH, OK, SD, TN, TX and WI. Supporting shipper: Gilman Paper Company, P.O. Box 520, St. Marys, GA 31558.

MC 147536 (Sub-5–5TA), filed July 14, 1980. Applicant: D. L. SITTON MOTOR LINES, INC., P.O. Box 1567, Joplin, MO 64801. Representative: David L. Sitton (same address as applicant). *Such commodities as are dealt in or used by wholesale and retail, discount or variety stores (except commodities in bulk)* between points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NC, OH, OK, SC, TN, TX and WI. Restricted to the transportation of shipments originating at or destined to the facilities of Wal-Mart Stores, Inc. Supporting shipper: Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR 72712.

MC 148482 (Sub-5–1TA), filed July 14, 1980. Applicant: CRUSADER COACH LINES, INC., RFD #1, Box 103AA, Logan, IA 51546. Representative: David P. Lovell, RFD #1, Logan, IA 51546. *Passengers, their baggage, and incidentals in charter and special operations* between all points in the IA counties of: Fremont, Page, Mills, Montgomery, Pottawattamie, Cass, Shelby, Harrison, Audubon, Monona, Crawford, and Carroll, and all points within the states of: NE, MO, and SD. Supporting shippers: Six.

MC 150783 (Sub-5–4TA), filed July 16, 1980. Applicant: SCHEDULED TRUCKWAYS, INC., Post Office Box 757, Rogers, AR 72756. Representative: Ronnie Sleeth, Post Office Box 757, Rogers, AR 72756. (1) *Such commodities as are dealt in or used by manufacturers and distributors of rabbit meat and* (2) *Commodities otherwise exempt from economic regulations pursuant to 49 U.S.C. § 10526(a) (6), in mixed loads with the commodities in (1) above.* Between points in the United States (except AK and HI) on the one hand, and, on the other the facilities of Pel-Freeze, Inc. located in Rogers, AR and Anton, TX. Supporting shipper Pel-Freeze, Inc., P.O. Box 68, Rogers, AR 72756.

MC 151023 (Sub-5–1TA), filed July 15, 1980. Applicant: TRANS-AMERICAN TRUCK LINES, INC., P.O. Box 516, Amite, LA 70422. Representative: Fletcher W. Cochran, 1338 Gause Boulevard, Suite 245, P.O. Box 741, Slidell, LA 70459. *Contract;* Irregular: *Lumber, lumber products and forest products* from the plant sites of Crown Zellerbach Corporation or those facilities under a continuing contract or contracts with Crown Zellerbach Corporation located at Bogalusa, LA and Lumberton, MS, to all points in the states of AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NJ, NC, OH, OK, PA, SC, TN, TX, WV, and WI. Supporting shipper: Crown Zellerbach Corporation, P.O. Box 1060, Bogalusa, LA 70427.

MC 151134 (Sub-5–1TA), filed July 15, 1980. Applicant: KASKO, P.O. Box 401826, Garland, TX 75040. Representative: K. W. Castleberry, 3310 Bobbie Lane, Garland, TX 75042. *General commodities restricted to traffic moving in ocean going containers* between Port of Houston and Dallas, Fort Worth and Greenville, TX. Supporting shipper: Joe Small Auctioneers, Inc., 3116 Gardenbrook Dr., Dallas, TX 75234.

MC 151154 (Sub-5–2TA), filed July 14, 1980. Applicant: LENERTZ, INC. OF IOWA, 1004 29th Street, Sioux City, IA 51104. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City,

IA 51104. *Paints, varnishes and stains (except commodities in bulk), in tank or hopper vehicles).* From South Bend, IN to Bloomington, MN. Restricted to traffic originating at and destined to the facilities of the O'Brien Corporation, South Bend, IN and Bloomington, MN. Supporting shipper: The O'Brien Corporation, 2001 W. Washington, South Bend, IN 46624.

MC 151210 (Sub-5–1TA), filed July 15, 1980. Applicant: RAMROD TRUCKING, INC., P.O. Box 707, Marrero, 70073. Representative: Harold R. Ainsworth, 2307 American Bank Building, New Orleans, 70130. *Iron and steel articles and non-ferrous metals,* between New Orleans, LA, on the one hand, and on the other, all points in the states of AL, AR, FL, GA, IL, IN, KY, LA, MS, MO, MI, OH, TN, TX. Supporting shipper: There were 10 supporting shippers.

MC 151223 (Sub-5–1TA), filed July 14, 1980. Applicant: SMITHWAY COACHES, LTD., P.O. Drawer V, Fort Dodge, IA 50501. Representative: Charles Mickelson (same address as applicant). *Passengers and their baggage, in the same vehicle as passengers, in special operations, in round trip, sightseeing, and pleasure tours,* between points in Clay County, IA, on the one hand, and, on the other, all points in the United States (except AK and HI). Supporting shippers: Mark Wedel, 301 Grand Avenue, Spencer, IA 51301; Lynn Anderson, Chamber of Commerce, Spencer, IA 51301; Janice Orr, Spencer, IA 51301.

MC 151259 (Sub-5–1TA), filed July 14, 1980. Applicant: TRIPLE S HAULING, INC., 4000 I–70 Drive, Northwest, Columbia, MO 65201. Representative: W. R. England III, Hawkins, Brydon & Swearengen P. C., P.O. Box 456, Jefferson City, MO 65102. *Contract,* irregular, *bag cement, flue tile and cement in bulk,* from Humboldt, KS, Chanute, KS, and Pittsburg, KS, and their respective commercial zones, to Columbia, MO, and its commercial zone. Supporting shipper: Columbia Ready Mix, Inc., 1115 Big Bear Boulevard, Columbia, MO 65201.

MC 151276 (Sub-5–1TA), filed July 14, 1980. Applicant: C. WARREN BISHOP, 918 South Avenue, Norwalk, IA 50211. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Contract,* irregular, *concrete sewer pipe,* from the facilities of Iowa Concrete Products Co. at West Des Moines, IA to points in Johnson County, KS, under continuing contract(s) with Iowa Concrete Products Co. Supporting shipper(s): Iowa Concrete Products Co., P.O. Box 312, Ames, IA 50010.

MC 151278 (Sub-5–1TA), filed July 15, 1980. Applicant: WILD CAT TRUCKING COMPANY, 6810 Dollarway Road, Pine Bluff, AR 71602. Representative: M. Douglas Wood, Attorney at Law, 2500 McCain Blvd., Suite 103, North Little Rock, AR 72116. *Contract,* irregular, *steel/iron tubing and metal products* from the facilities of Century Tube, Inc. at Pine Bluff, AR, on the one hand, and to and between points in AL, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WV, and WY. Supporting shipper: Century Tube, Inc., P.O. Box 7612, Pine Bluff, AR 71611.

MC 151279 (Sub-5–1TA), filed July 17, 1980. Applicant: SAM H. CURNUTT, d.b.a. INTER-CITY COURIERS, 906 South 12th Street, Longview, TX 75602. Representative: Fred S. Berry, Practitioner, P.O. Box 2147, Longview, TX 75606. *Machinery parts, Earth-moving equipment parts, electric motors and power transmission equipment, and packaged chemicals and lubricants.* Restricted that all movement over all routes shall be conducted with equipment having a manufacturer's rated capacity of one ton or less. Further restricted to exclusive use of vehicle for shipper. Between Panola, Harrison, Camp, Titus, Hopkins, Freestone and Gregg County, TX and Denver, CO, Pittsburg, KS, Kansas City, MO, Peoria, IL, Indianapolis, IN, Memphis, TN and Alexandria, Lafeyette, Baton Rouge, New Orleans and Shreveport, LA. Between Ashdown, AR and Shreveport, Baton Rouge and New Orleans, LA, Houston, Lufkin, Dallas, Fort Worth, Longview and Wichita Falls, TX. Supporting shippers: Nekoosa Paper Company, Highway 71 South, Ashdown, AR 71822. Darr Equipment Company, FM 1845, Longview, TX 75601. Continental Can Company, 901 Fisher Road, Longview, TX 75601.

MC 151280 (Sub-5–1 TA), filed July 16, 1980. Applicant: IOWA TURKEY EXPRESS, INC., P.O. Box 582, Storm Lake, IA 50588. Representative: Richard D. Howe or Ronald R. Adams, 600 Hubbell Building, Des Moines, IA 50309. *Such commodities as are normally dealt in by wholesale and retail lumber yards and home improvement stores,* between the facilities of Ranco Company at or near Culbertson, McCook, North Platte, Grand Island, NE, Storm Lake, IA, and Rogers, AR. Supporting shipper: Ranco Company, 11128 John Galt Blvd., Suite 101, Omaha NE 68137.

MC 151285 (Sub-5–1TA) filed July 16, 1980. Applicant: DON CRYDER, d.b.a. CRYDER TRUCK LINE, Route 3, Ames, IA 50010. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Animal and Poultry and feed supplements (except in bulk),* (1) From Ames, IA, to points in AR, CA, IL, IN, KS, MN, MO, NE, OH, PA, and TX, and (2) between the facillities of Hoffman La Roche, Inc. at or near Ames, IA, Fresno, CA, Forth Worth, TX, and Salisbury, MD. Supporting shipper: Hoffman La Roche, Inc., Kingsland Street, Nutley, N.J. 07110.

MC 151286 (Sub-5–1TA), filed July 16, 1980. Applicant: BUDDEMEYER TRUCKING, P.O. Box 189, Belle, MO 65013. Representative: A. J. Swanson, Quaintance & Swanson, 226 North Phillips Avenue, P.O. Box 1103, Sioux Falls, SD 57101. *Contract,* irregular, (1) *Charcoal, wood chips, fireplace logs, lighter fluid, and barbecue base materials,* from Belle and St. Louis, MO, and Kansas City, KS, and points in the commercial zones, to points in IN, IL, WI, MN, IA, ND, SD, NE, OK, TX, KS, NM, AZ, CO, and AR, and (2) *Coal* from AR to Belle, MO. Supporting shipper: The Kingsford Company, P.O. Box 0133, Louisville, KY 40201.

MC 140665 (Sub-5–16TA) filed June 23, 1980. Applicant: PRIME, INC., P.O. Box 4208 G.S., Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. *Batteries and such commodities as are manufactured or distributed by ESB, Incorporated and materials and supplies used in the production or distribution of these commodities (except commodities in bulk),* between points in the United States (except AK and HI restricted to traffic originated at or destined to the facilities utilized by ESB Incorporated. Supporting shippers: ESB, Incorporated, 101 Gibraltar Road, Horsham, PA 19044.

MC 151025 (Sub-5–1TA) (Republication), filed June 23, 1980. Applicant: FRANKLIN McVEY, P.O. Box 8, Des Arc, AR 72040. Representative: James M. Duckett, 411 Pyramid Life Building, Little Rock, AR 72201. *Agricultural Chemicals (except in bulk),* between points in AR, TN, LA, TX, MO, OK, MS, FL, and AL. Supporting shipper: McCrary Farm Supply, Inc., Lonoke, AR.

The following applications were filed in Region 6. Send protects to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 143154 (Sub-6–2TA), filed July 14, 1980. Applicant: A & S TRUCKING, P.O. Box 4027, Missoula, MT 59801. Representative: Charles A. Murray, Jr., 2822 Third Avenue North, Billings, MT 59101. *Solar panels, heating collectors, and such items as can be used in the*

manufacture, packaging and installation of solar panels and heating collectors; and boxes, paper and packaging materials between points in MT on the one hand, and points in the U.S. (including AK) on the other hand for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Sun Wise Solar Products, 38th Street and River Dr. N., Great Falls, MT 59406.

MC 129219 (Sub-6–2TA), filed July 9, 1980. Applicant: CMD TRANSPORTATION, INC., 12340 SE Dumolt Road, Clackamas, OR 97015. Representative: Philip G. Skofstad, 1525 NE Weidler, Portland, OR 97232. *Contract carrier,* Irregular routes: (1) *Paint, paint materials and allied products* involved in manufacturing and sales of paint, Between the facilities of PPG Industries, Inc., at or near City of Commerce, San Leandro and Torrance, CA; Robertson, MO; Portland, OR; and Houston, TX, on the one hand, and on the other, points in AZ, CA, CO, ID, KS, MO, MT, NE, NV, NM, OK, OR, TX, UT, WA, and WY; (2) *Paint, paint materials and allied products* involved in manufacturing and sales of paint, moving in steamship containers with or without own chassis having prior or subsequent movement by water between points in AZ, CA, CO, ID, KS, MO, MT, NE, NV, NM, OK, OR, TX, UT, WA, and WY; (3) *Empty steamship containers* with or without own chassis having prior or subsequent movement by water between points in AZ, CA, CO, ID, KS, MO, MT, NE, NV, NM, OK, OR, TX, UT, WA, and WY; and (4) *Paint, paint materials and allied products* involved in manufacturing and sales of paint, having a prior or subsequent movement by rail between points in AZ, CA, CO, ID, KS, MO, MT, NE, NV, NM, OK, OR, TX, UT, WA, and WY; for the account of PPG Industries, Inc. for 270 days. Supporting shipper: PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222.

MC 150894 (Sub-6–1TA), filed July 14, 1980. Applicant: RONALD R. CLARK, 226 Filbert, Wray, CO 80758. Representative: Ronald R. Clark (same as applicant). *Contract Carrier,* Irregular routes: *Dry potash compounds, boron compounds, and bulk liquid fertilizers,* from points in Eddy and Lea Counties, NM; Perkins, Chase and Red Willow Counties, NE; Logan and Prowers Counties, CO; Laramie County, WY; to points in Yuma County, CO: Dundy County, NE; and Cheyenne County, KS, for the account of Consumers Coop, Inc., Wray, CO; Bojac, Inc., Wray, CO; and Pure Grow, Wray, CO, for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper(s): Consumers Coop, Inc., Box 187, Wray, CO 80758; Bojac, Inc., Wray, CO 80758; Pure Grow, Wray CO 80758.

MC 42487 (Sub-6–22TA), filed July 10, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular route: *General commodities, (except those of unusual value, Classes A and B explosives, livestock, green hides, assembled automobiles, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading),* serving the facilities of Hazel, Inc., at or near Washington, MO, as an off-route point in connection with carrier's otherwise authorized regular route operations, for 270 days. Applicant intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will be tacked or joined, as an off-route point, with authority held in Docket No. 42487 Subs 500, 578, 646 and 708. These authorities, in turn, will be tacked or joined with other authorities of Applicant at such points as Chicago, IL, Cincinnati, OH, Minneapolis, MN, Kansas City, MO, Denver, CO and Dallas, TX, to permit service to and from points throughout the United States. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States, as provided in tariffs on file with the Interstate Commerce Commission. Supporting shippers: Hazel, Inc., 1200 South Stafford Street, Washington, MO 63090.

MC 145102 (Sub-6–5TA), filed July 11, 1980. Applicant: FREYMILLER TRUCKING, INC., 1400 S. Union Avenue, Bakersfield, California 93307. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, Wisconsin 53703. *Cheese and cheese products* from Livingston, WI to Corpus Christi, Dallas, Houston and San Antonio, TX, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Livingston Creamery, Inc. P.O. Box 67, Livingston, Wisconsin 53554.

MC 145102 (Sub-6–6TA), filed July 9, 1980. Applicant: FREYMILLER TRUCKING, INC., 1400 S. Union Ave., Bakersfield, CA 93307. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, Wisconsin 53703. *Cheese and cheese products,* in vehicles equipped with mechanical refrigeration, from points in IL, IA, MO and WI to Greensburg, IN, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Senmar, Inc., P.O. Box 907, Monroe, Wisconsin 53566.

MC 150726 (Sub-6–2TA), filed July 14, 1980. Applicant: HILGO TRANSPORT, INC., P.O. Box 149, Selma, CA. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. *Sizing emulsion, in bulk, in tank vehicles,* from the plantsite of Seepage Control in Phoenix, AZ to points in the U.S., for 270 days. Supporting shipper: Seepage Control, Inc., 3306 E. Washington, Phoenix, AZ 85034.

MC 144572 (Sub-6–5TA), filed July 9, 1980. Applicant: MONFORT TRANSPORTATION COMPANY, P.O. Box G, Greeley, CO 80631. Representative: John T. Wirth, 717 17th Street, Suite 2600, Denver, CO 80202. *Steel doors and hardware used in their framing and installation; fireplaces, chimneys, chimney assemblies, and related equipment and supplies; and plumbing fixtures, fittings, and related equipment and supplies,* from Cincinnati, Tiffin and Salem, OH; Huntington, IN; Louisville, KY; and now Orleans, LA to points in CO; Restrictions: (1) Restricted to the transportation of traffic originating at the facilities of American Standard, Inc., and (2) restricted against the transportation of commodities in bulk, for 180 days. Supporting shipper: American Standard Ind., P.O. Box 2003, New Brunswick, NJ 08903.

MC 33641 (Sub-6–1TA), filed July 14, 1980. Applicant: IML FREIGHT, INC., 10 Exchange Place-6th Floor, Salt Lake City, UT 84111. Representative: Eldon E. Bresee (same as applicant). *Common carrier,* Regular routes: *Electrical instruments and parts thereof,* serving the facilities of Hewlett-Packard Co., near Liberty Lake, WA as an off-route point in connection with carrier's authorized regular route operations, for 270 days. Applicant intends to tack and interline. Supporting shipper: Hewlett-Packard Co., 1620 Signal Dr., Liberty Lake, WA 99019.

MC 151232 (Sub-6–1TA), filed July 10, 1980. Applicant: NEW COLUMBIA GARDEN CO., INC., 12112 N. W. Lower River Rd., Vancouver, WA 98660. Representative: Albert P. Fazio (same as applicant). *Canned and prepared foodstuffs* from Tacoma, WA to Sacramento, Hayward and Los Angeles, CA for 270 days. Supporting shipper: Nalley's Fine Foods, 3303 So. 35th. St., Tacoma, WA 98411.

MC 151256 (Sub-6–1TA), filed July 14, 1980. Applicant: ODYSSEY TRANSPORTATION, INC., 3826 Depot Road, Hayward, CA 94544.

Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. *Contract Carrier,* Irregular Routes: *Chemicals, in bulk, in tank vehicles,* from the facilities of Rohm and Haas Company in Hayward, CA, to points in the States of AZ, CO, ID, NV, NM, OR, TX, UT, and WA, for 270 days. Supporting shipper: Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105.

MC 151248 (Sub-6-1TA), filed July 9, 1980. Applicant: JIMMIE D. OTT, d.b.a. JIM OTT TRUCKING, 3400 Wood Ln., Bakersfield, CA 93309. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. *Oilfield equipment, materials and supplies used in drilling, exploration and production of oil and gas* from Bakersfield, CA to Abilene, TX and Dallas, TX, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Duhn Oil Tool, Inc., 3912 Gilmore Ave., Bakersfield, CA 93308.

MC 141532 (Sub-6-9TA), filed July 10, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Highway, Rancho Cucamonga, CA 91730. Representative: Michael J. Norton, 1905 South Redwood Road, Salt Lake City, UT 84104. *Steel pipe and tubing,* from Long Beach and Gardena, CA to points in WA, OR, CA, ID, MT, CO, UT, NV, AZ, NM, WY and TX, for 270 days. Supporting shipper: J. D. Rush Company, Inc., 14714 South Avalon Blvd., Gardena, CA 90248.

MC 151257 (Sub-6-1TA), filed July 14, 1980. Applicant: SHO-LEN, INC. d.b.a. PACIFIC TRANSPORTATION, 10869 Drury Lane, Lynwood, CA 90262. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. (1) *Aluminum articles* from the facilities of Reynolds Metals Company at Phoenix, AZ, to points in CA, NV, OR and WA; (2) *Aluminum ingots* from the facilities of Reynolds Metals Company at Longview, WA, and Troutdale, OR, to the facilities of Reynolds Metals Company at Phoenix, AZ, for 270 days. Supporting shipper: William H. Bartlett, Supervisor—Commerce, Reynolds Metals Company, 1703 Parham Road, Richmond, VA 23261.

MC 151255 (Sub-6-1TA), filed July 14, 1980. Applicant: N. PEDERSEN TRANSPORT LT., P.O. Box 5297, Station "E", Alberta, Canada T5P 4C5. Representative: G. Todd Baugh, Room 805, First Bank Building, Billings, MT 59101. *Contract Carrier,* regular routes: *Construction and pipeline equipment;* and commodities because of their unusual size, weight or shape requiring special equipment from the R. Angus (Alberta) Ltd. yard in Shelby, MT to US/Canada port of entry near Sweetgrass, MT for 270 days. Supporting shipper: R. Angus Alberta Limited, 16900, 107 Avenue, Edmonton, Alberta T5J 2S1.

MC 127922 (Sub-6-3TA), filed July 10, 1980. Applicant: NELLO PISTORESI & SON, INC., P.O. Box 432, Toppenish, WA 98948. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Meat and meat products* from Yakima, Ellensburg and Toppenish, WA, to points in ID for 270 days. Supporting shipper: Washington Beef Producers, Inc., P.O. Box 9344, Yakima, WA 98909.

MC 151231 (Sub-6-1TA), filed July 9, 1980. Applicant: GLEN M. RICKERT d.b.a., RICKERT TRUCKING, 2507 Blackstone Ct., Bakersfield, CA 93304. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. *Roofing materials, i.e.: packaged asphalt, roofing cement, roofing coating, paving joint compound, roofing nails, roofing paper, pitch, asphalt shingles or siding* from Bakersfield, CA to points in AZ, NV, OR, UT and WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: San Joaquin Refining Co., Inc., P.O. Box 5576, Bakersfield, CA 93308.

MC 52709 (Sub-6-16TA), filed July 9, 1980. Applicant: RINGSBY TRUCK LINES, INC., 3980 Quebec St., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same address as applicant). *Common carrier,* regular routes: *Meats, meat products, and meat by-products, and articles distributed by meat packinghouses and materials, equipment and supplies used in the business of meat packinghouses,* serving the facilities of Sigman Meat Co., Inc., at or near Brush, CO, in connection with carrier's presently authorized regular route operations between Denver, CO and Omaha, NE, for 270 days. Supporting shipper: Sigman Meat Co., Inc., P.O. Box 364, Brush, CO 80723.

MC 136897 (Sub-6-11TA), filed July 11, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. *Contract Carrier:* Irregular routes: *Iron and steel articles,* between points in AZ, CA, CO, ID, KS, MO, NM, NE, NV, TX, UT, and WY, for the account of Brown-Strauss, Div. of Azcon Corp., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Brown-Strauss, Div. of Azcon Corp., 6900 East Camelback Road, Scottsdale, AZ 85251.

MC 136476 (Sub-6-1TA), filed July 10, 1980. Applicant: TRANSPORT WEST, INC., P.O. Box 2015, Eugene, OR 97402. Representative: Gene E. Cook (same as applicant). *Contract carrier:* irregular routes: *Tin Plate, Can Ends, and Related Materials and Supplies used in the manufacture of Containers,* From Pittsburg, San Leandro, and Stockton, CA to the facilities of Container Corporation of American at Portland, OR, for 270 days. Supporting shipper: Container Corporation of America, 2800 De La Cruz Blvd., Santa Clara, CA 95050.

MC 140074 (Sub-6-1TA), filed July 9, 1980. Applicant: WALDO W. WILLIAMS d.b.a. TRIPLE W TRANSPORT, 9300 Cartage Road, Missoula, MT 59801. Representative: Jeremy G. Thane, P.O. Box 4747, Missoula, MT 59806. *Contract Carrier,* regular route: *Wood residuals,* from port of entry at Roosville on the International Boundary line between the U.S. and Canada to Schilling, MT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Champion Timberlands, a Division of Champion International, P.O. Box 8, Milltown, MT 59851.

MC 138206 (Sub-6-1TA), filed July 10, 1980. Applicant: TRULINE CORPORATION, 4455 South Cameron Avenue, Las Vegas, NV 89103. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. *Iron and Steel Articles and Iron and Steel Products;* between Points in CA, OR, NV, AZ, CO, and UT, for 270 days. Supporting shippers: There are 5 supporting shippers. Their statements may be examined at the regional office listed. Restriction: Transportation of articles which by reason of size or weight require the use of special equipment is prohibited.

MC 148404 (Sub-6-5TA), filed July 11, 1980. Applicant: UNITED CHEMICAL CARRIERS, INC., 15812 La Monde Street, Hacienda Heights, CA 91745. Representative: Bobbie F. Albanese, 13215 E. Penn Street, Suite 310, Whittier, CA 90602. *Petroleum lubricating grease and petroleum lubricating oil and related equipment and for supplies for distribution and sale of these lubricants* from Toledo, OH, to AZ, CA, CO, ID, MN, NM, NV, OR, TX, UT, WA and WY, for 270 days. Supporting shipper: Fiske Brothers Refining Co., P.O. Box 8038, Station A, Toledo, OH 43605.

MC 26396 (Sub-6-34TA), filed July 14, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. (1) *Malt beverages and related advertising materials:* and (2) *materials, equipment and supplies utilized in the*

manufacture, sale and distribution of commodities named in (1) above; between points in AR, FL, GA, IL, IN, IA, KY, MD, MI, MO, NY, NC, OH, PA, SC, TN, VA, WV and WI, restricted to traffic originating at or destined to the facilities of Stroh Brewing Company, for 270 days. Supporting shipper: Stroh Brewing Company, One Stroh Drive, Detroit, MI 48226.

MC 26396 (Sub-6-35TA), filed July 14, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Such commodities as are dealt in or utilized by manufacturers and distributors of metal buildings, grain storage and handling systems and agricultural equipment,* between Houghton, IA and Grand Island, NE, on the one hand, and on the other, points in the United States (except AK and HI), for 270 days. Supporting shipper: Conrad-American, Inc., P.O. Box 88, Houghton, IA 52631.

MC 135803 (Sub-6-15TA), filed July 11, 1980. Applicant: WALLACE TRANSPORT, 9290 E. Hwy 140 (P.O. Box 67), Planada, CA 95365. Representative: Donald M. Fennel (same as applicant). *Forest Products and Materials for the account of Bendix Forest Products,* Between the facilities of Bendix Forest Products in CA and points in NV and CA for 270 days. Supporting shipper: Benidx Forest Products Corp., 2740 Hyde St., San Francisco, CA 94107.

MC 151261 (Sub-6-1TA), filed July 14, 1980. Applicant: WATERVILLE-CASCADE TRUCKING, INC., P.O. Box 1686, Wenatchee, WA 98801. Representative: Robert G. Gleason, 1127 10th East, Seattle, WA 98102. *Rolled plastic, plastic sheets, resin, polypropolene, plastic beads, plastic pellets and aluminum tubing,* from points located in MO, WV, CA, TX, KY and LA to points located in the state of WA for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Sitka Corporation, 18249 Olympic Avenue So., Seattle, WA 98188 and Allsop Automatic, Inc., P.O. Box 23, Bellingham, WA 98225.

MC 141804 (Sub-6-64TA), filed July 11, 1980. Applicant: WESTERN EXPRESS, Division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *Thread and related sewing materials,* between points in GA, on the one hand, and, on the other, points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Coats and Clark Sales Corp., Joseph V. Valente, Corporate Traffic Manager, 2915 N. E. Parkway, Doraville, GA 30360.

MC 141804 (Sub-6-65TA), filed July 11, 1980. Applicant: WESTERN EXPRESS, Division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *Commodities as are dealt in and utilized by home improvement stores and materials and supplies used in the manufacture of caulking compounds* (except in bulk), between Pryor, OK on the one hand, and, on the other, points in the U.S. (except AK, HI & OK). Restricted to traffic originating at or destined to the facilities of Red Devil, Inc., for 270 days. Supporting shipper: D. B. Piantoni, Traffic Manager, Red Devil, Inc., 2400 Vauxhall Road, Union, NJ 07083.

MC 141804 (Sub-6-66TA), filed July 11, 1980. Applicant: WESTERN EXPRESS, Division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *General Commodities,* (except those of unusual value, household goods as described by the Commision, commodities in bulk, frozen foods and those requiring special equipment), from Compton, CA to points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Restricted to traffic originating at the facilities utilized by MGD Corporation, for 270 days. Supporting shipper: John R. Navarro, Jr., President, MGD Corporation, 355 W. Carob Street, Compton, CA 90220.

MC 106679 (Sub-6-1TA), filed July 14, 1980. Applicant: WHEELER FREIGHTWAYS, 3375 S. Polaris Avenue, Las Vegas, NV 89102. Representative: R. Alan Wheeler, Jr. (same address as applicant). *Common Carrier,* regular routes: *General commodities* (except classes A & B explosives, commodities in bulk and household goods as defines by the Commission, between the following points or areas: (a) between Las Vegas, NV and Boulder City, NV via U.S. Hwy 93; (b) between Las Vegas, NV and Tonopah, NV and Searchlight, NV via U.S. Hwy 95; (c) between Las Vegas, NV and Tower, NV and Mesquite, NV via Interstate Hwy 15; (d) between Las Vegas, NV and Lathrop Wells, NV via Interstate Hwy 15 to Arden, NV, thence from Arden, NV to Lathrop Wells, NV via NV Hwy 16 to junction with NV Hwy 52 thence via NV Hwy 52 to junction CA Hwy 178, thence via CA Hwy 178 to junction CA Hwy 127, thence via CA Hwy 127 to NV Hwy 29, thence via NV Hwy 29 to Lathrop Wells, NV and return over the same route; (e) between Searchlight, NV and Crescent Mine, NV via NV Hwy 68; (f) between Mina, NV and Manhattan, NV via U.S. Hwy 95 to junction NV Hwy 8A thence via NV Hwy 29 to Manhattan, NV and return via the same route; (g) between Manhattan, NV and Round Mtn, NV via NV Hwy 29 to junction NV Hwy 92 thence via NV Hwy 92 to Round Mtn, NV and return via the same route; and (h) between Jean, NV and Sandy, NV via NV Hwy 93; serving all intermediate points on the above-named routes and off route points within five miles thereof; Restricted to service by tacking to currently held authority of applicant or by joint service at through rates in interline traffic with authorized connecting motor carriers, or to service on traffic having an immediately prior or subsequent movement via railroad, for 270 days. Supporting shippers: There are 15 shippers. Their statements may be examined at the Regional office listed.

MC 117786 (Sub-6-17TA), filed July 11, 1980. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: Baldo J. Lutich, 1441 E. Thomas Rd., Phoenix, AZ 85014. *Alcoholic beverages and commodities used or useful in the manufacturing, sale and distribution of alcoholic beverages (except commodities in bulk),* between the facilities of Schenley Distillers, Inc. in or near Lawrenceburg, IN, Louisville and Frankfort, KY, Schenley, PA and Tullahoma, TN, and points in FL, for 270 days. Supporting shipper: Schenley Distillers, Inc., 36 E. 4th St., Cincinnati, OH 45202.

MC 52914 (Sub-6-2TA), filed May 23, 1980. Applicant: FITCHETT TRUCK LINES, INC., P.O. Box 10799, Portland, OR 92710. Representative: Lawrence V. Smart, 419 N.W. 23rd Avenue, Portland, OR 92710. *Common carrier,* regular route; *General commodities,* except those of unusual value, class A and B explosives, household goods as defined by the Commission and commodities in bulk, between Portland, OR and the John Day Dam, or over Interstate Hwy 84, serving all intermediate points on Interstate Hwy 84, for 180 days. An underlying ETA seeks 90 day authority. Applicant also intends to interline. Supporting shipper: There are 21 shippers. Their statements may be examined at the Regional office listed.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-22564 Filed 7-25-80; 8:45 am]
BILLING CODE 7035-01-M

Water Carrier; Grant of Discretionary Temporary Authority

Pursuant to 49 CFR 1131a, the Regional Motor Carrier Board on July 18,

1980, granted the following Temporary Authority and waived prior Federal Register Publication. Petitions for reconsideration will be accepted from interested parties for 20 days following this notice. Petitions should be submitted to Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, Massachusetts, 02114.

W-81 (Sub-1-1TA), filed July 16, 1980. Applicant: McALLISTER LIGHTERAGE LINE, INC., 17 Battery Place, New York, NY 10004. Representative: Peter A. Greene, 900 17th Street, N.W., Washington, D.C. 20006. *Common carrier*, by water, in interstate or foreign commerce by non-self-propelled vessels with the use of separate towing vessels in the transportation of commodities generally, and by towing vessels in the performance of general towing, between ports and points along the Atlantic Coast and inland waterways from Massachusetts to North Carolina, on the one hand, and, on the other, ports and points in South Carolina, for 180 days. Supporting Shipper: Prudential Lines, Inc., 1 World Trade Center, New York, NY 10048.

Agatha L. Mergenovich,

Secretary

[FR Doc. 80-22565 Filed 7-25-80; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 80-57]

Notice of Intent To Grant Exclusive Patent License

Notice is hereby given that consideration is being given to the grant to W.P. Instruments, Inc. of New Haven, Connecticut, of a limited, exclusive revocable license to practice the invention described in U.S. Patent No. 3,977, 831 for "Method for Detecting Pollutants" issued August 31, 1976, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 C.F.R. § 1245.2, as revised April 1, 1972, NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 30 days of the date of this Notice, the Chairperson, Inventions and Contributions Board, NASA, Washington, DC, 20546, receives in writing any of the following, together with supporting documentation: (i) a statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed exclusive license; (ii) an application for a nonexclusive license under such invention, in accordance with § 1245.206(b) in which applicant states that he has already brought or is likely to bring the invention to practical application within a reasonable period. The Board will review all written responses to the Notice and then recommend to the Administrator whether to grant the exclusive license.

Dated: July 21, 1980.

S. Neil Hosenball,

General Counsel.

[FR Doc. 80-22538 Filed 7-25-80; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Activities; Addition to Agenda

The following item has been added to the August 6, 1980 meeting agenda of the ACRS Subcommittee on Regulatory Activities.

(6) Limited Revisions to 10 CFR Part 50, Appendix J—Air Locks (Post Comment)

Persons wishing to submit written statements regarding this item may do so, as explained in the notice of this meeting published in the Federal Register July 22, 1980 (45 FR 48999).

All other matters pertaining to this meeting remain the same as announced in the cited Federal Register notice.

Dated: July 23, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-22598 Filed 7-25-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-237-SP, 50-249-SP (Spent Fuel Pool Modification)]

Commonwealth Edison Co. (Dresden Station, Units 2 and 3); Order

July 22, 1980.

On August 19, 1980 beginning at 10 a.m. local time, a prehearing conference on this matter will be held at the following location: Room 2502, Everett Dirksen Federal Office Building, 219 South Dearborn Street, Chicago, Illinois 60204.

If necessary, the conference will continue on August 20, 1980.

This prehearing conference is being held in order to discuss:

(1) The contentions of the intervenor, the State of Illinois.

(2) The key issues raised by the contentions.

(3) Possible stipulations and admissions as to the facts.

(4) The establishment of a schedule for further actions in the proceeding.

(5) Such other matters as may aid in the orderly disposition of the proceeding.

The public is invited to attend this prehearing conference, but members of the public may not participate therein.

It is so ordered.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland this 22nd day of July 1980.

John F. Wolf,

Chairman.

[FR Doc. 80-22600 Filed 7-25-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-466 CP]

Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1); Order Scheduling Prehearing Conference

July 22, 1980.

Pursuant to 10 CFR 2.752, on August 13, 1980, and continuing through August 14, 1980, if necessary, a prehearing conference will be held at the following location: Holiday Inn, Medical Center, 6701 South Main Street, Houston, Texas 77030.

The sessions will begin at 9 am and will recess at 5:30 pm.

The conference is scheduled in order that the Board can consider:[1]

(1) setting due dates for the responses to motions for summary disposition; [2]

(2) establishing dates for the filing of testimony and commencement of the first phase of the evidentiary hearing;

(3) and simplifying the many contentions admitted as issues in this proceeding.[3]

The Board will also give consideration to any other matters which may aid in the orderly disposition of this proceeding.

The public is invited to attend this conference. However, limited

[1] These procedural matters to be considered are those proposed in the Staff's letter dated July 18, 1980. The Staff's letter as well as other submissions (for example, from Messrs. Doherty and Baker) indicate there are disagreements with the Staff's and/or the Applicant's proposals.

[2] Our scheduling of the prehearing conference on August 13, 1980 will give the affected parties adequate time to review Staff's and Applicant's motions for summary disposition which we understand will be filed on August 4, 1980, and will enable them to advise the Board how much time they will need to respond to the motions for summary disposition.

[3] Simplification of the admitted contentions would make it easier for all concerned to refer to them orally and in writing. Of course, the scope and thrust of each contention will be governed during this proceeding by the actual wording thereof.

appearance statements will not be received, but will be received at any subsequent prehearing conference and/or at the beginning of the hearing.

It is so ordered.

Dated at Bethesda, Maryland this 22nd day of July, 1980.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe, Esq.,

Chairman.

[FR Doc. 80-22601 Filed 7-25-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-2909]

Westinghouse Electric Corp. (Alabama Nuclear Fuel Fabrication Plant (ANFFP) to be located near Prattville, Ala.); Order

July 22, 1980.

On Thursday, August 21, 1980, beginning at 10:00 a.m. local time, a special prehearing conference on this matter will be held at the following location: Federal Building and United States Courthouse, 15 Lee Street, Montgomery, Alabama.

If necessary the conference will continue on August 22, 1980.

As stated in the telephone conference call on July 17, 1980 between this Board and the parties hereto, this special prehearing conference is being held in order to:

(1) Permit identification of the key issues in the proceeding.

(2) Take any steps necessary for further identification of the issues.

(3) Consider all intervention petitions to allow the presiding officer to make such preliminary or final determination as to the parties to the proceeding, as may be appropriate.

(4) Establish a schedule for further actions in the proceeding.

Further, the attention of the petitioners for leave to intervene is directed to 10 CFR 2.714(b) which provides that not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to section 2.751a, a petitioner shall file a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity.

The public is invited to attend this special prehearing conference, but members of the public may not participate therein.

It is so ordered.

Dated at Bethesda, Maryland this 22d day of July 1980.

For the Atomic Safety and Licensing Board

John F. Wolf,

Chairman.

[FR Doc. 80-22599 Filed 7-25-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

July 23, 1980.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);

The office of the agency issuing this form;

The tile of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instruction, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—447-6201

Extensions

Rural Electrification Administration
Details of general funds, notes and accounts receivable, and notes payable—telephone loan applicants
REA 491
On occasion
REA telephone borrowers, 1,700 responses; 850 hours
Charles A. Ellett, 395-7340

DEPARTMENT OF EDUCATION

Agency Clearance Officer—William A. Wooten—472-2655

New Forms

Repayment schedule and truth in lending disclosures for health education assistance loan program

ED 769–1 & ED 769–2
On occasion
Commercial lenders, 800 responses; 800 hours
Laverne V. Collins, 395–6880

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph J. Strnad—245–7488

New Forms

Office of the Secretary
Low-income consumers electronic funds transfer system
OS–13–80
Single time
Low income consumers in Boston, 50 responses; 25 hours
Office of Federal Statistical Policy and Standard, 673–7974

Revisions

Food and Drug Administration
Declaration for products subject to radiation control standards
FD 2877
On occasion
Electronic product manufacturers, 7,400 responses; 1,850 hours
Richard Eisinger, 395–6880

Extensions

Social Security Administration
Statement of living arrangements, support and maintenance/additional statement of living arrangements, support and maintenance
SSA–8005 and 8006
On occasion
Aged, blind, disabled applicants and recipients, 3,000,000 responses; 250,000 hours
Barbara F. Young, 395–6880

DEPARTMENT OF THE INTERIOR

Agency Clearance Officer—William L. Carpenter—343–6716

New Forms

U.S. Fish and Wildlife Service
Net harvest log sheet
Monthly
Indians eligible to fish on Hoopa Valley Reservation, 5.000 responses; 2,500 hours
Charles A. Ellett, 395–7340

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—523–6341

New Forms

Employment and Training Administration
Evaluation of the targeted outreach program
ETA–RC33
Single time
Primarily top program participants, 1,800 responses; 1,458 hours
Arnold Strasser, 395–6880

Extensions

Bureau of Labor Statistics
Current consumer expenditure survey
CE–301, 302, 303(L1), 304, 310
Quarterly
Households in 102 selected areas, 11,470 responses; 84,717 hours
Office of Federal Statistical Policy and Standard, 673–7974
Employment and Training Administration
Research on the food stamp workfare demonstration
MT–303
Single time
Food stamp work registrants, 2,000 responses; 1,367 hours
Charles A. Ellett, 395–7340

ENVIRONMENTAL PROTECTION AGENCY

Agency Clearance Officer—Henry F. Beal—755–2744

Reinstatements

Application for research fellowship
EPA–5770 2 through 5
On occasion
Individuals applying for fellowships, 200 responses; 200 hours
Edward H. Clarke, 395–7340

SMALL BUSINESS ADMINISTRATION

Agency Clearance Officer—John Anderson—653–6890

Revisions

Small business opinion leaders
On occasion
Business owners, 6,500 responses; 1,083 hours
Edward C. Springer, 395–4814

Extensions

SBA application for loan and SBA lender's application for guarantee or participation
RO X 40 and RO X 42
Single time
Small business, 1,600 responses; 16,000 hours
Edward C. Springer, 395–4814

WHITE HOUSE

Agency Clearance Officer—Esther E. Peterson—456–6590

New Forms

Readers survey for consumer action update
Single time
Consumer leaders and educators, 1 response; 60 hours

Office of Federal Statistical Policy and Standard, 673–7974

C. Louis Kincannon,
Acting Deputy Assistant Director For Reports Management.

[FR Doc. 80-22615 Filed 7-25-80; 8:45 am]
BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 16996; File Nos. SR-AMEX-80-20, SR-CBOE-80-19]

American Stock Exchange, Inc., and Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Changes and Order Approving Proposed Rule Changes

July 23, 1980.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") notice is hereby given that the American Stock Exchange, Inc., ("Amex") 86 Trinity Place, New York, New York 10006 and the Chicago Board Options Exhange, Incorporated ("CBOE") LaSalle at Jackson, Chicago, Illinois 60604, have filed with the Commission copies of proposed rule changes, to expand the number of authorized put options classes.[1] The proposed rule changes, if approved, would enable Amex and CBOE to list and institute put trading on all securities currently underlying each exchange's authorized call option classes, as well as those securities selected for options trading in the first options exchange allocation lottery.[2] Specifically, Amex requests Commission approval to list and institute put trading on 46 additional underlying securities and CBOE on 67 additional underlying securities.[3] Upon approval, both Amex and CBOE intend to commence trading in new put classes in general accordance with their respective puts

[1] Amex's proposal was filed on June 27, 1980. CBOE's proposal was filed on July 8, 1980, and amended on July 21, 1980.

[2] *See*, Securities Exchange Act Release Nos. 16892 (June 13, 1980), and 16863 (May 30, 1980).

[3] Amex previously received authorization to list ten additional put classes on May 6, 1980 (Securities Exchange Act Release No. 16788), ten additional put classes on May 28, 1980 (Securities Exchange Act Release No. 16851) and ten additional put classes on June 20, 1980 (Securities Exchange Act Release No. 16915). CBOE previously received authorization to list 27 additional put classes on May 6, 1980 (Securities Exchange Act Release No 16788) and 12 additional put classes on May 30, 1980 (Securities Exchange Act Release No. 16861). CBOE also received authorization to add nine new put classes in connection with the consummation of the combination of its options program with the program of the Midwest Stock Exchange, Incorporated (Securities Exchange Act Release No. 16862, May 30, 1980).

expansion schedules[4] with both exchanges adding new put classes at a rate not to exceed 12 classes per month.

Interested persons are invited to submit written data, views and arguments concerning the submissions within 30 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to the file numbers captioned above.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof. In the March 26, 1980 policy statement announcing the termination of the moratorium on the expansion of standardized options trading, the Commission stated that it perceived certain benefits with respect to the listing of both puts and calls on the same underlying security.[5] In the March 1980 policy statement the Commission also indicated that in the absence of significant operational or surveillance problems encountered by the options exchanges or difficulties experienced by member firms in handling current or anticipated trade volume, it anticipated giving expedited treatment to puts expansion rule proposals. No comments were received by the Commission concerning this aspect of the March 1980 policy statement, nor were any comments received concerning the Commission's determination to approve previous puts expansion proposals on an accelerated basis. Amex and CBOE have stated that the prior phases of their puts expansion programs have proceeded without any apparent adverse effect on their exchange's surveillance or operational capabilities or on member firm back office operations. The Commission has no information currently before it which is contrary to these representations. Amex and CBOE have also indicated that, upon approval of the proposed rule change, they will continue to add new puts classes on a periodic basis in a reasonable and prudent fashion giving due consideration to their own operational and surveillance capabilities, as well as the back office capacity of their member firms.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes referenced above be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-22589 Filed 7-25-80; 8:45 am]

BILLING CODE 8010-01-M

[4] *See* Securities Exchange Act Release No. 16788 (May 6, 1980).

[5] *See* Securities Exchange Act Release No. 16710 (March 26, 1980) ("March 1980 policy statement").

Boston Stock Exchange, Inc.; Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

July 22, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Hiram Walker-Consumers Home Ltd., Common Stock, No Par Value (File No. 7-5678).

Inter-City Gas Corporation, Common Stock, No Par Value (File No. 7-5679).

These securities are listed and registered on one or more other national securities exchanges.

Interested persons are invited to submit on or before August 12, 1980 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-22587 Filed 7-25-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11269 (811-1518)]

Chagres Fund, Inc.; Filing of Application Pursuant to Section 8(f) of the Act for an Order Declaring That Company Has Ceased To Be an Investment Company

July 22, 1980.

Notice is hereby given that Chagres Fund, Inc. ("Applicant"), P.O. Box 914, Hendersonville, North Carolina 28739, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on May 12, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant is a corporation organized under the laws of the State of Maryland. Applicant filed its initial Registration Statement under the Act of August 3, 1967, which registration first became effective on February 29, 1968.

Effective August 23, 1979, Applicant sold substantially all of its property and assets to Beacon Income Fund, Inc. ("Beacon") without the assumption by Beacon of any liabilities of Applicant in exchange for shares of Beacon at net asset value, pursuant to an Agreement and Plan of Reorganization ("Agreement"), approved by Applicant's Board of Directors on January 31, 1979 and approved on August 22, 1979, in accordance with Maryland law by an affirmative vote of the holders of not less than two-thirds of the outstanding common stock of Applicant. The assets of Applicant transferred to Beacon consisted of all of the investments, properties, rights and other assets of Applicant, free and clear of all liens, encumbrances and claims, whatsoever, excluding a cash reserve in the amount of $5,000 which was retained by Applicant for the payment of its expenses in connection with the agreement, its liquidation, dissolution and its other liabilities. The shares of Beacon so received by Applicant were

distributed, pro rata, to the shareholders of Applicant. According to the application, on August 22, 1979, Applicant had outstanding 59,748.80 shares of common stock held by 133 shareholders of record with a net asset value per share of $5.51 and an aggregate net asset value of $329,240.28.

The Applicant represents that it intends to take appropriate steps to file a certificate of dissolution under Maryland law. Applicant states that it is indebted for legal and accounting fees and expenses relating to its liquidation and dissolution in an indeterminable amount, but not in excess of $5,000. Further, the Applicant asserts that it no longer has any security holders, is not a party to any litigation or administrative proceeding and does not propose to engage in any activity other than that necessary for winding up its business affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than August 18, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants(s) at the address(es) stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-22581 Filed 7-25-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 16995 (SR-CBOE-80-11)]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

July 22, 1980.

On May 27, 1980, the Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, Illinois 60604, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change prohibiting member firms from placing multiple orders with several floor brokers for the account of the same principal.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16873, June 4, 1980) and by publication in the Federal Register (45 FR 40269, June 13, 1980). Comments were solicited but none were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-22580 Filed 7-25-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6222]

FlightSafety International, Inc., Common Stock, $0.10 Par Value, Application To Withdraw From Listing and Registration

July 18, 1980.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. FlightSafety International, Inc. (the "Company") common stock is listed and registered for trading on the Amex and, pursuant to a Registration Statement on Form 8-A which became effective on June 24, 1980, the New York Stock Exchange, Inc. ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE and believes that dual listing would fragment the market for its common stock.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before August 8, 1980, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-22586 Filed 7-25-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11264 (812-4695)]

IDS Tax-Free Money Fund, Inc., Filing of an Application Pursuant to Section 6(c) of the Act for an Order of Exemption From the Provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 Thereunder

July 21, 1980.

Notice is hereby given that IDS Tax-Free Money Fund, Inc. ("Applicant"), 1000 Roanoke Building, Minneapolis, Minnesota 55402, registered under the

Investment Company Act of 1940, as amended ("Act") as an open-end, diversified management investment company, filed an application on June 16, 1980, and an amendment thereto on June 26, 1980, requesting an order of the commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to value its portfolio securities using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on February 29, 1980, as an investment vehicle for substantial investors who desire tax-exempt income from a portfolio of high quality short-term municipal obligations. According to the application, Applicant's investment objective is to provide as high a level of current income as is consistent with the stability of principal and liquidity. The application also states that Investors Diversified Services, Inc., will serve as the investment adviser to Applicant. A registration statement on Form N–1 under the Securities Act of 1933 covering shares of common stock of Applicant has been filed with the Commission, but has not yet become effective. Thus, a public offering of Applicant's common shares has not commenced. Applicant's common shares will be offered for sale to the public at net asset value without a sales charge.

The Applicant represents that its portfolio will be invested in general obligation bonds, revenue bonds, and notes with original or remaining maturities of one year or less. The Applicant further states that at least 80% of its net assets will be invested in debt obligations issued by states, the District of Columbia, territories and possessions of the United States, and their political subdivisions, duly constituted authorities and corporations, the interest from which is wholly exempt from federal income taxation in the opinion of bond counsel to the issuer and that this policy can be changed only if the holders of a majority of the Applicant's outstanding shares agree. Applicant further states that the remainder of its assets (not to exceed 20% of its net assets) may be invested in short-term notes and obligations of the United States government, banks, and corporations having remaining or original maturities of one year or less. The application states that the dollar-weighted average maturity of the Applicant's portfolio will at all times be 120 days or less.

The Applicant states that the tax-exempt securities which it may invest in include tax anticipation notes, bond anticipation notes, revenue anticipation notes, tax and revenue anticipation notes, construction loan notes, tax-exempt commercial paper, project notes and other short-term municipal securities that are similar to the foregoing. In addition, the application states that the Applicant may enter into repurchase agreements, and may purchase securities on a "when-issued" basis but that the Applicant will not invest more than 20% of its net assets in "when-issued" securities. The application further states that the Applicant does not presently intend to invest in "put" transactions, but that it reserves the right to do so in the future.

Applicant represents that the municipal notes in its portfolio will be rated not lower than Aa or MIG–2 by Moody's Investors Services, Inc., and that the municipal bonds will be rated not lower than AA by Standard & Poor's Corporation. Applicant may also purchase nonrated municipal bonds and notes so long as they meet standards of quality equivalent to those described above.

The application states that all of the above instruments are generally offered on the basis of a quoted yield to maturity and the price of the security is adjusted so that relative to the stated range of interest it will return the quoted rate to the purchaser. The Applicant states that it intends to declare and pay its net income as a dividend to its shareholders on a daily basis and distribute it monthly, and that "net income" for this purpose will consist of all interest income accrued on the portfolio assets of the Applicant, less all expenses of the Applicant. The application also states that if the Applicant values its securities on an amortized cost basis there will be no calculation for realized or unrealized capital gains or losses. Applicant represents that the nature of the investments which it proposes to make have characteristics which are similar to those securities which are generally designated as money market instruments.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors. Rule 22c–1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a–4 adopted under the Act provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company, used in computing its price for the purposes of distribution, redemption and repurchase, shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate, Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests exemptions from the provisions of Section 2(a)(41) of the Act, and Rules 2a–4 and 22c–1 thereunder, to the exent necessary to permit Applicant to value its portfolio securities by means of the amortized cost method of valuation (i.e., valuing securities at cost, adjusted for amortization of premium or accretion of discount).

Section 6(c) provides, in pertinent part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant states that its experience has been that investors in a money market

fund desire a stable net asset value, preferably at $1.00 per share, and a constant and steady flow of investment income. Applicant also states that it will not own portfolio securities having maturities exceeding one year, and its average portfolio maturity will not exceed 120 days. Applicant further states that its experience has been that with respect to municipal securities maturing in 120 days or less, there is normally a negligible discrepancy between market value and the amortized cost value of such securities. On the basis of the foregoing, Applicant believes that the valuation of its portfolio securities on the amortized cost basis will benefit its shareholders by enabling Applicant to more effectively maintain its $1.00 price per share while providing shareholders with the opportunity to receive a flow of investment income less subject to fluctuation than under procedures whereby its daily dividend would be adjusted by all realized and unrealized gains and losses on its portfolio securities.

Applicant consents to the following conditions being contained in any order of the Commission granting the exemptive relief requested:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its stockholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant,s $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1%, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing stockholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements if any, to those U.S. dollar-denominated instruments which the Board of Directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

The Applicant represents that its Board of Directors has determined in good faith that in light of the characteristics of the Applicant as described above and, subject to compliance with the above conditions, absent unusual or extraordinary circumstances, the amortized cost method of valuing portifolio securities is appropriate and preferable for the Applicant and reflects fair value of such securities. Applicant further represents that granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than August 15, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

[1] Applicant states that to fulfill this condition, it intends to use actual quotations, or estimates of market value reflecting current market conditions chosen by its Board of Directors in the exercise of its discretion to be appropriate indicators of value. Applicant states that the quotations or estimates utilized may include, *inter alia*, quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of muncipal securities published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-22585 Filed 7-25-80; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 11268 (812-4693)]

Mellon Financial Co.; Filing of Application Pursuant to Section 6(c) of the Act for an Order Exempting Applicant From All Provisions of the Act

July 22, 1980.

Notice is hereby given that Mellon Financial Company ("Applicant"), 6400 Steubenville Pike, P.O. Box 15599, Pittsburg, Pennsylvania 15244, a Pennsylvania corporation, filed an application on June 13, 1980, and an amendment thereto on July 10, 1980, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order of the Commission exempting Applicant from all provisions of the Act. All interested persons are referred to the application which is on file with the Commission for a statement of the representations made therein which are summarized below.

Applicant, a Pennsylvania corporation, is a wholly-owned subsidiary of Mellon National Corporation ("Mellon"), a one-bank holding company registered under the Bank Holding Company Act of 1956 and incorporated under the laws of Pennsylvania. As of December 31, 1979, Mellon was the 12th largest bank holding company in the United States in terms of total equity capital and the 17th largest bank holding company in terms of total assets. Mellon's principal subsidiary is Mellon Bank, N.A. ("Mellon Bank"), a member bank of the Federal Reserve System which was the 16th largest commercial bank in the United States as of December 31, 1979 in terms of total assets and deposits. Other subsidiaries of Mellon engage in mortgage banking, real estate financing, consumer finance and equipment leasing.

Applicant states that it was organized in order to consolidate short-term commercial paper and long-term debt financing activities on behalf of Mellon under one corporate entity for ease of administration, accounting, recordkeeping and tax considerations, and that its sole purpose will be to provide a vehicle through which Mellon can finance its operations and those of its subsidiaries through the issuance of debt securities. According to the application, it is anticipated that Applicant will make public offerings and private placements of long-term and short-term debt instruments, including commercial paper. Applicant represents that all such debt securities will be unconditionally guaranteed by Mellon as to principal and interest, and such guarantees will be on a parity with other unsecured debt obligations of Mellon and guarantees of debt obligations of its subsidiaries, and no such guarantee will be subordinated in right of payment to other debt issued or guaranteed by Mellon. Applicant proposes to lend the proceeds of all debt offerings to Mellon and its subsidiaries in exchange for notes or other evidences of indebtednesss issued by those entities. Applicant states that it will not engage in any other business and its only assets will be cash and evidences of the indebtedness owed to it by Mellon and its subsidiaries.

Applicant represents that its debt securities will be registered under the provisions of the Securities Act of 1933 unless they are issued in a nonpublic offering or are otherwise exempt from registration under that Act, and that any such debt securities to be registered under the provisions of the Securities Act of 1933 will be issued pursuant to a trust indenture subject to and qualified under the Trust Indenture Act of 1939. According to the application, if debt securities to be issued by Applicant are registered under the provisions of the Securities Act of 1933, Applicant will become a reporting company under the Securities Exchange Act of 1934 by reason of Section 15(d) thereof and, under existing rules and regulations of the Commission, will be required to file with the Commission annual reports on Form 10-K and quarterly reports on Form 10-Q. Applicant asserts that such reporting requirements under the Securities Exchange Act of 1934 will be in addition to more expansive filings of a similar nature required to be made by Mellon for itself and its subsidiaries on a consolidated basis.

Section 3(a)(3) of the Act defines the term "investment company" to include any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per cent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Applicant states that its only assets will be cash and evidences of indebtedness.

Section 6(c) of the Act provides, in relevant part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

Applicant submits that because Mellon is primarily engaged, through its wholly-owned subsidiary Mellon Bank, in the business of banking, it is excluded from the definition of investment company by Section 3(c)(6) of the Act, and it could therefore issue debt securities directly without raising questions under the Act. Applicant also submits that the fact that the debt securities are issued by a wholly-owned subsidiary of Mellon should not bring Mellon or Applicant within the policies of the Act. Applicant represents that Mellon and its subsidiaries, including Mellon Bank and Applicant, are subject to regulation by the Board of Governors of the Federal Reserve System, and Mellon is required to file with the Federal Reserve Board an annual report and such additional information as the Federal Reserve Board may require. Applicant represents that it and its related companies are and will be strictly supervised by various banking authorities. The application also states that the business of Mellon bank and that ot its affiliaters is subject to regulation of various federal and state banking authorites and examination by the Comptroller of the Currency. Applicant states that Mellon is also registered under the Securities Exchange Act of 1934 and is subject to reporting and other provisions of that act.

Notice is further given that any interested person may, not later than August 23, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanies by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and

Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-22584 Filed 7-25-80; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

July 22, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks: Archer-Daniels-Midland, Common Stock, No Par Value (File No. 7-5680). NLT Corporation, Common Stock, $5 Par Value (File No. 7-5681).

These securities are listed and registered on one or more other national securities exchanges.

Interested persons are invited to submit on or before August 12, 1980 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-22586 Filed 7-25-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1843; Amdt. No. 1]

Florida; Declaration of Disaster Loan Area

The above numbered Declaration (See 45 FR 37319) is amended by extending the filing date for acceptance of physical disaster loan applications only until the close of business on August 20, 1980, due to civil disorders and unsettling conditions within Dade County beginning on or about May 17, 1980, through July 21, 1980. All other information remains the same.

Dated: July 21, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-22621 Filed 7-25-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0184]

Grocers Capital Co., Inc.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Grocers Capital Company (Grocers) 2601 S. Eastern Avenue, Los Angeles, California 90040, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004(1980)) for approval of a conflict of interest transaction.

Grocers proposes to loan $95,000 to J.M. & G.A. Roth Corp. No. 1, d/b/a the Mars Market (Mars), 4022 N. Tyler Ave., El Monte, California 91731. The proceeds of the loan will be used to purchase restaurant equipment from Grocers Equipment Company (G.E.C.). All of Grocers' stock is owned by subsidiaries of Certified Grocers of California, Ltd. (Certified), a retailer-owned grocery cooperative. G. E. C., a subsidiary of Certified, is a 41 percent shareholder Grocers and is defined as an Associate by Section 107.3 of SBA Rules and Regulations. As a result, Grocers financing of Mars falls within the purview of Section 107.1004(b)(5) of the SBA Regulations. Grocers loan to Mars requires prior written approval of SBA.

Notice is hereby given that any person may not later than August 12, 1980 submit written comments to the Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the Los Angeles, California area.

(Catalog of Federal Domestic Assistance Programs No. 95.001, Small Business Investment Companies)

Dated: July 21, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-22615 Filed 7-25-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0188]

J & D Capital Corp.; Issuance of License

On May 5, 1980, a Notice was published in the Federal Register (45 FR 29653), stating that J & D Capital Corporation located at 12747 Biscayne Blvd. North Miami, Florida 33181, has filed an application with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1980) for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended.

Interested persons were given until the close of business May 20, 1980, to submit their written comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information the SBA has issued License No. 04/04-0188 to J & D Capital Corporation on July 9, 1980.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: July 21, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-22619 Filed 7-25-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0307]

Regional Financial Enterprises, Inc.; Issuance of License To Operate as a Small Business Investment Company

May 1, 1980, a notice was published in the Federal Register (45 FR 29152) stating that Regional Financial Enterprises, Inc., 1111 Summer Street, Stamford, Connecticut 06905 had filed an Application with the Small Business Administration, pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), for a license to operate as a small business investment company.

Interested parties were given until the close of business on May 16, 1980, to

submit written comments on the Application to the SBA.

Notice is hereby given that no written comments were received, and having considered the Application and all other pertinent information, the SBA approved the issuance of License No. 01/01/0307 on July 2, 1980, to Regional Financial Enterprises, Inc. pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: July 21, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-22617 Filed 7-25-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0228]

Retail Capital Corp., Issuance of License To Operate as a Small Business Investment Company

On April 2, 1980, a notice was published in the Federal Register (45 FR 21758) stating that an application had been filed by Retail Capital Corp., Suite 160, 13403 Northwest Freeway, Houston, Texas 77040, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), for a license to operate as a small business investment company (SBIC). Interested parties were given until the close of business April 17, 1980, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other information, SBA issued License No. 06/06-0228 on May 20, 1980, to Retail Capital Corp. to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 21, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-22620 Filed 7-25-80; 8:45 am]

BILLING CODE 8025-01-M

UPPER MISSISSIPPI RIVER BASIN COMMISSION

Notice of Meeting

The 35th Quarterly Meeting of the Upper Mississippi River Basin Commission, 7920 Cedar Avenue South, Suite 210, Minneapolis, Minnesota 55420, 612-725-4690, will be held August 12-13, 1980 at Breezy Point Resort near Brainerd, Minnesota. Registration will be from 10:00 a.m. to 1:00 p.m. on August 12th and the meeting will convene in the Mallard Room at 1:00 p.m. and adjourn at 4:30 p.m. The Commission meeting will reconvene on August 13th at 9:00 a.m. in the Mallard Room. The meeting is expected to include a status report on the Master Plan Study, Committee reports and a slide presentation regarding the Commission's comprehensive planning and priorities process.

Neil S. Haugerud,

Chairman.

[FR Doc. 80-22528 Filed 7-25-80; 8:45 am]

BILLING CODE 8410-02-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 146
Monday, July 28, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:50 p.m. on Tuesday, July 22, 1980, the Board of Directors of the Federal Deposit Insurance Corporation met by telephone conference call to consider an appeal, pursuant to the Freedom of Information Act, from the Corporation's earlier partial denial of a request for records.

In calling the meeting, the Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. Lewis G. Odom, Jr., acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsection (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

Dated: July 22, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1416-80 Filed 7-24-80; 1:45 pm]

BILLING CODE 6714-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

July 23, 1980.

TIME AND DATE: 10 a.m., July 30, 1980.

PLACE: 825 North Capitol Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Power Agenda—457th Meeting, July 30, 1980, Regular Meeting 10 a.m.

CAP-1. Project Nos. 2906 and 2948, Town of New Roads, La. and City of Alexandria, La.
CAP-2. Project No. 3177, Sacramento Municipal Utility District.
CAP-3. Docket No. ER80-452, Florida Power & Light Co.
CAP-4. Docket Nos. ER80-427, ER80-428, ER80-429 and ER80-430, Pennsylvania-New Jersey-Maryland Interconnection, Cleveland Electric Illuminating Co. & Allegheny Power System.
CAP-5. Docket No. ER80-313, Public Service Company of New Mexico.
CAP-6. Docket No. ER76-716, Indiana & Michigan Electric Co.
CAP-7. Docket No. E-7777 (Phase II), Pacific Gas & Electric Co.
CAP-8. Docket No. ES79-7, Idaho Power Co.

Miscellaneous Agenda—457th Meeting, July 30, 1980, Regular Meeting

CAM-1. Docket No. RM79-54, small power production and cogeneration facilities—qualifying status.
CAM-2. Docket No. QF80-6, Power systems engineering, Great Lakes Carbon Corp.
CAM-3. Docket No. QF80-4, Consolidated water power.
CAM-4. Docket No. RM80- , annual report of gas supplies for certain natural gas pipe line companies; Form No. 15.
CAM-5. Docket Nos. RA79-5 and RA80-50, Sabre Refining, Inc.
CAM-6. Docket No. GP80- , section 108 NGPA determinations, BCS Natural Resources Corp., JD80-42000 through JD80-42003 and JD80-42006 through JD80-42013.
CAM-7. Docket No. RA79-18, Orso Cobb.
CAM-8. Docket No. RA80-62, Johnson Oil Co.

Gas Agenda—457th Meeting, July 30, 1980, Regular Meeting

CAG-1. Docket No. TA80-2-15 (PGA80-3, IPR80-3, LFUT80-2 and TT80-2), Mid-Louisiana Gas Co.
CAG-2. Docket No. TA80-2-16 (PGA80-3; IPR80-3), National Fuel Gas Supply Corp.
CAG-3. Docket No. TA80-2-17 (PGA80-3, DCA80-2, IPR80-2, LFUT80-2 and TT80-1), Texas Eastern Transmission Corp.
CAG-4. Docket No. TA80-2-18 (PGA80-3, IPR80-3, DCA80-2, LFUT80-2 and AP80-1), Texas Gas Transmission Corp.
CAG-5. Docket No. TA80-2-47 (PGA80-2a), McCulloch Interstate Gas Corp.
CAG-6. Docket No. RP80-121, United Gas Pipe Line Co.
CAG-7. Docket No. RP80-120, Columbia Gas Transmission Corp.
CAG-8. Docket No. RP80-118, Sea Robin Pipeline Co.
CAG-9. Docket No. RP80-117, Transcontinental Gas Pipe Line Corp.
CAG-10. Docket No. RP80-116, Consolidated Gas Supply Corp.
CAG-11. Docket No. RP80-114, Inter-City Minnesota Pipelines Ltd., Inc.
CAG-12. Docket No. RP80-80, Michigan Gas Storage Co.
CAG-13. Docket No. RP80-84, Eastern Shore Natural Gas Co.
CAG-14. Docket No. TP80-98, Valley Gas Transmission, Inc.
CAG-15. Docket No. RP78-68, United Gas Pipe Line Co.
CAG-16. Docket No. RP78-36, Southern Natural Gas Co.
CAG-17. Docket No. RP80-75, Southern Natural Gas Co.
CAG-18. Docket No. RP80-57, High Island Offshore System.
CAG-19. Docket No. RP75-73, Texas Eastern Transmission Corp.
CAG-20. Docket No. RP71-29, et al. (phase II), United Gas Pipe Line Co.
CAG-21. Docket No. RP77-62, Tennessee Gas Pipeline Co.
CAG-22. Docket Nos. CI80-265, et al., Fin-Oil, Inc. (successor to Wintershall Oil & Gas Co.); Docket No. CI80-266 (CS76-386), Fin-Oil Inc. (successor to Wintershall Oil & Gas Co.); Docket No. CI80-267 (CS76-386), CI80-270 (CS76-386), CI80-271 (CS76-386), and CI80-327 (CS76-386), Fin-Oil Inc. (successor to Wintershall Oil & Gas Co.); Docket No. CI80-288, Arco Oil & Gas Co., division of Atlantic Richfield Co.; Docket No. CI80-198, Arco Oil & Gas Co., division

of Atlantic Richfield Co.; Docket No. CS67-95, et al., estate of Fred Turner, Jr. (Fred Turner, Jr.), et al.; Docket No. CI68-311, Cities Service Oil Co.; Docket No. CI63-1119, et al., Gulf Oil Corp., et al. (Gulf Oil Corp.); Docket No. CI73-201, Mobil Oil Exploration & Producing Southeast, Inc.; Docket No. CI78-504, Arco Oil & Gas Co., division of Atlantic Richfield Co.

CAG-23 Docket No. CI70-126, Columbia Gas Development Corp.

CAG-24. Ferc gas rate schedule Nos. 84, 93, 110, 311, 426, 455 and 594, Gulf Oil Corp.; Docket No. CI80-324, Texaco Inc.

CAG-25. Docket No. RI77-71, N. C. Ginther, et al.

CAG-26. Docket No. RI79-2, Logue & Patterson.

CAG-27. Docket Nos. G-7008 and G-7009, Cities Service Co.

CAG-28. Docket No. TC79-138, North Alabama Gas District.

CAG-29. Docket No. CI72-674, Texas Gas Exploration Corp.; Docket No. CI62-965, Gulf Oil Corp.; Docket No. CP73-72, Southern Natural Gas Co.; Docket No. CP73-123, United Gas Pipe Line Co. v. Humble Oil & Refining Co and Issac Arnold, et al.; Docket No. CI75-420, Chevron U.S.A., Inc.

CAG-30. Docket No. CP79-228, Transcontinental Gas Pipe Line Corp.

CAG-31. Docket Nos. CP80-283 (extension), CP80-305 and CP80-305 (extension) Texas Eastern Transmission Corp.

CAG-32. Docket No. CP80-105, Columbia Gulf Transmission Co.; Docket No. CP80-106, Columbia Gas Transmission Co.; Docket No. CP80-117, Mountain Fuel Supply Co.; Docket No. CP80-118, Mountain Fuel Resources; Docket No. CP80-125, Natural Gas Pipeline Co. of America; Docket No. CP80-127, El Paso Natural Gas Co.; Docket No. CP80-130, Valero Interstate Transmission Co.; Docket No. CP80-131, Northern Natural Gas Co.; Docket No. CP80-132, Tennessee Gas Pipeline Co.; Docket No. CP80-133, Trunkline Gas Co.; Docket No. CP80-134, Panhandle Eastern Pipe Line Co.; Docket No. CP80-137, United Gas Pipe Line Co.; Docket No. CP80-138, Midwestern Gas Transmission Co.; Docket No. CP80-151, Transcontinental Gas Pipe Line Corp.; Docket No. CP80-155, Transwestern Pipeline Co.; Docket No. CP80-156, Texas Eastern Transmission Corp.; Docket No. CP80-163, Northwest Pipeline Corp.; Docket No. CP80-182, East Tennessee Natural Gas Co.; Docket No. CP80-186, Texas Gas Transmission Corp.; Docket No. CP80-219, Southern Natural Gas Co.; Docket No. CP80-230, Mid Louisiana Gas Co.; Docket No. CP80-239, Cities Service Gas Co.; Docket No. CP80-266, Consolidated Gas Supply Corp.

CAG-33. Docket No. CP80-317, National Fuel Gas Supply Corp.

CAG-34. Docket No. CP80-308, Northern Natural Gas Co., a division of Internorth, Inc., Columbia Gulf Transmission Co. and Texas Eastern Transmission Co.

CAG-35. Docket No. CP79-343, Western Gas Interstate Co.

CAG-36. Docket No. CP78-187, Northern Natural Gas Co.

CAG-37. Docket No. CP80-267, Columbia Gulf Transmission Co. and Southern Natural Gas Co.

CAG-38. Docket No. CP80-263, Transcontinental Gas Pipe Line Corp. and Columbia Gulf Transmission Co.

CAG-39. Docket No. CP80-76, Montana-Dakota Utilities Co.

CAG-40. Docket No. CP79-352, Tennessee Gas Pipeline Co., a division of Tenneco, Inc.

CAG-41. Docket No. CP80-278, Great Lakes Transmission Co.

CAG-42. Docket No. CP80-227, Michigan Wisconsin Pipe Line Corp.

CAG-43. Docket No. CP80-231, Panhandle Eastern Pipe Line Co. and Stauffer Chemical Co. of Wyoming.

CAG-44. Docket No. CP70-41, Louisiana Intrastate Gas Corp.

CAG-45. Docket No. CP80-360, Florida Gas Transmission Co.

CAG-46. Docket No. CP68-204, Sugar Bowl Gas Corp.; Docket No. CP80-350, West Lake Arthur Distribution Co.

CAG-47. Docket No. CP79-211, National Fuel Gas Supply Corp.; Docket No. CP77-465, Columbia Gas Transmission Corp. and National Fuel Gas Supply Corp.; Docket No. CP78-305, Columbia Gas Transmission Corp.; Docket No. CP79-324, Tennessee Gas Pipeline Co., a division of Tenneco Inc.; Docket No. CP79-359, Transcontinental Gas Pipe Line Corp.

CAG-48. Docket No. CP80-67, Lone Star Gas Co.

CAG-49. Docket No. CP79-458, Valero Interstate Transmission Co.

CAG-50. Docket No. CP80-234, Columbia Gas Transmission Corp.

CAG-51. Docket No. CP77-421, Transcontinental Gas Pipe Line Corp.

CAG-52. Docket No. CP80-286, Michigan Wisconsin Pipe Line Co.

CAG-53. Docket Nos. CP78-123, et al., Northwest Alaskan Pipeline Co.; Docket No. CP79-56, Northwest Pipeline Corp.; Docket No. CP79-57, El Paso Natural Gas Co.; Docket No. CP79-58, Pacific Interstate Transmission Co.; Docket No. CP79-59, Northwest Alaskan Pipeline Co.; Docket No. CP79-60, Pacific Gas Transmission Co.; Docket No. CP79-170, Northwest Alaskan Pipeline Co.; Docket No. CP78-124, Northern Border Pipeline Co.

Power Agenda—457th Meeting, July 30, 1980, Regular Meeting

I. Licensed Project Matters

P-1. Docket No. E-9530, Pyramid Lake Paiute Tribe of Indians v. Sierra Pacific Power Co.

P-2. (A) Project No. 405, Susquehanna Power Co. and Philadelphia Electric Power Co.; (B) Project No. 1888, York Haven Power Co.; (C) Project No. 1025, Safe Harbor Water Power Corp.; (D) Project No. 1881, Pennsylvania Power & Light Co.; (E) Docket No. , Philadelphia Electric Power Co. and Susquehanna Power Co., Safe Harbor Water Power Co., Pennsylvania Power & Light Co., and York Haven Power Co.

P-3. Project No. 2827, the City of Redding, Calif.; Project No. 2636, the County of Tehama, Calif.

P-4. Project No. 768, City of Colorado Springs, Colo.

II. Electric Rate Matters

ER-1. Docket No. ER80-447, Public Service Co. of Colorado.

ER-2. Docket No. ER80-373, Arkansas Power & Light Co.

ER-3. Docket No. ER80-454, Ohio Edison Co.

ER-4. Docket No. ER80-421, Oklahoma Gas & Electric Co.

ER-5. Docket Nos. ER79-31, ER80-284 and ER80-314, Louisiana Power & Light Co.

ER-6. Docket No. ER80-204, CP National.

ER-7. Docket No. ER80-235, Public Service Co. of New Mexico.

ER-8. (A) Docket No. ER80-450, Kansas City Power & Light Co.; (B) Docket No. ER80-315, Kansas City Power & Light Co.

ER-9. Docket No. ER80-259, Kansas Gas & Electric Co.

ER-10. Docket No. ER80-344, Carolina Power & Light Co.

ER-11. Docket Nos. E-7631, and E-7633, City of Cleveland, Ohio v. Cleveland Electric Illuminating Co.; Docket No. E-7713, City of Cleveland, Ohio.

ER-12. Docket No. ER77-5, and E-9152, Otter Tail Power Co.

ER-13. Docket No. ER77-531, Illinois Power C.

ER-14. Docket No. EL79-10, Wisconsin River Power Co.

ER-15. Docket No. EF79-4021, Sam Rayburn Dam Project.

ER-16. Docket No. ID-1839, H. Russell Smith.

ER-17. Docket No. ID-1840, Frederick G. Larkin, Jr.

ER-18. Docket No. ID-1860, Robert L. Loughhead.

Miscellaneous Agenda—457th Meeting, July 30, 1980, Regular Meeting

M-1. Docket No. RM79-28, amendments to part 32 of the regulations under the Federal Power Act; regulation governing interchange energy transmision rates for section 202(c) emergencies.

M-2. Reserved.

M-3. Reserved.

M-4. Docket No. RM79-42, procedures governing the assessment of civil penalties under the NGPA.

M-5. Post employment conflict: Petition for waiver.

M-6. Docket No. RM80-10, rule required under section 202 of the Natural Gas Policy Act of 1978.

M-7. Docket No. RM79-47, Statewide exemptions from incremental pricing.

M-8. Docket No. RM80-21, regulations under section 110 of the Natural Gas Policy Act of 1978.

M-9. Docket No. RM80-14, final regulations under section 105 and 106(b) of the Natural Gas Policy Act of 1978.

M-10. Docket No. RM79-40, determination of alternative fuels for essential agricultural users.

M-11. Docket No. GP79-84, State of Utah, NGPA section 108 determinations, Gilliland & Fix, Whyte—State No. 2 well, JD79-12345, Legg Resources, Ltd., Joyce—State No. 1 well, JD79-12346.

M-12. Docket No. RO79-9, Mobile Oil Corp.

M-13. Docket No. RO79-6, R. H. Engelke.

M-14. Docket No. RA79-30, Young Coal Co.

M-15. Docket No. RA79-29, Husky Oil Co., et al.

Gas Agenda—457th Meeting, July 30, 1980, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket No. OR78–5, Northville Dock Pipe Line Corp. and Consolidated Petroleum Terminal, Inc.
RP–2. Docket No. RP74–86 and RP76–97, Gulf Energy and Development Corp.
RP–3. Docket No. RP80–53, Arkansas Louisiana Gas Co.

II. Producer Matters

CI–1. Docket No. RI73–60, Mitchell Energy Corp.
CI–2. Docket Nos. CI77–298 and IN79–3, Tenneco Inc., et al.; Docket Nos. G–3973, G–7360, G–11936, G–11943, and G–11946, Mobile Oil Corp.

III. Pipeline Certificate Matters

CP–1. (A) Docket No. RM78–4, proposal by the Federal Energy Regulatory Commission relating to the incorporation of compensation provisions in curtailment plans; Docket Nos. RP71–130, RP72–58, and RP75–111, Texas Eastern Transmission Corp.; Docket No. RP72–89, Columbia Gas Transmission Corp.; (B) Docket Nos. RP72–99 and TC79–6, Transcontinental Gas Pipe Line Corp.; (C) Docket Nos. RP74–49 and RP76–34, Northwest Pipeline Corp.; (D) Docket No. RP72–6, El Paso Natural Gas Co.
CP–2. Docket No. TC80–7, Michigan Wisconsin Pipe Line Co.
CP–3. Docket No. TC79–8, Transcontinental Gas Pipe Line Corp.
CP–4. Docket No. CP80–135, Northern Natural Gas Co. (respondent); Docket No. CP79–423, Lloyd Crum (applicant).
CP–5. Docket No. CP80–435, Alaska Northwest Natural Gas Transportation Co.; Docket Nos. CP78–123, et al., Nortwest Alaskan Pipeline Co., et al.; Docket No. CP79–56, Northwest Pipeline Corp.; Docket No. CP79–57, El Paso Natural Gas Co.; Docket No. CP79–58, Pacific Interstate Transmission Co.; Docket No. CP79–59, Northwest Alaskan Pipeline Co.; Docket No. CP79–60, Pacific Gas Transmission Co.; Docket No. CP79–170, Northwest Alaskan Pipeline Co.; Docket No. CP78–124, Northern Border Pipeline Co.; Docket No. RM78–12, incentive rate of return for the Alaskan Natural Gas Transportation System.
CP–6. Docket Nos. CP78–123, CP79–59, and CP79–170, Northwest Alaskan Pipeline Co.; Docket No. CP78–124, Northern Border Pipeline Co.; Docket No. CP79–56, Northwest Pipeline Corp.; Docket No. CP79–57, El Paso Natural Gas Co.; Docket No. CP79–58, Pacific Interstate Transmission Co.; Docket No. CP79–60, Pacific Gas Transmission Co.; Docket No. CP79–396, Northern Natural Gas Co.; Docket No. CP79–399, ANB Gas Co.; Docket No. CP79–400, United Gas Pipe Line Co.; Docket No. CP79–403, Panhandle Eastern Pipe Line Co.

Kenneth F. Plumb,
Secretary.

[S–1418–80 Filed 7–24–80; 10:11 am]
BILLING CODE 6450–01–M

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NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, August 6, 1980.

PLACE: Board hearing room, eighth floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board action taken by notation voting during the month of July, 1980.
(2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary; telephone (202) 523–5920.

Date of notice: July 18, 1980.

[S–1419–80 Filed 7–24–80; 11:27 am]
BILLING CODE 7550–01–M

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[NM–80–27]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 10:30 a.m., Thursday, July 24, 1980.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, S.W. Washington, D.C. 20594.

STATUS: Closed under exemption 9B of the Government in the Sunshine Act.

MATTER TO BE CONSIDERED:

A majority of the Board has determined by recorded vote that the business of the Board requires that the following item be discussed on this date and that no earlier announcement was possible:

Discussion of Board strategy for the Rail Rapid Transit Safety Hearing to be held July 28 and 29, 1980.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–472–6022.

July 24, 1980.

[S–1421–80 Filed 7–24–80; 12:42 pm]
BILLING CODE 4910–58–M

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[NM–80–28]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Wednesday, July 30, 1980.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: The first item on the agenda will be open; the second will be closed under Exemption 2 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED: A majority of the Board has determined by recorded vote that the business of the Board requires that the following items be discussed on this date and that no earlier announcement was possible.

1. *Briefing* on planned accident data systems.
2. *Discussion* re designation of Acting Chairman.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–472–6022.

July 24, 1980.

[S–1422–80 Filed 7–24–80; 12:43 pm]
BILLING CODE 4910–58–M

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SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 48020, July 14, 1980.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, July 14, 1980.

CHANGES IN THE MEETING: Additional item. The following additional item will be considered at a closed meeting scheduled for Thursday, July 24, 1980, following the 10:00 a.m. open meeting:

Regulatory matter bearing enforcement implications.

Commissioners Loomis, Evans, and Friedman determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Wojtas at (202) 272–2178.

July 23, 1980.

[S–1420–80 Filed 7–24–80; 11:27 am]
BILLING CODE 8010–01–M

Federal Register

Monday
July 28, 1980

Part II

Environmental Protection Agency

Assessment and Collection of Noncompliance Penalties by EPA and Approval of State Noncompliance Penalty Program

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 66 and 67

Assessment and Collection of Noncompliance Penalties by EPA and Approval of State Noncompliance Penalty Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The regulations below establish the procedures by which EPA and participating States will assess and collect noncompliance penalties under Section 120 (42 U.S.C. 7420) of the Clean Air Act (42 U.S.C. 7401 et seq.) ("the Act"). The purpose of these mandatory penalties is to recover the costs a source avoids by not complying with Clean Air Act requirements. These regulations define which sources are subject to the noncompliance penalty, how the penalty is calculated, and the criteria for obtaining an exemption. The regulations also set forth the means by which the States may be delegated the authority to administer the noncompliance penalty program.

DATES: Effective date October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Robert Homiak, Attorney, Division of Stationary Source Enforcement (EN-341), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 755-2580.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 (Pub. L. 95-95) added Section 120 to the Clean Air Act (42 U.S.C. 7420). This section requires promulgation of regulations for the assessment and collection of noncompliance penalties against stationary source violators of certain requirements of the Clean Air Act. To calculate the economic benefits of noncompliance, EPA has developed a mathematical model and computer program that is set forth in Appendices A-C, below. EPA will supply, at nominal cost, a listing of this computer program for time sharing computers that calculate the penalty. This program listing may be obtained by writing to Director, Division of Stationary Source Enforcement at the address listed above.

Summary of Final Regulations

I. Backgrqund

The majority of the Nation's 23,000 major sources of air pollution are in compliance with State and Federal Clean Air Act requirements, but a substantial number are not. Many of these noncomplying sources emit particularly high levels of pollutants. For example, many noncomplying steelmaking facilities emit great quantities of particulate matter, while noncomplying electric power plants are significant sources of sulfur dioxide emissions. In many cases, these violators have not yet complied with applicable deadlines (usually mid-1975) related to attainment of National Ambient Air Quality Standards for the protection of public health.

Sources that have violated the law by failing to install and operate pollution control devices or to take other steps necessary to achieve compliance have enjoyed, either directly or indirectly, an economic advantage. The possibility of economic savings constitutes an incentive to delay or avoid compliance. Before the 1977 Amendments to the Clean Air Act, the regulatory and enforcement measures authorized by the Act did not include direct economic incentives to comply promptly. Section 120, added by the 1977 Amendments, required EPA to assess and collect an administrative penalty designed to capture the economic savings resulting from certain periods of noncompliance. Beginning from the date the source receives a notice of noncompliance, a penalty will be assessed to recover the costs avoided thereafter by a source as a result of its failure to comply.[1]

On March 21, 1979, EPA published its proposed noncompliance penalty regulations and economic model (44 FR 17309). On June 15, 1979, EPA published a supplementary Notice (44 FR 34524). The supplementary Notice listed some minor errors in the computer program, and reprinted EPA's proposed Instruction Manual (Appendix B), portions of which were not reproduced clearly in the original proposal. The supplementary Notice also proposed for public comment an alternate data source for determining the discount rate (one of the model parameters) and the appropriate amount of the initial penalty payment.

EPA received numerous comments on these proposals. These comments are summarized and discussed below, and in a Responses to Comments document that precedes Appendix A, and a Responses to Comments document that has been placed in the public docket. Where appropriate, changes have been made to the regulations and economic model.

II. Applicability of Regulations

A. Applicability to Sources. Section 120 requires that noncompliance penalties be assessed against three classes of sources. First, penalties must be assessed against any major stationary source that is violating any emission limitation, emission standard or compliance schedule under an applicable State implementation plan (SIP). The only exception to this rule is for violations of sulfur oxides emission limitations by primary nonferrous smelters that have received primary nonferrous smelter orders under Section 119 of the Act.

The second class of sources subject to the penalty is stationary sources (regardless of size) that are violating any emission limitation, emission standard, standard of performance or other requirement established under Section 111 (New Source Performance Standards) or Section 112 (National Emission Standards for Hazardous Air Pollutants) of the Act.

Finally, a source may be required to meet interim requirements or compliance schedules contained in an extension, administrative order, consent decree, court order, or suspension. Failure to comply with any of these interim requirements or compliance schedules will subject the source to penalties for such failure. This includes a primary nonferrous smelter that is violating any interim requirement of a primary nonferrous smelter order.

Sources on Consent Decrees

The final regulations are applicable to sources on consent decrees. Comments argued that sources that have agreed to Federal or State consent decrees should be automatically exempted from the penalties, either because to do otherwise constituted impermissible EPA review of court action or because an exemption is implied by the provisions of Section 120(a)(2)(A)(iii).[2]

EPA disagrees with both arguments. Section 120(a)(2)(A)(i) provides that a major stationary source in violation of a SIP requirement is subject to the penalty

[1] The noncompliance penalty is designed to recover the economic benefit gained by a noncomplying source from the date on which it receives a notice of noncompliance until final compliance is achieved. In order to capture savings realized from earlier noncompliance, EPA may seek penalties in a civil judicial action pursuant to Section 113(b). The relationship between § 113 and § 120 penalties is discussed below.

[2] Section 120(a)(2)(A)(iii) provides that a source that violates "any interim emission control requirement or schedule of compliance under such . . . consent decree" shall pay a noncompliance penalty equal to the economic value of noncompliance with the interim requirement or schedule contained in the consent decree. Commenters argued that since Congress provided that sources violating consent decrees will be assessed penalties, Congress must have intended that sources in compliance with decrees be automatically exempted.

whether or not it is subject to a consent decree. This is logical since a source enjoys an economic benefit from delay even if the delay is court sanctioned and because separate provision is made to exempt those delays for which assessment of a penalty would be inequitable.

Section 120(a)(2)(A)(iii) does not by implication repeal what Congress provided in Section 120(a)(2)(A)(i), but imposes an additional requirement. It requires the recovery of savings resulting from failure to comply with any interim requirements contained in the decree, even if these requirements are not part of the final compliance strategy. For example, a noncomplying source that will meet SIP SO_2 requirements by installing a scrubber will be assessed a penalty based upon the savings realized by not having installed this scrubber after the date of notice of noncompliance. (Section 120(a)(2)(A)(i)). Installation of the scrubber and final compliance, however, may take several years. If the same source is required by the consent decree to reduce emissions in the interim (e.g., by burning lower sulfur fuel), the costs associated with meeting the interim requirement, assuming it is not part of the final compliance strategy, will not be considered in calculating the initial penalty. Failure to purchase and burn such fuel, however, results in an economic benefit independent of that gained by not having installed the necessary scrubber. Subsection 120(a)(2)(A)(iii) requires EPA to recover this economic benefit.

As noted below, however, sources that have agreed to, and are meeting a compliance schedule contained in a consent decree will generally be assigned a lower priority for Section 120 actions. In addition, a source that has agreed to a Federal or State consent decree may be eligible to petition for an exemption based upon an inability to comply for reasons entirely beyond its control. Eligibility for such exemptions is discussed below.

"Major Stationary Source"

EPA's proposed noncompliance penalty regulations defined "major stationary source" as one that at full capacity, and in the absence of pollution control equipment, emits or has the potential to emit one hundred tons per year or more of any air pollutant regulated under the Act. Potential emissions were to be calculated assuming operation at maximum capacity in the absence of control equipment. This definition was consistent with EPA's Prevention of Significant Deterioration (PSD) regulations promulgated on June 19, 1978 (40 CFR 52.21(b)(3)).

On December 14, 1979, the U.S. Court of Appeals for the District of Columbia rejected EPA's definition of "major stationary source" in the PSD regulations. In *Alabama Power Co.* v. *Costle*, (No. 78-1006 (D.C. Cir.)), the Court held that, for purposes of PSD preconstruction review, a source is "major" only if it actually emits 100 tons per year or more, or has the potential, when operating at full design capacity, to emit that amount. Design capacity should take into account both the maximum productive capacity of the source and the design of air pollution controls.

The *Alabama Power* court also addressed the issue whether fugitive emissions could be counted in determining whether a particular facility is a "major stationary source." The court held that EPA must undertake rulemaking in order to include fugitive emissions.

On September 5, 1979 the Agency proposed revisions to its PSD regulations (44 FR 51924). New definitions of "major stationary source" and "potential to emit" were proposed in accordance with the *Alabama Power* requirement. Included in that proposal is a new fugitive emission regulation which would provide for inclusion of fugitive emissions from 26 categories of industrial sources in determining their status as major sources.

The noncompliance penalty regulations promulgated today include definitions of "major stationary source" and "potential to emit" consistent with those contained in EPA's proposed PSD rulemaking. (Should those definitions change as a result of comment, corresponding amendments will be proposed to these regulations). Thus, for purposes of Section 120, a facility is a major stationary source if, at the time it receives a notice, it has actual emissions of 100 tons per year or more of any air pollutant regulated under the Act or has the capability, a maximum design capacity, to do so considering any air pollution control equipment which is in place. Fugitive emissions will be considered in determining annual emissions for those stationary sources whose fugitive emissions are regulated by the applicable State implementation plan, to the extent that such emissions are quantifiable.

EPA may determine a source's annual emissions from emissions data collected over a period of time shorter than one year. If this data, when projected over one year, would exceed 100 tons, EPA will consider the source to be "major" for purposes of Section 120.

B. Applicability to Acts and Failures to Act. In most instances, noncompliance results from a failure to install control equipment or to use appropriate fuels. In some cases, however, noncompliance results from failure to operate and maintain pollution control equipment or other process equipment or from failure to follow other necessary work practices so as to ensure continuous compliance. Both types of violation can lead to assessment and collection of a noncompliance penalty.

C. Setting Priorities. EPA must establish priorities for conducting noncompliance penalty actions if it is to implement the program in a rational and consistent manner. EPA's limited resources are insufficient to implement the stringent procedural requirements of the statute simultaneously for the large number of sources that are potentially subject to penalties.

Section 120 requires the Administrator to issue a notice of noncompliance within 30 days after discovering a violation. Receipt by the source of the notice triggers certain procedural deadlines and begins the accrual of penalties under these regulations. The source has 45 days to calculate its penalty or to petition for an adjudicatory hearing. EPA then has 30 days to review the source's submittal and, if necessary, grant a hearing. Final decisions on petitions must be rendered within 90 days of the hearing request.

EPA estimates that approximately 2,000 major stationary sources may be in violation of applicable Clean Air Act requirements and thus potentially subject to noncompliance penalty actions. This number includes a large number of sources that have never achieved initial compliance. Were all sources believed to be liable for noncompliance penalties to receive notices of noncompliance upon the effective date of these regulations, the resulting volume of calculations and petitions would far exceed the resources available to process them within a reasonable time. EPA believes that Congress did not intend to disrupt, reduce, or suspend implementation of other provisions of the law related to environmental protection when it enacted Section 120. A severe curtailment of other programs would result, however, if EPA attempted to proceed simultaneously against all violating sources within the statutory time frames. One important example of this potential disruption is the stationary source enforcement program itself, where many judicial actions are now underway to obtain injunctive relief

against violators pursuant to Section 113. Reassigning resources now devoted to that effort would adversely affect EPA's ability to assure that violators are placed on, and complying with, enforceable compliance schedules.

EPA will, therefore, implement the noncompliance penalty program in a manner which will maximize the use of limited resources. EPA will proceed initially against sources that have never achieved compliance with Clean Air Act requirements and are not complying with enforceable compliance schedules contained in federal or EPA-approved State consent decrees and administrative orders. Other factors EPA will consider in setting priorities include the size of the economic benefit enjoyed, the nature and amount of the source's emissions, and whether the emissions are causing or contributing to a nonattainment situation. EPA will not issue notices of noncompliance to sources which it considers to be economically unable to both pay the penalty and meet pollution control requirements without shutting down, and to sources it considers probably entitled to an exemption.

Proceeding initially against sources that have not agreed to enforceable compliance schedules is consistent with one of the principal purposes of Section 120, that of achieving compliance. Source owners that are complying with enforceable compliance schedules have begun to reduce the level of economic benefits attributable to noncompliance, whereas the source owner that has not agreed to a schedule continues to maximize these economic benefits of delay. This priority scheme also is consistent with the philosophy of the Act's enforcement mechanisms, which is to achieve early compliance with air pollution control requirements. Taking account of the nature and impact on ambient air quality of the source's emissions is consistent with EPA's mandate to protect the public health. Therefore, violating sources that are most severely impacting the public health could generally expect to receive higher enforcement priority than those with minor or insignificant impacts. Similarly, EPA believes it is appropriate to recognize that the imposition of penalties against sources in financial difficulty, but which are moving towards compliance, could slow down the source's compliance efforts by tying up funds that otherwise would have been used for pollution control equipment. EPA does not intend to implement the noncompliance penalty program in a way that will force the closure of such sources.

Finally, EPA generally will refrain from issuing notices of noncompliance where it appears certain that a source is entitled to an exemption from the penalty. It will also allow the source to avoid the inconvenience and possible adverse publicity or impact on its ability to secure capital that might arise from having to respond to a notice of noncompliance. If probable entitlement to an exemption is not clear, a notice of noncompliance ordinarily will issue.

D. Applicable Dates. 1. *Implementation of the Regulations.*— The noncompliance penalty regulations promulgated today will become effective October 27, 1980. EPA believes it would be desirable to delay actual implementation for a reasonable period of time, and has therefore decided to delay general implementation of the program until January 1, 1981. This action has been taken for two reasons. First, it will take several months for the Agency to make available and train the personnel to run such a far-reaching, procedurally complex program.

Additionally, implementation of this program must be coordinated with EPA's administration of its judicial enforcement program under Section 113 of the Act. EPA's decision to set priorities for notice issuance based upon the source's commitment to an enforceable compliance schedule under Section 113 should encourage many sources to request schedule negotiations. Delaying the implementation of the noncompliance penalty program until January 1, 1981, should enable EPA to complete many of these negotiations. For sources that are unwilling to negotiate, EPA will use this period to obtain additional evidence of violation. Finally, EPA will use this time to work closely with those States that are interested in accepting a delegation of authority to administer the noncompliance penalty program.

The result of all of these activities will be that on January 1, 1981, EPA and the States will be in an improved position to proceed expeditiously against the maximum number of violating sources. This is consistent with the legislative intent of Section 120.

Comments argued that Section 120, as a matter of law, prohibits EPA from assessing noncompliance penalties prior to 18 months after promulgation of the final regulations. These comments argued that the Act required EPA to promulgate final regulations no later than February 7, 1978. Since the earliest date for imposition of the penalties was to have been August 7, 1979, it was asserted that Congress must have intended that sources be given 18 months to study the final regulations prior to assessment of the penalty.

EPA disagrees. There is nothing in the Act or legislative history which indicates that EPA's authority to assess penalties as of August 7, 1979, is dependent upon having promulgated final regulations 18 months earlier. Rather, the August 7, 1979, date has independent significance as the date on which the two year grace period permitted by Congress in the 1977 amendments came to an end.

2. *Relationship Between Civil and Noncompliance Penalties.*—Delaying the implementation of this rulemaking could have the effect of allowing some sources to continue to benefit from their noncompliance during the period prior to January 1, 1981. To minimize this possibility, EPA has amended its Civil Penalty Policy applicable to civil judicial actions pursuant to Section 113 of the Clean Air Act. As originally promulgated, that policy provided that EPA would seek to recapture the economic value of noncompliance from August 7, 1977, to August 7, 1979. Certain factors besides economic benefit could be considered to mitigate or increase the penalty as appropriate. The economic benefit attributable to delayed compliance after August 7, 1979, was to be recaptured in a noncompliance penalty assessment pursuant to Section 120. The amendment to the Civil Penalty Policy provides that, for purposes of determining Section 113 civil penalties, EPA will calculate the economic benefit of noncompliance to a source owner until January 1, 1981, instead of the original August 7, 1979 date. Thus, there will still be a strong incentive for a source to come into compliance expeditiously in order to minimize civil penalties pursuant to Section 113(b).

E. Issuance of Notices and Commencement of Penalty Period. EPA has not issued any notices of noncompliance to date and will not issue any such notices until after January 1, 1981. The penalty will be calculated from the date a source receives its notice of noncompliance. This represents a change from EPA's March 21 proposal. The proposal was based upon the language of Section 120(d)(3)(C)(ii), which provides that the penalty is calculated from the date of issuance of a notice of noncompliance. Comments received pointed out that, because of possible delays in mail delivery, a source could have fewer than 45 days in which to calculate a penalty, challenge the notice of noncompliance, or petition for an exemption. The change made today will allow all sources the 45 days provided by the Act to submit a

response to the notice. Calculating penalties from receipt of the notice should have only an insignificant effect, if any, on the amount of the penalty actually paid. The penalty is calculated on a monthly basis, with the amount of the penalty dependent upon the number of months the source is out of compliance. Since only a small time difference should ever exist between issuance and receipt of the notice, the number of months of noncompliance will be unaffected.

As provided in Section 66.12(b), all notices will be transmitted either by personal service, or by registered or certified mail, return receipt requested. Thus, there should be no uncertainty about the date on which the penalty begins to accrue and from which the 45 day period for response begins to run.

F. The Effect of SIP Revisions. 1. *Effect of Section 120(g).*—As noted in the March 21 proposal, Section 120(g) provides, in effect, that the earliest date for imposition of penalties based on violations of SIP requirements approved or promulgated by EPA after August 7, 1977, is the date of promulgation, or the date on which the source must demonstrate compliance with the new requirement, whichever is later, but in no event later than three years after the approval or promulgation of the new requirement. The time for final compliance will be specified in the SIP itself. If the SIP requires final compliance at a future date, the source will not be subject to noncompliance penalties until that future date, provided it satisfies any interim or incremental requirements specified in the SIP. If the SIP revision requires that the source achieve final compliance immediately, the source will be potentially liable for violations of these requirements as of the date of receipt of a notice of noncompliance or the effective date of the SIP regulation, whichever is later.

Comments received by EPA argued that assessing penalties against sources subject to immediately effective regulations would be unfair since immediate compliance might not be possible.

EPA has encouraged States submitting SIP revisions that impose new or more stringent emission limits to include compliance schedules in the compliance regulations and to provide for a future date for final compliance which is as expeditious as practicable. Nothing in the Act, however, prohibits a State from requiring that a source comply immediately and Section 116 reserves this determination to the States. If a State chooses to submit an immediately effective regulation that is approved by EPA as part of the SIP, Section 120(g) clearly provides that a source violating that regulation is subject to the noncompliance penalties.

A source faced with an immediately effective SIP may, in some circumstances, qualify for an exemption for inability to comply for reasons entirely beyond the source's control. In order to petition for this exemption, the source must have received an administrative order issued or approved by EPA, or an EPA-approved State or Federal consent decree. All exemption requests will be evaluated on a case-by-case basis in accordance with Subpart D of these regulations.

Alternatively, a source unable to comply with an immediately effective SIP requirement might seek a variance from the State which imposes an expeditious compliance schedule. If this variance were approved by EPA as a formal SIP revision under Section 110 of the Act, it would amend the SIP and change the date for compliance with the immediately effective requirement. To obtain EPA approval, the State would have to demonstrate that granting the variance would not prevent the attainment and maintenance of the national ambient air qualify standards as required by Section 110 of the Act and that the new compliance date was as expeditious as practicable. Upon approval by EPA, the source, if in compliance with the provisions of the variance, would not be subject to any additional noncompliance penalties.

2. *Applicable Dates for Carbon Monoxide And Ozone Requirements.*—As noted in the March 21 proposal, Section 120(g) of the Act provides that, in the case of new, more stringent requirements approved or promulgated by EPA after August 7, 1977, the date for imposition of a noncompliance penalty could not be later than three years after approval or promulgation by EPA of the new requirement. EPA also pointed out in the proposal that Section 120(g) appears to conflict with Section 172(a)(2) of the Act, which provides that States with areas which will not attain the national ambient standards for carbon monoxide or ozone by 1982 must revise their SIPs by the beginning of 1982 to show attainment by the end of 1987. EPA reasoned that major stationary sources subject to requirements under the 1982 SIP revisions could be allowed until as late as the end of 1987 to comply with those requirements, and that it would be inconsistent with that to interpret Section 120(g) to apply noncompliance penalties to them three years after approval of the 1982 SIP, *i.e.*, approximately mid-1985. The resolution of this apparent conflict proposed by EPA was that Section 172(a)(2) was the more specific provision and should govern. EPA therefore proposed not to impose penalities after mid-1985 on sources that have a later compliance date approved under the 1982 SIP.

After considering the issue further and evaluating the comments received, EPA has decided that Section 120(g) is the more specific provision, not Section 172(b)(2). The latter section addresses *attainment* of national ambient air quality standards; it does not mention sources' *compliance* with SIP requirements. Section 120(g) directly addresses compliance requirements for sources covered by the 1982 SIP in providing that noncompliance penalities are applicable beginning three years after SIP approval or promulgation.

The 1987 attainment deadline in Section 172 does not necessarily mean that Congress intended for major stationary sources to have until as late as 1987 to comply with requirements imposed in 1982. Though it is true that attainment by the end of 1987 will be accomplished, in part, by major stationary sources complying with necessary emission requirements, it is apparent from Section 172 and related sections in Part D that many sources would be necessary to show attainment. It is also apparent from Part D and its legislative history that Congress adopted the 1987 deadline principally to give States and localities considerable time to solve difficult and novel problems involving major shifts in urban transportation uses.

EPA must harmonize statutory provisions as much as possible, however, and considers that the relationship of Section 120(g) and Section 172(b)(2) requires further study. Section 120(g) may mean that no major stationary source regulated under a 1982 SIP may legally have a compliance date later than three years from approval or promulgation of the SIP, that a source may have a lengthier compliance schedule in the SIP but must be assessed the value of economic savings after three years even if in compliance with its schedule, or that (as in the proposal) the penalties may not be imposed three years after approval or promulgation of the SIP if a source has a lengthier compliance schedule under the SIP.

The Agency will announce a final interpretation and policy on applying noncompliance penalities to 1982 SIP sources in time to provide the States and other interested persons with guidance necessary for preparing those SIPs. At this time, EPA believes that the only essential action on this issue is the withdrawal of its proposed

interpretation that would have barred applying noncompliance penalties to 1982 SIP sources with compliance schedules longer than three years from approval or promulgation.

3. *Continuity of Existing SIP Requirements.*—SIP revisions submitted pursuant to the requirements of Part D of the Act (Nonattainment Areas) are expected to establish requirements for some sources that are more stringent than existing requirements. As EPA stated on April 4, 1979, any source subject to new, more stringent, SIP requirements must at least meet the requirements of the predecessor SIP until such time as it has demonstrated compliance with the new, more stringent, requirements. (*See,* 44 FR 20374). Keeping the predecessor SIP requirements in effect is necessary to prevent sources from operating uncontrolled or with less effective controls than now required while moving towards compliance with the new regulations. Violations of these pre-existing requirements will make the source subject to noncompliance penalties.

As was also noted, a narrow exception to this rule would occur when the new SIP regulations require control equipment that is incompatible with the continued operation of control equipment already installed. In such a case, the source may be excused from meeting the earlier SIP if, and only so long as, it is physically impossible to keep the existing equipment in operation while simultaneously installing the new device. This exception will be narrowly construed to apply only to the period during which an actual physical impossibility exists, (e.g., not during the design and contract phases of a new compliance schedule). Similarly, a source that was operating uncontrolled at the time the new requirement was adopted would normally not be eligible for this exception.

4. *Pending SIP Revisions.*—The final regulations authorize the assessment of penalties where a source is in violation of currently applicable requirements. Commenters argued that EPA should not assess noncompliance penalties against a source for which a SIP revision is pending, if the source would be in compliance with the revised SIP. EPA disagrees. Until a SIP revision is formally approved by EPA, the source is under a legal obligation to comply with the SIP that is in effect. Failure to maintain compliance with the effective SIP potentially subjects the source to noncompliance penalties. However, lower priority for issuing a notice of noncompliance might be given to a source that would be in compliance with the proposed SIP revision, provided that EPA determines that there is good reason to assume that the proposed revision is approvable (i.e., that it conforms to all requirements of Section 110 of the Act.)

5. *Stays of SIP Provisions.*—Commenters argued that EPA may not assess a noncompliance penalty based upon violations of a SIP provision that has been judicially stayed by a State court. A SIP that has been stayed, they argue, is of no effect and cannot form the basis of an alleged violation.

EPA is studying this issue further in light of the recent District Court opinion in *Illinois* v. *Commonwealth Edison Co.* (Civ. No. 78 C 2675, N.D. Ill. Feb. 19, 1980), and will announce its position as soon as this analysis is completed.

III. Procedures for Assessment, Calculation and Payment of the Noncompliance Penalty

A. Issuance of Notice of Noncompliance. Receipt of an EPA or State-issued notice of noncompliance is the trigger for assessing and collecting the noncompliance penalty. The notice will inform the source of its duty to calculate the amount of its penalty and schedule of payments as required by Section 120(b)(4)(A) (based on instructions contained in an enclosed Manual and Technical Support Document), and of its right to petition for a hearing to challenge the finding of noncompliance or to claim an exemption. The source must, within forty-five days of receipt of the notice, either calculate the penalty and payment schedule, or submit such a petition. In conformity with the structure of the Act, EPA will require that the source owner's penalty calculation demonstrate that compliance will be achieved as expeditiously as practicable.

Where a source does not properly submit data adequate to support its penalty calculation and schedule, EPA may enter into a contract to determine the amount of the penalty and the payment schedule applicable for that source. EPA's proposed regulations provided that the costs of such a contract would automatically be added to the amount of the source's penalty. Comments received generally argued that automatic imposition of these costs would be unwarranted.

The decision to impose such costs is discretionary, and the final regulations have been amended accordingly. In exercising its discretion, however, EPA will generally add these costs to the amount of the penalty.

B. Calculation of the Penalty. 1. *Components of the Penalty.*—Section 120 of the Act provides for a penalty of not less than the economic benefit of delay to the owner or operator of the source. The Act specifies that, in determining this benefit, EPA consider three components: (1) the quarterly equivalent of the capital costs avoided; (2) the operation and maintenance costs avoided; and (3) "any additional economic value which such a delay may have for the owner or operator of such source." [3]

The economic model proposed in the March 21 Federal Register takes into account the first two components described by Congress, but does not take into account the third component, i.e., "any additional economic value".

EPA believes that, at present, it is not possible to quantify and calculate the additional economic value of noncompliance in an administratively manageable fashion. Should it become evident, however, that the additional values not described by the model are in fact so calculable, EPA will propose for public comment appropriate changes to the economic model.

Section 120(d)(3)(A) of the Act specifies that all penalty payments after the first payment must be equal. The legislative history of the Act indicates that this provision should be interpreted as equality in real dollar terms. That is, if inflation is expected to cause costs to escalate, that escalation ought to be reflected in the noncompliance penalty (123 Con. Rec. S. 13698 (daily ed. Aug. 4, 1977)). A penalty that does not rise with expected inflation, but merely averages inflation, would over-recover the savings from noncompliance in the early years of the penalty and under-recover the savings in the final years. Therefore, the model adopted by the regulations automatically escalates each quarterly assessment in an amount equal to the quarterly inflation rate.

2. *The Model.*—EPA's model calculates the economic benefit of

[3] The first component arises because owners of sources that have not invested in required air pollution controls have had the opportunity to invest their funds instead in projects that yield a direct economic benefit to the firm. The second component of savings from delayed compliance results from avoidance of the operation and maintenance costs that would have been incurred if the source had complied. These include labor, raw materials and energy costs, as well as any other expenditures directly associated with the operation of the pollution control equipment. In addition, certain operation and maintenance costs may be required to achieve compliance even where no pollution control equipment is required. Delaying compliance means that these expenditures have been avoided and that the source owner had the opportunity to invest these funds in projects yielding a direct economic benefit. The noncompliance penalty recovers these savings.

noncompliance by comparing two cash flows, that which the source would have experienced had it achieved compliance on the date it received a notice of noncompliance, and that which it is estimated it will experience as a result of its delay. Because these cash flows occur at different times, a basis of comparison is provided by discounting them to their present value equivalents. The model then calculates the difference between these two cash flows and the proper quarterly payment schedule that the source must follow. The same model is used to make a final calculation when the source has achieved compliance. (The model is explained in greater detail in the Technical Support Document, Appendix A to these regulations.)

3. *Conclusive Effect of EPA's Model.*—The model established by these regulations will be the only model used to compute the penalty. Any penalty calculation differing from the one obtained by using EPA's model will not be accepted. Comments argued that EPA's model should be of presumptive, rather than conclusive effect and that if another model more closely approximated the actual costs avoided by noncompliance, EPA should accept that model or those results.

EPA disagrees. There is nothing in the Act or legislative history which indicates that sources should be free to use methods of calculation that are inconsistent with those developed by EPA. Use of other models that achieved similar results would mean duplication of effort and would unduly complicate the task of verification. EPA analysis of other models showed in addition that some alternative models did not satisfy the intent of Section 120. Some models proceeded on the assumption that the penalty should be limited to the amount of benefit from delay ultimately experienced by the source's shareholders, while others computed short-term benefits only. These models are discussed in greater detail in the responses to comments.

4. *Inputs to the Model.*—A separate set of comments resulted from EPA's designation of sources for inputs. The model itself utilizes twelve financial parameters, (1) the firm's projected capital investment schedule, (2) its projected schedule of operation and maintenance expenses, (3) the investment tax credits and (4) depreciation-related tax benefits associated with the installation of pollution controls, (5) the useful life of the control equipment, (6) the firm's marginal income tax rate, (7) an inflation rate, (8) discount rate, (9) interest rate, (10) preferred stock dividend rate, and the portion of the firm's long-term financing provided by (11) equity and (12) preferred shareholders and debtholders. These parameters are based on generally accepted principles of financial and economic theory. The impact of each of these inputs on the penalty, and the sources for obtaining them are discussed in detail in the Technical Support Document.

Six of the parameters listed above are specific to the noncomplying source. The remaining parameters are based on industry or national averages. EPA will require the use of a specific industry average for the inflation rate and the rate of return on shareholder's equity and a national average for useful life, interest on debt, and rate of return on preferred stock. For the discount rate the model uses the higher of the industry average or all manufacturing average rate of return on shareholder equity. Comments argued that sources of inputs other than those designated by EPA should be used. It was argued, for instance, that use of an historical rate of return on equity does not provide an accurate measure of the investment opportunities faced by a particular noncomplying source.

EPA disagrees. The noncompliance penalty is designed to recover the long term opportunity costs avoided by the noncomplying firm. This requires an analysis of the investment opportunities available to a source owner as of the date he receives a notice of noncompliance. Source-specific data are not an accurate estimator of these long-term investment opportunities. As profit maximizing investors, source owners are assumed to seek investment opportunities that yield a high rate of return. If the source is located in an industry that historically has experienced a high rate of return on investment, it may be assumed that the source will continue to invest in that industry. If the source is in an industry that has experienced a low rate of return, it may be assumed to invest in alternative industries at a rate approximating the all-manufacturing rate of return.

Apart from the appropriateness as a matter of theory of using industry-wide data, the use of a source-specific rate of return would introduce unnecessary complexity into the administration of the program. Verifying the accuracy of the inputs used by the source in its calculation would require an expensive and time-consuming analysis of the source's financial records and accounting practices. It would also be difficult for EPA or the State to calculate a penalty if the source failed to do so and the penalty had to be calculated on the basis of the source's financial records.

Another issue concerns updating of the various inputs to the initial penalty calculation when the final calculation is made. The proposed regulations provided that the discount and inflation rates and the equity and preferred share of investment were to be derived from the most recent five years of data available at the time the penalty was initially calculated. The same inputs were to be used in any interim or final penalty calculations. Comments received suggested that these inputs should be derived from, and limited to, data reflecting experience during the period of covered noncompliance.

EPA disagrees that the derivation of inputs should be limited to data from the period of covered noncompliance. As noted before, the penalty is designed to recapture the long-term opportunity costs available to the source as a result of delayed compliance. The returns realized by a firm in any particular year will not be representative of these long-term opportunities. To obtain a more accurate indication of these long-term rates EPA chose a five year average. Using a five year average smooths out some of the year-to-year fluctuations evidenced in the data which are not representative of long-term performance. In most cases, the period of covered noncompliance would be less than five years. For this reason, the use of rates computed over this period alone could be influenced by such fluctuations and would be a less accurate forecaster of long-term opportunities than a five year average.

EPA agrees, however, that for any given penalty calculation the input used should reflect a rolling average, i.e., the most recent five years of data available at the time that the penalty calculation is performed. Use of a rolling average will provide at least as accurate, if not superior, an estimate of such long term behavior as a fixed average. The provision that the data be available reflects the fact that data for the most recent year or two may not be available due to the lag in collecting and publishing the necessary information. Since the original calculation will have reflected a similar lag, and since the purpose is to average out fluctuations, the inclusion of the most recent year from the data does not warrant delay of the final calculation.

Rolling averages, however, will not be used for interim recalculation of the penalty. An interim recalculation will represent an effort better to approximate the penalty where there are

gross unanticipated changes, rather than an effort to adjust the penalty incrementally to match actual experience. As noted elsewhere, the decision to permit an interim recalculation is within the Administrator's discretion. Under these circumstances, it is generally appropriate to defer the use of a rolling average to the final recalculation.

Useful Life

The regulations require that the source owner or operator use the guidelines specified in Internal Revenue Procedure 77–10 for determining the useful life of pollution control equipment. This is the same data source specified in the proposed regulations. EPA selected the IRS guidelines because they are publicly available, and because they are familiar to business. Little comment was received on the propriety of using these guidelines for performing penalty calculations. (IRS supplements this data periodically. All presently available updates are reprinted in this rulemaking. Source owners or operators required to pay a penalty should check with IRS to determine if the relevant useful life figures have been amended.)

EPA believes that it may become possible to establish more accurate estimates of the useful life of pollution control equipment, ones which are based specifically on the life of that equipment. The useful life estimates contained in the IRS guidelines are not specific to pollution controls. EPA has commenced a study aimed at deriving these more accurate estimates. If this study results in useful life data for pollution control equipment for any source category, EPA will propose the data for public comment.

C. The Effect of Precompliance Expenditures. 1. *Expenditures Made Prior to Receipt of a Notice of Noncompliance.*—The noncompliance penalty is calculated only on the amounts that remain to be expended by the noncomplying source as of the date on which the source receives a notice of noncompliance. Compliance expenditures already incurred by the source as of this date are no longer being avoided, and are not used to calculate the penalty. For example, if on the date it receives a notice a source had already spent $5 million of the $10 million in capital costs necessary to achieve compliance, the capital component of the penalty will be appropriately adjusted only to account for the $5 million that remains to be spent.

2. *Expenditures Made After Receipt of a Notice of Noncompliance.*—Section 120(d)(2)(B) provides that the noncompliance penalty must be reduced to reflect any expenditures made by the source during any quarter for the purpose of achieving or maintaining compliance "to the extent that such expenditures have not been taken into account" in the initial calculation. EPA's model accounts for all appropriate expenditures in the initial penalty calculation. To calculate a penalty, the source owner must first determine the total capital expenditures and the annual operations and maintenance (O&M) expenditures that must be made to achieve and maintain compliance. Each of these components is treated separately in the precompliance credit calculation. Second, the model requires that the source owner estimate in what months precompliance capital and O&M expenditures will be made. The timing of these expenditures is important because the longer a source owner delays an expenditure, the greater the opportunity to benefit from the alternative investment of funds.

After each entry of an anticipated precompliance expenditure, the model recalculates a penalty amount based upon the expenditures that still remain to be made. For example, assume that a source must spend a total of $10 million in capital and $250,000 each quarter in O&M to achieve continuous compliance. If, prior to the first quarter of covered noncompliance, the source spends $1 million of the necessary capital costs the model would calculate a new capital penalty amount based upon the $9 million in capital costs remaining to be spent. This amount represents the capital costs still being avoided by the source during the first quarter. If during the quarter $100,000 of O&M expenditures are incurred, the O&M portion of the penalty would be calculated based on the $150,000 of O&M expenditures that were avoided that quarter. This process is repeated after each anticipated expenditure during the period of covered noncompliance. The net payments for all the quarters of noncompliance are then discounted and summed to derive their total present value. This present value will then be converted into a series of escalating payments to take into account the effects of inflation.

The effect of this method of calculation is that precompliance capital expenditures act to reduce the source's penalty in the proportion that they bear to the total anticipated costs of compliance. In the above example, the source's first quarter expenditures of $1 million (capital) act to reduce the capital component of the penalty by 10% in all subsequent quarters. This reduction in the capital component of the penalty is cumulative. If prior to the following quarter the source were to spend another $1 million of the capital costs, the capital portion of the penalty would now be reduced by 20%.

O&M precompliance expenditures also reduce the O&M portion of the penalty in the direct proportion that they bear to the anticipated costs of compliance. If quarterly O&M expenditures of $250,000 will be required once the source achieves full compliance, quarterly precompliance expenditures of $100,000 will reduce the O&M component of the penalty by 40%. Unlike the capital component of the penalty, however, reductions in the O&M component are not cumulative. This treatment recognizes, and is consistent with, the different financial impacts experienced by a source that delays compliance. A source owner that delays compliance by one year merely postpones the necessary capital outlays for a similar period. Annual O&M costs that would have been incurred, however, are forever avoided, rather than merely postponed by the delay. This method of calculation is set forth in more detail in the Technical Support Document.

EPA received many comments on its proposed method of granting credits. These comments argued that a source should be able to deduct from its quarterly penalty assessment a dollar amount equal to that expended during that quarter for achieving compliance. EPA explained its reasons for rejecting "dollar-for-dollar" credits in its proposal. After consideration of the comments received, EPA has determined that the approach adopted in the proposal and in the regulations promulgated today is correct.

A dollar-for-dollar credit as described by commenters is not appropriate since it would prevent the recovery of the true costs avoided by the noncomplying source, and provide an incentive towards continued delay. EPA's model bases the penalty on the difference between two cash flows over time. EPA's credit mechanism recognizes that precompliance expenditures represent a relative acceleration of payments which alters the ratio between the two cash flows. Were the penalty calculation based on a model which computed an absolute rather than a relative total, a different credit provision might be required.

If EPA granted a dollar-for-dollar credit, many firms would in effect pay no penalty, thereby realizing, contrary to Congress' intention, a savings equal to the annual capital charges on the uncompleted investment. For example,

assume that in order to achieve compliance in one year, a hypothetical firm will make $12 million of capital expenditures at the rate of $1 million per month, and $1.2 million of O&M expenditures at $100,000 per month. In the absence of any consideration of credits, the penalty calculated in this example would be approximately $1.1 million. An illustration of the effects of EPA's credit mechanism on the penalty computation appears below. Column A lists the amount of the penalties in the absence of any consideration of credits. Column B sets forth amount of the penalty using EPA's credit mechanism. Column C shows the penalty amounts using a dollar-for-dollar credit.

	A—(No credits)	B—(With EPA credits)	C—(Dollar-for-dollar credits)
Quarter 1	$278,620	$75,220	$0
Quarter 2	284,490	76,810	0
Quarter 3	290,480	78,490	0
Quarter 4	296,610	80,080	0

[The present value of the payments from Column A is $1,093,430; the present value of Column B is $295,210. The present value of Column C is $0].

The firm receiving a dollar-for-dollar credit would pay no penalties because the quarterly precompliance expenditure of $3 million exceeds the quarterly penalty based on the comparative cash flows. However, the source would still have realized a benefit from delay in present value terms, since some expenditure remains unspent. Thus, the dollar-for-dollar credit prevents the capture of these savings and thereby directly violates the intent of Section 120. Failure to capture these savings could also result in the violating source receiving an unfair competitive advantage over one that did comply, another situation that Congress sought to prevent.

A dollar-for-dollar credit would also create, rather than reduce, incentives to delay compliance, thereby delaying attainment of air quality objectives. In the above example, the annual capital penalty for a source that must make total capital expenditures of $12 million to achieve compliance is approximately $0.5 million. Thus, a dollar-for-dollar credit provides no economic incentive for a source to spend any more than $0.5 million on capital expenditures in any year, or to achieve final compliance in less than 24 years. For these reasons, the Agency continues to believe that adopting a "dollar-for-dollar" credit approach would be unwarranted.

D. Interim Recalculation of the Penalty, Replacement Cycles. 1. *Interim Recalculation of the Penalty.*—EPA's proposed regulations provided that any error in computing a noncompliance penalty would be corrected upon the final adjustment after the source achieved final compliance. No provision was made for interim recalculations of the penalty.

Comments requested that EPA provide a mechanism for interim recalculations, pointing out that the initial calculation will often be based upon preliminary estimates of the expenditures necessary to achieve final compliance. Interim recalculations of the penalty would enable the source to pay quarterly penalties that more accurately reflected the costs avoided by noncompliance during that quarter. Interim recalculations, they argue, would also reduce the likelihood that the source would have to pay, or that EPA would have to refund, substantial amounts of money at the final adjustment stage.

Section 120(b)(8) of the Act does not require that the Administrator provide for an interim recalculation of the penalty, but merely authorizes him to do so. In most instances, the final adjustment mechanism under Section 120(b)(9) will be adequate to ensure that a source is not prejudiced by its over— or underpayment of the penalty prior to the time it achieves final compliance. EPA agrees, however, that in certain situations an interim recalculation of the penalty might be warranted. A source owner may petition for an interim recalculation of the penalty at any time. Such petition must contain the source's revised calculation, and a description of the changed conditions that necessitate the revision. The Administrator may also, on his own initiative, decide that an interim recalculation is appropriate. The decision to grant an interim recalculation of the penalty is within the sole discretion of the Administrator.

2. *Number of Replacement Cycles.*— In order to calculate the full economic benefits of noncompliance it is necessary to account not only for cash flows the source owner realizes in achieving compliance, but also those future cash flows that result from the delay. A source owner that delays installing pollution control equipment for two years receives an economic benefit which includes not only that two year period but also the benefit of being able to defer replacement of pollution control equipment, since such replacement will occur two years later than if the source owner had complied on time. This future savings has a present value equivalent, which the statute requires that EPA recover.

In order to capture these future savings, EPA's proposed model assumed an infinite number of replacement cycles. Comments argued that the use of infinite replacement cycles overestimates economic savings by assuming that an endless chain of similar pollution control devices will be installed on the underlying source of pollution. This, it is argued, is clearly not the case since obsolescence will set in, brought about in part by technological advances in pollution control equipment and by retirement or modification of the underlying source of pollution itself.

EPA agrees. Consequently, EPA has adopted a finite time horizon. The model limits the calculation of economic benefits to those occurring within 30 years of the date of the notice of noncompliance. A 30 year horizon recognizes that alternate investments are likely to be made in a variety of short-term and long-term investment opportunities, that the state of the art of pollution control technology and pollution control requirements are not likely to remain static for a period longer than 30 years, and that a 30 year period is commonly used by business planners contemplating a decision to make a long-term investment of capital. [This assumption is discussed in greater detail in the Technical Support Document.)

E. Payment of Penalty

The penalty will be paid quarterly, at the beginning of the quarter. The first payment will be due six months after the source receives a notice of noncompliance. If the source is challenging the finding of violation that led to issuance of the notice or petitioning for an exemption, the first payment will be due six months after the source has received a final administrative decision on its challenge or petition. The first payment will be in an amount equal to the costs avoided from the date of receipt of the notice through the period of the challenge, as well as the normal quarterly penalty for the upcoming quarter. In order to ensure that the full benefits of noncompliance are captured, EPA will include in the initial penalty amount due the benefit enjoyed by the source by delaying this initial payment. This will be calculated at the same discount rate used to make the initial penalty calculation. If the source owner fails to make timely payment of any penalty amount, Section 120(d)(5) of the Act requires that a twenty percent late payment penalty be added to the overdue penalty payment.

F. Final Adjustment

When a source believes it has come into compliance, it should notify the Administrator. The Administrator will

determine whether the source is in compliance based on documentation furnished by the source plus an independent verification where appropriate. If the Administrator determines that the source has achieved compliance, the Act requires that a final adjustment of the penalty be made within 180 days. Where an underpayment has occurred, the source must pay that deficiency within thirty days after the adjustment. Similarly, EPA or the State administering the program will reimburse a source for any overpayment that has occurred within 30 days after the final adjustment.

The Act requires that any reimbursement or additional penalty assessment be paid with interest. Interest payments are necessary to ensure that the penalty captures the economic value of noncompliance.[4]

The Act provides that the interest rate for over- and underpayments be specified by the U.S. Department of the Treasury. In correspondence with EPA, Treasury has indicated that the same rate of return on equity that is used to calculate the penalty will be used for underpayments. The interest rate for overpayments, however, will be equal to the average rate of interest on Treasury notes of a duration similar to, and over the period of covered noncompliance.

F. Limited Life Facilities. 1. *Shutdowns.*—EPA's proposed regulations discussed the way in which it would calculate penalties against a source owner that achieves compliance by shutting down its existing facility. The same approach has been adopted in the final regulations. Penalties will be calculated based upon the costs of retrofitting the existing facility with pollution control equipment. These costs form the proper basis for calculation, because it is the existing facility that is in violation of applicable legal requirements. The economic benefits enjoyed by the source arise from the continued operation of the existing facility without having installed the necessary pollution controls. These costs are avoided until the facility is shut down. Because the source owner does not make any precompliance expenditures, it will not be granted any credit against the initial penalty assessment.

2. *Credit for Replacement Facilities.* In some cases, a source owner might have elected to retrofit an existing facility rather than construct a replacement in order to obtain credits against the noncompliance penalty. To remove this disincentive to modernization by means of replacement, EPA will allow sources to reduce their penalty based upon expenditures made for construction of the replacement facility. This credit mechanism will make the source owner economically indifferent between achieving compliance by means of retrofitting the existing facility and constructing a replacement facility.

EPA will base the penalty calculation upon the costs of retrofitting the existing facility with necessary pollution control equipment. Comments argued that the penalty should be based upon the costs associated with installing pollution control equipment at the replacement facility. Replacement, they argue, represents the chosen means of compliance. Therefore, the costs being avoided by the source owner are those that should have been incurred to bring the replacement facility into compliance by the date on which a notice of noncompliance was received.

EPA disagrees. It is the existing facility that is in violation of applicable legal requirements. The economic benefits enjoyed by the source owner arise from the continued operation of the existing facility without having installed the necessary pollution controls. These costs are avoided until the existing facility is shut down.

Calculating penalties for replacement facilities necessitates a change in the method by which credits are granted, because the source owner will not actually retrofit the existing facility. The proposed regulations were inconsistent in identifying the appropriate expenditures on which credits will be based. The preamble based credits on expenditures made for pollution control equipment at the replacement facility. The Technical Support Document, however, provided that all expenditures made at the new facility, whether or not clearly related to pollution controls, would be considered in determining the appropriate credit amount.

EPA has decided to consider all expenditures made by the source towards constructing the entire replacement facility in determining the amount of the credit. Several factors favor this approach. First, the fact that credits are not absolute but proportionate to the total obligated expenditure means that there is little difference between basing the proportion on the total construction cost or limiting it to pollution control equipment. It is the rate at which those expenditures are made, not their magnitude that dictates their impact on the penalty. Whether a source spends in a given quarter $1 million of a $10 million total investment or $10 million of a $100 million total investment, its penalty would be reduced by 10%. Second, in constructing a replacement facility it will often be difficult to distinguish between expenditures for general process construction and expenditures directly related to pollution control. This would be particularly true if the replacement facility utilized an inherently less polluting process. Third, basing credits upon the entire replacement facility also minimizes the opportunity of the source owner to "frontload" the credit by purchasing pollution control equipment solely to reduce the capital component of the penalty long before actual operation of the replacement facility (or shutdown of the existing facility).

Credits in a replacement situation will be granted in a manner similar to non-replacement situations; i.e. if, in a given quarter, a source spends 10% of the capital costs associated with construction of the replacement facility, the inputs for calculating the capital component of the penalty for all succeeding quarters will be reduced by 10%. This method of calculating credits will be utilized whether the new facility is of greater or lower capacity than the one it replaces.

The proposed regulations provided that the penalties would be due until the source shut down the noncomplying facility and commenced operation of the replacement facility in compliance with all applicable standards. Comments received generally argued that the period of covered noncompliance should cease when the source shut down its existing facility since it would no longer be in violation. EPA agrees with these comments. Shutdown of a violating facility is an acceptable means of compliance. The source owner, however, will not be granted any credit against the penalty for expenditures on the replacement facility that occur after the date of the shutdown. Moreover, EPA possesses authority during the final adjustment to disallow expenditures

[4] For example, assume that a source paid eight quarterly penalties of $10,000 each (in constant dollars). The final adjustment, however, indicates that the actual quarterly penalties should have been $12,000, rather than $10,000, so that the original calculation underestimated the benefits of noncompliance by $16,000. Assessing a lump sum additional penalty of $16,000 ($2,000 per quarter x 8 quarters) would not recapture the full economic value that this delay in payment had to the source. Avoiding the payment of $2,000 for the first quarter of noncompliance allowed the source to invest that sum over the 8 quarters of noncompliance, plus that period of time until the final adjustment is completed. Similarly, avoiding payment of $2,000 for the second quarter of noncompliance allowed the source to invest that sum over seven quarters plus the period until final adjustment, etc. The statute requires that EPA recover or, in the case of an overpayment, refund this amount. The model automatically calculates the amount of interest owed as part of the final adjustment process.

claimed as credits if the time between shutdown of the old facility and start-up of the new facility is so great that the new facility is not really a replacement for the old one. In this case the penalty will be computed as if it were a simple shutdown situation with no replacement involved.

The proposed regulations specified the type of facility that EPA would consider a replacement facility. EPA proposed that the new facility must produce the same product or serve the same function, must be no more polluting per unit of production, and must be of substantially the same or greater capacity than the one being replaced.

As noted above, credits are allowed by the provisions of the Act. Regulatory objectives in allowing credits in this program are to promote air quality objectives without jeopardizing or diminishing the economic incentives to comply generated by the Act. Given that constraint, the credit policy has been designed to allow attainment of the Act's objectives without impeding modernization. It would be inconsistent with the Act's objectives to grant credits for all investment regardless of whether the new facility is truly a replacement facility for the noncomplying source which is being retired. Even if the source were retired, a credit for all new investment would be inconsistent with statutory objectives since in effect owners of violating sources, who simply wished to invest in alternative industries, would be subsidized and the economic advantage enjoyed by such owners would not in that event be removed but continued. Only where compliance is to be achieved by replacement of an existing facility is the continuum of investment such that a subsidy is consistent with the provisions of the Act, which allow credit to be granted to the extent that an expenditure is made toward compliance at existing facilities.

The criteria which EPA will use to evaluate whether a new facility replaces an older one are first, whether the old facility is retired, second, whether the product produced is the same or whether for some other reason operation of the replacement facility would eliminate the need for the product produced by the existing facility and third, whether their economic integration is substantially similar.

The requirement that the new facility or process serve a function similar to the one it replaces, is, in EPA's opinion, inherent in the concept of replacement. Thus a steel company could obtain credits to construct a new coke battery to replace an existing one. The company could also get credit for a process that eliminated the need for coke by making new steel from scrap since the new process serves a function similar to the process which it replaced.

A separate question is the location of the new facility; i.e., whether to qualify for credit as a replacement facility the new facility must be located at or near the site of the existing source. It would be artificially constrictive to require construction of a qualifying facility on the actual site of the facility replaced. Nonetheless, the proximity of the new facility to the existing one is a key consideration in determining whether the new facility is a true replacement for the old or merely a different facility in a different economic environment. EPA will consider therefore whether the new facility is physically and functionally integrated into the related production facilities and labor and sales markets of the old one. This evaluation will be made on a case-by-case basis.

EPA also has determined that it is not necessary to restrict credits to those replacement facilities that are less polluting per unit of production than the one replaced. Most new facilities will be less polluting, since they are required to satisfy applicable new source review requirements. There may be instances, however, in which the new facility could be more polluting per unit of production than the one it replaces and yet be in compliance with all applicable legal requirements. As long as these legal requirements are satisfied, and the new facility satisfies the other criteria discussed herein, EPA sees no reason to depart from a policy of allowing credits based upon the construction costs of the new facility.

IV. Exemptions

Subsections 120(a)(2) (B) and (C) of the Act set forth the circumstances in which sources may be exempted from the duty to pay a noncompliance penalty. A source owner wishing to request an exemption must do so within 45 days of receipt of a notice of noncompliance. Hearings on such requests will be on the record and will follow the procedures set out in the Agency's "Consolidated Rules of Practice" (40 CFR Part 22), except to the extent provided in Subpart J of these regulations. (The Consolidated Rules were proposed on August 4, 1978 (43 FR 34730), and promulgated on April 9, 1980 (45 FR 24360).)

One category of exemptions is based on the prior issuance of specified orders, extensions or suspensions. Included in this category are: (1) coal conversions pursuant to U.S. Department of Energy prohibition orders or State or EPA delayed compliance orders under Section 113(d)(5); (2) delayed compliance orders based on use of innovative technology under Section 113(d)(4); and (3) emergency implementation plan suspensions under Section 110 (f) and (g).

A second category of exemptions is available if the source owner is unable to comply for reasons that are entirely beyond his control.

A. Inability To Comply

1. *Compliance Schedule Precondition.*—The prerequisite for obtaining an inability to comply exemption under Section 120(a)(2)(B)(iv) is the source's possession of a delayed compliance order (DCO) issued pursuant to Section 113(d)(1) of the Act,[5] or an order issued pursuant to Section 113 as in effect prior to enactment of the 1977 Amendments and not voided by Section 113(d)(12). The statute is silent on the use of any other order or decree as a basis for exemption under Section 120(a)(2)(B)(iv). Since DCOs may not provide for final compliance beyond July 1, 1979, or three years beyond the date for final compliance specified in the SIP, whichever is later, the statute appears to limit eligibility for this exemption to those relatively few sources with SIP final compliance dates later than July 1, 1976, since these are the only sources eligible for DCO's.

In its March 21 proposal, EPA provided that a Federal or State court order or consent decree, if approved by EPA, could also provide a predicate for a petition for an exemption based upon inability to comply. EPA believes that allowing court orders and consent decrees (as well as DCOs) to serve as a predicate for an inability to comply petition is consistent with the Act and legislative history. Congress does not appear to have intended to preclude granting such exemptions to sources that are unable to obtain DCOs because their SIP compliance dates are earlier than July 1, 1976, so long as a true inability to comply is demonstrated. Rather, the purpose of requiring a DCO seems to have been to establish an expeditious schedule for compliance. An appropriate consent decree or court order satisfies this concern.

Comments received generally supported EPA's proposed approach. Comments, however, argued that EPA may not review the decision of a State

[5] Section 120(a)(2)(B)(iv) refers to orders under Section 113(d). EPA interprets the reference to Section 113(d) as a reference to Section 113(d)(1). Exemptions based upon orders issued pursuant to Sections 113(d)(5) [coal conversions] and (d)(4) [innovative technology] are covered by Section 120(a)(2)(B) (i) and (iii).

court to approve a consent decree or issue an order. Thus, it is argued that if the court determined that the source's inability to comply was for reasons entirely beyond its control, EPA may not deny an exemption.

EPA disagrees. Judicial discussion whether certain circumstances qualified a source for an exemption would only be advisory in the absence of EPA action. Moreover, the statute links eligibility for an exemption to possession of a DCO. DCOs require EPA approval, and parity requires that orders or consent decrees also be examined, not to determine whether they are valid, but to determine whether they form a predicate for exemption. In order to serve as a predicate, the order or decree must satisfy certain conditions of Section 113(d) of the Act. It must contain, among other things, an expeditious compliance schedule, require compliance with interim requirements, and provide for emission monitoring and reporting. EPA will not enter into or approve consent decrees unless they satisfy these criteria. Finally, all orders would have to be final; that is, a source could not seek an exemption from the noncompliance penalty on the basis of an unconsented judicial order or decree if it was appealing that order or decree.

2. *Scope of the Inability to Comply Exemption.*—The second test established by Congress for inability to comply exemptions is that such inability must be for reasons that are entirely beyond the control of the source. It is for the Administrator to determine whether, for purposes of Section 120, the circumstances are such that the source's noncompliance was due to reasons entirely beyond its control. This assures consistency and provides a uniform basis for Federal court review. (If the State is granted delegation of the noncompliance penalty program, EPA is authorized to review any exemption granted by the State).

EPA's proposed regulations limited the inability to comply exemption to the five factors listed in the 1977 House Committee Report: fires, strikes, embargoes, natural disasters, and the complete impossibility of a supplier or contractor to furnish the goods or services necessary to achieve compliance.[6] EPA requested comment on whether technological or economic impossibility should also be considered to be entirely beyond the control of the source.

Commenters argued that any attempt by EPA to limit the factors that constitute inability to comply would contravene the legislative history. These commenters point out that the House Committee rejected Administrator Costle's request that the exemption be limited to easily verifiable factors such as fires or strikes. The Committee noted that "some flexibility" was required since "not all possible unforeseen circumstances could be foreseen and expressly provided for".[7] These comments argued that a source must be permitted to demonstrate in an adjudicatory hearing that any set of circumstances rendered it unable to comply for reasons entirely beyond its control.

EPA disagrees. Congress' unwillingness to specify in the statute circumstances constituting inability to comply does not mean, in EPA's view, that it should make no effort to establish such circumstances in the regulations. Far from indicating that a general exemption should be provided, Congress indicated that the inability to comply exemption "should be construed narrowly, so as not to open a loophole or defeat the purposes" of the penalty program.[8] Providing for a general exemption could result in erroneous or inconsistent determinations of what constituted inability to comply, thereby frustrating Congress' intent. Few comments suggested that EPA's list was deficient in omitting any particular situation.

The final regulations respond to Congress' concern that some limited flexibility be afforded by substituting the term "Act of God" for the term "natural disasters." The latter connotes events that are not necessarily (though usually) unforeseeable and which affect large numbers of people. The term "Act of God" connotes a genuinely unforeseeable event, whether or not large numbers of people are affected. Moreover, EPA possesses authority to expand in the future the list of situations that constitute inability to comply should this become necessary to prevent inequity in a particular case.

In addition to providing a general exemption for inability to comply, commenters encouraged EPA to include technological and economic impossibility as being entirely beyond the control of the source. Commenters also argued that relief should be granted for sources that made "good faith" efforts at compliance. EPA's resolution of these issues is discussed below.

B. Additional Situations Constituting Inability To Comply. 1. *Technological Impossibility.*—Claims of technological impossibility will not provide a basis for an inability to comply exemption. Comments suggested that some SIP requirements are technologically impossible to achieve, and that source owners subject to such requirements should be exempted. EPA disagrees. As noted in the preamble to the proposed regulations, the legislative history indicates that sources should not be totally exempt from penalties by reason of technological impossibility. The House Committee on Interstate and Foreign Commerce indicated that the absence of any adequately demonstrated pollution control equipment would constitute grounds for an exemption from the noncompliance penalty only if the source "had made maximum feasible efforts to research and develop the necessary technology or to assist some other persons to do so."[9] Senator Muskie, however, in discussing the Conference Report accompanying the 1977 amendments, emphasized that claims that technology is not available to meet a certain emission standard would not exempt a source from the penalty.[10]

While the House and Senate differed somewhat in their approaches to this problem, it is clear that neither House contemplated the granting of an outright exemption. This position is consistent with the technology-forcing philosophy of the Act, as recognized by the Supreme Court (*See, e.g., Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976)).

Where existing technology has not yet demonstrated compliance, the penalty will be based upon the cost of installing the best available controls as determined on a case-by-case basis, as well as a commitment to an appropriate research and development (R&D) program designed to develop the new means of emission control necessary to achieve the standards. Thus, a source that has taken and is continuing to take all possible steps to achieve compliance, including the installation of the best available controls and, where appropriate, participation in an appropriate R&D program, would be considered to be deriving no economic benefit from its failure to comply; i.e. any penalty calculated would equal zero. (Appropriate R&D projects will be determined by the Regional Offices or by the Office of Research and Development.)

Calculating noncompliance penalties on the basis of best available controls should encourage sources to undertake vigorous control efforts. Providing for an

[6] H.R. Rep. No. 95-294 95th Cong., 1st Sess. 76 (1977). [House Report]

[7] *Id.*

[8] *Id.*

[9] House Report at 76, FN.

[10] 123 Cong. Rec. S. 13698-99 (daily ed. Aug. 4, 1977) (remarks of Sens. Muskie and Stafford).

outright exemption on the other hand might encourage a source subject to stringent requirements to delay installing controls and/or to challenge the control requirements in the hopes that they might be found to be impossible to achieve. Basing the penalty calculation on the cost difference between installation of best available controls and those actually installed eliminates the economic advantage experienced by sources subject to impossible requirements that have made no (or minimal) compliance efforts and those that have installed the best available controls. Providing for a complete exemption, on the other hand, would allow for no distinction among sources that made vastly different compliance efforts. This result would frustrate the intent of the Act.

2. *Inability To Pay.*—The preamble to the proposed regulations discussed the possibility that, in certain instances, a source that was unable to obtain financing for pollution control equipment could be exempted from the penalty. To qualify for this exemption, the source would have to demonstrate that its inability to obtain capital resulted from temporary, verifiable, general market conditions. Merely being a poor loan risk would not entitle the source to an exemption. Finally, EPA provided that in no event could an exemption be granted if capital was available to the source owner or operator for the purpose of improvement or expansion of the existing production capacity, or for construction of new production capacity.

Commenters argued that the test for economic impossibility should focus not on conditions in capital markets, but on the financial condition of the individual source.

EPA disagrees. There is no indication that Congress meant to exempt sources that were experiencing economic difficulties except where those difficulties are due to temporary, verifiable market conditions. As noted in the proposal, the test established by the House Committee in an earlier version of the noncompliance penalty provision focused on conditions in the capital markets, rather than on the source's individual financial position.[11] The Senate Committee's approach was even more restrictive, providing that cost of control should not form the basis for an inability to comply exemption.[12]

It is also clear financially troubled facilities that delay compliance realize an economic benefit. Compliance with the requirements of the Clean Air Act is a cost of doing business. By avoiding these costs, the source may pursue other investments. The fact that the source may have operated at a deficit does not alter this; the effect of noncompliance in this case is to reduce the level of deficit.

The source also may have gained some level of competitive advantage over others that have made the expenditures necessary to achieve compliance.

In issuing notices of noncompliance, however, EPA will consider whether a source is economically able to both pay the penalty and comply with applicable emission limitations without shutting down. EPA does not intend to implement this program in a way that will force the closure of sources that are moving toward compliance.

3. *Best Engineering Judgment.*—Comments argued that noncompliance penalties should not be assessed against sources that have made good faith efforts at compliance. These commenters noted that the economic model does not specifically provide a credit for unsuccessful compliance efforts. Because the penalty is calculated upon the control method that will achieve compliance, a source that made substantial efforts at compliance could be assessed the same penalty as an identical source that had done nothing towards reducing its emissions.[13]

EPA believes that "good faith" is too amorphous a test on which to base an exemption. A more objective test would focus on the reasonableness of the compliance method chosen and whether or not the failure of that method was foreseeable. Therefore, the regulations provide that a source that has obtained the requisite order or decree shall be exempted if it either failed to achieve full compliance or failed to meet compliance deadlines, provided that EPA finds that best engineering judgment and due diligence were used throughout the entire compliance plan and that the source's violation was due to unforeseeable technical problems.

This exemption is justified to avoid inequity where sources have failed despite best efforts to achieve compliance through installation of pollution control equipment or other measures and where the failure of the control method to achieve compliance could not have been foreseen in time to correct the situation. The source might actually have incurred costs equal to or greater than would have been incurred in installing controls that are now known to be superior to the source's initial choice. In this case, the source would not have derived an economic benefit from its failure to comply. Assessment of a noncompliance penalty could actually place the source at a competitive disadvantage against a source that had done nothing, since both ultimately must install necessary controls.

C. Period of the Exemption. In order to petition for an exemption, the source owner must have been granted one of the orders, suspensions or extensions specified in the Act. Issuance of certain orders requires a demonstration that a particular event has already occurred. Comments argued that the effective date of certain exemptions should be the date of the underlying order or the date of the occurrence for which the order was issued, rather than the date on which the exemption was granted.

EPA agrees that the effective date for certain exemptions should relate back to the date of the underlying order. Where an order covers a source that is converting to coal as its primary energy source (§ 120(a)(2)(B)(i)), is prohibited from converting from the use of coal to petroleum products or natural gas (§ 120(a)(2)(B)(ii)), is utilizing innovative control technology (§ 120(a)(2)(B)(iii)), or is granted an EPA-approved suspension under Section 110(g) (§ 120(a)(2)(B)(v)), the underlying order sanctions conduct that will occur in the future. For this reason, the period of any exemption granted will begin on the date of issuance of the underlying order and terminate on the date for final compliance specified in the order.

In other cases, the exemption will relate back to the event that necessitated the order. Exemptions for inability to comply for reasons entirely beyond the source's control (§ 120(a)(2)(B)(iv)), or energy emergencies pursuant to Section 110(f) (§ 120(a)(2)(B)(v)) are in this category.

An exemption for inability to comply should last no longer than the event which necessitates the exemption, or the delay directly attributable to the event. Such an event, e.g., a fire, may occur at any source, including one that was in compliance. If the source had been in compliance, the entire period of ensuing noncompliance could be exempt (assuming the source complied with the terms of the schedule contained in the underlying order). If the source had undertaken compliance efforts but had not yet achieved compliance, any

[11] H.R. Rep. No. 94-1175 94th Cong., 2d Sess. 42 (1976).

[12] S. Rep. No. 95-127 95th Cong., 1st Sess. 50 (1977) [Senate Report].

[13] The comments, and this discussion assume that the method chosen would have to be scrapped and a completely different system installed. On the other hand, a source that merely had to add on additional equipment to achieve compliance would only be assessed a penalty based on the costs of the add-on equipment.

exemption would expire (notwithstanding the expiration date of the underlying order) when the source had reconstructed its pollution control equipment to the same level that had existed at the time of the fire.

There may also be situations in which only a portion of the source's inability to comply was due to reasons entirely beyond its control. In such situations, EPA could reduce the amount of the penalty assessed to take account of this partial inability.

Exemptions granted pursuant to suspensions under Section 110(f) may also pre-date the underlying suspension. This section authorizes the Governor, upon application of a source owner and after a public hearing, to petition the President to determine that an energy emergency exists that justifies a temporary suspension of certain SIP provisions. In the case of an emergency situation, the source owner might not be able to purchase conforming fuels even before it actually receives a suspension from the Governor following a Presidential declaration. EPA believes that if the source can demonstrate that it was completely unable to purchase necessary fuels, it could be granted an exemption as of the date of this inability, rather than from the date the SIP was suspended. In no case, however, could an exemption be granted if the President did not declare an energy emergency and the Governor not suspend the SIP applicable to the source.

De Minimis Exemptions

Section 120(a)(2)(C) exempts a "particular instance of noncompliance" if the Administrator determines, after notice and opportunity for a public hearing, that the noncompliance is *de minimis* in nature and duration. The term "in nature and duration" is not discussed in the legislative history. EPA proposed several criteria for evaluating whether a particular violation is *de minimis*. Those criteria included the magnitude of the noncompliance, whether such noncompliance is of a recurring nature, the steps being taken to minimize such excess emissions, and the extent to which the source has benefitted economically from its noncompliance.

EPA received many comments on this proposal. Most of the comments argued that the only relevant factors for EPA to consider in determining whether a violation is *de minimis* are the level and duration of the excess emissions. Other commenters argued that EPA should consider the impact of a particular violation on ambient air quality.

EPA believes that the proposed criteria are reasonable and necessary for effective regulation. The criteria proposed by EPA were designed to deter violations that could have been avoided without imposing unwarranted burdens on both EPA and the source. The nature and amounts of the pollutant involved and the duration of a particular instance of noncompliance are the leading criteria, but they need not be the only ones considered in determining eligibility for an exemption. Consideration of these other enumerated factors will allow EPA to determine whether issuance of a notice of noncompliance is warranted in any given case. For example, a source experiencing persistent minor violations might be able to eliminate them by installing control equipment or by improving O&M practices. In this case, granting a series of exemptions might not be appropriate, notwithstanding that each violation, viewed separately, would be *de minimis* in nature and duration and would have an insignificant effect on air quality. The assessment of a noncompliance penalty in such situations would act as an incentive for the source to take whatever steps were necessary to avoid the periodic violations. Further, such sources are in fact enjoying an economic benefit due to their failure to install necessary controls or utilize proper O&M procedures.

If, on the other hand, the source is doing everything possible to avoid its excess emissions, or if there is no piece of control equipment or O&M practice that would completely eliminate the violation, there would be little or no calculable economic benefit from noncompliance. In this case, the assessment of a penalty, assuming one could be quantified, would not be an effective deterrent to future intermittent violations. Thus, the costs to the source and EPA of imposing a penalty would outweigh any benefits.

Malfunctions

The Agency's proposed exemption for *de minimis* violations included sudden and unavoidable breakdowns of process or air pollution control equipment. This exemption will be based on, among other things, a finding that the source's pollution control equipment was properly designed, operated and maintained, that the amount and duration of the excess emissions were minimized, and that the source had not gained a significant economic advantage from the breakdown.

Comments supported EPA's proposal to exempt true malfunctions from the penalty. It was suggested at the same time that such noncompliance might be viewed, and exempted, as being for reasons entirely beyond the source's control. One reason suggested in favor of such an approach was that malfunctions may result in excess emissions of considerable duration and amounts.

Treating malfunctions wherever possible within the *de minimis* exemption is reasonable. Adjudicatory hearings are not required to determine eligibility for a *de minimis* exemption, and a more expeditious and informal notice and comment procedure can be used. Treating malfunctions within the *de minimis* procedure also avoids the necessity of obtaining a consent decree or DCO as would be the case under an inability to comply exemption. There may be situations, however, in which the nature or duration of the violation would not be *de minimis*. In such cases, the source would be subject to the penalty, unless it qualified for an exemption for inability to comply for reasons entirely beyond its control.

Eligibility for an exemption will be determined on a case by case basis. The source owner will have to demonstrate that the pollution control equipment was operated and maintained properly at all times. The owner must also demonstrate that he received no significant economic benefit from his noncompliance. Any activity that can be foreseen and planned for will not constitute a malfunction. This includes in most instances the phasing in and phasing out of equipment and routine maintenance operations.

One issue raised by several commenters concerned the effect of SIP malfunction provisions. Several SIPs which have been approved by EPA contain provisions that do not treat equipment malfunctions as violations, provided that the source satisfies certain criteria specified in the SIP. Commenters argued that a source that satisfies a SIP malfunction provision would not be in violation of the SIP and that assessment of penalties would be improper, regardless of the level of excess emissions.

EPA has recognized that some SIP malfunction provisions might not be consistent with the requirements of the Clean Air Act and with the Agency's malfunction policy. On April 27, 1977, EPA gave notice that it would review SIP malfunction provisions and, if necessary, disapprove them (42 *Fed. Reg.* 21472). If source is in compliance with an EPA-approved malfunction provision, then noncompliance penalties will not be assessed. EPA, however, may make an independent assessment

of whether the excess emissions constitute a malfunction under the SIP.

Federal, State, and Municipal facilities

The final regulations are applicable to federal, State, and municipal facilities. In the preamble to the proposed regulations, EPA stated its conclusion that Congress intended that noncompliance penalties apply to such government entities. Comments argued that a penalty should not be assessed because it is the citizen, not the government-owned facility, that benefits from noncompliance. Federal commenters argued that Section 120 provides no real incentive to achieve compliance because the federal government both pays and collects the penalties.

EPA finds no legal basis for exempting government owned facilities. Congress was aware of the special considerations that might apply to government-owned facilities. The statute covers them, and there is no indication in the legislative history that Congress intended to exempt them. Section 118 subjects the federal government to all federal, State and local air pollution control requirements, as well as any applicable process or sanction to the same extent as any non-governmental entity. The applicability of the Clean Air Act to States and municipalities is also well established.

Furthermore, the purpose of Section 120 is to recapture the costs that a source avoids by not complying with the law. A noncomplying government-owned facility avoids these costs in much the same way that a privately owned source does. Thus, unless they qualify for one of the specified exemptions, government-owned facilities will be assessed noncompliance penalties.

Electric Utilities

Section 120 (d)(2)(A) provides that the amount of the penalty shall be equal to the economic value that a delay in compliance has to the source owner. Comments argued that regulated utilities should be exempted from Section 120, or be separately treated, on the ground that the nature of regulation is such that the beneficiaries of a utility's failure to comply are its ratepayers, not the utility or its shareholders. Charges for utility service are set by public utility commissions at a level estimated to be sufficient to recover operating costs and earn a fair return on the capital invested in the equipment used to provide electric service. Pollution control equipment constitutes invested capital of this kind. Assuming that the rate setting process works properly, it is argued the cost of pollution control devices is passed through to the ratepayers making them, not the utility, the economic beneficiaries of delayed compliance. In the alternative, utilities argued that if EPA assesses penalties, it should modify the economic model to reduce the penalty by the amount of cost savings passed through to the ratepayers.

EPA disagrees. There is no statutory basis for exempting electric utilities. The legislative history indicates that Congress did not intend that regulated utilities be exempted from the penalty. The Senate Report assumed that noncomplying electric utilities would be covered.[14] Additionally, an effort was made to grant exemption to the Louisville Gas and Electric Company because of its continued efforts to develop scrubbing technology.[15] This effort would not have been necessary if utilities in general were to be exempted from penalties.

There is also no legal or economic basis for according special treatment to utilities because they are regulated. The purpose of Section 120 is to establish a penalty that makes the source owner or operator, i.e., the decision maker, indifferent, from an economic viewpoint, between on-time compliance compared to delayed compliance with payment of the penalty. To achieve this indifference, the penalty must remove the incentives to delay compliance—the opportunities for alternative investments and improved market position. These incentives do not disappear, either in the case of regulated or non-regulated industries, simply because some of the benefit of avoidance of obligatory costs is passed through rather than retained. All industries, whether or not regulated, may, in theory, pass through costs or, conversely, the benefit of cost avoidance. (The benefit in both cases may simply change from a quantifiable dollar benefit to the somewhat more intangible benefit of improved market position). The fact that the mechanism is a price in some cases and a rate in others is immaterial. Congress noted explicitly that noncomplying utilities, to the extent they can lower their rates, can attract new customers.[16] Congress significantly did not provide for *any* industry that penalties be reduced to the extent benefits were passed through. The fact that the benefits of improved market position were to be recouped indicates, in fact, the opposite intention. The Congressional plan to equalize the market position of those who complied and those who delayed complying would be frustrated by a method of computation that in effect ignores Congress' focus on the central role and operative significance of the decisionmaker.

The specificity of the statute in defining the costs that EPA is to consider in determining the economic value of noncompliance further evidences this intent. The penalty (economic value of noncompliance) must equal the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone, and any additional economic value of delay. Similarly, the statute limits credits to expenditures made by the source to come into compliance. This specificity regarding the calculation of credits indicates that Congress did not intend that revenues from ratepayers lost by failure to comply on time were to be subtracted in computing the penalty.

V. Administrative and Judicial Review

A. Adjudicatory Hearings. EPA's proposed noncompliance penalty regulations provided that a source has 45 days to petition for an adjudicatory hearing to challenge the finding of violation that led to issuance of a notice of noncompliance, petition for an exemption, or challenge a recalculation of the penalty. A hearing would be granted if the source presented information which if true would alter the liability of the source.

Commenters argued that EPA lacked authority to deny a request for an adjudicatory hearing in view of the language of Section 120(b)(5), which states that the EPA's implementing regulations "shall require the Administrator to provide a hearing on the record" whenever the source submits a petition.

EPA disagrees. Despite the seemingly non-discretionary language of the statute, an administrative agency may deny a formal hearing if it clearly appears from the data submitted in the petition that the source has not raised any significant questions of material fact. *See, e.g., Weinberger v. Hynson, Westcott and Dunning, Inc.*, 412 U.S. 609 (1973); *Federal Power Comm. v. Texaco, Inc.*, 377 U.S. 33 (1964). Furthermore, the granting of a hearing is not necessary to protect the due process rights of the source. The regulations provide that any denial of a hearing constitutes final agency action and may be reviewed by the court. This right of judicial review ensures that the source will not be

[14] Senate Report at 49.

[15] *See*, 123 Cong. Rec. S. 9435 (daily ed. June 10, 1977) (remarks of Sens. Huddleston and Muskie). *See also* H. 8664, 8669 (remarks of Congressman Waxman) (daily ed. Aug. 4, 1977).

[16] Senate Report at 49.

prejudiced by the Agency's decision to deny a hearing.

Other commenters argued that the 45 day time period provided for response to notices of noncompliance was too short. These commenters argued that EPA should either extend the 45 day period, or allow the source to amend its petition.

The 45 day time limit for the submittal of petitions is established by the statute. EPA will allow, however, a source to amend its petition within the 45 day period. Leave to amend after the 45 day period may be granted if the source demonstrates that changed conditions occurring after the 45 day period make amendment of the original petition necessary. EPA believes that these procedures provide the source with adequate opportunity to submit an acceptable petition. The petition itself need not be an elaborate legal brief. It need only set forth clearly the grounds on which the source believes it is entitled to relief.

Another issue raised concerned the amount of time provided for adjudicatory hearings. Commenters noted that, read literally, the Act requires that the Administrator reach a final decision within 90 days of the date the source requests a hearing. The proposed regulations, however, provided for an initial decision by an Administrative Law Judge (ALJ) within 90 days of the date of the granting of the hearing. Some commenters argued that the Act's literal requirements should be followed. Other commenters argued that due process requires that the source be allowed to raise for consideration every legitimate issue and that this right must take precedence over any arbitrary time limit.

It is clear that Congress intended that the necessary adjudicatory hearings be conducted quickly to minimize the source's uncertainty of its liability for the penalty. However, it is also clear that any hearing must comport with requirements of due process. The Agency believes that the requirement that the Administrator reach a final decision within 90 days of the time the hearing is requested might not be adequate in some instances to ensure these due process rights. For this reason the final regulations provide that the ALJ shall issue an initial decision within 90 days after the hearing is granted. The regulations also provide that this 90 day period may be extended by agreement of the parties.

EPA will attempt to carry out these hearings within the specified time periods. Failure to do so in an individual hearing, however, will not lead to dismissal of the action or affect the accrual of penalties. Such an automatic dismissal would give sources an incentive to delay the proceedings. In order to avoid prejudice to the source, however, the regulations provide that no penalty payment will be due until 180 days after the source receives a final administrative decision on its petition. Thus, no source will be forced to pay a penalty amount it is disputing while challenges to resolve that dispute are underway.

B. Limitation of Issues for Hedrings. Section 307(b)(1) of the Act provides that rules of national scope issued by the Administrator are reviewable on petition to the United States Court of Appeals for the District of Columbia filed within 60 days of their promulgation. Section 307(b)(2) provides that administrative action that could have been reviewed "shall not be subject to judicial review" in enforcement proceedings.

These judicial review provisions evidence Congress' belief that the public interest is best served by an early and consistent disposition of legal challenges to the provisions of regulations issued under the Clean Air Act. That intent would be nullified if EPA were to allow challenges to its regulations in proceedings under Section 120. To carry out Congress' purpose in this respect, EPA's final regulations define the issues that may and may not be raised in individual adjudicatory hearings.

Comments argued that EPA may not restrict the issues which may be raised in an adjudicatory hearing. EPA disagrees. The issues excluded from adjudicatory hearings are the kind of issues Congress intended for early, consistent resolution. The purpose of Section 307 of the Act is to promote consistent interpretations of the law by centralizing judicial review. Allowing sources to raise these issues in the context of an adjudicatory hearing would violate the provisions of Section 307, increase the likelihood of inconsistent determinations, complicate the hearings, and make it difficult to render initial decisions within 90 days.

C. Additional Adjudicatory Hearings. EPA's proposed regulations limited the instances in which a source could be granted an adjudicatory hearing. A source could seek a hearing to challenge the finding that it was in violation of applicable legal requirements, that it was entitled to an exemption, or that EPA's calculation of the penalty was erroneous. Commenters suggested several additional situations in which EPA should provide for adjudicatory hearings.

The final regulations expand the list of situations for which a hearing may be granted to include a finding that a source has not achieved final compliance, and a decision to revoke an exemption. Another issue suggested in the comments as requiring a hearing would be EPA's determination that a source was a "major source", or whether the person issued the notice is an "owner or operator" of the stationary source and thus subject to Section 120. EPA believes that the source's ability to raise these issues is implicit in any hearing on the finding of violation and that a special hearing category for these issues is unnecessary.

The regulations also limit decisions that constitute final Agency action to those listed in the regulations. Judicial review is available on all of these issues provided that the source exhausts all of its administrative remedies. To exhaust administrative remedies the source must request an administrative hearing and must appeal or attempt to appeal any unfavorable decision to the Administrator.

D. Informal Hearings. Section 120(a)(2)(C) of the Act provides for informal hearings to determine whether a source should be exempted because its noncompliance is *de minimis*. Such hearings need not meet the requirements of the Consolidated Rules. A source applying for a *de minimis* exemption must submit all relevant information. The hearing shall be scheduled upon notice to the public. Opportunity for submission of questions by the public to the petitioner shall be afforded, but the hearing officer may exercise his discretion to limit the number of questions allowed. The decision of the hearing officer will be made in writing within a reasonable period of time after the close of the hearing.

Where a State has been delegated the noncompliance penalty program, its hearings on challenges to notices and exemption requests may be informal so long as the conditions established in Section 67.11 of the Regulations are met. Where a State hearing is held, any EPA hearing to review State exemption decisions or penalty assessments may be of an informal nature.

E. Confidentiality. Comments received expressed concern that EPA take adequate precautions to ensure the confidentiality of any business information submitted by the source in the context of a penalty assessment. EPA recognizes the need to protect the confidentiality of business information. The procedures that EPA will follow in handling confidential information are codified at 40 CFR 2.201 *et seq.* These procedures require that the source

specify the materials that it believes are entitled to confidential treatment.

VI. State Involvement

A. Delegation. Part 67 deals with State involvement in assessing and collecting noncompliance penalties. EPA encourages all States that are interested in the program to seek delegation as soon as possible. Penalties assessed by a State will be paid to that State.

In order to be delegated the authority to administer this program, a State must request a delegation by describing its proposed program. The request must indicate, among other things, the availability of adequate staff and funds and the capability for conducting the necessary financial analysis and administrative hearings, as well as an indication that the State possesses adequate legal authority to carry out the program. Where specific assistance from EPA will be necessary, the State request should so indicate.

After a State delegation is in effect, EPA will retain concurrent authority to assess and collect a penalty against any source within that State that is subject to the penalty and against which the State has failed to take appropriate action. The Act requires that EPA review a State's administration of the noncompliance penalty program to ensure that it conforms to the requirements of the Act and EPA's regulations. To enable such review, the proposed regulations specified extensive reporting requirements for States to follow. Comments received objected to these proposed requirements as unnecessarily stringent, and urged that they be reduced.

The final regulations reduce the mandatory reporting requirements to the greatest extent possible. The regulations require the State to provide a copy of each penalty calculation which it performed or approved, together with any information needed to verify its accuracy. This information is required by the Act itself. Additionally, upon request by the Administrator, the State must furnish a copy of the record compiled in any administrative hearing which it conducted. Transmittal of this information is necessary to enable EPA to fulfill its non-discretionary duty under Section 120(b)(6) to review, upon request by the source owner or operator, the State's decision in any administrative hearing.

Additional reporting procedures, if any, which may be needed to ensure adequate EPA oversight of the State's program will be specified in the individual delegation of authority. This procedure will enable EPA and the State to structure any necessary reporting mechanism in a manner that is most convenient for the State. EPA oversight of State penalty programs will diminish as the State demonstrates continued implementation of the program in accordance with the requirements of the law.

Where the Administrator determines that a source has been overlooked, or that other steps subsequent to the issuance of a notice of noncompliance have not been taken, he will notify the State that EPA will issue a notice of noncompliance or take other appropriate measures if the State does not cure the defects in its proceedings within 30 days. The penalty will be calculated from the date the source first received a notice of noncompliance from either the State or EPA.

Provision is also made in the regulations for review of State exemption decisions and penalty assessments. Where the Administrator disapproves a State action, EPA will then take whatever steps are necessary to assess the penalty against that source in accordance with these regulations. If the Administrator determines that the State has generally failed to administer the program as required in the regulations, he shall so notify the State, setting forth the reasons for such a determination. The State may then respond. If the State cannot so demonstrate conformity with the regulations, the Administrator will withdraw the delegation and implement the program.

Final Action

The following regulations and the appendices thereto are nationally applicable, and this action is based upon a determination of nationwide scope and effect. Therefore, under Section 307(b) (1) of the Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review must be filed on or before [insert date 60 days after publication date]. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of this Notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(Sections 120, 301 and 114 of the Clean Air Act, as amended, 42 U.S.C. 7420, 7601 and 7414)

Douglas M. Costle,

Administrator.

July 7, 1980.

Responses to Comments

Note.—Responses to Comments will not be printed in CFR.

I. General

1. (a) Monitored violations that fall within the range of error in monitoring equipment should not constitute noncompliance.

Response: The SIP regulation applicable to a particular source defines what constitutes noncompliance, and specifies the testing method by which compliance will be determined. There is no basis in the Act or legislative history for requiring that EPA consider the range of error in monitoring equipment before determining that a violation exists, unless the SIP itself so specifies. Any violation of the SIP requirements as approved by EPA subjects the source to noncompliance penalties.

(b) Does the noncompliance penalty apply to violations of reporting requirements or increments of progress?

Response: The statute provides that all violations that result in an ecomomic benefit to the source are subject to noncompliance penalties. This could include violations of reporting requirements or increments of progress.

2. Sources should not be assessed noncompliance penalties where SIPs:

(a) are subject to a revision and the federal government has not acted on the revision within a reasonable time.

(b) are about to be changed and, as changed, the source would no longer be in violation.

Response (a) and (b): A source is subject to the provisions of a SIP. SIP revisions are effective only after approval by EPA. The pendency of a SIP revision does not excuse the source from complying with the existing SIP, or insulate the source from noncompliance penalties.

(c) have been stayed by a State court.

Response: As noted in the preamble, EPA is determining the effect of State court stays in light of the recent opinion in *Illinois* v. *Commonwealth Edison Company,* and will announce its policy on this as soon as this analysis is completed.

3. If a source decides to shut down upon issuance of a notice of noncompliance, the source should not be liable for the penalty.

Response: A source that complies by permanently ceasing operation is no longer in violation of the law and will not be assessed a penalty for the period of time after its shutdown. The source has, however, enjoyed the benefit of noncompliance up to the time of shutdown, and a penalty is appropriate. The preamble discusses how credits will be granted when a source owner or operator complies by replacing an older facility.

4. Some sources operate only intermittently. Will the penalty be limited to periods during which the source is actually operating?

Response: EPA will calculate noncompliance penalties for the entire period from receipt of a notice of noncompliance until the source actually achieves final compliance. By failing to make necessary expenditures to install pollution controls, the source achieves an economic benefit. This benefit is enjoyed until these expenditures are made, whether the source operates for the full 12 months or some lesser period. There may, of course, be a reduction in the amount of O&M penalty reflecting the source's intermittent operation.

5. The penalty should not be assessed against nonferrous smelters until Nonferrous Smelter Order regulations are promulgated.

Response: EPA will not assess penalties against smelters for violations of sulfur dioxide requirements prior to promulgation of the nonferrous smelter order regulations. Further, smelters will be allowed adequate time in accordance with the statute and the regulations to apply for and receive a § 119 order prior to imposition of § 120 penalties. Violations of requirements relating to other pollutants will not be affected by these smelter regulations.

6. The definition of "applicable legal requirements" should include variances, and a source operating in accordance with the provisions of a variance should not be subject to the penalty.

Response: The term "variance" is loosely used to describe a variety of procedures which have differing legal effects. As used by EPA, the term "variance" refers to an EPA-approved SIP revision under Section 110 of the Act. To be approvable by EPA, the revision must be such that it would not prevent the attainment and maintenance of the national ambient air quality standards. Upon approval by EPA, such a revision amends the SIP, and compliance with its provisions constitutes compliance with the SIP. Other "variances" do not satisfy these criteria and do not constitute an "applicable legal requirement" of a SIP.

7. Penalties should only be imposed on sources that are not installing pollution controls as rapidly as possible.

Response: EPA disagrees. Even a source that is installing controls as rapidly as possible is benefitting from its failure to achieve compliance with the requirements of the law as of the date of receipt of a notice of non-compliance.

8. Information required under the model could give an advantage to competitors.

Response: A source may seek confidential treatment for information provided pursuant to statute under the provisions of 40 CFR Part 2.

II. Exemptions

1. Prehearing conferences concerning petitions for exemptions should be provided so that issues can be resolved without a hearing.

Response: EPA encourages prehearing conferences. As noted in the regulations, EPA will generally follow its Consolidated Rules of Practice for adjudicatory hearings. These Consolidated Rules provide explicitly for prehearing conferences.

2. A source obtaining a delayed compliance order in connection with a revised SIP requirement should be automatically exempted under Section 120.

Response: Section 120 is designed to recapture the economic benefit enjoyed by a source that does not achieve timely compliance with SIP requirements. Sources obtaining DCOs enjoy an economic benefit by not having achieved such timely compliance. While insulated from a civil enforcement action under Section 113 or citizen's suits under Section 304 during that period, there is no reason such sources should also enjoy the economic benefit of delay unless they qualify for an exemption under Section 120. The fact that the DCO relates to a revised rather than an existing SIP requirement does not, in and of itself, provide a basis for giving it special treatment. Section 120 also specifies the circumstances under which a DCO exempts a source from noncompliance penalties.

3. A consent decree should exempt a source as an inability to comply.

Response: EPA disagrees. The existence of a consent decree is the result, not the cause of, the source's failure to comply on time. It is an enforcement response to the fact that the source is in violation. The standard for obtaining a consent decree is that the source is unable to comply immediately. The standard for receiving an exemption is more stringent, i.e., that the inability resulted from reasons entirely beyond the control of the source. Sources on consent decrees do obtain an economic benefit from their delayed compliance. The noncompliance penalty recovers this benefit.

4. A source owner should not be required to possess a final court order or consent decree in order to petition for an exemption based on inability to comply for reasons entirely beyond the source's control.

Response: EPA disagrees. Until a court order or decree is final EPA cannot determine whether it may serve as a predicate to the exemption. Where the event giving rise to the inability occurred prior to the order, however, the exemption may relate back to the date on which the inability to comply arose. Thus, the source owner will not be prejudiced by a delay in finalizing the order or decree.

5. The statute authorizes the issuance of delayed compliance orders (DCOs) which extend beyond July 1, 1979, or the issuance of DCOs after July 1, 1979. Such DCOs could serve as a predicate for an exemption for inability to comply.

Response: Section 113(d)(1)(D) provides that a DCO must "provide for final compliance as expeditiously as practicable but * * * in no event later than July 1, 1979, or three years after the date for final compliance" specified in the SIP, whichever is later. Thus, unless the SIP specified a final compliance date later than July 1, 1976, EPA may not issue or approve a DCO with a final compliance date later than July 1, 1979.

6. A source that has made a substantial commitment to replacing an old facility should be eligible for an inability to comply exemption. This should be available even if compliance might have been achieved by means other than replacement.

Response: EPA disagrees. Noncomplying sources that are replacing facilities have nonetheless enjoyed economic benefit from delay. No exemption for such sources is authorized in the Act or legislative history. EPA does, however, wish to encourage replacement and has accordingly provided that the source, within the framework of the economic model, may use the costs of the replacement facility as a credit against the penalty.

7. EPA should not assess penalties against sources that have installed pollution control equipment which has occasional periods of violation.

Response: Any source in violation of emission limitations is subject to the penalty unless exempted. The mere installation of pollution control equipment does not exempt a source, since the source owner may still be avoiding O&M costs. If no economic savings resulted from the occasional violation, however, no penalty is assessable. Where occasional violations do result in benefit, several exemptions might be applicable. There is no statutory basis, however, for exempting all occasional violations. Some may provide the kind of benefit Congress intended to recapture.

8. An exemption should be available for violations caused by phasing in and out of pollution control or process

equipment or both, as well as for routine maintenance operations.

Response: Generally, these procedures are foreseeable and would not, therefore, be considered unavoidable malfunctions. If, however, the source can demonstrate that the above violations meet the criteria for malfunctions established in the regulations, an exemption would be available.

9. A source owner should be automatically exempted for short term violations where EPA or the State has approved the pollution control equipment. It should not have to petition formally for an exemption and satisfy the requirements specified in the regulations.

Response: EPA disagrees. EPA does not approve equipment as such. The source is responsible for determining that the control method is adequate to meet the applicable requirement. The source is also responsible for operating and maintaining the equipment to ensure continuous compliance.

10. Sources that have installed approved control equipment which does not operate as designed should be exempted.

Response: Failure of control equipment to operate as designed may allow a source to get relief under the exemption for inability to comply despite best efforts.

11. A source owner should not have to demonstrate that its pollution control equipment was properly designed in order to obtain an exemption based on a malfunction. Ensuring proper design is not the source owner's responsibility.

Response: EPA disagrees. The source owner must bear the responsibility to purchase and install pollution controls adequate to maintain compliance. The source owner is the person most familiar with any peculiarities of the production process that might make certain types of pollution controls necessary and others inappropriate. There may be instances, however, in which the problems with the control equipment were unforeseeable or unavoidable, or the equipment delivered and installed did not meet the specifications ordered by the source owner. In these situations, the source owner might qualify for an exemption based on inability to comply for reasons entirely beyond his control. EPA will consider all exemption requests on a case-by-case basis.

12. The availability of financing has no bearing on the ability of the source owner to install pollution control equipment. EPA should broaden the definition of economic impossibility to encompass factors included in its proposed nonferrous smelter order regulations (e.g., cost of controls, energy impacts, and non-air health and environmental impacts).

Response: EPA disagrees. In enacting Section 119, Congress directed EPA to consider the cost of compliance, non-air quality health and environmental impacts, and energy considerations when specifying what controls are reasonably available to a nonferrous smelter seeking a nonferrous smelter order. No similar provision is contained in Section 120. Rather, the legislative history of Section 120 indicates that Congress limited the economic impossibility exemption to an inability to obtain financing due to temporary, verifiable general market conditions. (See discussion in preamble). The purpose of Section 120 is not to determine which type of control equipment is reasonably available to the firm, but rather to recover the economic benefits that the firm enjoys by not satisfying applicable legal requirements.

13. EPA should consider overall air quality impacts in assessing penalties. It is unfair that one source could be in violation for emitting less pollution than another source that is in compliance.

Response: The Act is clear. A State may regulate its sources in any manner sufficient to attain and maintain the national ambient air quality standards. The State having made the necessary judgments, a source is subject to Section 120 if it violates the SIP or other applicable requirements. It would be improper for EPA, except within the limited framework of the exemption provisions, to use the penalty provisions to second guess the State's assessment of the impact of a particular source's emissions on air quality.

14. The provision that a source is insulated from penalty assessment only for the period during which its inability to comply was entirely beyond its control fails to take into account the fact that compliance may not immediately result when the cause of the inability is removed.

Response: The regulations do not limit the duration of an inability to comply exemption to the time during which the event causing the inability actually exists. Rather, EPA will exempt that period of noncompliance that followed unavoidably from the event that caused the inability. For example, if a source that had been in compliance experienced a fire in its control equipment, it would be exempt until it had rebuilt its equipment in accordance with the expeditious schedule contained in a DCO or consent decree. This issue is discussed in more detail in the preamble.

15. EPA should consider the financial condition of the individual source in determining entitlement to an exemption based on economic impossibility.

Response: EPA disagrees. To make the individual circumstances of a firm the relevant test would go considerably beyond Congressional intent and would be administratively unworkable. As noted in the preamble, the test for economic impossibility articulated by the House committee focused on the conditions existing in the capital markets as a whole, rather than on the individual source. Even if consideration of the financial condition of the individual source were appropriate, an accurate determination of a particular source's ability to pay would not be workable in practice. It would necessitate that the source submit, and EPA analyze, extensive (and even then not necessarily conclusive) data relating among other things, to markets, sales, and past and anticipated financial actions. EPA does not believe that Congress intended for it to review a source's economic history in this fashion.

III. Timing/Due Process

1. Penalty should be calculated from the date a source receives notice, rather than date of issuance of the notice.

Response: EPA agrees. While § 120(d)(3)(C)(ii) provides that, for all sources issued a notice of noncompliance after August 7, 1979 the period of covered noncompliance commences on the date of issuance of the notice, EPA believes that it is more equitable to interpret that provision as meaning the date of receipt of the notice and to calculate the penalty from that date. The regulations have been changed accordingly. This change ensures that all source owners will have the full 45 days provided by the statute in which to respond to the notice.

2. Forty-five days may not be long enough to calculate a penalty or to develop a petition.

Response: The 45 day period is a statutory deadline. Moreover, the regulations permit the source owner to submit additional information after the 45 day period where necessary. A source submitting a petition need not submit an elaborate supporting brief but may summarize the facts and legal arguments that prove it is not in violation or that it is entitled to an exemption in a fashion sufficiently compelling to ensure that a hearing will be granted. The function of the hearing will be to examine the source's contentions in detail.

3. EPA should allow a source to amend its petition within the 45 days, or

after that time if information previously unavailable later become available.

Response: EPA will allow such amendment.

4. The 90 day time period for hearings is too short for adequate exposition of the issues and reasoned decision making.

Response: The 90 day requirement is established by statute. The final regulations do, however, allow for extension of this time period upon agreement of the parties and approval of EPA. Where the deadline for decision making is missed (for whatever reason) the regulations provide, consistent with administrative law, that such slippage would not affect the validity of the proceedings or the accrual of penalties.

5. Precluding a source from raising at an adjudicatory hearing issues that could have been but were not raised in the rulemaking is a denial of due process.

Response: Section 307(b)(2) precludes a source from raising in an individual proceeding under the Act issues that could have been raised in a judicial challenge to the regulations at the time of promulgation. Section 307(d)(7) provides the source with an additional opportunity to seek agency reconsideration of certain issues arising after promulgation.

6. Payment of penalties should be suspended until any legal challenge to the penalty is completed.

Response: A source that petitions for an exemption or reconsideration of the finding of violation will not make penalty payments prior to administrative resolution of the petition. Penalties will, however, be payable after final administrative action notwithstanding the pendency of judicial review, if required. Commencement of payments upon final agency action is consistent with the intent of Congress as expressed in the anti-stay provision of the Act, Section 307(g).

A source that petitions for reconsideration of EPA's recalculation of the penalty will only pay the penalty amount which it itself has calculated until a final administrative decision on the petition has been rendered. At that time, any necessary corrections to the penalty amount or payment schedule will be made.

IV. State Delegations

1. The 10th Amendment requires EPA to approve State programs which are less strict than EPA's.

Response: EPA disagrees. The Administrator is authorized to object to a penalty assessment as less than would be required under federal law. A State can, of course, establish under State law a penalty program of its own. The State acts as EPA's delegate in implementing the Section 120 program, however, and that program must conform to these regulations.

2. A State should be precluded from assessing a higher penalty than would be assessable by EPA.

Response: EPA disagrees. Section 116 allows a State to develop a program that is more stringent than EPA's if the State has adequate legal authority to do so.

3. A State should be able to collect penalties for violations of State requirements even if such requirements are not part of the applicable SIP.

Response: EPA agrees. Section 116 does not preclude assessment of penalties based on non-SIP State regulations if there is authority under State law to do so.

4. EPA's requirement that the predecessor SIP remain in effect until such time as a source demonstrates compliance with new SIP requirements would require a State which has been granted a delegation of authority to issue notices of noncompliance based on violations of requirements that are no longer part of the State program.

Response: Requiring the continuity of predecessor SIP requirements is necessary to assure reasonable further progress towards attainment and maintenance of the ambient air quality standards. If State law prohibits the State from enforcing SIP requirements that have been superseded, EPA would assume primary enforcement authority for these pre-existing provisions.

5. EPA should only have the authority to review a State's adequacy in conducting the program. It should not have the authority to review State decisions on a case-by-case basis.

Response: The Act authorizes the Administrator, on his own initiative, to review any State noncompliance penalty proceeding to determine whether it conforms to the Act and to EPA's regulations. Further, the Act requires that the Administrator undertake such review upon receipt of a petition.

6. The regulations should specify whether appeals from a State hearing decision will lie with the Administrator or with the State court.

Response: Appeals from a State hearing decision will lie with the Administrator. The Act and legislative history indicate that Congress intended an exclusive federal role in ensuring that a State's administration conforms to the Act, and provided a procedure to accomplish this result. Section 120(b)(6) authorizes the Administrator, on his own initiative, to review any State decision and disapprove it if it was not in accordance with the provisions of the Act. This Section also provides that the Administrator must undertake such review upon receipt of a petition.

Allowing a source owner to appeal adverse State decisions to the State courts would frustrate this intent, and could lead to inconsistent interpretations of the Act and EPA's regulations. The only situation in which an appeal would lie with the State court would occur if the State's program was more stringent than required by Part 66 of the regulations. In this situation, appeals from State administrative interpretations of these more stringent provisions would be in accordance with procedures set forth in the State's implementing regulations.

7. The requirement of § 120(b)(5) that State hearings be substantially similar to federal adjudicatory hearings means that State hearings must conform to §§ 554, 556, and 557 of the Administrative Procedure Act.

Response: EPA disagrees. Congress required only that State hearings be "substantially similar" to federal adjudicatory hearings. Part 67 of the regulations ensures adequate protection of due process rights in this respect.

8. The regulations should require that States demonstrate adequate legal authority to carry out the program.

Response: It is for a State to decide whether it requires independent authority to assume delegation. If a State is willing to accept delegation based on federal legal authority, EPA will accept that decision.

V. Calculation of the Penalty

A. General

1. How is the penalty calculated if the notice of noncompliance is received in the middle of the month?

Response: The manner in which EPA will compute a penalty if a notice of noncompliance is received, or final compliance achieved, in the middle of the month is explained at II–4 of the Instruction Manual, Appendix B to these regulations.

2. EPA may not revise the model to recapture additional economic benefit without providing opportunity for public comment.

Response: EPA will continue to consider the question of how to measure such benefits. No source will be assessed a penalty on the basis of additional economic benefit without additional rulemaking by EPA.

3. Opportunity to correct accounting errors should be provided.

Response: Errors of accounting or computation made in the initial calculation will be corrected during the

final adjustment of the penalty. Mere changes in accounting methodology or changes to reflect preferred practice will not ordinarily justify revision of penalty calculations.

4. The model is too complex.

Response: EPA has attempted to formulate a model that is relatively easy to use, while also calculating accurately the economic benefits of noncompliance. The present model accomplishes this result. Making the model less complex would decrease its computational accuracy. This would violate the purpose of the statute. Other models were suggested and evaluated by EPA but were found deficient in some respects as is shown in individual responses below.

5. Certain things are not accounted for in the model: (1) source's political power to have standards changed; (2) changes in demand for product. Thus it may be in source's interest to postpone expenditures in existing facility.

Response: The Agency agrees that the model does not account for the possibility that a noncomplying source may possess the political power to have standards changed. The statute, however, requires that the penalty be based on the economic value that a source enjoys from not complying with applicable requirements. The political power a source does or does not possess is irrelevant to this process.

It is also true that a firm always faces uncertainty about demand for its products, a situation which would often make it desirable to postpone capital expenditures such as those required for pollution control equipment. However, the Agency feels that the added benefit of delayed compliance which results from this factor cannot now be calculated.

6. Section 120(d)(3)(A)'s requirement of equal quarterly payments means equality of nominal not of "real" dollars.

Response: EPA disagrees. The legislative history supports the use of "real" dollars in establishing a payment schedule (See 123 Congressional Record S. 13698 (daily ed. August 4, 1977)). A schedule of payments that does not reflect inflation will over-recover the savings from noncompliance in the early years of equipment life and under-recover the savings in the final years.

7. A weighting factor for severity of noncompliance should be considered.

Response: Except for *de minimis* exemptions, EPA has no discretion to adjust the penalty based on the severity of the violation.

8. No penalty should be assessed where the noncomplying firm showed a net loss for the year.

Response: The discounted cash flow method of evaluating the cost associated with an investment does not rely on an assumption that the firm shows a profit on its overall operations. The assumption is that the firm has the opportunity to invest the funds which should have been used for pollution control equipment in other areas. It is the returns that the source could have realized on these alternative investments that the noncompliance penalty seeks to remove.

9. The penalty creates a disincentive to maintain equipment since maintenance costs will increase the penalty. O&M costs avoided should not be computed.

Response: The Act specifically includes O&M costs avoided as one component of the penalty. EPA believes that a source will choose the most cost effective method of pollution control and that O&M costs will be but one of the factors considered. Failure to attain and maintain compliance, whether or not attributable to inadequate O&M, will lead to additional enforcement by EPA.

10. The model should compute the cost of compliance on the basis of the cheapest method available. This will allow the firm to risk innovation to come into compliance without risking increased penalty.

Response: The Act requires that the penalty be based on the actual costs of compliance. The method chosen to achieve compliance is up to the firm, subject to EPA review for the reasonableness of the compliance effort. A firm which proposes a method of compliance bears the risk of failing to achieve compliance and at a minimum extending the period of covered noncompliance. Since noncomplying firms will be subject to regular enforcement action, EPA believes that firms will choose the most cost effective means of achieving expeditious compliance, i.e., the "cheapest" method in the long run. Compliance based on short-term expedients would, therefore, probably not be chosen. EPA has, furthermore, no reason to conclude that a penalty calculation based on the "cheapest" method of compliance would encourage innovative approaches to compliance.

11. EPA has no authority to assess a 20 percent nonpayment penalty against a source with respect to late payment of the final settlement. Only sanction would be to charge appropriate interest rates as specified in § 120(d)(4)(B).

Response: EPA disagrees. Section 120(d)(5) provides that the late payment penalty applies to *any* late payment. Without a 20 percent late payment fee a source whose historical rate of return on equity was lower than its internal discount rate would find it attractive to avoid making its final payment.

12. Regulations should take into account circumstances that would justify late payments.

Response: EPA has no discretion to waive the requirement of timely payment.

13. The Act provides for adjustment of the penalty from time to time. The regulations make no provision for this. Source should be able to petition for such interim recalculations.

Response: Interim recalculations of the penalty are authorized but not compelled by the statute. Final adjustment of the penalty will generally suffice to ensure that the source has paid the appropriate penalty. On good cause being shown, e.g., a serious miscalculation, or on his own initiative where necessary, the Administrator will re-open the penalty calculation proceeding and, if necessary, adjust the penalty.

14. Should "interest" payments made as part of the final adjustment be considered part of the penalty.

Response: Such payments should be considered as part of the penalty rather than as a separate interest charge. A source owner who underestimates his penalty has the opportunity to realize a rate of return on funds that, had the penalty calculation been accurate, would have been collected by EPA. By assessing such charges at the time of final adjustment, EPA ensures that the full economic value of noncompliance has been captured. If a source owner could deduct such payments as interest for tax purposes, he would be encouraged to underestimate his penalty and will realize further economic benefits.

B. Inputs to the Model

1. EPA should use the same interest rate for both overpayment and underpayment of the penalty.

Response: EPA disagrees. There are sound economic and policy reasons for establishing a dual rate. The rate for underpayments will be identical to the discount rate used to calculate the penalty initially. Use of this discount rate recognizes that to the extent the source owner has underpaid the penalty, he has continued to derive some economic benefit from his noncompliance. Establishing a rate for underpayments that is lower than the rate of return available to the source owner creates an incentive to underpay the penalty. The source owner would be able to invest the shortfall (which should have been spent on compliance efforts) and receive a positive rate of

return. To the extent that the rate established for the underpayment was lower than the rate of return available to the source owner, EPA would not have recovered the full economic value that the source owner received from his noncompliance.

Using the same rate for overpayments of the penalty, however, would not be appropriate. Government paper is relatively risk free. If the rate established for over-payments were equal to the discount rate, source owners would have an incentive to overpay the penalty deliberately. In essence, these source owners would be making a short term deposit of funds in an account yielding a higher rate of return than would be available on the open market for alternative investments of comparable risk. To the extent that the discount rate was higher than the rate of return available for investments of comparable risk on the open market, the Treasury and, indirectly, the taxpayer would be subsidizing the noncomplying source. To prevent such deliberate overpayment of the penalty, the Department of the Treasury and EPA have selected as the rate of return on overpayments the rate of return available on Treasury instruments having a duration similar to the period of covered noncompliance.

2. Reliance on IRS Revenue Procedure 77–10 to determine the life of pollution control equipment is unjustified. The actual physical life of controls depends upon several factors and could differ from the useful life figures in the IRS guidelines.

Response: Some assumption about the useful life of pollution control equipment is necessary to enable EPA to calculate the economic benefits of delay associated with replacement of control equipment. EPA selected the IRS guidelines to provide this information because the guidelines are readily available, and because they are familiar to and used by businesses. This is so despite the fact that the actual life of a particular piece of pollution control equipment, like that of other types of equipment, may vary from useful life estimates.

As noted in the preamble, EPA recognizes that it may be possible to develop useful life estimates that are more accurate than those contained in the IRS guidelines. If such data becomes available, EPA will propose its use for public comment.

3. The model should use inflation indices already in existence for particular industries, e.g., the Handy Whitman Index, Marshall and Swift's comparative cost tables and Standard and Poor's Auto and Auto Parts Index. The model should also recognize the possibility that the price of a particular piece of control equipment may inflate faster than the inflation index presented in *Chemical Engineering Plant Cost Index.*

Response: EPA has reviewed most of the indices suggested by commenters. Even assuming that comparable indices were available on an industry-by-industry basis, the use of a single index to estimate inflation in pollution control equipment costs remains preferable to the use of multiple indices. This is because the function of the selected index in the model is to represent industry experience with pollution control equipment cost. It does not represent each industry's own experience with production costs. While the cost of a particular item of pollution control will vary to some extent with the industry, such variation may or may not correlate with that industry's inflation index. It is, for instance, at least as reasonable to assume that the price of the same pollution control equipment in two industries moves at the same approximate rate as to assume that it will vary with each particular industry.

4. Use of an identical inflation rate for capital and O&M costs may not be accurate since increases in labor, material and construction equipment costs all affect capital while labor is the primary reason for increased O&M costs. O&M could be based on a regional wage index.

Response: Increased O&M expenditures may reflect increased energy, chemicals, and other materials costs, as well as increased labor costs. EPA believes that the designated inflation index reasonably represents the apprropriate cost components.

5. The relative tax position of the firm should not affect the penalty, which should be indifferent to the tax bracket of the firm.

Response: The firm's tax bracket directly affects the level of economic benefits resulting from noncompliance since it affects the real cost of the investment. The higher the firm's tax bracket, the greater the marginal impact of the deduction or credit, and the lower the benefit of delay.

6. The tax rate should be the maximum statutory rate of 46 percent. Since the penalty is so sensitive to the marginal tax rate, using a general tax rate makes sense.

Response: EPA disagrees. Section 120 of the Clean Air Act requires that the noncompliance penalty remove the economic benefit of noncompliance. That benefit will vary with the actual tax rate of the source. Use of a flat maximum would understate the penalty for firms not taxed at the maximum rate. However, since the maximum marginal federal tax rate of 46 percent applies to all pre-tax income in excess of $100,000 most, if not all, major pollution sources may be expected to use this rate.

7. EPA should define what constitutes a tax exempt industrial development bond.

Response: Section 103 of the Internal Revenue Code defines the term "industrial development bond" and provides special tax treatment for bonds issued "as part of an issue substantially all of the proceeds of which are used to provide . . . air or water pollution control facilities." Determining whether a particular bond satisifies these criteria and is thus eligible for special tax treatment lies with the Internal Revenue Service.

8. The model should assume that, where industrial development bonds are issued, the purchase of pollution control equipment will be financed by debt to the extent that industrial development bond (IDB) funding is available. The result of assuming that industrial development bond financing will establish the cost of debt but will not alter the financing structure is to distort the actual cost of financing since the higher cost of equity (due to disqualification for investment tax credit) and the true cost of debt for the particular project are not fully recognized.

Response: The use of industrial development bond financing gives rise to several problems. Since the availability of such bonds is limited to particular projects, their use requires a breach of the rule against costing of investment by assuming particular forms of financing. On the other hand, the fact remains that additional debt will, all else being equal, in the long term prompt the equilibrium-seeking firm to augment equity accounts.

Recognizing that a firm will likely choose to avail itself of low cost debt financing does not mean that the long term equilibrium assumption must be abandoned. The model's use of the IDB rate in conjunction with its assumption of a contant capital structure is a pragmatic resolution of the theoretical problem.

One commenter pointed out, in addition, that EPA's treatment can have a perverse effect in some circumstances, i.e., where a firm's debt to equity ratio is low. EPA acknowledges that such a perverse effect can arise but considers that such effects could not be alleviated without making the model considerably more complex.

9. If pollution control bonds are used as a source of financing, the effective

interest rate of the bonds should be used instead of the current rate of interest on bonds of a grade equal to the firm's bonds.

Response: The Agency agrees with this comment. The final regulations call for using a weighted average of the corporate bond interest rate and the rate on industrial development bonds.

However, using this weighted average approach does not in all cases fully account for the beneficial effects of using industrial development bonds. If a firm has a low debt share in its capital structure, the model may slightly underestimate the cost-reducing impact of IDB's. This in turn will result in a slight overstatement of the economic benefit of noncompliance. The Agency believes that the magnitude of this overstatment is too small to make it necessary to adjust for it.

10. Use of present rather than historic interest rate on debt is inconsistent with use of historic inflation and discount rates. Interest rate should also be based on a 20 quarter average.

Response: The Agency has sought to require use of that data which will provide the most meaningful estimates of the various parameters. In the case of the rate of interest on long term bonds, current rates are a better estimate of the marginal cost of compliance than averages, and they are readily available.

11. Capital cost of compliance should include cost of working capital.

Response: The amount of working capital required to install and operate pollution control equipment is very difficult to estimate. While, in theory, it constitutes one of the costs avoided by delay, the amount would probably be small. For this reason, and for administrative reasons, it is excluded from the penalty calculation.

12. The designation of the FTC's *Quarterly Financial Report for Manufacturing, Mining and Trade Corporations* as the source of an equity discount rate is mistaken. A conglomerate is potentially subject to reclassification between industrial categories, changing the amount of the penalty without significant change having occurred to the noncomplying source.

Response: The possibility of reclassification does not warrant use of some other index. If reclassification occurs and has an impact on the penalty, proper adjustment can be made through an interim recalculation if appropriate or at the final adjustment.

13. The debt-to-equity ratio cannot be estimated for all firms.

Response: EPA disagrees. The debt-preferred stock-common equity ratio can be estimated from the firm's balance sheet. Where the noncomplying source is owned by a firm which itself is a joint venture of two or more firms, the mix existing in the capital structure of the joint venture would be used in the penalty calculation. In the case of conglomerates and similar diversified companies, the appropriate balance sheet will be that of the smallest entity with audited financial statements which includes the source not in compliance.

14. It is arbitrary for the penalty to change depending on the ratio of debt to equity in the firm's capital structure.

Response: EPA disagrees. Firms with low debt-equity ration have a higher proportion of more expensive equity in their capital structure. Thus, the present value of their pollution control costs will generally be higher. It follows that the economic benefit of delaying these costs will also be greater and the noncompliance penalties will reflect that increased benefit. The increased penalty merely reflects the firm's relatively higher financing costs.

C. Discount Rate/Inflation Rate

1. The use of an equity discount rate wrongly equates return on equity with the cost of equity. The firm with the highest risk will experience the highest cost of equity, but will not necessarily experience the highest return.

Response: While the theoretical possibility exists that the firm with the highest rate of return on equity will not be the firm with the highest cost or risk, in practice there is a correlation between risk and return. More significantly in terms of the model, the equity rate is only used as an estimate of the rate of return which may be achieved by the firm. It does not equate the return on equity with the cost of equity.

2. The use of an average return on equity improperly assumes that all firms are alike.

Response: The use of an average is not intended as a statement that all firms are alike but as a statement that all have similar long run investment opportunities and, upon settlement, as a simplifying assumption that the firm's average return on its (untraceable) alternative use of capital equals the average enjoyed by the industry or all manufacturers.

3. EPA should use market values where available in lieu of book values for establishing the equity discount rate.

Response: EPA disagrees. Relying on market share values to determine the equity discount rate has several drawbacks. First, the market value of shares is often influenced by short term trends and non-economic factors. Additionally, market values would provide a meaningful measure only for those relatively few companies whose shares are widely held and actively traded. EPA lacks the capability to analyze the market to determine whether particular shares satisfy these criteria and would thus be an appropriate indicator for the equity discount rate.

4. The use of an averaged return (on equity) means that the highly leveraged firm pays a lower penalty than if the rate were firm-specific. The highly leveraged firm has more debt, and therefore will have a higher cost of equity (and associated return) and should enjoy a greater benefit from delay than the firm not so highly leveraged. Conversely, the lower leveraged firm will pay a higher penalty than it should due to the averaging in of returns from higher leveraged firms.

Response: The problem described arises from the nature of averages. The effect should be reduced by the fact that the higher-leveraged firm will have higher debt costs but a higher proportion of debt, i.e., possibly a relatively "low" weighted average capital cost which would reduce needed returns.

5. The designation of the FTC's *Report* is mistaken because it is not designed to measure a future discount rate, because the use of a 20-quarter historic average does not reflect business practice in projecting such a rate, and because industry-wide averages such as the *Report* generates are unrelated to and should not be used in conjunction with firm-specific figures (such as the tax rate). Difficulties in arriving at firm-specific figures do not warrant resort to arbitrary averages.

Response: The use of a 20-quarter book-based historic average in lieu of an internal hurdle rate, market value, econometric projection or other basis of estimation results from the necessity to use a reasonably ascertainable and verifiable figure. The rate specified by EPA is both available and easily ascertainable. Whether or not it is used in industry planning is not relevant. There is no inherent reason that the use of the designated average will not provide a reasonable estimate of the firm's future discount rate since it reflects an average of an industry's immediate past experience. The fact that it is not a firm-specific rate does not make its use in conjunction with firm-specific inputs improper. It describes the opportunities available to the firm in the context of the firm's own industry or the economy as a whole.

6. Using historical averages, which are retrospective, to predict future values is questionable. Econometric models are prospective and, therefore, better.

Response: Historical values are used because such values are readily available and applicable to a wide variety of industries. As is explained in the Technical Support Document, the fact that the model is sensitive to the difference between the inflation and discount rates, and the fact that this difference may be expected to remain relatively constant, will counteract the unavoidably retrospect bias of the data. The final adjustment of the penalty will provide a second corrective to the use of historical averages, since those averages will be updated at that time.

Econometric models do not exist for all of the parameters which must be estimated. Such models often disagree, moreover, on their predictions of future indices and rates. EPA considered that the complexity, incompleteness and controverted nature of econometric models were disadvantages that outweighed conceivable advantages.

7. The model should not assume a constant relation between the discount rate and the inflation rate, particularly where the inflation rate does not reflect price changes in the total economy but only in part of it.

Response: It is true that the relation between a general discount rate and a general inflation rate will not necessarily be constant, and that the relationship between a general discount rate and a less general inflation rate will be somewhat less constant. But the assumption of a correlation is reasonable given the inflation component of the discount index used. The other components are generally considered to be a pure time value of money and risk.

8. The model should allow the rate of inflation to exceed the discount rate.

Response: The Instruction Manual provides that, where the inflation rate exceeds the discount rate, the source owner must set the discount rate equal to the inflation rate. This is the case with respect to both the capital and O&M components. This treatment results in the calculation of a zero benefit in the capital portion of the penalty, and is conservative in that it does not recognize the residual value which accrues from displacing the last replacement more than 30 years into the future. This treatment will also result in the calculation of a positive benefit in the O&M portion of the penalty. The calculation of an O&M component of the penalty where the inflation rate equals or exceeds the discount rate is appropriate since O&M costs not incurred are avoided forever rather than merely postponed. The model does not allow O&M costs to be reduced by the extent to which negative capital costs would have been incurred if the inflation rate was permitted to exceed the discount rate. Correspondingly, however, the model does not recognize that O&M costs would be increased if inflation were greater than the discount rate. The two effects of the administrative simplification employed should tend to counteract each other.

9. The model should use a pre-financing return to establish the discount rate, not an equity rate.

Response: A pre-financing rate would not measure the benefit of delay to the firm. A pre-financing return would typically compute a return on capital assets without regard to financing or to capital structure. The embedded cost of debt in such case would be built into the rate of return. Such an embedded cost is unlikely to be equal to the cost of debt faced by a firm buying pollution control equipment. The return to the firm on its capital assets would not necessarily equal the return available to the firm by delaying such purchase either. To compute the benefit to the firm of delay, it is necessary to use a rate of return which reflects the costs at the margin of using debt and equity. The equity method accomplishes this, as would a weighted average cost of capital method which allocated appropriate weights to each component and assigned a marginal cost of each.

10. The final calculation should provide for the use of inflation and other rates experienced during the period of covered noncompliance.

Response: Several historical rates are used in calculating noncompliance penalties. The most important in terms of their impact on the magnitude of penalty are the inflation rate and the discount rate.

The inflation rate, which measures the rate of increase in pollution control costs, is used in estimating the magnitude of expenditures over time, both for replacement of capital equipment and for operating and maintenance expenses. The inflation rate should represent the best estimate of the rate of growth of such costs.

The discount rate is used to convert the resulting cash flows into their present value equivalents. Thus, the discount rate should reflect the opportunity cost of capital, or the future returns available on alternative investment projects. EPA has determined that the best available estimate of such rates, and therefore the best estimate of the benefit of delay at a particular time, is an average of historical rates. The problem is then one of selecting the appropriate time span over which the average is to be taken. The most recent five years was chosen because it is long enough to smooth out random fluctuations but short enough to capture the impact of changing trends.

When the penalty calculation is made at the time of the post-compliance settlement, the most recent five years will normally include the entire period of covered noncompliance. If only the period of covered noncompliance were used to determine these rates, the quality of the estimates would suffer because of the possible presence of random fluctuations. Limiting the calculation to the period of covered noncompliance is not appropriate. Such a limitation would ignore that a firm may be expected to enjoy long term, as well as short term benefits from delay, i.e., that the "portfolio" of investments will be mixed. The use of five year averages to estimate the benefits presently accruing to the firm during the period of covered noncompliance from this "mixed" portfolio recognizes that the estimates must represent a period greater than the period of covered noncompliance.

11. The penalty should use the actual rate of inflation during the period of covered noncompliance.

Response: The benefits which accrue from delay are not limited to those which accrue during the period of covered noncompliance. While inflation experienced during that period is relevant, using the actual inflation rate during the period of noncompliance would ignore these long-term benefits of costs deferred. The principal function of the inflation rate is to estimate replacement capital costs. The five year average is the best available figure which is representative of inflation in the future. A shorter period (as EPA assumes most periods of covered noncompliance will be) is too subject to variation.

D. Credits

1. It is unlikely that monthly expenditures for major capital projects can be predicted accurately. Expenditures should be divided on a quarterly basis.

Response: In order to determine the amount of any appropriate credits, it is necessary to know the timing and amount of the precompliance capital expenditures made by the source owner or operator. Requiring the use of a monthly schedule of capital expenditures enables EPA to calculate the economic benefits of non-compliance more accurately than would be possible if quarterly schedules were used. Any errors in estimating the amount or timing of precompliance expenditures can be corrected at the time of post-compliance settlement.

2. Separate treatment of the capital and O&M components of the penalty is unjustified. A precompliance expenditure made for O&M should reduce the entire penalty, not merely the O&M component of the penalty.

Response: EPA disagrees. The cash flow resulting from delaying capital expenditures differs from the cash flow resulting from delaying O&M expenditures. By choosing not to comply on time, the source owner is able merely to *defer* making necessary capital expenditures for a certain period. In contrast, O&M costs not incurred during that period of delay are avoided forever. Because of the different nature of these cash flows, it would be inappropriate to allow precompliance expenditures made on one component to be used as an offset for the other. (For an expanded discussion of this issue, see the Technical Support Document, App. A).

3. The model should take into account the reduced operating costs resulting from the installation of more efficient pollution controls, or controls that result in improved product recovery.

Response: Section 120(d)(2)(A) specifies that, in calculating the economic benefits of non-compliance, EPA must consider the "operation and maintenance costs foregone as a result of non-compliance." A source owner expending O&M funds on existing pollution controls reduces the level of his economic savings.

A similar effect on the firm's cash flow is experienced when new control equipment enables the source owner to improve product recovery. The Technical Support Document explains how a penalty should be calculated in this case.

4. Credit should be given for expenditures which reduce emissions in the interim, even if the means used are unrelated to the controls needed to achieve final compliance. Air quality benefit justifies this credit, as does the language in Section 120(d)(2) that provides credit for *any* expenditure made towards bringing source into compliance.

Response: As a general rule, allowing credits for expenditures made to achieve interim emissions reductions would not be appropriate. The Act specifies the factors EPA is to consider in calculating the penalty. Section 120(d)(2)(A) provides that the basic penalty will be calculated on the costs being avoided by a source owner who has not complied with applicable legal requirements. Section 120(d)(2)(B) limits the granting of credits to expenditures made to achieve compliance with those legal requirements which formed the basis of the original penalty calculation. There may be situations, however, in which expenditures made by the source owner to achieve interim emissions reductions acted to reduce the level of economic benefits, thus lowering the penalty.

E. Miscellaneous

1. The economic model is deficient in that retained earnings are ignored.

Response: Retained earnings are included in the model as a source of long term financing. See page IV-10 of the Technical Support Document.

2. The model treats lost production during construction as a depreciable capital expenditure. This cost, however, is not subject to the investment tax credit, with a resulting overstatement of penalties.

Response: The model treats lost production as a component of O&M cost. Thus, no depreciation or investment tax credit problems arise.

3. A source should have an opportunity to show that no returns were enjoyed on funds that should have been spent on the installation of pollution control equipment.

Response: A firm without funds to invest, in pollution control equipment or otherwise, still obtains a savings from delay. The firm has avoided having to borrow funds to finance the necessary construction, and has kept its borrowing capacity available for other purposes. By not complying it avoids both this step and the capital costs that follow it.

4. Sources should be permitted to use a model which computes a yearly penalty based on estimated capital cost multiplied by a firm's return on total capital. Such a return would equal net earnings divided by total capital assets employed. Even so, such a penalty would overstate the value of delay during inflation since use of book values overstates returns and since depreciation allowances are not based on replacement costs. The use of a return on total capital assets is better than an equity return since it removes any incentive to manipulate debt levels to lower the rate of return on equity.

Response: The model based on return on total capital has several shortcomings. A yearly calculation would probably present unwarranted administrative burdens, since yearly verification of each non-complying source's computation would be required, and since each computation could require hearings and opportunity for review. The discount rate proposed would involve embedded costs of debt and would not describe the opportunity cost faced by the complying firm. The accounting issues involved in restating book values and depreciation reserves to account for inflation are presented by all models. It is not unreasonable for a firm which has operated in inflated dollars to pay a penalty stated in the same dollars. Emergent accounting conventions regarding restatement of returns in constant dollars are not well enough settled in any event to permit their use, even if they could be used without abandoning the relative conceptual and computational simplicity of the model. As to the possibility of manipulation, EPA does not believe that the possibility is more than speculative, or that the proposed model constitutes a better remedy than simply policing penalty calculations. The model, finally, does not appear to take into account the benefits to the firm which accrue from displacing into the future the need to replace pollution control equipment.

5. Entities not subject to the income tax unfairly pay a much larger penalty than those who are.

Response: It is true that entities not subject to income taxes will normally pay a much larger penalty than profit making, tax paying firms. The reason for this is that the penalty must be set so as to reflect the economic benefit of noncompliance. This benefit is greater for organizations which pay no income tax.

Tax paying organizations realize a lower benefit from noncompliance because the entire expense avoided through a failure to install and operate pollution control equipment does not flow through to the benefit of the firm. Approximately one-half is lost to income taxes. Thus the gain to the noncomplying, tax paying firm will generally be about one-half of that experienced by an entity not subject to income taxes.

6. Entities which finance entirely out of debt should use a cost of debt related discount rate and should be assumed to have 100 percent debt financing.

Responses: Not all entities have shareholders, but that does not mean that the balance sheets of those firms do not contain capital components which are the functional equivalent of equity supplied by investors. An examination of such balance sheets and of a sample of rate cases shows that entities without stockholders nonetheless calculate returns on the basis of a mix of debt and equity. The mix so stated or assumed is an appropriate basis for a noncompliance penalty calculation.

7. Governmental facilities which are financed by appropriations should be exempted from the penalty.

Response: The use of appropriations to finance pollution control equipment purchases rather than the use of debt or equity poses the conceptual difficulty of establishing an appropriate discount

rate. It does not suggest a basis for exemption. In line with the recommendation of the Office of Management and Budget, the penalty will compute using a 10 percent real discount rate.

8. Municipally owned utilities are statutorily exempted because federally owned entities are included.

Response: Municipalities are covered by the Act, *see* Section 302(e). The rationale for inclusion of one kind of governmental facility applies with equal force to all governmental facilities, and more so to those not financed by appropriations.

9. Utilities will have a return through ratesetting on the pollution control equipment. The return reduces the benefit to them of delay.

Response: Utilities are allowed to include PCE costs in their rate base for purpose of setting a rate of return. But establishment of an allowed rate does not guarantee that the rate will be earned. Unregulated industries may also pass through costs, although generally speaking in a less monopolistically structured economic environment. The extent of cost pass through is more a function of market structure than of regulation. The statute does not require a calculation of the extent of possible pass through since the relevant decision maker is the firm, which enjoys the benefit of alternative investment, improved market position, etc., and which may or may not distribute such benefits.

10. In the case of utilities, a special model should be used which reduces the penalty to the extent the benefit of delay is passed through to ratepayers, and which computes the benefit of delay to shareholders as only consisting in the postponement of the regulation-induced lag in flowing through costs to ratepayers.

Response: No special model is required for utilities by virtue of their being regulated or by virtue of their use of a rate rather than price mechanism to pass costs through. Both regulated and unregulated industries will seek to pass through costs. More generally, there is no statutory warrant for reducing the penalty to the extent costs, had they been incurred, might have been flowed through to customers rather than to shareholders. The contrary is more consistent with the statute. Such costs, having been avoided, may improve the market position of the regulated and unregulated firm alike. Such favorable changes in market position represent benefits that the statute authorizes EPA to calculate and to recoup. Such recapture would tend to make the relevant decision-maker, i.e., the firm, indifferent to the benefit of delay.

11. Rural electric utility cooperatives are not entities for profit and finance construction out of debt. The penalty should either be zero or should be based on the cost of debt financing.

Response: The fact that a firm makes no profit does not mean that it enjoys no benefit from delay. It is, for instance, able to avoid costs and to avoid price changes. Similarly, the fact that a firm has no shareholders does not mean that equity is absent from its capital structure. Rural electric cooperatives rates are based on cost of money which includes debt and equity components.

12. Since electric power cooperatives are non-profit, many of the parameters applicable to the calculation are not applicable.

Response: Each of the parameters in the penalty calculation is necessary to estimate the economic benefit from delayed compliance. In some instances, the parameters will have a zero value, such as the income tax rate for non-profit organizations.

Title 40 of the Code of Federal Regulations is amended by adding new Parts 66 and 67 as set forth below:

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PART 66—ASSESSMENT AND COLLECTION OF NONCOMPLIANCE PENALTIES BY EPA

Subpart A—Purpose and Scope

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Note: Appendixes A, B, and C appear after Part 67.

Authority: Sec. 120, Clean Air Act, as amended, 42 U.S.C. 7420.

Subpart A—Purpose and Scope

§ 66.1 Applicability and effective date.

(a) This Part applies to all proceedings for the assessment by EPA of a noncompliance penalty as provided by Section 120 of the Clean Air Act. This penalty is designed to recover the economic advantage which might otherwise accrue to a source by reason of its failure to comply with air pollution control standards after receipt of a notice of noncompliance.

(b) These regulations shall be effective October 27, 1980.

§ 66.2 Program description.

This Part sets forth the procedures by which EPA will administer the noncompliance penalty provisions of Section 120 of the Clean Air Act. Subpart A describes the scope of the Part, defines key terms and states the manner of operation of these provisions Subpart B states which sources of air pollution are subject to these penalties and the form and substance of the notice of noncompliance. Subpart C and the

accompanying Technical Support Document and Manual state how a source must compute the penalty which it owes. Subpart D describes the conditions under which an exemption from the penalty may be available, and Subpart E sets forth the procedures for requesting such an exemption. Subpart F states how EPA will review penalties calculated by sources under Subpart C, and Subpart G describes the method of payment. Subpart H provides for adjustment of the penalty after the source has come into compliance and the actual costs of doing so are known. Finally, Subpart I states which actions under these regulations are subject to judicial review and on what conditions, and Subpart J provides supplemental procedures for adjudicatory hearings.

§ 66.3 Definitions.

In this Part and Part 67:

(a) "Act" means the Clean Air Act, 42 U.S.C. 7401 *et seq.* as amended on August 7, 1977, except where the context specifically indicates otherwise.

(b) "Affiliated entity" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the owner or operator of a source.

(c) "Applicable legal requirements" means any of the following:

(1) In the case of any major source, any emission limitation, emission standard, or compliance schedule under any EPA-approved State implementation plan (regardless of whether the source is subject to a Federal or State consent decree);

(2) In the case of any source, an emission limitation, emission standard, standard of performance, or other requirement (including, but not limited to, work practice standards) established under Section 111 or 112 of the Act;

(3) In the case of a source that is subject to a federal or federally approved state judicial consent decree or EPA approved extension, order, or suspension, any interim emission control requirement or schedule of compliance under that consent decree, extension, order or suspension;

(4) In the case of a nonferrous smelter which has received a primary nonferrous smelter order issued or approved by EPA under Section 119 of the Act, any interim emission control requirement (including a requirement relating to the use of supplemental or intermittent controls) or schedule of compliance under that order.

(d) "Approved Section 120 program" means a State program to assess and collect Section 120 penalties that has been approved by the Administrator.

(e) "Computer program" means the computer program used to calculate noncompliance penalties under Section 120 of the Clean Air Act. This computer program appears as Appendix C to these regulations.

(f) "Control" (including the terms "controlling", "controlled by", and "under common control with") means the power to direct or cause the direction of the management and policies of a person or organization, whether by the ownership of stock, voting rights, by contract, or otherwise.

(g) "Major stationary source" means any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant regulated by EPA under the Clean Air Act.

(h) "Manual" means the "Noncompliance Penalties Instruction Manual" which accompanies these regulations. This Manual appears as Appendix B to these regulations.

(i) "Owner or operator" means any person who owns, leases, operates or supervises a facility, building, structure or installation which emits or has the potential to emit any air pollutant regulated by EPA under the Act.

(j) "Potential to emit" means the capability at maximum design capacity to emit a pollutant after the application of air pollution control equipment. Annual potential shall be based on the larger of the maximum annual rated capacity of the stationary source assuming continuous operation, or on a projection of actual annual emissions. Enforceable permit conditions on the type of materials combusted or processed may be used in determining the annual potential. Fugitive emissions, to the extent quantifiable, will be considered in determining annual potential for those stationary sources whose fugitive emissions are regulated by the applicable state implementation plan.

(k) "Source" means any source of air pollution subject to applicable legal requirements as defined in paragraph (c).

(l) "Technical Support Document" means the "Noncompliance Penalties Technical Support Document" which accompanies these regulations. The Technical Support Document appears as Appendix A to these regulations.

All other terms are defined as they are in the Act.

§ 66.4 Limitation on review of regulations.

No applicable legal requirement, which could have been reviewed or challenged by means of the timely filing of an appropriate petition, no provision of this Part or Part 67 or Appendices A, B or C, may be challenged, reviewed or re-examined in any hearing conducted under this Part or Part 67. This limitation on review includes, but is not limited to:

(a) Arguments that the statute is more or less restrictive than the regulations, e.g., that exemptions other than those provided herein should be granted.

(b) Arguments that the economic model does not accurately calculate the economic benefits of noncompliance, or that parameters, terms and conditions other than those provided for in the model should be used or that evidence other than that described in the Technical Support Document for establishing inputs should be considered.

§ 66.5 Savings clause.

Proceedings under these regulations for imposition of a penalty under Section 120 are in addition to any other proceedings related to permits, orders, payments, sanctions or other requirements or State of Federal law. No action under this Part or Part 67 shall affect in any way any administrative, civil or criminal enforcement proceeding brought under any provision of the Clean Air Act or State or local law.

§ 66.6 Effect of litigation; time limits.

(a) The existence of any litigation on the validity of these regulations shall not affect the authority of the Agency to issue notices of noncompliance or to conduct subsequent administrative proceedings under Parts 66 and 67.

(b) Failure of the Administrator or the Presiding Officer at a hearing to meet any of the time limits contained in Parts 66 and 67 shall not affect the validity of any proceeding under these regulations.

(c) The filing of any petition for reconsideration under this Part or Part 67 or the institution of EPA review of a State determination under Part 67 shall not toll the accrual of noncompliance penalties. The penalty will be calculated from the date on which the source owner or operator receives a notice of noncompliance.

Subpart B—Notice of Noncompliance

§ 66.11 Issuance of notices of noncompliance.

(a) The Administrator shall issue a notice of noncompliance to the owner or operator of any source which he determines is in violation of applicable legal requirements and which is located in a State without an approved Section 120 program.

(b) The Administrator shall send a notice of noncompliance to the owner or operator of any source located in a State with an approved Section 120 program

when he determines as provided in Part 67 that the source is in violation of applicable legal requirements and the State has failed to send a notice of noncompliance to it, or has failed to pursue diligently any subsequent steps for the assessment or collection of the penalty.

(c) Failure of EPA or a State to issue a notice of noncompliance within 30 days after discovery of a violation shall not affect the obligation of a source owner or operator to pay a noncompliance penalty but shall affect the date from which the penalty is calculated. The penalty shall be calculated from the earliest date that the owner or operator of the source received a notice of noncompliance under this section, whether issued by EPA or the State.

§ 66.12 Content of notices of noncompliance.

(a) Each notice of noncompliance shall be in writing and shall include:

(1) A specific reference to each applicable legal requirement of which the source is in violation;

(2) A brief statement of the factual basis for the finding of violation, together with a reference to any supporting materials and a statement of when and where they may be inspected;

(3) Instructions on calculating the amount of the penalty owed and the schedule for payments. Such instructions shall include (i) a statement of the date from which penalties should be calculated and (ii) a copy of the Technical Support Document and the Manual;

(4) Notice of the right to petition for a hearing to challenge the finding of noncompliance or to claim an exemption; and

(5) Notice that the penalty continues to accrue during the pendency of any hearings granted under this Part or Part 67.

(b) Each notice of noncompliance shall be transmitted to the source owner or operator either by personal service or by registered or certified mail, return receipt requested.

§ 66.13 Duties of source owner or operator upon receipt of a notice of noncompliance.

(a) Within forty-five days after receiving a notice of noncompliance a source owner or operator shall either:

(1) Calculate the amount of the penalty owed and the appropriate quarterly payment schedule, as provided in the Technical Support Document and Instruction Manual, and transmit that calculation, together with supporting data sufficient to allow verification of the penalty calculation, to the Administrator; or

(2) Submit a petition for reconsideration, alleging that the source is not in violation of applicable legal requirements or that the source owner or operator is entitled to an exemption pursuant to Sections 66.31 through 66.33, or both. A source owner or operator must present both grounds in the petition if he wishes to preserve a claim to an exemption in the event that the source is found to be in violation. Issues relating to the existence of a violation or entitlement to an exemption not raised in the petition shall be deemed waived.

(b) Any submittal pursuant to this subsection shall specify the identity of the person responsible for the payment of any noncompliance penalty, and to whom any reimbursement, if necessary, shall be sent.

(c) A source owner or operator may amend any petition for reconsideration pursuant to subsection (a) above within 45 days from receipt of a notice of noncompliance. Amendment of such petition after 45 days will be permitted only if based on unforeseeable conditions occurring after termination of the 45 day period, or upon consent of the Administrator.

Subpart C—Calculation of Noncompliance Penalties

§ 66.21 How to calculate the penalty.

(a) All noncompliance penalties shall be calculated in accordance with the Technical Support Document and the Manual.

(b) Where the Administrator determines that no existing technology or other emissions control method results in emission levels which satisfy the applicable legal requirement, the penalty calculation shall be based on the cost of the capital equipment, operation and maintenance practices, or other methods of control which best approximates the degree of control required. In such a case, the Administrator may include in the penalty the costs of participation in an EPA approved research and development program where he determines that such participation would be appropriate. Information on appropriate research and development programs will be available from the regional offices or from the Office of Research and Development.

§ 66.22 Contracting out penalty calculation.

Upon the failure of a source owner or operator, who does not submit a petition for reconsideration as provided in § 66.13(a)(2), to submit the information described in § 66.13(a)(1) within 45 days of receipt of a notice of noncompliance, or upon submission of incorrect information as determined pursuant to § 66.51, the Administrator may enter into a contract with any qualified person who is not an affiliated entity and who has no financial interest in the owner or operator of the source to assist in determining the amount of the penalty assessment or payment schedule with respect to such source owner or operator. The cost of this contract may be added to the penalty to be assessed against the owner or operator of the source. The data used in calculating the penalty shall be furnished to the source owner or operator at the time that the penalty calculation is reported.

§ 66.23 Interim recalculation of penalty.

(a) The Administrator, upon concluding that a previously approved penalty calculation no longer is accurate, may:

(1) Request, in writing, that the source owner or operator submit a revised calculation in the form specified in § 66.13(a). The Administrator shall respond to any information submitted in accordance with the provisions of § 66.51.

(2) Notify the source owner or operator, in writing, that the penalty has been recalculated based upon information in the Administrator's possession. The source owner or operator shall respond as provided in § 66.52.

(b) If a source owner or operator believes that, because of changed circumstances, a penalty calculation which has been accepted by EPA no longer is accurate, he may submit a revised penalty calculation and schedule to the Administrator. The revised calculation shall be in the form specified in subsection 66.13(a)(1). The Administrator shall respond in accordance with the provisions of subsection 66.51. The decision to accept the interim calculation or to grant a hearing on this issue shall be solely within the discretion of the Administrator.

Subpart D—Exemption Requests; Revocation of Exemptions

§ 66.31 Exemptions based on an order, extension or suspension.

(a) A source owner or operator who would otherwise be subject to a noncompliance penalty will be exempted from that penalty during the period for which, and upon a demonstration that, its noncompliance with applicable legal requirements is or was due solely to:

(a) A conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under Section 113(d)(5) or Section 119 of the Act as in effect before August 7, 1977.

(2) In the case of a coal-burning source, the issuance of a prohibition to that source against burning petroleum products or natural gas, or both, by means of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, the Powerplant and Industrial Fuel Use Act, or under any legislation which amends or supersedes these provisions, *Provided,* That the source had received an extension under the second sentence of Section 119(c)(1) of the Act as in effect before August 7, 1977.

(3) The use of innovative technology by the source owner or operator pursuant to an enforcement order under Section 113(d)(4) of the Act.

(4) An inability to comply with an applicable legal requirement resulting from reasons entirely beyond the control of the owner or operator of such source or of any affiliated entity, *Provided,* That (i) the source owner or operator has received an order under Section 113(d) (or an order under Section 113 issued before August 7, 1977) or a federal or EPA-approved State judicial decree or order which has the effect of permitting a delay in complying with the legal requirement at issue, and (ii) that the source owner or operator meets the requirements of subsections (c) and (d) of this section.

(5) The existence of an energy or employment emergency demonstrated by issuance of an order under Section 110(f) or 110(g) of the Act, unless such order is disapproved by EPA.

(b) To qualify for an exemption under this section, the source owner or operator must have received the order, extension or suspension or consent decree described in the paragraph of the subsection pursuant to which the exemption is claimed. No exemption may be sought which, if granted, would exceed the terms of the relevant extension, order, suspension, or consent decree, except as provided in subsection (e) below. No exemption may be sought which is based on a claim that the source owner or operator is entitled to any such order, extension, suspension, or consent decree even though it has not been issued.

(c) In any exemption claim based on paragraph (a) (4) above, the source owner or operator must demonstrate that the inability to comply resulted from one of the following situations:

(1) Act of God;

(2) Fire;

(3) Embargo;

(4) Strike;

(5) The inability to obtain capital necessary to finance the installation of pollution control equipment or the use of other control measures, to the extent that such inability resulted from temporary, verifiable, general market conditions;

(6) The verifiable and unforeseeable failure of pollution control equipment and associated process equipment to perform at reasonably anticipated design levels despite the best efforts of the source owner or operator in designing, operating and maintaining the control and process equipment or other emission control methods, provided that such efforts were reasonably calculated to achieve compliance; or

(7) The complete inability of a supplier or contractor to furnish labor or materials necessary to achieve compliance, provided the source owner or operator demonstrates:

(i) That the source owner or operator or an affiliated entity in no manner sought, caused, encouraged or contributed to the inability; and

(ii) That the source owner or operator in no way unduly delayed negotiation for needed equipment or fuel supply or made unusual demands not typical in its industry, or placed unusual restrictions on the supplier, or delayed in any other manner the delivery of goods or the completion of the necessary construction.

(d) (1) No exemption will be granted pursuant to subsection (a)(4) above unless the owner or operator of the source demonstrates that, with respect to a situation described in paragraph (c), all reasonable steps were taken to prevent the situation causing the inability to comply, that procuring the needed pollution control equipment or fuel supply was given and continues to be given the highest possible priority in the planning and budgeting process of the owner or operator of the source, and that alternative sources of equipment and fuel have been explored without success.

(2) Any exemption granted under subsection (a)(4) shall cease to be effective when the inability to comply ceases to be entirely beyond the control of the source owner or operator as defined in this section.

(e) Except in the case of exemptions based on orders under Section 113 (d)(4) or (d)(5) or suspensions under Section 110(g), the Administrator may grant an exemption with retroactive effect to the date of the event giving rise to the Section 120 predicate order, extension, suspension, or consent decree. In such cases, the exemption from the noncompliance penalty shall run from the date that the basis for the exemption first occurred.

§ 66.32 De Minimis exemptions.

(a) The Administrator may, upon notice and opportunity for public hearing, exempt the owner or operator of any source from a penalty where he finds that a particular instance of noncompliance was *de minimis* in nature and duration.

(b) A petition for an exemption on the ground that the violation described in a notice of noncompliance was *de minimis* in nature and duration may only raise issues related to entitlement to an exemption and shall contain or be accompanied by supporting documentation. Issues relating to entitlement to a *de minimis* exemption not raised in the petition shall be deemed waived.

(c) In ruling upon such a petition, the Administrator shall consider:

(1) The magnitude of the excess emissions and whether the source's noncompliance is recurring or persistent;

(2) The steps the source owner or operator is taking to eliminate the cause of the excess emissions and to minimize such emissions;

(3) Whether any significant economic savings are likely to accrue to the owner or operator of the source as a result of the noncompliance;

(4) The character of the emissions, and their impact on ambient air quality; and

(5) The duration of the violation.

(d) A hearing on a petition for a *de minimis* exemption shall be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of questions by the public to the petitioner shall be afforded. The decision of the hearing officer will be made in writing within a reasonable period of time after the close of the hearing.

§ 66.33 De Minimis exemptions: malfunctions.

(a) The Administrator may, upon notice and opportunity for a public hearing, exempt the owner or operator of a source if he finds with respect to a particular instance of noncompliance, that such noncompliance was *de minimis* in nature and duration, and was caused solely by a sudden and unavoidable breakdown of process or pollution control equipment.

(b) A petition for an exemption on the ground that the violation was *de minimis* and was caused by a sudden and unavoidable breakdown of process

or pollution control equipment may only raise issues related to entitlement to an exemption and shall contain or be accompanied by supporting documentation. Issues relating to entitlement to an exemption that are not raised in the petition shall be deemed waived. In making such finding the Administrator shall consider whether:

(1) The violation was *de minimis* in nature and duration within the meaning of § 66.32;

(2) The air pollution control equipment, process equipment, or processes, including appropriate back-up systems, were designed, and have been maintained and operated in a manner consistent with good practice for minimizing emissions;

(3) Repair of the malfunctioning equipment was undertaken and carried out in an expeditious fashion as soon as the owner or operator knew or should have known that the malfunction existed or that applicable emission limitations were being violated or were likely to be violated;

(4) All practicable steps were taken to minimize the impact of the excess emissions (including any bypass) on ambient air quality;

(5) The excess emissions were not part of a pattern indicative of inadequate design, operation, or maintenance;

(6) Off-shift and overtime labor were utilized where necessary to ensure that repairs were made as expeditiously as possible or that emissions were minimized to the maximum extent possible; and

(7) The level of economic savings, if any, accruing to the source owner or operator was *de minimis*.

(c) Any activity that could have been foreseen, avoided or planned for, or any breakdown that could have been avoided by the exercise of reasonable diligence shall not constitute grounds for an exemption under this section. Such activities include, but are not limited to, sudden breakdowns avoidable by better maintenance procedures, phasing in and out of process equipment and routine maintenance.

(d) A hearing on any petition for an exemption based upon the unavoidable breakdown of pollution control equipment shall be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of questions by the public to the petitioner shall be afforded. The decision of the hearing officer will be made in writing within a reasonable period of time after the close of the hearing.

§ 66.34 Termination of exemptions.

(a) Exemptions pursuant to subsections 66.31(a) (1), (2), (3), and (5) will cease to be effective upon termination or revocation of the order on which the exemption is based.

(b) Exemptions pursuant to subsection 66.31(a)(4) will cease to be effective when the order or decree is terminated or revoked, or the inability to comply ceases to be for reasons entirely beyond the control of the source owner or operator as defined in subsection 66.31(c).

(c) Exemptions granted pursuant to §§ 66.32 or 66.33 shall terminate at the time specified in the exemption.

(d) The Administrator shall notify the source owner or operator, in writing, that the exemption has terminated, and shall specify the date from which the penalty shall be calculated. The notice shall be transmitted as required by § 66.12. The source owner or operator shall respond to this notice within 45 days of its receipt and in the form provided in subsection 66.13.

§ 66.35 Revocation of exemptions.

(a) The Administrator may upon notice and opportunity for a hearing revoke an exemption granted to the owner or operator of any source at any time in accordance with paragraphs (b) and (c) below.

(b) An exemption may be revoked and a penalty for the period of non-exempted noncompliance assessed if:

(1) The grounds for the exemption no longer exist or never did exist, or

(2) In the case of an exemption under § 66.31, the source owner or operator has failed to comply with any interim emission control requirements or schedules of compliance (including increments of progress) contained in the extension, order, suspension or EPA-approved consent decree on which the exemption was based.

(c) The Administrator shall provide the source owner or operator written notice containing the information required by § 66.12 and a statement of the reasons for revocation. The notice shall also specify the date from which the source owner or operator must calculate a penalty. The notice shall be transmitted as required by § 66.12. The source owner or operator shall respond to this notice within 45 days of its receipt and in the form provided in § 66.13.

Subpart E—Decisions on Exemption Requests and Challenges to Notices of Noncompliance

§ 66.41 Decision on petitions.

(a) Within thirty days after receiving a petition filed under § 66.13, the Administrator shall notify the source owner or operator in writing that:

(1) The petition demonstrates that the source owner or operator is entitled to part or all of the relief requested and that the notice of noncompliance is withdrawn or modified accordingly;

(2) The petition of the owner or operator of the source presents no information regarding the issues of whether the source is in violation of applicable legal requirements or is entitled to an exemption which, if true, would alter the liability of the source owner or operator, and that a hearing on the petition is denied;

(3) A hearing is granted on the issue of whether the source is in violation of applicable legal requirements or is entitled to an exemption under §§ 66.31, 66.32, 66.33, or on both;

(4) The information submitted is inadequate to enable EPA to determine whether the source owner or operator is entitled to the relief requested. The Administrator shall specify what deficiencies exist and request that the source owner or operator supplement his petition within thirty days of receipt of that request. If the petition is not supplemented adequately within this time, the Administrator may deny the relief requested. Any supplemental material provided pursuant to the Administrator's request shall be evaluated as provided in subsections (1)–(3) above.

(b) In granting any hearing pursuant to subsection (3), the Administrator may exclude particular fact questions from the hearing which do not qualify for a hearing under the criteria set forth in subsection (2).

§ 66.42 Procedure for hearings.

(a) Except as provided in §§ 66.32 and 66.33, hearings granted under § 66.41(a)(3) shall be held as provided in Subpart J.

(b) If hearings are granted pursuant to both §§ 66.32 or 66.33 and under Subpart J, a consolidated hearing in accordance with Subpart J shall be held. At the consolidated hearing the issues that would otherwise have been considered at a hearing under §§ 66.32 or 66.33 shall be considered pursuant to the procedures for a hearing provided in those sections.

(c) The Presiding Officer at a hearing granted under § 66.41 shall issue an initial decision within 90 days after the

Administrator grants the hearing, unless the duration of the hearing or the deadline for decision is extended by the Presiding Officer upon agreement of the parties. Failure to issue a decision (whether or not by consent) within 90 days shall not affect the validity of the proceedings or the accrual of penalties in any manner.

§ 66.43 Final decision; submission of penalty calculation.

Within forty-five days after EPA has notified the owner or operator of a source of the final Agency decision that it is in violation of applicable legal requirements or is not entitled to an exemption, the owner or operator shall submit the information required by § 66.13(a), including appropriate compliance and payment schedules and extra interest owed for the period of delay. The penalty shall be calculated from the date of receipt of the original notice of noncompliance.

Subpart F—Review of Penalty Calculation

§ 66.51 Action upon receipt of penalty calculation.

(a) Within thirty days after receipt of a penalty calculation provided pursuant to §§ 66.13(a)(1) or 66.43, the Administrator shall notify the source owner or operator in writing, that:

(1) The penalty is provisionally accepted as calculated, subject to any recalculation that may be necessary under § 66.72 after the source has achieved compliance; or

(2) The penalty is incorrect and has been recalculated based on the data provided by the source owner or operator, or other data. The Administrator shall provide a brief statement of the basis for the recalculation and shall identify when and where any supporting data may be examined. The Administrator shall also notify the source owner or operator of the right to petition for a hearing under § 66.52; or

(3) The source owner or operator has not submitted any calculation, or the information submitted is inadequate to enable EPA to verify the owner or operator's penalty calculation. The Administrator shall specify what deficiencies exist and request the source owner or operator to supplement his submission within thirty days of receipt of that request. If an inadequate supplemental submission is made within this time, EPA may calculate the penalty itself or as provided in § 66.22.

(b) Supplemental material provided pursuant to subsection (a)(3) of this section shall be evaluated as provided in paragraph (a).

§ 66.52 Petitions for reconsideration of calculation.

Within forty-five days after receipt of notice under § 66.51(a)(2) that the penalty has been recalculated by EPA, a source owner or operator who wishes to challenge EPA's recalculation shall petition in writing for reconsideration. A statement of all arguments on which the owner or operator relies, including all necessary supporting data and a substitute penalty calculation and payment schedule shall be included in or accompany this petition. Issues not raised in the petition shall be deemed waived.

§ 66.53 Decisions on petitions.

Within thirty days after receiving a petition for reconsideration under § 66.52 the Administrator shall:

(a) Accept the penalty calculation of the owner or operator to the extent the Administrator concludes it is correct; or

(b) Deny a hearing and affirm the calculation to the extent he concludes that the petition of the owner or operator does not present information which, if true, would alter the amount of the penalty; or

(c) Grant a hearing to the extent he concludes that the petition of the source owner or operator raises such questions.

§ 66.54 Procedures for hearing.

(a) Hearings granted under § 66.53 shall be held as provided in Subpart J.

(b) The Presiding Officer at a hearing granted under § 66.58 shall issue an initial decision within ninety days after the Administrator grants the hearing, unless the duration of the hearing or the deadline for decision is extended by the Presiding Officer upon agreement of the parties. Failure to issue a decision (whether or not by consent) within 90 days shall not affect the validity of the proceedings or the accrual of penalties in any manner.

Subpart G—Payment

§ 66.61 Duty to pay.

(a) Except where the owner or operator has submitted a petition pursuant to § 66.13(a)(2), the first installment of the penalty shall be paid on the date six months after receipt of the notice of noncompliance.

(b) Where the source owner has filed a petition pursuant to § 66.13(a)(2), the first installment consisting of payment of penalties for all quarters "missed" as well as for the upcoming quarter shall be paid on the date six months after a final administrative decision affirming the source owner or operator's liability. Installments shall be paid quarterly thereafter until compliance is achieved. Quarters shall be measured in increments of three calendar months from the date the first payment is due.

(c) A source owner or operator who submits a petition pursuant to § 66.52 shall pay the penalty amount calculated by the owner or operator under §§ 66.13 or 66.43 or any penalty calculated by EPA where the owner or operator has failed to calculate such penalty. Within 45 days after EPA has notified the owner or operator of a final administrative action after hearings on such petition, the owner or operator shall submit any necessary modification to the penalty. The revised penalty will be calculated in accordance with the Technical Support Document and the Manual, and a revised schedule, including appropriate adjustments for overpayments or underpayments made, will be established.

§ 66.62 Method of payment.

Payments in excess of $10,000 under this Part shall be made by wire transfer payable to the United States Treasury. Payments under this Part which are less than $10,000 shall be made by cashier's or certified check made payable to the United States Treasury, sent by registered mail, return receipt requested, and addressed to the Administrator, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Payment by check is made on the due date if it is postmarked on or before the due date. Payment by wire transfer is made on the due date if the Treasury's account is credited on or before the due date.

§ 66.63 Nonpayment penalty.

(a) Any source owner or operator who fails to make timely payment under § 66.61 shall pay in addition to the penalty owed a quarterly nonpayment penalty. The nonpayment penalty shall be calculated as of the due date of the noncompliance penalty payment and shall be equal to 20 percent of the aggregate amount of the noncompliance penalties and nonpayment penalties due and owing from the owner or operator on the due date. Partial payments shall be credited first against the nonpayment penalty, then against the noncompliance penalty.

(b) The Administrator shall notify the source owner or operator in writing of the amount of any nonpayment penalty for which the owner or operator is liable. Failure of the Administrator to provide such notice immediately shall not affect the legal obligation of the source owner or operator to pay such penalty. Such nonpayment penalty, as

well as the past due noncompliance penalty, shall be payable immediately.

Subpart H—Compliance and Final Adjustment

§ 66.71 Determination of compliance.

(a) An owner or operator of a source who is paying a noncompliance penalty under this Part shall notify the Administrator in writing when he believes that the source has come into and is maintaining compliance with all applicable legal requirements. The notice shall be accompanied by any factual data, analytical materials, and legal arguments which the source owner or operator believes support such claim.

(b) Within 30 days of receipt of a source owner's submittal, the Administrator shall determine whether the source has achieved and is maintaining compliance with applicable legal requirements, and shall notify the source owner or operator of this determination in writing. If the Administrator is unable to conclude, on the basis of the information submitted, whether the source has achieved and is maintaining compliance with applicable legal requirements, he shall inform the owner or operator of any additional material that is needed. Within 30 days of receipt of such additional material, the Administrator shall determine whether the source has achieved and is maintaining compliance, and shall notify the source owner or operator of this determination in writing.

(c) If the Administrator determines that the source has not achieved or is not maintaining compliance with applicable legal requirements, the source owner or operator may petition for reconsideration within 30 days of receipt of the determination. The source owner or operator shall include in this petition any necessary supporting material. Issues not raised in the petition will be deemed waived. The procedures of § 66.41 shall be followed upon the receipt of such petition.

§ 66.72 Additional payment or reimbursement.

(a) Within 120 days after the source owner or operator receives notification pursuant to § 66.71(b) that it has achieved and is maintaining compliance with applicable legal requirements, or within 120 days after receipt of a decision to that effect upon petition and hearing, or within 120 days after receipt of a decision to that effect upon an appeal to the Administrator, the source owner or operator shall submit to the Administrator a revised penalty calculation as provided in the Technical Support Document and the Manual, together with data necessary for verification. The revised calculation shall include interest on any underpayment.

(b) Within thirty days after receiving a revised penalty calculation provided pursuant to paragraph (a), the Administrator shall inform the source owner or operator in writing that:

(1) The revised penalty is correct as calculated;

(2) The revised penalty is incorrect and has been recalculated based on the data provided by the source owner or operator or on other data. The Administrator shall provide to the source owner or operator a brief statement of the basis of the recalculation and shall identify when and where any supporting data may be examined. The Administrator shall also notify the source owner or operator of the right to petition for reconsideration under § 66.73; or

(3) The source owner or operator has not submitted any penalty calculation, or has not submitted enough material to enable EPA to verify the penalty calculation. The Administrator shall specify what deficiencies exist and shall require the source owner or operator to furnish the supplemental material within thirty days of receipt of the notice. The supplemental material submitted will be evaluated in the same manner as the original submittal.

(c) If a source owner or operator fails to submit or to complete a revised penalty calculation when due under this section or the calculation submitted is incorrect, the Administrator may recalculate the penalty or may enter into a contract for independent calculation of the penalty as provided in § 66.22.

§ 66.73 Petition for reconsideration and procedure for hearing.

Within forty-five days of receipt of a notice under § 66.72(b) (2) a source owner or operator may petition for reconsideration in the form and manner provided in § 66.52. The petition shall be evaluated as provided in § 66.53 and any hearing shall be held in conformity with § 66.54.

§ 66.74 Payment or reimbursement.

(a) Within thirty days after any adjustment of a noncompliance penalty under this Subpart has become administratively final:

(1) Any deficiency owed by the source owner or operator shall be paid as provided in § 66.62.

(2) Any reimbursement shall be paid by check from the United States payable to the order of the source owner or operator, and sent by registered or certified mail, return receipt requested.

(b) Any payment under paragraph (a) shall include interest on the amount of the deficiency or reimbursement due, from the date the deficiency or reimbursement arose, at a rate determined by the Secretary of the Treasury. Such payment shall be calculated in accordance with the Technical Support Document and the Manual.

(c) Any source owner or operator who fails to make timely payment of a deficiency shall pay a nonpayment penalty. The nonpayment penalty shall be calculated as of the due date of the deficiency payment and shall be equal to 20% of the deficiency not paid. Such nonpayment penalty (in addition to the amount of the deficiency owed) shall be payable immediately. If any part of the nonpayment penalty or deficiency shall remain unpaid at the end of three calendar months from the due date of the deficiency, a further nonpayment penalty shall be due equal to 20% of the sum of all payments due and owing. Partial payments shall be credited first against the nonpayment penalty, then the deficiency.

Subpart I—Final Action

§ 66.81 Final action.

(a) A final Agency action appealable to the courts by the source owner or operator includes and is limited to the following, provided the conditions of paragraph (b) are met:

(1) A notice of determination that a source is in violation of applicable legal requirements;

(2) A notice of decision to deny or revoke an exemption under Subpart D;

(3) A notice of revision by EPA of a penalty calculation or schedule under Subpart F;

(4) A notice of decision by EPA that the source is not in final compliance or any revision by EPA of a final penalty calculation under Subpart H; and

(5) A notice of denial of a petition for reconsideration under §§ 66.41, 66.53, 66.71 or 66.73.

(6) A decision by the Administrator upon completion of any review of a State action pursuant to Part 67.

(b) The actions listed in paragraph (a) constitute final Agency action only if all administrative remedies have been exhausted. To exhaust administrative remedies a source owner or operator must first petition for reconsideration of the decision in question and, if unsuccessful after hearing or after denial of hearing, appeal the decision in question to the Administrator. The action becomes final upon the completion of review by the

Administrator and notice thereof to the owner or operator of the source.

(c) Where a petition seeks reconsideration both of the finding of noncompliance and of the finding of liability on the ground that the source owner or operator is entitled to an exemption, both questions must be decided before any review by the Administrator is sought, except on agreement of the parties.

Subpart J—Supplemental Rules for Formal Adjudicatory Hearings

§ 66.91 Applicability of supplemental rules.

The Supplemental Rules in this subpart, in conjunction with the Consolidated Rules of Practice (40 CFR Part 22) shall govern all hearings held under this Part. To the extent that the provisions of these Supplemental Rules or any other provision of this Part are inconsistent with the Consolidated Rules, the provisions of this Part shall govern.

§ 66.92 Commencement of hearings.

(a) The provisions of 40 CFR 22.08 (Consolidated Rules of Practice) shall become applicable when the Administrator grants a hearing.

(b) Upon granting a hearing the Administrator shall immediately transmit to the appropriate Regional Hearing Clerk two copies of the notice granting the hearing and:

(1) In the case of a hearing pursuant to § 66.42, two copies of the notice of noncompliance under Section 66.11 (or the revocation notice under § 66.34) and of the petition of the owner or operator under § 66.13, together with supporting documents; and

(2) In the case of a hearing pursuant to § 66.53 or § 66.73, two copies of the penalty calculation of the source owner or operator provided pursuant to § 66.13(a) or § 66.72, and of any Agency recalculation pursuant to Section 66.51(a)(2) or 66.72(b)(2), and of the petition of the source owner or operator for reconsideration pursuant to §§ 66.52 or 66.73, together with supporting documents.

(3) The Regional Hearing Clerk shall open and maintain the official file of the proceeding upon receipt of the documents referred to in subparagraphs (1) and (2) above.

(c) Upon granting a hearing the Administrator shall request the Chief Administrative Law Judge to designate an Administrative Law Judge to serve as the Presiding Officer. The Chief Administrative Law Judge shall make this designation within seven days of receiving the request, and shall notify the Regional Hearing Clerk of his action. The Regional Hearing Clerk shall forward to the Presiding Officer one set of the documents described in paragraph (b).

§ 66.93 Time limits.

The Presiding Officer upon designation shall notify the parties and shall, if appropriate, schedule a prehearing conference (or alternative procedures) under 40 CFR 22.19 and shall notify the parties of the date of hearing under 40 CFR 22.21. The Presiding Officer shall issue an initial decision no later than ninety days after the hearing is granted, unless an extension of the hearing schedule or of the deadline for decision is agreed to by the parties. To that end, the Presiding Officer may establish such deadlines as are reasonable and necessary. Failure to issue a decision withing 90 days or further extended deadline (whether or not by consent) shall not affect the validity of the proceedings.

§ 66.94 Presentation of evidence.

(a) In hearings pursuant to § 66.42 EPA shall present evidence of violation of applicable legal requirements. The source owner or operator shall then present any rebuttal evidence.

(b) In hearings under Section 66.42 the source owner or operator shall present evidence of entitlement to an exemption. EPA shall then present any rebuttal evidence.

(c) In hearings under §§ 66.54 and 66.73 EPA shall present evidence that its calculation or revisions of the source owner or operator's penalty calculations are correct. The source owner or operator shall then present any rebuttal evidence.

(d) Each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence.

(e) Any documentation submitted pursuant to § 66.92(b) shall automatically be received into evidence in the hearing.

§ 66.95 Decisions of the Presiding Officer; Appeal to the Administrator.

(a) The Presiding Officer shall dispose of the issues raised in the hearing in a single written decision. Such decision shall terminate the Presiding Officer's consideration of those issues.

(b) Penalty calculations and payment schedules, if any, established by the decision of the Presiding Officer shall be based solely on the parameters, terms and conditions of the Technical Support Document, Manual, and Computer Program.

(c) An appeal to the Administrator from a decision of the Presiding Officer shall be made by petition filed within twenty (20) days from receipt by a party of the Presiding Officer's decision. The Administrator shall rule on the appeal within 30 days of receipt of a petition. No appeal may be made before receipt of the decision of the Presiding Officer.

Appendix A—Technical Support Document

Note.—For text of Appendix A see Appendix A to Part 67.

Appendix B—Instruction Manual

Note.—For text of Appendix B see Appendix B to Part 67.

Appendix C—Computer Program

Note.—For text of Appendix C see Appendix C to Part 67.

PART 67—EPA APPROVAL OF STATE NONCOMPLIANCE PENALTY PROGRAM

Subpart A—Purpose and Scope

Sec.

67.1 Purpose and scope.

Subpart B—Approval of State Programs

67.11 Standards for approval of State programs.
67.12 Application for approval of programs.
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Appendix A—Technical Support Document.
Appendix B—Instruction Manual.
Appendix C—Computer Program.

Authority: Section 120 of the Clean Air Act, as amended, 42 U.S.C. 7420.

Subpart A—Purpose and Scope

§ 67.1 Purpose and scope.

This Part describes the standards and procedures under which EPA will approve State programs for administering the noncompliance penalty program under Section 120 of the Clean Air Act and will evaluate actions taken by States with approved

programs. Subpart A describes the purpose of the Part. Subpart B states the conditions under which EPA will approve State programs to administer the noncompliance penalty provisions. Subparts C and D state when and how EPA will issue its own notices to owners or operators of sources in States with approved programs, and how it will review State decisions to grant or deny exemptions from the penalty. Finally, Subpart E states how EPA will review State assessments of a penalty.

Subpart B—Approval of State Programs

§ 67.11 Standards for approval of State programs.

(a) The Administrator shall approve any program submitted by a State, or by a local governmental agency where no program has been submitted by a State, for administering the noncompliance penalty provisions of Section 120 of the Clean Air Act upon finding that the program conforms to the requirements of the Act and to those of this Part and 40 CFR Part 66. References to "State program" in this Part shall be read as including local governmental agencies and their programs.

(b) The Administrator shall not approve any State program that does not provide explicitly for:

(1) Issuance of a notice of noncompliance, in a manner consistent with procedures under Part 66, upon discovery by the State or upon notification by EPA of a violation of applicable legal requirements, which notice satisfies the informational requirements set forth in Section 66.13.

(2) Levels of staffing and funding satisfactory, in the judgment of the Administrator, to implement and enforce the requirements of Section 120 in that State, together with adequate provision for maintaining such levels;

(3) A capability to carry out the financial analysis and procedures specified in these regulations and the Technical Support Document and Instruction Manual, together with adequate provision for maintaining such capability. Such capability may be provided by trained State personnel or through qualified contractors;

(4) Except as provided in paragraph (6), an administrative hearing whenever the owner or operator of a source submits a petition for reconsideration of a notice of noncompliance on the ground that the source either is not in violation of applicable legal requirements, or is entitled to an exemption, or both, or submits a petition to challenge a recalculation of the penalty by the State, provided that such petitions raise issues of fact that would require a hearing under Part 66. This hearing need not conform to the requirements of 5 U.S.C. 554 as long as its procedures provide for:

(i) An initial decision by the hearing officer on the record;

(ii) A hearing officer who has not performed investigative or litigating functions in any enforcement action against the source owner or operator in question;

(iii) Opportunity for public participation on reasonable notice, including intervention, by interested persons;

(iv) Opportunity for cross-examination or an equivalent opportunity for confrontation between persons advocating differing positions on material factual matters; and

(v) An initial decision by the hearing officer within ninety days of commencement of the hearing unless such period is extended upon agreement of the parties.

(5) Explicit provision for:

(i) notice to the Administrator of any determination granting an exemption, or finding a source in violation of applicable legal requirements, and any penalty calculation and payment schedule approved or calculated by the State, together with any information necessary to verify its accuracy;

(ii) within 30 days of receipt of a request from the Administrator, transmission of a copy of the record of the hearing held under paragraphs (4) or (6) of this subsection, including any proffered evidence and a ruling on its admissibility and the State's decision on the merits; and

(iii) additional reporting and record keeping, if necessary, adequate to enable the Administrator to review the State's administration of the program and determine whether it conforms to the Act and to Part 66 of these regulations. Such requirements will be specified in the Notice of Delegation to the State.

(6) A hearing on the question of whether the owner or operator of a source is entitled to an exemption pursuant to §§ 66.32 or 66.33 may be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of questions to the petitioner by members of the public shall be afforded. A record of the hearing shall be made, and the decision of the hearing officer made in writing within a reasonable period of time after the close of the hearing.

(c) The State may delegate all or part of its responsibilities under its program to a local governmental agency to implement the program within the jurisdiction of the local agency, *Provided* that the program of the local government agency meets the requirements of this section.

(d) No State penalty program or program of one of its agents shall be disapproved because it is more stringent than the program established by Part 66 or by Section 120 where the State or local agent concludes that it has independent authority under State or local law to implement and administer the more stringent portions of the program.

§ 67.12 Application for approval of program.

A state that wishes to administer a Section 120 program shall submit an application in writing to the Administrator describing its proposed program. All necessary supporting materials shall accompany the application.

§ 67.13 Approval.

(a) The Administrator shall evaluate any application submitted under § 67.12 and shall:

(1) Approve the program and delegate authority to the State to administer the program if he determines that the requirements of § 67.11 have been and will be met; or

(2) Request additional information if he determines that the information submitted is not sufficient to allow him to determine whether the requirements of § 67.11 have been and will be met; or

(3) Disapprove the State program if he determines that the information submitted establishes that the requirements of § 67.11 have not been or will not be met.

(b) The Administrator shall notify the State in writing of his action under subsection (a) and shall state the reasons for his action.

(c) In all cases of delegation (whether or not express provision is made in the notice of delegation) the Administrator shall retain continuing authority to issue notices of noncompliance, review exemption requests or penalty calculations, or take any other steps set forth in Part 66 to assess and collect these penalties. Such authority shall be exercised pursuant to the provisions of § 67.21.

(d) The Administrator shall retain exclusive authority to assess and collect penalties against source owners or operators of facilities in the State who were issued notices of noncompliance pursuant to Part 66 prior to the effective date of the delegation, except to the extent the Administrator specifically delegates such authority to the State.

§ 67.14 Amendments to the program.

A State or local agent with a program approved pursuant to § 67.13 may propose amendments to that program to the Administrator. The Administrator shall evaluate whether the State or local agent's program as amended would conform to the requirements of § 67.11 and shall respond as provided in § 67.13.

§ 67.15 Revocation.

If the Administrator determines that a State with a program approved under § 67.13 is not administering the program in conformity with the requirements of the Act or § 67.11, or the delegation of authority, he shall provide the State written notice of that determination, setting forth his reasons. Copies of all supporting materials shall accompany the notice if requested, or shall be placed on file in the appropriate Regional Office and made available for inspection during normal business hours. The State shall have 90 days in which to respond in writing to this determination. If the Administrator finds after reviewing the State response that (i) the State is in fact administering the program in conformity with § 67.11, or (ii) there are reasonable grounds to believe the State program will immediately be brought into conformity with that section, he shall withdraw his determination. If he finds that neither of these conditions has been met, he shall withdraw the delegation of authority to the State.

Subpart C—Federal Notice of Noncompliance to Sources in States With Approved Programs

§ 67.21 Federal notice of noncompliance to owners or operators of sources in States with approved programs.

(a) The Administrator shall issue a notice of noncompliance to the owner or operator of any source in a State with an approved program if he determines that the State or its local agent has failed to issue such notice, provided that he shall first give 30 days notice to the State of his intent to issue a notice of noncompliance to the owner or operator of the source in question unless the State or its agent does so first. Any notice issued by the Administrator pursuant to this section shall be deemed to be issued pursuant to the provisions of Part 66.

(b) The issuance of a notice of noncompliance shall operate to withdraw EPA delegation of authority to the State with respect to the particular facility in question.

(c) If the Administrator determines that the State or local agent has issued a notice of noncompliance but has failed to pursue diligently subsequent steps for the assessment and collection of the penalty, he shall notify the State of his intent to withdraw delegation of authority to the State with respect to the facility in question and take appropriate actions pursuant to Part 66 unless the State or local agent, within 30 days, takes appropriate action in accordance with the requirements of this Part. In either case the penalty will be calculated from the date of the State notice.

Subpart D—EPA Review of State Compliance or Exemption Decisions

§ 67.31 Review by the Administrator.

(a) The Administrator may, on his own initiative, review any determination by a State or its agent that a source owner or operator is or is not in compliance with applicable legal requirements or is or is not entitled to an exemption, to determine whether that determination conforms to the requirements of the Act and Part 66 (as modified by § 67.11).

(b) The Administrator shall review any such determination upon receipt of a petition alleging that the State's determination does not conform to the requirements of the Act and Part 66 (as modified by § 67.11). Such petition must be filed within 20 days of issuance of the State's decision.

(c) The Administrator shall give notice in writing to the State or local agent, to the owner or operator of the source, and to the petitioner of his intent to review the determination. Such notice shall be given within 90 days of the Administrator's receipt of the State or local agent's determination. Unless otherwise provided, such notice shall not withdraw EPA's delegation of authority to the State or local agent over the particular facility in question.

(d) No such State determination shall become final until the expiration of 90 days after the Administrator's receipt of the notice required by § 67.11(b)(5).

(1) If the Administrator does not issue a notice of intent to review within that period, the State determination shall, upon expiration of such period, constitute final action of the Administrator under Section 120 of the Act.

(2) If the Administrator issues a notice of intent to review within that period, the State determination shall not become final until the Administrator takes final action after reviewing the determination.

(e) Except as otherwise provided, a State determination shall be approved if there was a reasonable basis in law and in fact for making the determination.

§ 67.32 Procedure where no formal State hearing was held.

(a) In reviewing a decision that a source is in compliance with applicable legal requirements or entitled to an exemption for which no hearing conforming to § 67.11(b) (4) or (6) was held, the Administrator shall evaluate the accuracy and adequacy of the documents transmitted to him pursuant to § 67.11(b)(5) and shall invite submission of comments on issues identified by him as relevant to his review.

(b) If the Administrator concludes that no hearing need have been held and that the State determination was correct, he shall notify the State, the source owner or operator, and other participants of his determination, which shall constitute final agency action by EPA under authority of section 120. If the Administrator concludes that the petition of the source owner or operator presented information which, if true, would have altered the owner or operator's liability for a penalty, he shall upon notice to the State or local agent schedule a hearing in accordance with subpart E of Part 66. Such notice shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent schedules a hearing within 15 days of receipt of the notice.

(c) If the Administrator concludes that the State determination did not conform to the requirements of the Act or of Part 66 (as modified by Section 67.11), he shall by written notice revoke the determination. Such revocation shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question. The source owner or operator may then petition for review of the Administrator's decision pursuant to the provisions of Section 66.13.

(d) Unless otherwise provided in the Administrator's notice to the State or local agent, any noncompliance penalties owed by the source owner or operator shall be paid to the State or local agent. The Administrator shall send a copy of this notice to the source owner or operator.

§ 67.33 Procedure where a formal State hearing was held.

(a) In reviewing a decision that a source is in compliance with applicable legal requirements or is entitled to an exemption for which a hearing conforming to § 67.11(b) (4) or (6) was held, the Administrator may invite comment on issues identified by him as relevant to his review and shall propose or make findings as to the correctness of

the determination and the accuracy and adequacy of the material transmitted pursuant to § 67.11(b)(5).

(b) The Administrator shall notify all participants in the State hearing of his findings and conclusions. If the Administrator concludes that the State determination conformed to the requirements of the Act and of Part 66 (as modified by § 66.11), the Administrator's determination shall constitute final administrative action by EPA under authority of Section 120. If the Administrator finds that the State determination did not conform to the requirements of the Act and of part 66 (as modified by § 67.11), the findings shall constitute proposed findings and the notice shall invite participants to file exceptions thereto. If the Administrator considers it desirable, he may schedule a time for argument.

(c) Within 60 days of receipt of any briefs or exceptions or after oral argument pursuant to subsection (b), the Administrator shall affirm, modify, or revoke his proposed findings that the State's determination did not conform to the requirements of the Act or of Part 66 (as modified by § 67.11). The decision shall be in writing. Notice and a copy of the decision shall be provided to the source owner or operator and to all other participants in the State hearing. The decision shall constitute a final administrative action by EPA under authority of Section 120.

(d) If the Administrator finds that deficiencies in the hearing record prevent him from determining whether the determination of the State or local agent conformed to the requirements of the Act and Part 66 (as modified by § 67.11), he shall notify the State or local agent of his finding and specify what deficiencies exist and schedule a hearing pursuant to Subpart E of Part 66. Such notice shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent schedules a supplemental hearing to correct the deficiencies within 15 days of receipt of the notice.

(e) If the Administrator concludes that the source is in violation of applicable legal requirements or is not entitled to an exemption, or both, and unless otherwise ordered in the decision, the source owner or operator shall submit a penalty calculation to the State within 45 days of receipt of the notice of determination.

Subpart E—EPA Review of State Penalty Assessments

§ 67.41 When EPA may review.

(a) The Administrator may on his own initiative or on petition review any initial, interim, or final penalty calculation made or approved by the State or local agent to determine whether it conforms to the requirements of the Act, of Part 66, of the Technical Support Document and the Instruction Manual. The Administrator shall notify the State or local agent in writing of his intention to review the calculation within 60 days of receipt by EPA of the calculation or any item considered by the State in making or approving such calculation, whichever occurs later.

(b) No such State determination shall become final until the expiration of 90 days after the Administrator's receipt of the notice required by § 67.11(b)(5).

(1) If the Administrator does not issue a notice of intent to review within that period, the State determination shall, upon expiration of such period, constitute final action of the Administrator under Section 120 of the Act.

(2) If the Administrator issues a notice of intent to review within that period, the State determination shall not become final until the Administrator takes final action after reviewing the determination.

(c) Except as otherwise provided, a State determination shall be approved if there was a reasonable basis in law and in fact for making the determination.

§ 67.42 Procedure where no formal State hearing was held.

(a) In reviewing a penalty calculation for which no hearing conforming to the requirements of Subsection 67.11(b)(4) was held, the Administrator shall evaluate the accuracy and adequacy of the data contained in the documents transmitted to him pursuant to Section 67.11(b)(5) and shall invite comments on issues identified by him as relevant to his review.

(b) If the Administrator concludes that no hearing need have been held and that the State determination was correct, he shall notify the State, the source owner or operator, and other participants of his determination, which shall constitute final agency action by EPA under authority of Section 120. If the Administrator concludes that the petition of the source owner or operator for reconsideration of a recalculation presented information which, if true, would have altered the amount of the penalty calculated, he shall upon notice to the State schedule a hearing in accordance with subpart F of Part 66. Such notice shall operate as a withdrawal of EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent schedules a hearing within 15 days of receipt of the notice.

(c) If the Administrator concludes that the determination of the State or local agent not to hold a hearing was proper but that the penalty calculation does not conform to the requirements of the Act or of Part 66, he shall by written notice revoke the determination and issue a notice of recalculation to the source owner or operator pursuant to § 66.51. A copy of the notice of recalculation shall be provided to the State or local agent. The notice of recalculation shall constitute final administrative action by EPA under authority of Section 120 unless the source owner or operator petitions for reconsideration under § 66.52, in which case it shall operate as a withdrawal by EPA of its delegation of authority to the State or local agent over the facility in question.

(d) Unless otherwise provided in the Administrator's notice, noncompliance penalties finally determined to be owed shall be paid to the State or local agent.

§ 67.43 Procedure where a formal State hearing was held.

(a) In reviewing a penalty calculation for which a hearing conforming to § 67.11(b)(4) was held, the Administrator may invite comment on issues identified by him as relevant to his review and shall propose or make findings as to the correctness of the determination and shall evaluate the accuracy and adequacy of the material transmitted pursuant to § 67.11(b)(5).

(b) The Administrator shall notify all participants in the State hearing of his findings and conclusions. If the Administrator finds that the State determination conformed to the requirements of the Act, Part 66 (as modified by § 67.11), the Technical Support Document, and the Instruction Manual, his determination shall constitute a final action pursuant to Section 120. If the Administrator finds that the State determination did not conform to the requirements of the Act or of Part 66 (as modified by § 67.11) or to the Technical Support Document or Instruction Manual, the findings shall constitute proposed findings, and the notice shall invite participants to file exceptions to his proposed findings and, if necessary, schedule a time for argument.

(c) Within 60 days of receipt of any briefs or exceptions or after oral argument, the Administrator shall affirm, modify, or revoke his proposed findings that the State or local agent's

determination did not conform to the requirements of the Act or of Part 66 (as modified by § 67.11) or the Technical Support Document or Instruction Manual. The decision shall be in writing. Notice and a copy of the decision, which shall constitute final administrative action by EPA pursuant to Section 120, shall be provided to the source owner or operator and to all other participants in the State hearing.

(d) If the Administrator finds that deficiencies in the State or local agent's hearing record prevent him from determining whether the State or local agent's determination conformed to the requirements of the Act and Part 66 (as modified by § 67.11) or the Technical Support Document or Instruction Manual, he shall notify the State or local agent of his decision and specify what dificiencies exist and schedule a hearing in accordance with Subpart F of Part 66. Such notice shall operate to withdraw EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent within 15 days schedules a supplemental hearing to correct the deficiencies.

(e) Unless otherwise provided in the Administrator's notice to the State or local agent, any noncompliance penalties owed by the source owner or operator shall be paid to the State or local agent.

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APPENDIX A

CLEAN AIR ACT

SECTION 120

NONCOMPLIANCE PENALTIES

TECHNICAL SUPPORT DOCUMENT

CONTENTS

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SECTION I

INTRODUCTION AND SUMMARY

The decision to install pollution control equipment implies a decision to commit financial resources, both initially in the form of capital investment and over time in the form of operating and maintenance expenses While the acquisition of such equipment and its operation may result in improved environmental quality, it is unlikely to yield any direct economic benefit to the firm If these financial resources were not required for pollution control equipment, they presumably would be invested in projects which would give a direct economic benefit to the firm Thus, from a economic point of view, it is usually in the firm's interest to delay the commitment of funds for the purchase and operation of pollution control equipment

Congress acted in 1977 to remove this incentive for noncompliance The Clean Air Act ("the Act") was amended to require the imposition of penalties against firms not in compliance with pollution control regulations These penalties must be based on the savings which accrue to a firm as a result of its noncompliance Section 120(d)(2) of the Act states:

> "The amount of the penalty which shall be assessed and collected with respect to any source under this section shall be equal to--
>
> (A) the amount determined which is no less than the economic value which a delay in compliance beyond July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source."

The Administrator of the Environmental Protection Agency (EPA) is given responsibility for carrying out this provision This appendix describes the economic basis and the mathematical formulation of a noncompliance penalty to be used in conforming with the requirements set forth in the Act It is intended to serve three distinct purposes First, it presents in broad, conceptual terms the nature of economic savings which can accrue to a firm through delayed compliance and the calculation of a penalty to remove those savings Second, it provides a mathematical formulation of the noncompliance penalty and the assumptions used in deriving it Finally, it provides a complete specification of the sources of all the data needed to calculate the penalty for a particular incidence of noncompliance

This appendix is not intended to serve as an instruction manual for persons calculating noncompliance penalties A separate appendix issued by EPA serves that purpose [1]

THE VALUE OF DELAY

For the purposes of noncompliance penalties, the economic value, or savings, from noncompliance is defined to have two components: (1) the return which can be earned on the capital costs of pollution control equipment whose purchase has been delayed, and (2) the operating and maintenance costs avoided as a result of not having installed the equipment and the return on these savings The first component, the capital cost savings, arises because owners of noncomplying sources have the opportunity to invest their funds in projects other than pollution control equipment during the period of delay These other investments yield a monetary return during the period of delay and in the future equal to the firm's marginal return on capital; whereas, the purchase of pollution control equipment typically yields no direct monetary return. Thus a delay in compliance creates the

[1] Appendix B, Clean Air Act Section 120 Noncompliance Penalties, Instruction Manual.

opportunity for the owner of such sources to benefit by the amount of earnings which could be expected from alternative investments

The second component of savings from delayed compliance is based on the operating and maintenance costs which would be incurred if the pollution control equipment were installed These include the costs of labor, raw materials, energy and any other expenditures directly associated with the operation of the pollution control equipment Unlike capital expenditures which are only delayed, delaying compliance allows these operating and maintenance expenditures to be avoided altogether and therefore the noncomplying firm benefits by their amounts in addition to the return that can be earned on these savings

THE NONCOMPLIANCE PENALTY

The two components of economic savings can be quantified using generally accepted economic and financial principles and estimates of such factors as equipment costs, financing costs, the inflation rate, and the length of the delay. These same techniques can then be employed to convert the savings into the basis for a penalty As part of that conversion, an adjustment is made to incorporate the effect of capital and operating expenditures made after a notice of noncompliance has been given but prior to the time at which full compliance is achieved The resulting penalty schedule appears as a series of quarterly payments which increase with inflation

As implied above, the calculation of the penalty requires estimates of capital and operating costs, the rate of return on equity capital, and the inflation rate Because these estimates are often made well in advance of the actual expenditures, they are subject to error Once compliance has been achieved the capital cost is known and a better estimate of the operating and maintenance costs may be possible More current estimates of the rate of return on equity capital and the inflation rate are also possible since more recent data on the rates will become available during the period of noncompliance The Act calls for a recalculation of the penalty using these revised figures A refund will then be paid or additional penalty payment assessed based on the new estimate of economic savings

PLAN OF THIS APPENDIX

Following the introductory section, Section II contains a discussion of the legal and economic rationale for the procedures which have been adopted for calculating the penalty. Although an attempt has been made to present the discussion in such a way that it can be understood by persons not familiar with this subject, the need to keep intact the integrity of the underlying financial theory requires that the discussion remain somewhat technical

Section III contains a summary of the assumptions used in deriving the formulae and the reasons for adopting these assumptions Section IV defines the various parameters included in the formulae and the sources which should be used to acquire the data needed to calculate the penalty in specific cases

Finally, Section V presents the development of the formulae needed to compute the noncompliance penalty The attachments describe the treatment of certain cases which require adjustment of either the data or the formulae

SECTION II

ECONOMIC SAVINGS AND THE NONCOMPLIANCE PENALTY

The costs associated with controlling pollution arise from many sources The most apparent are the original purchase cost of the control equipment, and the annual operating and maintenance expenditures There may also be costs associated with the financing of the original purchase; for example, interest would be paid if a portion were financed with borrowed funds

In addition to the direct costs, other financial impacts result from the purchase of equipment Depreciation, for example, has the effect of reducing income tax liability in years subsequent to the original investment Similarly, the original purchase may result in an investment tax credit, acting much the same as if a discount were given on the purchase price Both of these have the effect of lowering the net cost to the firm [1]

To calculate the economic value to a firm from delaying compliance with pollution control regulations, it is necessary to evaluate on a consistent basis the effect of all costs avoided or delayed, and related tax consequences, between the date by which compliance is required and the date on which compliance actually occurs Because the various savings do not all occur at the same time, they must first be converted into values which are comparable with respect to the time-value of money (that is, the sooner a savings is generated, the more valuable it is) This conversion is accomplished by discounting all estimated future savings into their "present value" equivalents, a technique described below. Finally, the sum of the discounted values must be converted into series of level quarterly penalty payments as prescribed by the Act.

[1]The term "firm" will be used to designate the owner of the pollution source The discussion is equally applicable to sources owned by individuals

This section describes the process of translating the estimated costs and tax consequences associated with the purchase and operation of pollution control equipment into a penalty That penalty reflects the savings that a firm realizes by delaying its compliance with pollution control regulations

POLLUTION CONTROL CASH FLOWS

The above discussion of the financial impact of delaying an investment in pollution control equipment was expressed in terms of costs, net of related tax consequences A question arises as to the appropriate metric with which to measure these costs The financial literature is clear on this subject: the appropriate metric is the incremental cash flow, positive or negative, associated with each cost [1]

In order to measure each incremental cash flow properly, account must be taken not only of the initial effect but also of any offsetting tax effects Available tax deductions can reduce the amount of income otherwise taxable and tax credits can reduce the amount of tax otherwise payable. These tax effects reduce the cash flow impact of an investment in pollution control equipment since they reduce the amount of tax payable in the presence of such expenditures For example, payments for operations and maintenance are tax deductible Therefore, the incremental cash flow resulting from such payments consists of the initial expense less any reduction in tax liability For most corporations this means that the net cash flow resulting from tax deductible payments will usually be approximately one-half of the stated pre-tax cost.

[1]See, for example, Weston, J.F and Brigham, E F , Managerial Finance, The Dryden Press, Hinsdale, Illinois, 1975, pp 275-281, or Van Horne, R.C , Financial Management and Policy, Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1974, pp 78-81.

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There are three categories of cash flow arising from the purchase and operation of pollution control equipment. These are: (1) the initial capital outlay required to purchase and install equipment; (2) the subsequent monthly flows associated with depreciation and financing of the initial capital outlay; and (3) the subsequent monthly expenses of operating and maintaining the equipment The first category is equal to the cost of purchasing or constructing the equipment, less the amount of any applicable investment tax credit The investment tax credit constitutes a reduction in tax liability which has the effect of a discount on the purchase price The second category of cash flow includes the tax shield from depreciation and interest as well as principal payments on debt and preferred stock The third category is equal to expenditures for operation and maintenance less the applicable tax deductions All of these cash flows are repeated when the equipment is replaced at the end of its useful life

DISCOUNTING OF CASH FLOWS

Once all incremental cash flows have been estimated, they must be converted into a set of values which reflect the timing of their occurrence. This procedure is necessary because two cash flows of equal dollar value occurring many years apart do not have equal impact on the firm This differential arises because the firm can invest funds at some positive rate of return If a dollar of expenditure can be postponed for one year, that dollar can be invested in the interim At the end of the year the dollar of expenditure can be made and the return on the investment during the intervening period accrues to the benefit of the firm

The technique used to compensate for this effect is called discounting Discounting involves reducing the value of future cash flows to amounts which are equivalent in terms of

their present value As an example, suppose that a firm faced with a $100 expenditure could delay that expenditure by one year (assume no inflation). If the firm could invest money for that year at a 10 percent return, it would not need to put aside a full $100 to make the payment one year later In fact, if it invested only $90 91 at a 10 percent return, that amount would grow to $100 in one year Therefore, $90 91 is the present value, at 10 percent, of a $100 cash flow one year in the future

Similarly, $82 64 invested at 10 percent would grow to $100 in two years (it would grow to $90 91 in one year and to $100 in the second year) Thus, $82 64 is the present value, at 10 percent, of a $100 cash flow two years hence The present value of cash flows for other numbers of years in the future is found in a similar fashion The formula is given by:

$$\text{Present Value} = \frac{\text{Future Value}}{(1+E)^j} \qquad (1)$$

where: E = the discount rate, expressed as a fraction (e g , 0 10 corresponds to 10 percent)

j = the number of years in the future in which the cash flow occurs

Future Value = the value of the cash flow in the future

Applying this technique to all future pollution control cash flows converts each cash flow into its present value equivalent [1] The sum of these individual values represents the equivalent cost, in terms of a single present value, of all future cash flows arising from the requirement to purchase and operate pollution control equipment

[1] For a more thorough discussion of this concept see the capital budgeting chapters in the Weston and Brigham or Van Horne texts previously cited.

THE VALUE OF DELAY

For each polluting facility there is a date by which compliance should have been achieved Under Section 120 of the Act, as implemented, the period of covered noncompliance -- i e , the period over which a noncompliance penalty must be assessed -- begins on the date on which a notice of noncompliance is received Therefore, for purposes of calculating the penalty, it will be assumed that all capital expenditures should have been made by or on that date and that operating and maintenance expenditures should begin on that date

The economic value of delay is assessed by comparing two sets of cash flows The first consists of the flows that the firm would have experienced had it come into compliance on time These include the flows attributable to the purchase and operation of the original equipment as well as those associated with any future replacement cycles The second set of flows consists of those which the firm will experience when, following the delay, it actually does come into compliance This second set of flows will have three properties:

- It will be similar to the first set in that it will have the same sequence of capital expenditures, depreciation tax savings, operating and maintenance flows, and so forth
- It will begin at some time after the first day of noncompliance
- The magnitude of each of its individual component flows will be greater than the corresponding flow in the first set to the extent that any given cost has inflated during the period of delay.

The present value of both sets of cash flows, as of the first day of noncompliance, can be calculated in the manner described above The present value of the second set will be lower, reflecting the fact that delaying compliance yields a financial benefit to the firm That benefit is equivalent to the economic savings from delay Thus the economic value of delay is equal to the present value of the cash flows in the first set (on-time compliance) less the present value of those in the second set (delayed compliance) This calculated value of economic savings in turn becomes the basis on which the noncompliance penalty is derived.

THE EFFECT OF PRECOMPLIANCE EXPENDITURES

It is implicitly assumed in the above discussion that capital expenditures associated with delayed compliance were made in a single payment on the first day that the firm is projected to come into compliance and that no operating and maintenance expenditures were required prior to that time The Act requires that the penalty take into account any expenditures on pollution control equipment made by the firm prior to the date the firm comes into compliance The procedure used to account for these precompliance expenditures is begun by dividing the value of delay into its two components. The first component is the return earned on the capital costs of the pollution control equipment whose purchase has been delayed. The second component is the operating and maintenance costs avoided during the period of delay. An adjustment is made to each of these components of the penalty to account for the firm's precompliance expenditures

To adjust the capital component, the capital component of each period's penalty is multiplied by a factor representing the proportion of the capital investment which is still to be made The result is the adjusted capital component of the pen-

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alty Thus the firm receives a credit (a reduction in the capital component of the penalty) in proportion to the amount of the capital investment in pollution control equipment already made

The operating and maintenance component of the savings is adjusted to a value which is net of any actual operating and maintenance expenditures made during the period of noncompliance The present value of the operating and maintenance expenditures made by the firm during the period of noncompliance, on an after-tax basis, are subtracted from the operating and maintenance component of the savings The remainder is the adjusted operating and maintenance component of the penalty

CONVERSION OF SAVINGS INTO THE NONCOMPLIANCE PENALTY

The Act specifies that the total penalty assessment is to be paid in a series of equal quarterly payments EPA interprets this provision to mean equality in real or constant dollar terms The quarterly payments, therefore, should increase at the projected rate of inflation When deflated, such penalty payments will be equal in real terms (that is, in constant dollars)

Once the present value of the savings from delay has been calculated and adjustments have been made to account for precompliance expenditures, the magnitude of the required quarterly payments may be determined Since the period of noncompliance has been estimated,[1] the next step is to create a series of quarterly payments during this period (with each payment increasing at the rate of inflation) and with the present value of all payments summing to the economic value of delay which was just calculated A formula for making this conversion is described in Section V

[1]Any error in its estimation can be corrected at the time of the post-compliance settlement

POST-COMPLIANCE SETTLEMENT

The initial calculation of the noncompliance penalty is based on estimates; that is, an estimate of the costs of purchasing and operating the required pollution control equipment, an estimate of the schedule of precompliance capital and operating expenditures, and so forth These estimates will have represented the best judgment of the firm's management or of independent consultants The law, however, requires that a procedure be established whereby the penalty can be adjusted after compliance has been achieved to arrive at a final computation of the benefit of delayed compliance

As described in the preceding discussion, the noncompliance penalty has two components, one related to capital costs and the other to operating and maintenance expense The settlement process is similarly divided into capital and operating and maintenance components

Once the capital equipment has been purchased and installed, the associated costs can be determined from the firm's accounting records These, however, do not represent the costs which, had estimation been perfectly accurate, would have been used in the original penalty calculation The cost used then was the estimated amount which would have been expended at the time the penalty was first assessed had the firm come into compliance on that date The actual expenditure, coming at a later date, would reflect the impact of inflation Therefore, for purposes of recomputing the penalty, the amount actually spent to comply must be deflated to remove the effect of inflation

Similarly, the actual operating and maintenance costs cannot be determined until after the pollution control equipment has been in operation for some time If a post-compliance settlement were to reflect the actual level of such costs most accurately, settlement could not take place for months or even years after compliance has been achieved However, the Act requires settlement within six months of the date on which compliance is achieved. If at the time of post-compliance settlement it is apparent that the original estimate for operating and maintenance expense was inaccurate, an adjustment to the original savings calculation should be made by revising the operating and maintenance component

The rate of return on equity capital and the rate of inflation are both estimated using historical averages This is true of the shares of firm's capital structure represented by debt, preferred stock and common equity as well. More current information will become available during the period of noncompliance Therefore, at the time of the post-compliance settlement, the historic averages will be updated using the current information available to provide more recent estimates of the rate of return on equity capital, rate of inflation, and the firm's capital structure

These revised estimates -- capital costs, operating and maintenance costs, the rate of return on equity capital, the inflation rate, and the firm's capital structure -- and the actual schedule of precompliance expenditures are then substituted into the noncompliance penalty formula and a revised penalty series is calculated The difference between the penalties actually paid and the revised amounts constitutes the basis for the post-compliance settlement If the penalty has been overpaid, the excess will be refunded with interest If it has been underpaid, the deficiency must be paid, also with interest Under the Act, the rate of interest for underpayments and the rate of interest for overpayments will be set by the Secretary of the Treasury

SECTION III

ASSUMPTIONS UNDERLYING THE PENALTY CALCULATION

The basic concept underlying calculation of the noncompliance penalty is that the economic savings resulting from delaying compliance with pollution control regulations should be removed Implementing this concept requires several assumptions which were only implicit in the discussion in the previous section These assumptions are explained in this section

The calculation of the savings to a firm from delaying compliance is based on principles of financial and economic theory which are widely accepted or which have been selected as most appropriate for the purpose of calculating the penalty The methodology itself is routinely used by firms making their own investment decisions The assumptions involved are, for the most part, integral to the methodology itself Similarly, the parameters and the data sources specified for such parameters are, with few exceptions, those which would commonly be employed by financial analysts

1 The relative mix of debt, preferred stock and common equity allocated to pollution control equipment is the same as that found in the firm's capital structure as shown on its balance sheet

On the balance sheet of any firm, total net assets, including net working capital, are exactly equal to total long-term financing Any increase or decrease in net assets must be accompanied by a similar change in long-term financing Under the allocation scheme assumed in the formulae, each asset is allocated a share of each source of long-term financing (long-term debt, preferred stock, and equity) proportionate to its share of the total net asset structure Thus the sum of the shares of each source of long-term financing allocated to an asset will exactly equal the net book value of that asset As the asset is depreciated, its share of each source of long-term financing declines but, other factors being equal, the mix of debt, preferred stock, and equity associated with that asset is unchanged

Implicit in the assumed allocation system is the related assumption that the mix of total sources of financing is optimal and therefore constant over the life of any particular asset The mix of financing employed by a firm may fluctuate on a year-to-year basis due to short-run discontinuities [1] The mix may also be subject to longterm, secular changes due to gradual changes in the evaluation of management or financial markets as to what mix is optimal During the intermediate period in which the useful lives

[1]Firms are often observed issuing new stock or selling bonds, but rarely do the two occur simultaneously Thus, the capital structure of a firm may fluctuate from year to year However, as discussed below, an accepted principle of financial theory is that each firm has an optimal financial structure which it aims to preserve over the long run Obtaining long-term financing, such as a new debt or equity issue, is expensive and time-consuming and, therefore, firms tend to secure large amounts at one time Thus, the firm's capital structure may fluctuate on a year-to-year basis, even though the long-term structure remains unchanged

lives of most assets fall, however, the mix of debt, preferred stock, and equity is assumed to be constant and unaffected by the addition or subtraction of any particular asset for which financial support is required Given this assumption, it follows that an appropriate basis for allocating financial sources to particular assets is the pro rata basis used here

An alternative and less desirable approach would be to assume that the addition or subtraction of pollution control equipment from a firm's total net asset structure will lead to a long-term change in the firm's financial structure Using this approach, it would be appropriate to assign to an asset a pattern of financing different from that of the firm as a whole In theory, financing could be provided solely by debt or by equity As is discussed below, however, there is no reason to believe the nature of the asset involved will have a unique effect requiring financing different from other assets

At one extreme is the assumption that the entire cost of the equipment is financed by equity, typically the most expensive source [1] This assumption is based on the argument that pollution control equipment is not a "normal" investment, that is, an investment which holds the promise of creating future returns It is the expectation of future returns which enables the firm to borrow since its capacity to earn returns and hence honor fixed debt obligations is not diminished An investment which does not increase productive capacity, it is argued, does not add to the firm's ability to carry debt and would therefore be funded entirely from equity This would tend to increase the cost of the pollution control investment and hence increase the penalty for delaying that investment

[1]See, for example, Pogue, Gerald A , Estimation of the Cost of Capital for Major United States Industries with Application to Pollution Control Investments, Environmental Protection Agency, EPA-230/3-76-001, November 1975 p 5-16

This argument incorrectly assumes that non-productive pollution control equipment will generate no return to the firm While such equipment does not generate a direct return, some of the cost will be passed through to the customers of the firm and will result in indirect revenue effects Assuming (as the penalty provision seeks to ensure) that pollution control requirements are applied equally throughout the economy, there is no reason to believe that pollution control costs will not be eventually recovered through the increased price of the firm's products Thus, the addition of pollution control assets need not in the long run alter a firm's debt-coverage capability

At the other extreme is the assumption that the firm will finance the investment in pollution control equipment entirely with debt The argument advanced for making this assumption is that a firm may issue new debt, often in the form of pollution control bonds or some other low-cost instrument, in order to raise the funds needed to purchase the pollution control equipment since debt is generally the least expensive form of financing However, the fact that pollution control equipment may be financed with cheaper debt does not mean that the installation of such equipment will alter the perceived optimal capital structure of the firm While pollution control equipment may create an increase in debt in the short run (because new debt can be acquired on favorable terms), the imbalance will eventually be rectified by increases in equity and/or reductions in other long-term debt This is because the maximum amount a firm will be able to borrow depends on management's and lenders' perceptions of risk -- that is, the underlying ability of the firm to support a certain proportion of debt The addition of pollution control equipment should not change this perception of risk, other factors being equal Thus, a temporary increase in debt would be eventually adjusted to the perceived optimal level

The assumption of a constant financial structure over the life of an asset is therefore reasonable Given this assumption, it is appropriate to assign to any particular asset a mix of financing which is identical to the overall mix which supports the total asset base Hence, the pro rata system utilized in the penalty formulation follows directly This assumption also represents a middle ground between all-equity and all-debt financing with respect to the size of the resulting noncompliance penalty

2 Cash flows are discounted using the equity method

The rate used to discount future cash flows is the firm's return on equity The equity discounting method is one of several approaches to evaluating capital investments which have been developed The equity discounting method provides the advantage of explicitly recognizing the cash flows arising from debt and preferred stock financing by subtracting out all cash flows arising from debt or preferred stock financing The remainder is discounted at the rate of return on equity

This method of discounting explicitly recognizes the fact that debt is a fixed obligation Regardless of the return earned on the project, the bondholders will receive the agreed upon interest and principal payments.[1] If a project earns more than the firm's required return, the bondholders will be given no share of the excess return If a project earns less than the firm's required return, the bondholders' return is not reduced The equity discounting method acknowledges these financial arrangements by explicitly accounting for interest and principal payments and then discounting the residual by the cost of equity.

[1]The only exception occurs if the firm declares bankruptcy and there are insufficient funds to repay the bondholders in full.

The equity discounting method also holds constant the capital structure of the firm by recognizing that if a project earns less than the firm's required return, the shortfall must be funded using additional equity capital Since the shortfall will reduce the retained earnings of the firm (an equity account), the firm must compensate for this reduction by eventually raising additional equity capital in order to deep a constant capital structure If this shortfall were funded with both debt and equity, the portion of debt in the capital structure would rise This implies that projects which result in inadequate returns would increase the debt capacity of the firm Although, as discussed above, long-term debt capacity may not be lowered due to the undertaking of the pollution control investment, it is unlikely to increase as a result of this investment

An alternative to the equity discounting method is the weighted average cost of capital method This is the method often illustrated in introductory textbooks in corporate finance [1] The method works by discounting incremental operating cash flows That is, it computes cash flows resulting from investment in pollution control equipment without considering how the investment is financed This rate is developed by computing a weighted average cost of capital with the weightings based on the overall capital structure of the firm

While the weighted average cost of capital is the commonly accepted method for ranking investment alternatives, it is not the appropriate method to use in the special case of a required investment which yields no direct return to the firm It ignores the fact that debt is a fixed obligation and that the agreed upon interest and principal must be paid, regardless of the inadequate earnings on the project

[1] See Weston and Brigham, op. cit.

3 The noncompliance penalty is computed as a non-tax-deductible expense to the firm

In calculating the costs on which the penalty is based, the normal tax consequences of interest, depreciation, and operating and maintenance expenditures are taken into account If the penalty were to be allowed as an expense for tax purposes, it would need to be adjusted upward such that its after-tax cost to the firm would be the amount calculated herein

4 Cash flows take place at the end of each month

While expenditures such as those for operating and maintaining equipment obviously are incurred throughout the course of the month, this assumption greatly simplifies the computation Its effect is to lower the penalty slightly from the level it would have if these expenditures were assumed to be made on a continuous basis throughout the month

Similarly, the cash flows arising from depreciation and those associated with long-term financing, both principal repayment and interest or dividend payments, are assumed to take place at the end of each month

5 The rate of inflation of pollution control operating and maintenance expenditures is the same as that for pollution control capital costs

The assumptions of the model regarding inflation of pollution control capital costs are described in Section IV in the discussion of the sources of data Just as there is no index of pollution control capital costs, currently there is no identifiable index of pollution control operating and maintenance expense The development of an index reflecting past increases in operating and maintenance expense would require substantial resources and would probably not result in a significant increase in the accuracy of the penalty The inflation in operating and maintenance

expenses will depend primarily on the inflation in labor and materials cost As described in Section IV, the index of inflation for pollution control capital costs includes both of these elements

6 The noncompliance penalty is calculated using a thirty-year time horizon

Firms benefit from delay both by having funds for other investments during the period of noncompliance and by displacing into the future the need to replace the pollution control equipment In order to assess the benefit from a delay in compliance appropriately, all the cash flows incurred over a specified time period must be considered The time periods used for both the on-time compliance and the delay case must end simultaneously so that the present values of the costs calculated in each case are directly comparable

A time horizon equal to thirty years beginning at the time the notice of noncompliance is received was chosen as the time horizon for both the on-time compliance and the delay case. There exists no standard long-range planning horizon throughout all industries However, thirty years is a common estimate and it is a reasonable assumption for most industries Many firms evaluate long-term, large scale investment such as pollution control equipment over a long-term planning horizon Since the use of a thirty year planning horizon to calculate penalty amounts is consistent with the planning procedure of many firms, the use of a thirty year horizon will make the firm indifferent to the alternatives of on-time compliance or delayed compliance plus a penalty

One alternative to the thirty year time horizon considered was the use of a specified number of replacement cycles

However, the use of a fixed number of replacement cycles has the disadvantage that it requires the comparison of two investments of unequal duration For example, if a firm were to delay compliance by one year and the equipment had a useful life of ten years and the penalty was evaluated over a single replacement cycle, the on-time alternative would end in year ten while the delay alternative would end in year eleven Thus, the penalty calculation would require the comparison of a ten year series of cash flows with an eleven year series of cash flows

The use of an infinite number of replacement cycles, as originally proposed, avoids the need to compare two cash flow streams of unequal duration The use of an infinite number of replacement cycles assumes an endless chain of similar pollution control devices will be installed on the underlying source of pollution It can be argued that this is not the case since clean air regulations will change over time, technological advances in pollution control equipment will occur, and the underlying source of pollution will be retired, altered or otherwise modified Thus firms are unlikely to consider costs incurred more than thirty years in the future in their decision to delay an investment in pollution control equipment

The use of a single replacement cycle was also considered However, it is clear that a delay in the installation of pollution control equipment confers an advantage to the firm beyond the first cycle of equipment Even though future requirements for pollution control are uncertain, it is likely that there will be requirements for pollution control beyond the first cycle of equipment The use of a single replacement cycle would therefore ignore the benefits which accrue to the firm from the delay of the purchase of future replacement equipment of whatever type The use of a single replacement cycle would understate the penalty

and thus fail to capture the economic benefits enjoyed by the firm

7 The salvage value of any equipment with useful life remaining at the end of the thirty year time horizon is zero

The choice of a thirty-year time horizon requires the selection of a method to determine the salvage value for the pollution control equipment If, for example, the useful life of the pollution control equipment is ten years, on-time compliance would involve installation of the equipment at the beginning of years one, eleven and twenty-one At the end of year thirty, the equipment installed in year twenty-one will have no remaining useful life If compliance is delayed for one year, the third cycle will be initiated in year twenty-two and at the end of year thirty the firm would have pollution control equipment with a remaining useful life of one year A salvage value must be estimated for the value to the firm of having pollution control equipment with some remaining useful life at the time horizon

The economic value of any remaining useful life in pollution control equipment at the time horizon can be set based on several assumptions Some possible alternatives for this value are zero, the book value of the equipment at the planning horizon, or the replacement value of the equipment at the horizon The salvage value assumption chosen is that the pollution control equipment has zero economic value at the end of the time horizon The reasoning behind this assumption is that the thirty-year time horizon represents, among other things, the time period over which EPA can reasonably expect firms to plan to meet the agency's clean air regulations by installing existing controls or controls similar to those currently existing This implies that the equipment will be rendered obsolete at the end of the horizon due to changing conditions Consistent with this reasoning is the assumption that the

equipment will have no value in any other application, nor will it be required in its current application beyond the time horizon In this case, then, the salvage value of the equipment would be zero and the only cash flow that would result at the end of the planning horizon would be a tax benefit arising from writing off the remaining undepreciated portion of the equipment[1] and the repayment of outstanding debt and preferred stock

8 The discount rate is not less than the inflation rate

If a firm has a choice between making an investment which yields a direct positive return and an investment which yields no direct returns, it would choose to make the former The firm required to invest in pollution control equipment might seek to delay such an investment since the longer it delays, the longer it can keep its funds invested in projects producing positive returns

However, when the inflation rate is greater than the discount rate, this benefit from delay may no longer exist. For example, assume that the firm could invest $1000 in projects returning seven percent but that the pollution control equipment cost were increasing each year at an eight percent rate If the firm delayed compliance one year it would have earned $70 on its investment but the pollution control equipment would cost $80 more Under such circumstances, in terms of capital cost, the firm would

[1] If any portion of the equipment is not depreciated at the end of the time horizon, it is assumed that the undepreciated portion can be written off as a loss for tax purposes at the end of the planning horizon

be better off complying immediately if it planned to comply at some time [1] A firm which nonetheless delays is most likely doing so because its own estimate of the returns available to it on alternative investments is higher than the discount rate used in computing the penalty or because the value of the operation and maintenance expenditures avoided during the period of delay exceeds the increase in the present value of the capital costs

It is possible that the discount rate might be less than the inflation rate for some historical period in the data sources to be used for calculating noncompliance penalties EPA considers such data an inappropriate basis for future expectations Therefore, in the unlikely event that computations using the historical data yield a discount rate less than the inflation rate, the discount rate will be set equal to the inflation rate A similar adjustment will be made, if necessary in the post-compliance settlement

[1] In some circumstances, there may still be a benefit to delay even if the inflation rate exceeds the discount rate If the firm delays a sufficiently long period, the firm may avoid an entire replacement cycle

SECTION IV

DEFINITIONS OF PARAMETERS AND SOURCES OF DATA

Calculation of the penalty requires estimates of a large number of financial parameters, many of which are specific to the noncomplying firm This section contains definitions of these parameters and sources from which their numerical values are to be drawn

1 Capital Investment Schedule

This schedule is an estimate of monthly expenditures to be made for purchase and installation of the required pollution control equipment It includes not only direct purchase costs, including sales taxes, but also such expenditures as site preparation, engineering design, shipping costs, and installation expenses

In the event that contracts have been signed for construction or purchase of the required equipment, they should be used as the basis for such costs Other possible bases include engineering estimates, quotations from equipment manufacturers and, where no other data are available, reasonable estimates by the owner of the facility

2 Operating and Maintenance Expense

This parameter is an estimate of the monthly cost of operating and maintaining the required pollution control equipment That is, this amount should represent the average monthly operating and maintenance expense the firm would have incurred in the initial year of compliance There is a provision in the formula-

tion which automatically adjusts future months' operating and maintenance expense for anticipated inflation

Losses in production capacity and incremental energy costs which will be incurred as a direct result of operating the pollution control equipment should be counted as an expense in this category On the other hand, the value of any byproduct recovery resulting from such operating should be deducted To the extent that these or other factors will result in the real cost of operating and maintenance varying over time, an estimated schedule of payments must be provided

Sources of estimates for operating and maintenance expense include equipment manufacturers, engineering consultants and the owner of the facility These estimates should include all recommended operating and maintenance procedures, training and planning costs, cost of warranties, recordkeeping and costs of monitors.

3 Investment Tax Credit

This credit is a reduction in federal or state income taxes payable as a result of making qualified capital investments It is equal to a specified percentage of the portion of the initial capital costs which qualify under U S Internal Revenue Service (IRS) regulations The investment tax credit is included in the formulation because it has the effect of reducing the cash outflow required to purchase the pollution control equipment

The applicable percentage is given in the Internal Revenue Code as are the criteria for qualifying investments Further details are provided in Attachment B

4 Marginal Income Tax Rate

This rate is the fraction of the last dollar of taxable income which must be paid by the firm to federal, state and local governments It is the amount by which taxes would increase if taxable income were to increase It is different than the average income tax rate -- total income tax divided by taxable income

The tax rates of the various levels of government are specified by statute and depend on the level of taxable income reported by the owner of the polluting facility A formula for computing the marginal income tax rate for a firm subject to income taxation by more than one level of government is given in Attachment D

The noncompliance penalty is based on the incremental savings from delaying investment in pollution control equipment The tax effects will depend on the rate applied to the incremental cash flows -- the firm's marginal income tax rate

An alternative to using the marginal income tax rate would be to use the average rate The advantage of using such a rate is that it can be calculated directly from data contained in the firm's financial statements However, the use of an average rate would not result in a correct computation of the tax consequences of an incremental investment It was therefore rejected as the appropriate tax rate

5 Inflation Rate

This is the annual rate at which both capital and operating and maintenance costs are expected to grow These cost increases are the result of inflation in various factors such as labor, capital goods and energy

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For purposes of computing the noncompliance penalty, the annual compounded change in the Chemical Engineering Plant Cost Inflation Index for the most recent 60 months of data is to be used as an estimate of the future rate of increase in pollution control expenditures [1] The Chemical Engineering Plant Cost Index is based on a weighted average of four cost components: (a) fabrication and equipment, (b) engineering and supervision, (c) construction labor, and (d) building costs The weights are determined by a survey of the chemical industry made by Chemical Engineering magazine The cost components are derived from the producer price indices compiled by the Bureau of Labor Statistics

There is no widely available index of pollution control equipment costs as such The Chemical Engineering index is based on factors which are clearly important components of such costs The principle alternative considered was to use some broader and more universally recognized index, such as the GNP implicit price deflator This was considered to be an inferior choice since it is based on a broad range of factors (food, housing, medical costs, and so forth) only loosely related to the cost of pollution control equipment

[1] Chemical Engineering, McGraw-Hill, Inc , April 28, 1975 and subsequent issues. For the years 1972-1977 this rate was 8 3 percent

A problem with using any historical index to project the future is that changing conditions may make the estimates inaccurate Using an inflation rate over the past several years as an estimate of the future rate may appear to be an example of such a problem Offsetting this problem to a great extent is the fact that a similar approach is being used for the discount rate Since the inflation and discount rates act in opposite directions with respect to pollution control cash flows (that is, the inflation rate is used to increase future values while the discount rate is used to reduce them), any error introduced by using an historic inflation rate is counteracted by using an historic return on equity as the discount rate Furthermore, both the discount rate and the inflation rate will be updated using more current information at the time of post-compliance settlement

6 Discount Rate

This is the percentage rate to be used as the basis for discounting cash flows in future years Such discounting is necessary to convert cash flows occurring in different years into present values The source of the discount rate is the industry average return or the all-manufacturing average return on the net book value of common stockholders equity, whichever is higher. These rates are reported by the Federal Trade Commission in its Quarterly Financial Report for Manufacturing, Mining and Trade Corporations [1] They are based on an exhaustive sample of the firms in each industry and, subject to the limitations found in

[1] For public utilities, the return on equity data is found in the April issues of Citibank's Monthly Economic Letter The utility return on net worth is to be used as the discount rate for utilities

all accounting data, represent an accurate estimate of the past performance of U S industries To smooth out year-to-year fluctuations, the discount rate used in computing the noncompliance penalty is the average of the most recent twenty quarters However, as was discussed in Section III, a discount rate cannot be used that is lower than the inflation rate

In theory, the appropriate rate to include in the formulae is the marginal rate of return on equity; that is, the rate which investors would require in order to commit additional common equity funding to the firm The estimation of such a rate is difficult One possible estimate of this rate is the internal "hurdle rate" which firms use to evaluate capital investments This rate would automatically provide an insight into the firm's own estimate of the opportunity cost of additional equity capital However, because a hurdle rate is not used internally by all firms, because it is often very subjectively determined, and because it would be administratively difficult to obtain, it was rejected as an estimate of the discount rate

Another alternative means of estimating the discount rate is the expected future return on a share of the firm's common stock Unfortunately, only the stocks of a small percentage of firms are publicly held and frequently traded and hence, have realistic share prices Moreover, even if such prices exist, the expected return would have to be estimated It is doubtful whether a satisfactory means could be found for providing these estimates

Other estimates of the opportunity cost of equity funds based on economic and finance theory are available in the literature [1] However, there currently exists no commonly accepted methodology for making such estimates and the cost of updating these estimates is prohibitive Hence, these estimates were also rejected as a source of the discount rate The use of either these theoretical estimates or the hurdle rate estimates would have resulted in higher penalties since these estimates tend to be higher than the average return on equity over the past five years

The shortcomings of the methods described above have led to the selection of a return on equity which is based on book values However, since the appropriate discount rate should reflect the expected earnings on the firm's current investment opportunities rather than its past investments, the higher of the industry average rate or the all-manufacturing average rate of return is used rather than a firm-specific rate It is assumed that firms in industries which historically have earned more than the all manufacturing rate of return will continue to have investment opportunities available to them which will yield a higher than average rate of return For firms in industries which have historically earned less than the all manufacturing rate of return, the all manufacturing rate of return is more indicative of the return on the future investment opportunities available to the firm [2]

Certain consequences result from the use of industry average data rather than firm-specific data. If firm-specific data were employed, those firms with high historical returns

[1] See, for example, Gerald A Pogue, Estimation of the Cost of Capital for Major United States Industries with Application to Pollution Control Investments, Environmental Protection Agency, EPA-230/3-76-001, November 1975

[2] The industry average rate of return is employed as the discount rate for utilities, even if the all manufacturing rate is higher, since the investment opportunities available to utilities may be limited by federal or state law or public utility commission practice

would, all else being equal, pay higher penalties Similarly, firms whose returns have been below industry average would pay lower penalties Since the savings to a firm from delaying compliance is related to future returns on equity, the question becomes whether the future returns of a specific firm will best be estimated by its own past performance The fact that individual firm performance is influenced by a variety of factors, often peculiar to the firm and not likely to be repeated, and that future returns are more closely related to the investment opportunities available to industry argues for the use of industry average data

The use of an industry average rate or the all-manufacturing rate also eliminates the need to verify firm-specific rate of return calculations Particularly in the case of small firms, the amount and timing of reported earnings could be significantly altered such that a rate of return computed on their book value would be meaningless In the case of partnerships or sole proprietorships, it would be difficult to disentangle personal finances from company finances The lack of sufficient resources to verify these data argue strongly for the use of an average rate

7 Interest Rate

This is the current rate of interest which would be paid by the firm if additional debt were to be acquired The interest rate is found by taking the average yield as published in Moody's Bond Record on corporate bonds of a grade equal to that on the firm's bonds having the highest rating

If a firm's debt is not rated, the interest rate is found by using the current rate of interest on grade "A" corporate industrial bonds, published in the Bond Record The current interest rate on grade "A" corporate bonds was chosen because it is a widely available figure which estimates the rates appropriate to a large percentage of firms Since Moody's Bond Record does not provide average yields for bonds rated lower than "Baa", firms with

debt rated "Baa" or lower will use the "Baa" rate of interest

If the firm expects to use industrial development bonds (IDB's) to finance all or a portion of its investment in pollution control equipment, a weighted average of the corporate bond rate and the IDB rate[1] will be used as the interest rate in the model The calculation of this weighted average is explained in the Attachment E

8 Preferred Stock Dividend Rate

This is the rate which would be paid by the firm to its preferred stockholders on new issues of preferred stock Like return on equity and the interest rate, the dividend rate on preferred stock represents the marginal cost of this component of long-term financing

If a firm has preferred stock outstanding which has a rating, the preferred stock dividend rate is given by taking the average yield on public utility preferred stock[2] of that rating as reported in Moody's Bond Record If the stock is not publicly traded or has no rating, the rate is found by using the current preferred stock yield on grade "a" issues Since Moody's Bond Record does not provide average yields for preferred stock rated lower than "baa" or higher than "aa", firms with stock rated "baa" or lower should use the "baa" rate and firms with stocks rated "aa" or higher should use the "aa" rate

[1]The interest rate on IDB's is published by Smith, Barney, Harris Upham & Company in the Bond Market Review. This review is published weekly and the current yield on pollution control bonds is printed on the last page.

[2]Average yields are published only for public utility preferred stocks. Non-utility corporations, as well as utilities, should use these average yields if preferred stock is a part of their capital structure

9 Debt Share

This share is the proportion of long-term financing provided by long-term loans, bonds and other long-term interest-bearing instruments It is a fraction, the numerator of which is the sum of all long-term debt accounts on the firm's balance sheet The denominator of the fraction is the sum of these debt accounts plus preferred stock plus common equity investment

The source of the fraction of debt is the share of debt in the firm's capital structure averaged over the five most recent years The five year average is used to smooth out year-to-year fluctuations [1]

10 Equity Share

This share is the proportion of the firm's long-term financing which is provided by common shareholders It is a fraction, the numerator of which is the sum of all common equity accounts on the firm's balance sheet including common stock, retained earnings, capital surplus and any other accounts representing common equity investments [2] The denominator of the fraction is given by adding to the numerator the sum of the preferred stock account plus all long-term debt issued by the owner (excluding portions of such debt in the current account)

[1] If financial statements are unavailable, which may be the case for some privately-held firms, the fraction of debt and equity used in the penalty calculation will be the five year average debt and equity share for the firm's industry This can be calculated from the financial statement provided for the industry by the Federal Trade Commission in its Quarterly Financial Report for Manufacturing, Mining and Trade Corporations

[2] Some firms carry Treasury stock as an asset on their balance sheet Such stock should properly be shown as a contra-account to common stock In cases where it is shown as an asset, it should be used to reduce the common equity accounts for purposes of this calculation

The source of the fraction of equity in the investment is the average fraction of equity in the capital structure as given in the firm's five most recent annual financial statements

11 Preferred Share

This share is the fraction of long-term financing provided by preferred stock The numerator is given by the preferred stock accounts in the firm's balance sheet and the denominator by the quantity: long-term debt plus preferred stock plus common equity interest

The source of the fraction of preferred stock in the investment is the average fraction of preferred stock in the capital structure as given in the firm's five most recent annual financial statements

12 Depreciation

Computation of the noncompliance penalty involves consideration of the depreciation-related tax benefits of an investment in pollution control equipment The firm may choose the method of depreciation to be used, subject to conformity with Internal Revenue Service guidelines EPA's computer program to calculate the penalty automatically selects the depreciation method which results in the minimum penalty This is done under the assumption that the firm would use the depreciation method which resulted in the lowest possible cost of compliance, and hence, the lowest penalty

The depreciation life is the minimum number of years over which a particular investment in pollution control equipment may be depreciated The source of this figure is the lower limit on the asset depreciation range for the appropriate class of as-

sets as given in the Internal Revenue Service publication Revenue Procedure 77-10 If the lower limit is greater than ten years, a ten year limit is used, consistent with the requirements of the Act

13 Useful Life

The useful life of the pollution control equipment is the number of years it can be expected to operate before replacement

The source of the useful life of the pollution control equipment is the asset guideline period for the appropriate class These are provided by the Internal Revenue Service in Revenue Procedure 77-10 They represent IRS estimates of the average lives of assets within a particular industry They were established after an exhaustive study of actual asset lives and will be updated as appropriate

SECTION V

DERIVATION OF FORMULAE

Section II described the procedure used to determine the noncompliance penalty This section follows the same general outline in deriving the formulae used to make the calculations All symbols used in this section are defined in Attachment A A complete description of the parameters used and their sources was given in Section IV

POLLUTION CONTROL CASH FLOWS

To compute the savings from delaying pollution control investment requires that the cash flows be estimated over a thirty year fixed time horizon The simplest approach to calculating the present value of the cash flows over thirty years is to calculate the present value of cash flows in the initial cycle of N months[1] and use that value as a basis for all other replacement cycles The derivation described below uses such an approach

Initial Cycle of Equipment

The first category is the cash flow resulting from the initial investment of equity It is given by:

$$EI = II * Q \quad (1)$$

where: II = the capital cost of the pollution control equipment

Q = the fraction of the firm's capital structure made up of equity.

From this amount must be subtracted the effect of the investment tax credit whose cash flow is given by:

[1] N represents the useful life of the pollution control equipment in months

$$ITC = II * t_{ITC} \quad (2)$$

where: t_{ITC} = the adjusted investment tax credit rate

The investment tax credit rate must be adjusted if not all of the investment qualifies for the credit This adjustment is explained in Attachment B Further, if the investment is financed with industrial development bonds and rapid amortization is selected (see Attachment C), only one-half of the normal investment tax credit is allowed on that portion of the investment so financed

The initial cash flow at the beginning of the cycle is found by subtracting equation (2) from equation (1):

$$\begin{aligned} INITIAL_0 &= EI - ITC \\ &= II * Q - II * t_{ITC} \\ &= II * (Q - t_{ITC}) \end{aligned} \quad (3)$$

This cash flow occurs at the beginning of the first cycle -- at the end of month 0 The initial cash flow in the remaining months of the first cycle is zero ($INITIAL_m = 0$ for $m \neq 0$)

The second category of cash flow is the capital-related flow which occurs over the depreciable life of the equipment It is made up of depreciation and the flows associated with financing the equipment The effect of depreciation is to reduce the firm's tax liability The depreciation cash flow in month m is given by:

$$DEP_m = II * d_m * t_{TR} \quad (4)$$

where: d_m = the fraction of the original cost depreciated in month m (see Attachment C)

t_{TR} = the firm's marginal income tax rate (see Attachment D).

As the equipment is depreciated, the book value of the equipment declines. The book value of the equipment at the beginning of month m is given by:[1]

$$(BOOK\ VALUE)_m = II * (1 - \sum_{k=0}^{m-1} d_k) \quad (5)$$

where: d_0 = 0 by definition

The remainder of the annual capital-related cash flow consists of principal repayments and financing charges (i e , interest and dividends) on the debt and preferred stock issued to finance the equipment purchase The amount of the initial investment financed by debt is given by:

$$DEBT\ SHARE = II * B \quad (6)$$

where: B = the fraction of the firm's capital made up of debt

Debt is repaid each month in proportion to the depreciation of the asset That is, at the end of each month the same fraction of the principal is repaid as the original book value of the investment is depreciated [2] Therefore, the repayment of principal in month m is given by:

$$PRIN_m = d_m * II * B \quad (7)$$

[1]The declining book value does not in itself represent a cash flow This equation is included here to simplify the calculation of the remaining book value of the equipment at the end of the thirty year time horizon which occurs later in this chapter

[2]A variety of assumptions could be made concerning the debt repayment schedule The formulae assume that debt is repaid over the depreciation life of the equipment This assumption is made in order to hold constant the capital structure of the firm over the time horizon

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Interest is paid at the end of each month on the principal outstanding at the beginning of month m

$$(\text{INTEREST CHARGE})_m = R_{INT} * (\text{PRINCIPAL OUTSTANDING})_m \quad (8)$$

where: R_{INT} = the firm's monthly interest rate (expressed as a decimal fraction) [1] See Attachment E

Since interest is tax deductible, only the after-tax effects should be considered in calculating the cash flow Therefore, the interest payment net cash flow in month m becomes:

$$INT_m = R_{INT} * (\text{PRINCIPAL OUTSTANDING})_m * (1-t_{TR}) \quad (9)$$

The principal outstanding is the original amount borrowed, II * B, less the amount which has been repaid prior to the beginning of the month The amount repaid prior to the beginning of month m is:

$$(\text{AMOUNT REPAID})_m = \sum_{k=0}^{m-1} II * d_k * B \quad (10)$$

where: d_0 = 0 as before

The principal outstanding at the beginning of month m is the amount initially borrowed less the amount repaid by the end of month m-1

$$(\text{PRINCIPAL OUTSTANDING})_m = II * B - \sum_{k=0}^{m-1} II * d_k * B \quad (11)$$

[1]The monthly interest rate, R_{INT}, equals $(1+R)^{1/12} - 1$, where R is the annual interest rate paid by the firm on new issues of debt

Combining equations (9) and (11) yields a formula for the interest-related cash flow in year month m:

$$INT_m = R_{INT} * II * B * (1-t_{TR}) * (1 - \sum_{k=0}^{m-1} d_k) \quad (12)$$

The portion of the investment financed by preferred stock is given by:

$$\text{PREFERRED SHARE} = II * F \quad (13)$$

where: F = the fraction of preferred in the firm's capital structure [1]

Just as the additional debt is repaid, the preferred stock is redeemed as the asset is depreciated At the end of each month, the same fraction of the preferred stock is redeemed as the original book value of the investment is depreciated Redemption in month m is given by:

$$PREP_m = d_m * II * F \quad (14)$$

Dividends on preferred stock are paid at the end of each month on the amount of stock outstanding at the beginning of the month

$$DIV_m = R_{DIV} * (\text{PREFERRED OUTSTANDING})_m \quad (15)$$

where: R_{DIV} = the monthly dividend rate on preferred stock (expressed as a decimal fraction) [2]

[1]Note that Q + B + F must be equal to 1

[2]The monthly dividend rate, R_{DIV}, equals $(1+R)^{1/12} - 1$, where R is the annual dividend rate paid by the firm on new issues of preferred stock

These dividends are not tax deductible The preferred outstanding is the original amount issued, II * F, less the amount redeemed prior to the beginning of the month The amount redeemed prior to month m is:

$$(\text{AMOUNT REDEEMED})_m = \sum_{k=0}^{m-1} II * d_k * F \qquad (16)$$

where: $d_o = 0$ as before

The amount of preferred outstanding at the beginning of month m is equal to the amount originally issued less the amount redeemed

$$(\text{PREFERRED OUTSTANDING})_m = II * F - \sum_{k=0}^{m-1} II * d_k * F \qquad (17)$$

The preferred dividend paid at the end of month m is found by combining equations (15) and (17)

$$DIV_m = R_{DIV} * II * F * (1 - \sum_{k=0}^{m-1} d_k) \qquad (18)$$

Therefore, the total monthly capital-related charges for each month m of the initial cycle are:

$$\text{MONTHLY CAPITAL RELATED}_m = -DEP_m + PRIN_m + INT_m + PREF_m + DIV_m \qquad (19)$$

The negative sign preceding the depreciation cash flow results from the fact that this component represents a reduction in cash outflow These monthly capital-related cash flows will occur over the depreciable life of the equipment After the equipment is fully depreciated, these cash flows will be zero until the next cycle of equipment is installed

The final category of cash flow is that associated with monthly operating and maintenance expenditures These expenses grow each month at the monthly inflation rate Like interest and dividend payments, they are assumed to be paid at the end of the month They are tax deductible so their associated cash flows must reflect the effect of income taxes Let $O\&M_m$ be the cash flow resulting from operating and maintenance expense in month m Define M_0 as the monthly operating and maintenance expense before tax stated in current dollars as of the beginning of the period of noncompliance The first payment actually made will be this amount escalated by the monthly inflation rate The resulting cash flow is given by:

$$O\&M_1 = M_0 * (1-t_{TR}) * (1+i)$$
$$O\&M_2 = O\&M_1 * (1+i) = M_0 * (1-t_{TR}) * (1+i)^2$$
$$O\&M_3 = O\&M_2 * (1+i) = M_0 * (1-t_{TR}) * (1+i)^3 \qquad (20)$$

where: i = the monthly inflation rate [1]

In general, the monthly O&M expense in month m is:

$$O\&M_m = M_0 * (1-t_{TR}) * (1+i)^m \qquad (21)$$

Future Cycles of Equipment

It is now necessary to expand these calculations to include the value of any future replacement cycles which occur in the thirty-year time horizon This can be accomplished by recognizing that the costs incurred in any given future cycle are identical to those incurred in the corresponding year of the original cycle except that the costs have increased by the inflation

[1] The inflation rate will normally be given in annual terms If "A" is an annual rate, its monthly equivalent "a" is given by:

$$a = (1+A)^{1/12} - 1$$

rate [1] For example, the replacement of equipment after N months, when the original equipment wears out, gives rise to an initial equity investment equal to:

$$INITIAL_N = INITIAL_o * (1+i)^N$$

In general, the initial equity investment at the end of month m will be equal to the investment made N months ago inflated at a monthly inflation rate, i The initial capital expense at the end of month m is, therefore, equal to:

$$INITIAL_m = INITIAL_{m-N} * (1+i)^N$$

This can also be generalized as:

$$INITIAL_{(j-1)N} = INITIAL_o * (1+i)^{(j-1)N}$$

for the jth cycle

In most months this value will be zero Cash flows due to the initial investment at the beginning of a cycle will occur only in months 0, N, 2N, 3N and so forth until the end of the thirty year (360 month) time horizon If a cycle should end precisely at the end of the thirty year time horizon, it is assumed that the firm will not invest in replacement equipment at the end of the horizon Thus, $INITIAL_{360}$ will always be zero

[1] This assumption does not necessarily assume that equipment in future cycles is identical to that of the initial cycle, but does assume that costs are identical (except for inflation)

Similarly, the monthly capital-related charges in month m will be:

$$\text{MONTHLY CAPITAL RELATED}_m = \text{MONTHLY CAPITAL RELATED}_{m-N} * (1+i)^N \quad (23)$$

The monthly capital-related charges will occur in the first n months of each replacement cycle, where n is the depreciation life of the equipment in months In all other months, the value of these cash flows will be zero

And, finally, the monthly O&M expense in month m will be:

$$O\&M_m = O\&M_{m-N} * (1+i)^N \quad (24)$$

The monthly cash flow for each month m is the sum of these three values

$$MCF_m = INITIAL_m + \text{MONTHLY CAPITAL RELATED}_m + O\&M_m \quad (25)$$

These cash flows can be calculated for each of the 360 months in the planning horizon

Salvage Value of Equipment at End of Time Horizon

At the end of the thirty year time horizon the cash flows cease However, the firm realizes tax benefits from the deduction of any remaining depreciation and must repay all outstanding debt and preferred stock The salvage value of the equipment will be zero because it is assumed that technological or regulatory change will render the equipment obsolete at the end of the time horizon.

The additional depreciation cash flow in the final month is the tax shield from a writeoff of the remaining book value of the equipment The book value of the equipment at the beginning of each month m is:

$$\text{BOOK VALUE}_m = (\text{BOOK VALUE})_{m-N} * (1+i)^N \quad (26)$$

Therefore, the final tax writeoff in month 360 is:

$$\text{DEP}_{\text{FINAL}} = t_{TR} * \text{BOOK VALUE}_{360} - \text{DEP}_{360} \quad (27)$$

The depreciation write-off equals the tax shield on the book value of the equipment at the beginning of month 360 less the tax shield from depreciation claimed in the month 360

Similarly, the debt principal outstanding at the end of month 360 will be repaid To estimate the principal outstanding at the end of month 360, the principal outstanding at the beginning of month m is estimated first:

$$(\text{PRINCIPAL OUTSTANDING})_m = (\text{PRINCIPAL OUTSTANDING})_{m-N} * (1+i)^N \quad (28)$$

The final principal outstanding at the end of month 360 will be the principal outstanding at the beginning of month 360 less the principal repaid during month 360

$$\text{PRIN}_{\text{FINAL}} = (\text{PRINCIPAL OUTSTANDING})_{360} - \text{PRIN}_{360} \quad (29)$$

Finally, the outstanding preferred stock will be repaid at the end of month 360. The preferred stock outstanding at the beginning of month m is:

$$(\text{PREFERRED OUTSTANDING})_m = (\text{PREFERRED OUTSTANDING})_{m-N} * (1+i)^N \quad (30)$$

The final preferred stock outstanding at the end of month 360 will be the preferred stock outstanding at the beginning of month 360 less the preferred stock repaid during month 360.

$$\text{PREF}_{\text{FINAL}} = (\text{PREFERRED OUTSTANDING})_{360} - \text{PREF}_{360} \quad (31)$$

The sum of these final cash flows which will occur at the end of the thirty year time horizon is:

$$\text{CF}_{\text{FINAL}} = -\text{DEP}_{\text{FINAL}} + \text{PRIN}_{\text{FINAL}} + \text{PREF}_{\text{FINAL}} \quad (32)$$

DISCOUNTING THE CASH FLOWS

The present value of the cash flows in each month will be:

$$\text{PV}_{\text{MCF}_m} = \frac{\text{MCF}_m}{(1+e)^m} \quad (33)$$

where: e = the monthly discount rate [1]

The sum of the present value of the cash flows for each month plus the final cash flow incurred at the end of the time horizon represents the cost to the firm of on-time compliance

$$\text{PV}_{\text{PCE}} = \sum_{m=0}^{360} \text{PV}_{\text{MCF}_m} + \frac{\text{CF}_{\text{FINAL}}}{(1+e)^{360}} = \sum_{m=0}^{360} \frac{\text{MCF}_m}{(1+e)^m} + \frac{\text{CF}_{\text{FINAL}}}{(1+e)^{360}} \quad (34)$$

[1] As stated in Chapter III, the discount rate cannot exceed the inflation rate The monthly discount rate, e, is equal to $(1+E)^{1/12} - 1$, where E is the annual discount rate

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THE VALUE OF DELAY

The quantity just calculated is the present value, as of the day on which compliance should have been achieved, of pollution control cash flows which the firm would have experienced had it not delayed If compliance is delayed, the cash flows each month will be delayed and inflation will increase the magnitude of these cash flows The cash flows which will be incurred each month m over the thirty year horizon if the firm delays L months will be:

$$MCF'_m = MCF'_{m-L} * (1+i)^L \quad \text{for } m > L \qquad (35)$$

where: i = the monthly inflation rate
L = the number of months of delay

Note that MCF'_m will equal zero for m less than or equal to L since during the period of delay no cash flows are incurred As in the on-time compliance cash flow calculation, it is assumed that the firm will not install new equipment in the final month of the planning horizon [1]

Also as in the on-time compliance calculation, any remaining book value may be written off in the final month of the horizon The outstanding debt and preferred stock must also be repaid This final cash flow is:

$$CF'_{FINAL} = [-t_{TR} * (\text{BOOK VALUE})_{360-L} + DEP_{360-L} + (\text{PRINCIPAL OUTSTANDING})_{360-L} - PRIN_{360-L} + (\text{PREFERRED OUTSTANDING})_{360-L} - PREF_{360-L}] * (1+i)^L \qquad (36)$$

[1] Thus, if the cash flow in month 360-L in the on-time compliance calculation has a non-zero initial capital component, this total cash flow should be adjusted by subtracting the initial capital component

$$MCF_{360-L} = \text{MONTHLY CAPITAL RELATED}_{360-L} + O\&M_{360-L}$$

The present value of delay alternative is the sum of each of the cash flows in equations (35) and (36) discounted by the rate of return on equity:

$$PV_{DELAY} = \sum_{m=0}^{360} \frac{MCF'_m}{(1+e)^m} + \frac{CF'_{FINAL}}{(1+e)^{360}}$$

$$= \sum_{m=0}^{360} \frac{MCF_{m-L}\,(1+i)^L}{(1+e)^m} + \frac{CF'_{FINAL}}{(1+e)^{360}} \qquad (37)$$

The savings from delay is thus given by the difference between the present values of on-time compliance and delayed compliance:

$$SAVINGS = PV_{PCE} - PV_{DELAY} \qquad (38)$$

The savings from delay has two components The first is the value of forgone O&M expenditures The O&M component of the savings is the present value of the forgone O&M expenditures during the period of delay

$$SAVINGS_{O\&M} = \sum_{m=1}^{L} \frac{O\&M_m}{(1+e)^m} \qquad (39)$$

The second component is the value of delaying all capital-related cash flows The capital component of the savings is the remainder of savings

$$SAVINGS_{CAP} = SAVINGS - SAVINGS_{O\&M} \qquad (40)$$

CONVERSION OF SAVINGS INTO MONTHLY EQUIVALENTS

In order to convert the savings from noncompliance into a series of penalty payments, it is necessary to express savings as a series of equivalent monthly amounts.[1] This series, which will be referred to as the "savings equivalent," must have two attributes:

- It must have the same present value as the cash flows which would have resulted from investment in and operation of the required pollution control equipment. When these amounts are translated into a penalty, this requirement is intended to insure that a firm which continues to delay its pollution control expenditures will not benefit by doing so.
- The savings equivalents must escalate at the rate of inflation. If this requirement is not met, the early penalty payments overstate the savings to the firm while later payments understate it.

Let S_j be the savings equivalent at the beginning of month j.[2] The requirement that the series escalate with inflation implies that:

$$S_2 = S_1 * (1+i)$$

$$S_3 = S_2 * (1+i) = S_1 * (1+i)^2$$

$$S_j = S_{j-1} * (1+i) = S_1 * (1+i)^{j-1} \qquad (41)$$

where: i = the monthly inflation rate

[1] The final penalty payment will be made on a quarterly basis. However, in order to increase the accuracy of the penalty calculation, all adjustments to the economic savings are made on a monthly basis.

[2] It is assumed that penalties are paid at the beginning of each period in contrast to the cash flows which are assumed to occur at the end of each period.

The present value of each of these terms is calculated by discounting:

$$PV_{S_j} = \frac{S_j}{(1+e)^{j-1}} \qquad (42)$$

Combining with equation (41) yields:

$$PV_{S_j} = \frac{S_1 * (1+i)^{j-1}}{(1+e)^{j-1}} \qquad (43)$$

The present value of these L monthly savings equivalents must be equal to the savings from delay. Thus:

$$\text{SAVINGS} = \sum_{j=1}^{L} PV_{S_j}$$

$$= \sum_{j=1}^{L} S_1 * \left(\frac{1+i}{1+e}\right)^{j-1}$$

or

$$S_1 = \frac{\text{SAVINGS}}{\sum_{j=1}^{L} \left(\frac{1+i}{1+e}\right)^{j-1}} \qquad (44)$$

This represents the first term in the series. All terms after the first month can be computed by multiplying S_1 by the quantity $(1+i)$ raised to the appropriate power. For example, the savings equivalent at the beginning of the kth month would be:

$$S_k = S_1 * (1+i)^{k-1} \qquad (45)$$

The present value of these monthly savings equivalents is equal to the present value of the costs avoided during the period of noncompliance.

THE EFFECT OF PRE-COMPLIANCE EXPENDITURES

The series of savings equivalents just developed is based on the assumption that firm installing pollution control equipment will pay for it when installation is completed and operation begins In fact, substantial precompliance expenditures will often be required before final installation is completed In calling for the imposition of a noncompliance penalty, Congress explicitly required that these precompliance expenditures be accounted for in the penalty calculation The adjustments needed to incorporate the effect of precompliance expenditures are described below. The procedure is begun by dividing the savings equivalent into its capital and its operating and maintenance components The adjustment of the capital component of the penalty is described, followed by a description of the procedure for adjusting the operations and maintenance component of the penalty.

Adjustment of Capital Components

The method used to account for precompliance capital expenditures is to adjust the capital component of a month's savings equivalent by multiplying it by a factor representing the proportion of the capital investment which is still to be made prior to

the beginning of that month [1] For example, if one-third of the total investment will have been made prior to the fifth month, the adjusted capital component of the savings for the fifth month is equal to two-thirds (the fraction of the investment still to be made) of the savings equivalent

The computational procedure starts by rewriting formula (44) using formulae (39) and (40) This gives:

$$S_1 = S_1^C + S_1^M \qquad (46)$$

where:

$$S_1^C = \frac{\text{SAVINGS}_{CAP}}{\text{SAVINGS}} * S_1$$

$$S_1^M = \frac{\text{SAVINGS}_{O\&M}}{\text{SAVINGS}} * S_1$$

[1] Note that the capital expenditure credit includes only those payments made prior to the beginning of the month The capital expenditure credit does not include expenditures made in the current month since cash flows are assumed to occur at the end of the month Therefore, the firm was able to earn a return during the month on the current month's capital expenditure which it would not have earned if compliance had not been delayed Hence, the firm's savings from delay in the current month should include this return.

The superscript C refers to the capital component of the savings equivalent and M refers to operating and maintenance component Equation (45) for the capital component can then be rewritten as:

$$S_k^C = S_1^C * (1+i)^{k-1} \quad (47)$$

Let A_k^C be the month k capital component adjusted for precompliance expenditures. That is, A_k^C is equal to S_k^C times a factor representing the fraction of the initial capital investment (II) which remains to be made If X_k^C is the fraction of the initial investment which has been made prior to the beginning of month k,[1] then:

$$A_k^C = (1-X_k^C) * S_k^C \quad (48)$$

Adjustment of Operation and Maintenance Component

The operating and maintenance component of the savings must be adjusted to a value which is net of any actual O&M expenditures made during the period of noncompliance The adjustment of the operating and maintenance component, A^M, is equal to the present value of the operating and maintenance component of the savings ($SAVINGS_{O\&M}$ as defined in equation (39)) less the present

[1] Note that X_k^C has a value between 0 and 1

value of any precompliance O&M expenditures made during the period of noncompliance [1] Thus:

$$A^M = SAVINGS_{O\&M} - \sum_{k=1}^{L} \frac{P_k^M}{(1+e)^k} \quad (49)$$

where: P_k^M = precompliance operating and maintenance expense incurred in month k of the noncompliance period

CALCULATION OF QUARTERLY PENALTIES

The Act requires that the noncompliance penalty payments be made on a quarterly basis and that all payments be of equal value The EPA interprets this requirement to mean equality in real rather than nominal terms Consequently, the series of payments must increase with inflation This can be done by converting the monthly values of the capital component of the savings computed above into their present value equivalent, adding the present value of the O&M component of the savings, and then converting that present value into a new series of escalating quarterly payments Let L be the number of months which compliance is delayed Then the present value is given by:

$$PV_{\substack{ADJUSTED \\ SERIES}} = A^M + \sum_{k=1}^{L} \frac{A_k^C}{(1+e)^{k-1}} \quad (50)$$

[1] If this calculation should result in an adjusted O&M penalty less than zero the present value of the adjusted O&M penalty, A^M, shall be set equal to zero The firm will not be allowed to offset any portion of the capital component of its penalty with precompliance O&M expenses

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The series of escalating payments must have this same present value [1] Thus, if P_q is the payment to be made at the beginning of quarter q, the following equality must exist:

$$A^M + \sum_{k=1}^{L} \frac{A_k^C}{(1+e)^{k-1}} = P_1 + \frac{P_2}{(1+e')} + \ldots + \frac{P_T}{(1+e')^{T-1}} \quad (51)$$

where: e' = the quarterly equivalent discount rate [2]

T = the number of quarterly payments

[1] The number of required quarterly payments is determined from the months out of compliance using the formula:

T = Integer $[(L+2)/3]$

where: Integer = the closest integer less than or equal to the number in the brackets

L = number of months out of compliance.

[2] The quarterly equivalent discount and inflation rate is found by taking the monthly equivalent discount and inflation rate to the third power. Thus:

$e' = (1+e)^3 - 1$
$i' = (1+i)^3 - 1$

where: e = monthly equivalent discount rate
i = monthly equivalent inflation rate.

However, since $P_q = P_{q-1} * (1+i)$

$$A^M + \sum_{k=1}^{L} \frac{A_k^C}{(1+e)^{k-1}} = P_1 * \sum_{q=1}^{T} \left(\frac{1+i'}{1+e'}\right)^{q-1}$$

where: i' = the quarterly equivalent inflation rate [1]

$$\text{or} \quad P_1 = \frac{A^M + \sum_{k=1}^{L} \frac{A_k^C}{(1+e)^{k-1}}}{\sum_{q=1}^{T} \left(\frac{1+i'}{1+e'}\right)^{q-1}} \quad (52)$$

$$\text{and} \quad P_q = P_{q-1} * (1+i')$$

$$= P_1 * (1+i')^{q-1} \quad (53)$$

[1] The quarterly equivalent discount and inflation rate is found by taking the monthly equivalent discount and inflation rate to the third power. Thus:

$e' = (1+e)^3 - 1$
$i' = (1+i)^3 - 1$

where: e = monthly equivalent discount rate,
i = monthly equivalent inflation rate.

These payments have the following properties:

- They are equal in real terms
- Their present value is equal to the present value of savings after adjustments for pre-compliance capital and operating and maintenance expenditures
- If either the assumed schedule of expenditures for compliance, the amounts of those expenditures, or the compliance date are inaccurate, the payments must be revised This is discussed below

POST-COMPLIANCE SETTLEMENT

The original penalty computation is based on the costs which the firm would have experienced had compliance not been delayed If compliance is delayed, inflation will result in the actual expenditures being somewhat larger This inflation-induced variation is already accounted for in the formulation described above However, simple estimation error may also contribute to the difference and it is this error that the post-compliance settlement is intended to remedy

The method involves recomputing the penalty using revised estimates of capital costs and operating and maintenance costs, and revised estimates of the discount rate, the inflation rate and the capital structure of the firm. These revised estimates are then used in conjunction with the actual schedule of precompliance expenditures to recalculate the penalty payments The settlement is based on the difference between these payments and those actually paid.

The settlement amount is the cumulative overpayment or underpayment at the end of the noncompliance period plus interest on each month's outstanding balance (the cumulative overpayment or underpayment at the end of each month) The formula for computing the settlement payment is as follows: Let Δ_k be the difference between the penalty that was paid in month k and the amount which should have been paid in that month Let z_k be the cumulative overpayment or underpayment at the end of month k, including interest Then:

$$z_1 = \Delta_1 * r$$

and

$$z_2 = (\Delta_2 + z_1) * r$$

In general,

$$z_k = (\Delta_k + z_{k-1}) * r \qquad (54)$$

where:

- z_k = the cumulative overpayment or underpayment at the end of month k, including interest
- Δ_k = the difference between the penalty amount paid in month k and the penalty amount which is computed using the revised estimates
- r = the monthly equivalent rate of interest determined by the Secretary of the Treasury [1]

[1] The Secretary of the Treasury will designate an annual rate of interest for overpayments and an annual rate of interest for underpayments For underpayments, the Secretary of the Treasury has determined that the rate of interest will equal the discount rate Therefore, for each month with a positive outstanding balance indicating a cumulative overpayment ($\Delta_k + z_{k-1}$ greater than zero), r will equal the monthly equivalent of the interest rate for overpayments For each month with a negative outstanding balance indicating a cumulative underpayment ($\Delta_k + z_{k-1}$ less than zero), r will equal the monthly equivalent of the discount rate as revised in the post-compliance settlement.

The total post-compliance settlement as of the date of compliance is given by:

$$\$ = \$_L \quad (55)$$

where: $\$$ = the total post-compliance settlement as of the date of compliance

L = the total number of months of noncompliance

$\$_L$ = the cumulative overpayment or underpayment at the end of the noncompliance period, including interest

The total post-compliance settlement as of the day of compliance is then adjusted to reflect delay in the actual settlement payment The final settlement amount is:

$$Z = \$ * (1+r)^D \quad (56)$$

where: Z = the actual settlement to be paid (or refunded) on the day of the settlement

$\$$ = the total post-compliance settlement as of the date of compliance.

r = the monthly equivalent rate of interest specified by the Secretary of the Treasury [1]

D = the number of months between the date of compliance and the actual settlement

[1] The interest rate, r, will be the monthly equivalent of the interest rate for overpayments if $\$$ is greater than zero If $\$$ is less than zero, r will equal the monthly equivalent of the discount rate as revised in the post-compliance settlement

DELAYED PENALTY PAYMENTS

In general, any time a penalty payment (P) is delayed by k months, the actual payment should be equal to:

$$P * (1+e)^k$$

For example, if the first penalty payment is not paid until six months after the notice of noncompliance has been received, the first and second quarterly payments will be delayed for six and three months, respectively If this occurs, the penalty payment after an initial six-month delay is equal to:

$$P_1 * (1+e)^6 + P_2 * (1+e)^3 + P_3$$

ATTACHMENT A

DEFINITION OF SYMBOLS

Note: All variables denoted with an asterisk (*) are expressed as decimal fractions in the formulae in Section V In the Instruction Manual the user is instructed to enter some of these variables as percentages; that is, 10 percent as opposed to 0 10 The computer model then converts these percentages to decimal fractions for use in the model

A_k^C = the monthly equivalent of the capital component of savings adjusted for precompliance expenditures.

A^M = the O&M component of savings adjusted for pre-compliance expenditures

B = the fraction of debt in the owner's capital structure (book value).*

b = the fraction of the investment financed by industrial development bonds and depreciated using rapid amortization *

CF_{FINAL} = cash flow at end of thirty year time horizon if compliance is not delayed.

CF'_{FINAL} = Cash flow at end of thirty year time horizon if compliance is delayed

D = the number of months between the date of compliance and the payment of the post-compliance settlement

DEP_m = the net after-tax cash flow in month m resulting from depreciation of the initial investment

DEP_{FINAL} = Tax shield from writeoff of remaining book value of the equipment at the end of the thirty year time horizon.

d_m = the fraction of original asset value depreciated in month m *

D_j = the fraction of original asset value depreciated in year j *

Δ_k = the difference between the penalty paid in month k and the amount computed using revised figures for capital and O&M costs

DIV_m = the dividend payment in month m on the preferred stock used to finance the initial investment.

E = the discount rate *

e = the monthly equivalent of the discount E *

e' = the quarterly equivalent of the discount rate E *

EI = the amount of cash provided by equity investors to finance the initial investment.

f = the fraction of the initial investment which is amoritized on a straight line basis over five years *

F = the fraction of preferred stock (at book value) in the owner's capital structure.*

G = the depreciation life of the pollution control equipment in years.

I = the annual rate of inflation for pollution control expenditures.*

i = the monthly equivalent of the annual inflation rate I.*

i' = the quarterly equivalent of the annual inflation rate I.*

IBD = the dollar value of industrial development bonds issued to finance the pollution control equipment.

INITIAL = initial equity investment at the beginning of a replacement cycle.

INT_m = the interest payment cash flow (after the effect of taxes) in month m on the debt used to finance the initial investment.

II_{qual} = amount of initial capital investment which qualifies for the investment tax credit.

II = the initial investment in pollution control equipment; the amount which will be capitalized on the books of the firm and amortized over the life of the equipment.

ITC = the dollar amount of the investment tax credit.

j,k,m = indices, usually indicating the year or month in which a cash flow occurs.

K = the number of owners of the firm.

L = the number of months the firm is expected to be out of compliance.

M_0 = monthly operating and maintenance expense in current dollars as of the beginning of the period of noncompliance.

MCF_m = cash flow in month m if compliance is not delayed

MCF'_m = cash flow in month m if compliance is delayed

$MONTHLY\ CAPITAL\ RELATED_m$ = capital-related cash flows in month m

N = the useful life of the pollution control equipment in months

n = the depreciation life of the pollution control in months

$O\&M_m$ = the net operating and maintenance cash flow in month m

P_q = the penalty payment to be made at the beginning of quarter q

p_k^M = the precompliance operating and maintenance expenditure incurred in month k

PV = the present value of cash flow

PV_{MCF_m} = present value of cash flow occurring in month m

PV_{PCE} = present value of all cash flows resulting from the purchase and operation of the original and all future replacement cycles of pollution control equipment over the thirty-year time horizon

PV_{DELAY} = present value of the costs of the original and all future cycles of pollution control equipment if compliance is delayed, as of the day compliance should have been achieved

$PREF_m$ = the repayment of reallocation of preferred stock in month m

$PREF_{FINAL}$ = repayment of outstanding preferred stock at the end of the thirty year time horizon

$PRIN_m$ = the repayment of reallocation of debt in month m.

$PRIN_{FINAL}$ = repayment of outstanding debt at the end of the thirty year time horizon

q = index indicating the quarter in which penalty payment is make

Q = the fraction of common equity (at book value) in the owner's capital structure *

r = the monthly rate of interest to be paid on post-compliance settlement amounts *

R_{BOND} = the monthly interest rate on corporate or public utility bonds *

R_{DIV} = the monthly dividend rate on preferred stock *

R_{IDB} = the monthly interest rate in industrial development bonds.*

R_{INT} = the monthly rate of interest on long-term debt *

S_k = the monthly equivalent of savings

S_k^C = the monthly equivalent of the capital component of savings

S_k^M = the monthly equivalent of the O&M component of savings

SAVINGS = savings from delaying compliance

$SAVINGS_{O\&M}$ = savings from forgone O&M expenditures during period of delay.

$SAVINGS_{CAP}$ = savings from delaying capital-related cash flows

T = the number of quarterly payments

t_{FED} = the marginal federal income tax rate.*

t_{ITC} = the adjusted investment tax credit rate.*

t_L = the marginal local income tax rate.*

t_S = the marginal state income tax rate *

$t_{S\&L}$ = the marginal state and local income tax rate *

t_{TR} = the marginal income tax rate.*

W_j = the fraction of common stock held by stockholder j *

= the fraction of the capital investment which has been made prior to the beginning of month k *

= the portion of the total operating and maintenance expense incurred during the period of noncompliance at a replacement source *

= the statutory investment tax credit rate *

= the actual post-compliance settlement to be paid or refunded.

= the cumulative overpayment or underpayment of the penalty at the end of month k, including interest

= the total post-compliance settlement as of the date of compliance

ATTACHMENT B

INVESTMENT TAX CREDIT QUALIFICATION

Only certain assets qualify for the investment tax credit Most buildings are among the assets that do not qualify [1] If the installation of pollution control equipment involves expenditures which will be capitalized and amortized over the tax life of the equipment, but which do not qualify for the investment tax credit, then the calculation of the credit must be adjusted

Let II_{qual} be the investment which qualifies for the investment tax credit and let II be the total investment If the investment tax credit rate and specified in the Internal Revenue Code is Y, the adjusted rate for use in the noncompliance penalty calculation is:

$$t_{ITC} = \frac{II_{qual}}{II} * Y$$

A further adjustment must be made if the investment is financed by the sale of tax-exempt industrial development bonds If rapid amortization is used, only one-half of the credit can be taken on the investment Investment projects partially financed by industrial development bonds and using rapid amortization receive an investment tax credit weighted to reflect the loss of one-half of the credit on the portion paid for by bonds This is shown below:

[1] The Revenue Act of 1978 allows use of the investment tax credit for rehabilitation expenditures in connection with business and productive structures in use at least twenty years since first placed in service or since the last qualifying rehabilitation

$$t_{ITC} = \left(1 - \frac{b}{2}\right) * Y$$

where: t_{ITC} = the adjusted investment tax credit rate

b = the proportion of the investment financed by industrial development bonds and using rapid amortization

Y = the investment tax credit rate specified in the Internal Revenue Code

State investment tax credits should also be included in the investment tax credit rate For example, Connecticut provides an investment tax credit for plants built in distressed areas This tax credit lowers state taxes Because state taxes are deductible from Federal taxes, only a portion of the credit benefits the firm The total investment tax credit rate in states where the credit is based on actual investment is given by:

$$t_{ITC} = t_{ITC_{FEDERAL}} + \left[(1-t_{TR_{FEDERAL}}) * t_{ITC_{STATE}}\right]$$

where: t_{ITC} = the adjusted investment tax credit rate

$t_{ITC_{FEDERAL}}$ = the adjusted Federal investment tax credit rate

$t_{TR_{FEDERAL}}$ = the marginal federal income tax rate

$t_{ITC_{STATE}}$ = the adjusted state investment tax credit rate

ATTACHMENT C

DEPRECIATION

The cash flow resulting from depreciation is given by:

$$DEP_m = d_m * II * t_{TR}$$

where d_m is the fraction of the original cost depreciated in month m and t_{TR} is the original income tax rate The value of d_m will depend on the method of depreciation used by the owner of the facility Formulae for deriving the fraction of the original cost depreciated in year j (D_j) are presented for the more common methods The fraction of the original cost depreciated in month m, d_m, will be one-twelfth of the annual amount under each of these methods

STRAIGHT LINE

Under this method, depreciation is the same during each year of the equipment's tax life (G)

$$D_j = \frac{1}{G}$$

where: G = the depreciation life of the pollution control equipment in years.

SUM OF YEARS DIGITS

Under this method, depreciation in year j is given by:

$$D_j = \frac{2 * (G-j+1)}{G * (G+1)}$$

DOUBLE DECLINING BALANCE

Under this method, depreciation in any year is the product of the remaining book value and twice the straight line rate Switching to the straight line method is permitted after part of the asset has been depreciated This switch, properly timed, increases the present value of the depreciation tax shield The formula for double declining balance depreciation in year j is:

$$D_j = \max \begin{cases} \frac{2}{G} * (1 - \sum_{k=0}^{j-1} D_k) \\ \frac{1}{G-j+1} * (1 - \sum_{k=0}^{j-1} D_k) \end{cases}$$

where "max" means that the greater of the two quantities to the right of the bracket should be chosen

RAPID AMORTIZATION

A firm generally employs a depreciation method which minimizes the present value of its future income tax liability This is accomplished by using the so-called accelerated depreciation methods, the most common of which are described above Special rules governing the depreciation of pollution control equipment allow even faster writeoffs than the accelerated methods, often resulting in still greater reductions in the present value of future tax liability This approach, known as

rapid amortization, was provided for in the Tax Reform Act of 1976

The rules for rapid amortization are as follows:

- Divide the investment into two parts:
  - (1) the amount which would be depreciated during the first 15 years under straight line depreciation, and
  - (2) the residual
- The first part may be depreciated on a straight line basis over 5 years
- The second part may be depreciated over the full tax life of the investment using whichever depreciation method the owner chooses

The formula for the fraction depreciated in year j is most easily developed by considering the two parts separately The fraction in year j for the first part is given by:

$$D_j^1 = \begin{cases} \frac{1}{5} * f, \text{ if } j \leq 5 \\ 0, \text{ if } j > 5 \end{cases}$$

where: $f = \min \begin{cases} \frac{15}{G} \\ 1 \end{cases}$

The fraction of the second part depreciated in year j is given by the formula for straight line, sum of years digits, or

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double-declining balance, depending on the method used This must be multiplied by (1-f), the fraction of the initial investment in the second part

$$D^2_j = (1-f) * \text{(standard fraction based on depreciation method)}$$

The total depreciation fraction for year j under rapid amortization is then given by summing the two components:

$$D_j = D^1_j + D^2_j$$

ATTACHMENT D

TAX RATE ADJUSTMENTS

The calculation of the savings from noncompliance requires use of the firm's marginal income tax rate For most large corporations operating in states with no state income tax, this figure would be 46 percent [1] However, a state income tax or a non-corporate form of organization complicates the matter. This appendix discusses the adjustments necessary to deal with these two factors.

STATE AND LOCAL INCOME TAXES

Firms in some locations are subject to income taxation by more than one level of government. If state and local income taxes are deductible on the federal return, the rate of taxation on income, t_{TR}, must be computed according to the following procedure:

Let t_{FED} be the federal marginal tax rate and $t_{S\&L}$ be the rate on state and local returns. Taxes paid to state and local governments are deductible expenses on the federal return. Hence, this after-tax rate is given by:

$$t_{S\&L} * (1-t_{FED})$$

The overall tax rate is the sum of federal and state and local effects. It is given by:

$$t_{TR} = t_{FED} + \left[T_{S\&L} * (1-t_{FED})\right]$$

[1] As of January 1979

It is possible that certain local income taxes will be allowed as deductions when state income taxes are computed In such cases, $t_{S\&L}$ is given by:

$$t_{S\&L} = t_S + t_L * (1-t_S)$$

where: t_S = the marginal state income tax rate
t_L = the marginal local income tax rate

If the local income tax is not deductible from the state, the combined rate is given by:

$$t_{S\&L} = t_S + t_L$$

MULTIPLE OWNERSHIP, PARTNERSHIPS AND SOLE PROPRIETORSHIPS

The assumption in employing the tax rate, t_{TR}, and its components, t_{FED} and $t_{S\&L}$, is that these rates represent the marginal income tax rates applicable to the owning firm If there is more than one owner, as might be the case if the firm were a partnership or a Subchapter S corporation, the rate used in the noncompliance penalty should be a weighted average of the rates appropriate to each owner In the case of sole proprietorships, the tax rate will be the marginal income tax rate applicable to the individual owner

The formula for either t_{FED} or $t_{S\&L}$ would then be given by:

$$t = W_1 t_1 + W_2 t_2 + \cdot + W_k t_k$$

$$= \sum_{k=1}^{K} W_k t_k$$

where: t = the weighted average marginal income tax rate

W_k = the fraction owned by the kth owner

t_k = the marginal income tax rate of the kth owner

K = the number of owners

ATTACHMENT E

WEIGHTED AVERAGE INTEREST RATE

The interest rate used in the formulae is the marginal rate of interest which would be paid by the firm if additional debt were acquired If Industrial Development Bonds (IDB's) are not used, this rate is simply the most recent average yield on corporate bonds of a grade equal to that on the firm's bonds having the highest rating If the firm expects to use IDB's to finance all or a portion of its investment in pollution control equipment, a weighted average of the corporate (or public utility) bond rate and the IDB rate will be used as the interest rate in the model

The weighted average interest rate will equal:

$$R_{INT} = \frac{IDB}{B*II} * R_{IDB} + \left(1 - \frac{IDB}{B*II}\right) * R_{BOND} \qquad \text{for IDB} \leq B*II$$

Where:

R_{INT} = the monthly weighted average interest rate (expressed a decimal fraction)

IDB = the dollar value of issued industrial development bonds

B*II = the amount of the initial investment financed by debt

R_{IDB} = the monthly equivalent of the interest rate on industrial development bonds (expressed as a decimal fraction)

R_{BOND} = the monthly equivalent of the interest rate on corporate or public utility bonds (expressed as a decimal fraction)

If the dollar value of industrial development bonds issued to finance the pollution control equipment exceeds the amount of the initial investment, the interest rate used in the formulae will be set equal to the interest rate on industrial development bonds. Thus:

$$R_{INT} = R_{IDB} \qquad \text{for IDB} > B*II$$

ATTACHMENT F

FACILITIES WITH LIMITED USEFUL LIVES

In some cases, a noncomplying source of emissions will not be brought into compliance but instead will be retired or replaced by a complying source For example, a steel company with a noncomplying open hearth furnace may wish to retire that furnace rather than bring it into compliance, and may replace its steelmaking capability with a basic oxygen furnace The basic oxygen furnace would have sufficient emission controls to allow it to meet the standards for new sources

If the firm wishes to operate a noncomplying source for a limited period of time and then retire that source, the noncompliance penalty is calculated based on the capital and operating and maintenance costs which would have been incurred in bringing the source into compliance These are the costs which are foregone in continuing to operate the noncomplying source and are the basis of the savings which accrue to the owner in so doing Since the source is never brought into compliance, there are no precompliance expenditures. The full capital cost of compliance is assumed to be incurred in the final month before retirement.

When the firm plans to replace a noncomplying source with a new facility after some period of noncompliance, a similar approach is used The basic calculation is based on the costs that would have been incurred in bringing the older source into compliance. However, an adjustment is then made for the precompliance expenditures made on the new complying facility In other words, expenditures made on the construction of the new source are used to adjust the penalty much the same as precompliance expenditures on the older source would be used if they occurred This procedure is explained below

The basic equations utilized in the consideration of precompliance expenditures were detailed in Section V These equations begin by breaking the savings equivalent into its capital and operating and maintenance components The capital component is then adjusted for precompliance expenditures as shown in equation (48):

$$A_k^C = (1-X_k^C) * S_k^C \quad (48)$$

where: A_k^C = adjusted capital component in month k

X_k^C = fraction of total capital investment made prior to the beginning of month k

S_k^C = unadjusted capital component in month k

In the case of a firm replacing an older noncomplying facility with a new source which meets the emission standards, the equation above would be used with X_k^C based on the total investment (for both productive capacity and pollution control equipment[1]) in the new facility and S_k^C based on the capital costs of bringing the old source into compliance As such, X_k^C would represent the fraction of the total investment required for the new facility expended prior to the beginning of month k [2]

[1]Both production and pollution control expenditures are considered because in this case technology substitution itself as well as control equipment contribute to meeting the emission standards

[2]The value of X_k^C cannot exceed one

The adjusted value of the operating and maintenance component -- A^M -- is equal to the amount which would have been spent at the old source in complying adjusted for the portion of the total operating and maintenance expenses of the equipment at the new source made during the period of noncompliance The equation for adjusting operating and maintenance expenditures is written as:

$$A^M = (1-X^M) * SAVINGS_{O\&M} \quad (49)$$

where: A^M = adjusted operating and maintenance component of the penalty

X^M = the present value of the operating and maintenance precompliance expenditures made during the period of noncompliance at the new source divided by the present value of the total operating and maintenance expense of the new source had it been in operation during the period of noncompliance [1]

$SAVINGS_{O\&M}$ = the present value of the operating and maintenance expense of the old source had it been in compliance during the period of noncompliance; that is, the savings from forgone O&M expenditures during the period of delay

As described above, noncompliance penalties for facilities with limited useful lives are based on the costs which would have been incurred in bringing the facility into compliance Because the source is retired rather than brought into compliance, no post-compliance settlement based on the capital and operating and maintenance costs actually incurred is possible However, if

[1]The value of X^M cannot exceed one

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the noncomplying source is replaced with a new facility, the noncompliance penalty is adjusted based on planned precompliance capital and operating and maintenance expenditures In such cases, a post-compliance settlement is possible and necessary to adjust for differences between planned versus actual precompliance expenditures and the resulting alterations in the noncompliance penalty The estimates of the discount rate, the inflation rate, and the firm's capital structure are also updated at the time Such a settlement involves three steps:

- The actual capital and operating and maintenance expenditures for each month are converted to dollars as of the date of noncompliance
- Each monthly constant dollar capital expenditure's percentage of the total capital expenditure is calculated The percentage of the total operating and maintenance expenditures made during the period of noncompliance is also calculated
- The percentages of total capital expenditures and total operating and maintenance expenditures made during the period of noncompliance are used to adjust the respective penalty components computed in the initial penalty calculation

The formulae are identical to those shown in Section V for the post-compliance settlement

ATTACHMENT G

APPLICATION TO GOVERNMENT FACILITIES

The noncompliance penalties described in this document are designed to remove the economic savings realized by a firm due to delayed compliance with pollution control requirements Similar savings are realized by government-owned facilities -- emission sources owned or under the control of municipal, state, federal and other government and quasi-government entities The statute contemplates that noncompliance penalties will be assessed against such facilities as well

The calculation of penalties for government facilities is carried out using the same general logic as presented in this document with two important changes:

1 Cash flows due to tax effects are no longer relevant

2 A discount rate appropriate for use with government projects is used

Each of these changes is described below

TAX EFFECTS

Because government facilities do not pay income taxes, cash flows which result from tax effects in the private sector are not included in the noncompliance formulae for government facilities As a result, cash flows due to tax savings from depreciation, interest expense, and operating and maintenance expense are not included in the formulae for government noncompliance penalties. The replacement of t_{ITC} and t_{TR} with zero in all formulae developed in Section V will accomplish this change

DISCOUNT RATE

The choice of a discount rate for use in analyzing government investments has been a widely debated subject for a number of years One commonly held view is that the appropriate discount rate for evaluating government investments is the rate of return that the resources utilized would have provided in the private sector [1] The correct discount rate is, therefore, the opportunity cost of funds in the private sector This rate is extremely difficult to estimate since it involves calculating the weighted average of the rates of return in various productive sectors of the economy from which resources are withdrawn for the government investment under consideration

For the purpose of noncompliance penalties, the discount rate of 10 percent specified by the Office of Management and Budget (OMB) for use in federal project analysis is utilized [2] OMB argues that the discount rate of 10 percent represents an estimate of the average rate of return on private investment. This discount rate is often used by government, particularly in analysis of investments that will receive partial or full federal funding Thus, use of this rate will insure that the calculation of noncompliance penalties for government facilities is accomplished on the basis consistent with the analysis of investments carried out by government decision makers

[1] See, for example, William J Baumol, "On the Discount Rate for Public Projects," Public Expenditure & Policy Analysis, Robert H Haveman and Julius Margolis, eds , Rand McNally Publishing Company, 1977, pp 161-79

[2] OMB Circular A-94

All cash flows in the noncompliance formulae should be discounted using the 10 percent discount rate In order to accomplish this using the formulae derived in Section V, the variables F (preferred stock share) and B (debt share) should be set equal to zero and the variable Q (the equity share) should be set equal to one. The variable E is redefined to be the government discount rate and should be set equal to 10 percent These changes and those in the tax rate variables described above result in the following cash flow values for government facilities

$$INITIAL_0 = II * 1 \quad (3)$$

$$MONTHLY\ CAPITAL\ RELATED_m = 0 \quad (19)$$

$$O\&M_m = M_0 * (1+i)^m \quad (21)$$

Thus, the cash flows resulting from the purchase and operation of pollution control equipment each month for a government facility is the sum of these contributions:

$$MCF_m = INITIAL_m + O\&M_m \quad (25a)$$

Equation (25a) can be substituted for equation (25) in the subsequent formulae derivation presented in Section V

Discounting all the cash flows associated with non-compliance at the 10 percent discount rate is theoretically correct for government-funded projects Some government-owned entities, however, may more closely resemble private corporations in the manner in which they raise and repay their capital All government-owned entities will be treated in the manner described in Attachment G unless the source being considered demonstrates by providing appropriate data that either the debt-equity ratio or the discount rate or both is inappropriate and therefore that the exception provided by Attachment G should not apply to the entity in question

APPENDIX B

CLEAN AIR ACT

SECTION 120

NONCOMPLIANCE PENALTIES

INSTRUCTION MANUAL

CONTENTS

I	Introduction
II	Data Requirements and Data Sources
III	Using the Computer Program
IV	Calculation of the Post-Compliance Settlement
V	Special Conditions

SECTION I

INTRODUCTION

This appendix describes the procedures used to calculate the noncompliance penalty imposed by the 1977 amendments to the Clean Air Act (the Act) The penalty, stipulated under Section 120 of the Act, removes the economic benefits which accrue to a firm from delaying investment in pollution control

The economic benefits of a delay in the installation of pollution control equipment has two components First, the firm benefits by delaying the capital expenditure needed for pollution control The firm can earn a return on the capital costs of the pollution control equipment whose purchase has been delayed The second component of the economic benefit is the operating and maintenance costs avoided as a result of not having installed the equipment and the return on expenditures avoided

IMPLEMENTING THE NONCOMPLIANCE PENALTY

A detailed discussion of the economic rationale for the noncompliance penalty and the computational method used is contained in Appendix A, the Technical Support Document This appendix is designed to aid the user in determining the appropriate data for calculating the penalty and to describe the computer program which performs the actual computation.

To the extent practicable, the computer program has been written to accept data as it appears in the source. However, it is necessary in some instances to adjust the data for entry When this adjustment requires several computations, a worksheet has been provided

LEVEL OF KNOWLEDGE REQUIRED

The appendix has been written on the assumption that the user has had little formal training in business finance Use of this manual and the computer program do not require a knowledge of the mathematical formulae in the Technical Support Document It is assumed, however, that the reader is familiar with the discussion sections in the Technical Support Document

PLAN OF THE DOCUMENT

Section II describes the sources of data needed to calculate the penalty and how the various data items are converted to a form suitable for entry into the computer program As an aid in exposition, a hypothetical noncomplying firm is described and relevant penalty calculations are illustrated.

Section III describes the procedures necessary to operate the computer An example of an actual use of the program to calculate a penalty is included. This example will utilize data calculated in Section II

Section IV describes the calculation of the post-compliance settlement based on data used in Sections II and III

Section V discusses the calculation of the penalty under special conditions These conditions include investments financed with industrial development bonds, penalties for limited life facilities, and penalties for government facilities

SECTION II

DATA REQUIREMENTS AND DATA SOURCES

Calculation of the noncompliance penalty requires a substantial amount of financial data It is expected that most of this data, as well as the calculation itself, will be provided by the firm This is in accordance with Section 120 of the Clean Air Act which will:

> " require each person to whom is given under paragraph (3) to --
>
> (A) calculate the amount of the penalty owed (determined in accordance with subsection (d)(2)) and the schedule of payments (determined in accordance with subsection (d)(3)) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator "

However, some firms may not comply with the requirement Section 120 further stipulates that if the firm fails to submit a calculation of the penalty, the State or the Administrator may contract with a third party to determine the penalty payments This will require collection of data from several public sources This section discusses the method used to collect data and prepare it for the calculation of the penalty

CASE STUDY

As an aid to understanding the issues discussed in this and the next section, an example has been formulated involving a hypothetical fertilizer company While this case will utilize data from an actual corporation, the firm is not in the fertilizer industry The example was created to illustrate many of the features of the computer program and thus may be more complex than many "real life" situations Data prepared in the case discussion below will be entered in the computer program to determine a penalty in Section III

THE FERTILIZER COMPANY

On August 31, 1979, the Fertilizer Company was issued a notice of noncompliance with Section 120 of the Clean Air Act [1] The source of emissions was an incinerator used for the disposal of a waste byproduct from the manufacture of the firm's most profitable product

A preliminary engineering study had been performed in which it had been determined that compliance could be reached with an investment of $500,000 The investment would involve the purchase of a baghouse and modifications to the firm's incinerator in order to reduce particulate emissions

In addition to the capital investment, it was estimated that $15,000 in operating and maintenance expense would be needed each year the pollution control equipment was operated It was also estimated that $1,890 in precompliance maintenance expense was necessary to make the equipment operational.

[1] This example is for purposes of illustration only In actuality, no notice of noncompliance will be issued prior to January 1, 1981

Engineers for the Fertilizer Company believed that it would be at least nine months before the equipment was installed and shake-down was completed Because the waste could be safely stored for short periods, production of fertilizer would not be interrupted while the incinerator was being modified

The Fertilizer Company is a publicly-owned corporation with assets of $770 million The company is mainly financed with investment by the common stockholders but some preferred stock and long term debt also exists

The firm, in accordance with the Act, had computed the penalty owed and a schedule of payments It had also submitted the data used in calculating the penalty The enforcement official now had to arrange the data in the order it would be requested by the computer and verify that it was from an appropriate source The computer program would check the accuracy of the firm's penalty calculation

PREPARING DATA FOR
ENTRY INTO THE PROGRAM

The computer program will request data in a specific sequence Although the data submitted by the firm can be verified in any order, it is useful to verify the data in the same way so that omissions are avoided The following paragraphs follow the same sequence as is used to enter data into the computer program.

Initial Penalty Calculation or
Post-Compliance Settlement

The program can be used to calculate both the initial penalty when the notice of noncompliance is received and the post-compliance settlement after compliance has been achieved In the example of the Fertilizer Company, the initial penalty will be calculated in Section III and the post-compliance settlement will be calculated in Section IV.

Limited Life Facility

The program calculates a penalty based on eventual compliance at the source However, some firms will attain compliance by shutting down the source or by replacing it with a new source This option is discussed in detail in Section V For the Fertilizer Company, the source is not a limited life facility

Industrial Development Bonds

The calculation of the percentage of a pollution control investment financed by tax-exempt industrial development bonds is discussed in Section V For the Fertilizer Company, none of the investment is financed by issuing tax-exempt bonds

The Number of Months the Source Will be Out of Compliance

The period of noncompliance is measured from the first day of the month following the month in which the notice of noncompliance is issued until the month standards are actually met This will include installation time and shakedown period for the equipment The firm is assumed to be in compliance during the entire month in which compliance is finally achieved In the Fertilizer Company example, the firm stated that it will come into compliance in nine months

Schedule of Capital Investments

This is an estimate, provided by the firm, of monthly capital expenditures for the purchase and installation of the pollution control equipment It is assumed that all capital expenditures are completed when compliance is achieved [1]

[1]If a portion of the capital expenditures are expected to be incurred after compliance is achieved, these expenditures should be added to the capital expenditures made in the final month before compliance is achieved

The sources which firms will use to estimate monthly expenditures include engineering estimates, quotations from manufacturers, or estimates by management They will consist of not only the direct purchase cost, including sales taxes, but also site preparation, engineering design work, shipping costs and installation expense In addition, the value of lost production due to downtime of production equipment should be included. These temporary losses of productive capacity are included in capital expenditures Permanent losses of productive capacity are included in operating and maintenance expenditures All costs must be stated in terms of the actual expenditures the firm expects to make each month.

The Fertilizer Company estimated that the total expenditure needed was $500,000. It submitted the data in Exhibit II-1 to justify the estimate Expenditures to the manufacturer for the equipment will be made in three equal installments, during the second, fourth, and ninth months of noncompliance Each payment will be $166,666 67 ($500,000 divided by 3)

Schedule of Precompliance Operating and Maintenance Expenditures and Post-Compliance Monthly Operating and Maintenance Expense

These are costs the firm will incur for operation of the equipment to be installed [1] They may include operating and supervisory labor, power for equipment operation, supplies necessary for operation and a portion of the firm's overhead. If a byproduct is created during equipment operation, disposal costs are included as an operating expense If the byproduct can be sold or used in another process, the value of the byproduct should be subtracted from operating and maintenance expense

[1]This should not include any operating and maintenance expenditures incurred in operating pollution control equipment installed proir to the date the notice of noncompliance is received

EXHIBIT II-1

CALCULATION OF THE CAPITAL EXPENDITURE INPUT[1]
FERTILIZER COMPANY

1	List price or estimated price of the equipment:	$485,903 65
2	Less: Discount from manufacturer:	9,718.17
3	Equals net price of equipment:	476,190 48
4	Plus: Sales tax on equipment:[2]	23,809 52
5	Plus: Freight and delivery charge:	0
6	Plus: Installation charge:	0
7	Equals estimated cost of equipment installed:	$500,000 00
8.	Plus: Value of lost production:	0
9	Plus: Cost of building modifications:	0
10	EQUALS TOTAL CAPITAL EXPENDITURE:	$500,000 00

Note: Line 7 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit.

QUALIFIED PERCENTAGE INVESTMENT TAX CREDIT:

$$\frac{\text{Line 7}}{\text{Line 10}} = \frac{\$500{,}000}{\$500{,}000} \times 10^{*} = 10\%$$

[1]This calculation uses Worksheet A in Attachment V

[2]Some corporations subtract sales tax from revenue in the year of purchase If this is the case, the sales tax is multiplied by (1 - Tax Rate) and subtracted from the cost of the equipment rather than added as in step four.

*If the depreciable life of the equipment is less than seven years, this figure must be adjusted as described on page II-16

In addition, operating and maintenance should include the incremental cost of changing plant operations to conform to the Act For example, a firm forced to shift from high sulfur coal to low sulfur coal would include the increase in fuel costs as an operating expense Operating expense would also include the additional cost incurred if compliance requires shifting production to a less efficient or more expensive method Hence, permanent losses in productive capacity which will be incurred as a direct result of operating the pollution control equipment should be counted as an expense in this category

Sources for operating and maintenance expense are engineering reports, manufacturer specifications, estimates by owners or actual data from similar operations Two different estimates of operating and maintenance expense are necessary -- those incurred before compliance and those estimated for the period after compliance These amounts should be stated as the actual expense the firm would expect to incur in each month before compliance and the average monthly expense which will be incurred after the firm comes into compliance

The Fertilizer Company supplied the data in Exhibit II-2 as estimated precompliance operating and maintenance expense For post-compliance operating and maintenance expense the Fertilizer Company supplied the data in Exhibit II-3

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EXHIBIT II-2

ESTIMATE OF MONTHLY PRE-COMPLIANCE
OPERATING AND MAINTENANCE EXPENSE
FERTILIZER COMPANY

PRE-COMPLIANCE OPERATING EXPENSE

Months 1-6		$ 0
Month 7		
Labor (10 hours @ $10)	$ 100.00	$ 100.00
Month 8		
Labor (100 hours @ $10)	1,000 00	
Power (1500 Kwh @ 0333 kwh)	50.00	
TOTAL		$1,050.00
Month 9		
Labor (50 hrs @ $10)	500.00	
Power (7200 Kwh @ 0333 kwh)	240.00	
TOTAL		$ 740.00

EXHIBIT II-3

POST-COMPLIANCE ANNUAL OPERATING AND MAINTENANCE EXPENSE[1]
FERTILIZER COMPANY

1	Annual Labor Expense	
	840 hours x $10 per hour =	$8,400 00
2	Power Cost	
	90090 Kwh x $ 0333 per Kwh =	3,000 00
3	Water Cost	
	Gallons x $ per gallon =	0
4	Raw Materials and Supplies	
	1000 lbs x $1 per lb. =	1,000 00
5	Yearly Increase in Property Tax =	3,000 00
6	Cost of Production Lost Due to Maintenance or Use of Equipment =	0
7	TOTAL COST (1 + 2 + 3 + 4 + 5 + 6) =	$15,400 00
8.	Less: Value of Byproducts	
	800 lbs. @ $ 50 per lb =	400.00
9	Annual Operating and Maintenance (7 - 8) =	$15,000 00
10	AVERAGE MONTHLY OPERATING AND MAINTENANCE (9÷12) =	$1,250.00

[1] This calculation uses Worksheet B in Attachment V All expenses should be stated in dollars as of the date the firm comes into compliance

Investment Tax Credit Rate[1]

The investment tax credit is a percentage of the investment which can be used to directly reduce federal income tax Although the federal tax credit for an investment is currently ten percent, this rate may have to be adjusted to reflect two restrictions in the ravenue code:[2]

- Investments of less than seven years do not receive the entire ten percent
- Certain investments do not qualify for the credit

An investment with a depreciable life of less than seven years does not qualify for the maximum investment tax credit Currently, percentages allowed for such investments are as follows:

Depreciable Life (years)	Investment Tax Credit (percent)
Less than 3	0
At least 3 but less than 5	3 33
At least 5 but less than 7	6 67
7 or more	10.00

[1]Information on the investment tax credit is contained in the Internal Ravenue Service Code, Chapter 1, Subpart B — Rules for Computing Credit for Investment in Certain Depreciable Property.

[2]In addition to the two listed restrictions, investments financed with industrial development bonds qualify for only a portion of the credit when rapid amortization is used This adjustment is made automatically by the computer program Further, for the purposes of noncompliance penalties the entire investment tax credit as calculated is used regardless of the taxable income amount.

Items such as buildings and land are not usually allowable for purposes of computing the investment tax credit, so the percentage rate must be adjusted to yield a correct tax credit figure [1] This adjustment is made by calculating the percentage of the investment qualifying for the tax credit and multiplying it by the percentage tax credit for equipment of similar depreciable life

State investment tax credits should also be included in the investment tax credit rate. For example, the State of Connecticut allows an investment tax credit to be applied against state taxes if the investment occurs in certain depressed areas Because this credit reduces a tax deductible expense for federal income taxes, the credit must be adjusted to an after-tax basis The adjustment is made by multiplying the state investment tax credit by one minus the marginal federal tax rate. The adjusted state credit is then added to the federal credit.[2]

For the Fertilizer Company, the entire investment qualifies for the investment tax credit If $150,000 of the investment had not been qualified, only a seven percent credit would be allowed.[3]

[1]The Revenue Act of 1978 allows an investment tax credit for rehabilitation expenditures in connection with business and productive structures in use at least twenty years since first placed in service or since the last qualifying rehabilitation Thus, the adjustment described above should be ignored for qualified rehabilitation investments

[2]The formula for determining the investment tax credit in a state having a tax credit is:

$$t_{ITC} = ITC_{FEDERAL} + (1\text{-Tax Rate}_{FEDERAL}) * ITC_{STATE}$$

[3]Computed as $\frac{(\$500,000 - 150,000)}{500,000} \times 10\% = 7\%$

If the Fertilizer Company had a depreciation tax life of five years and the entire investment qualified for the investment, only a 6 67 percent credit would be allowed

Income Tax Rate

The income tax rate to be entered into the program must be the marginal rate -- that is, the rate which the firm would pay on an additional dollar of income The firm must estimate its marginal federal income tax rate and, where applicable, its marginal state and local tax rates The state and local tax rates should not include sales tax, inventory tax, charter tax or taxes on property If any of these taxes are material to the analysis, they should be included in either the investment or operating and maintenance expenditures, as appropriate Sales tax has already been shown to increase investment while property taxes would be included in operating and maintenance expense

In most cases involving large firms, the marginal tax rate will be 46 percent [1] Small corporations and some partnerships or privately-owned firms could have lower rates In many penalty calculations it will be necessary to adjust the state and local tax rates to reflect the fact that the state and local income taxes are also deductible from federal taxes The steps for calculation are as follows

[1] As of January 1979 This rate must be adjusted for future changes in the tax laws

The rate applicable to a firm is determined by the amount of taxable income expected in the next year The ranges of taxable income and the corresponding marginal tax rate are shown below

Taxable Income	Marginal Tax Rate
$0 - $25,000	17%
$25,000 - $50,000	20%
$50,000 - $75,000	30%
$75,000 - $100,000	40%
$100,000 and above	46%

- The marginal federal, state and local income tax rates are determined
- The adjusted local tax rate given state taxes is computed,[1]
- The local and state tax are adjusted for the federal tax
- The effective tax rate is computed

Exhibit II-4 contains a calculation of the tax rate for the Fertilizer Company

Inflation Rate

This is the estimated future increase in the capital and operating cost of pollution control equipment [2] The inflation rate to be used in the Fertilizer Company penalty calculation is 7 2 percent This was the compound annual rate of increase in the Chemical Engineering Plant Cost Inflation Index for the period July 1974 to July 1979 [3]

[1] If the local tax is not deductible from the state tax, the numbers should be added

[2] Chemical Engineering, McGraw Hill, Inc , April 28, 1975 and subsequent issues The compound rate of increase is computed as:

$$\left[\frac{\text{(Index in Final Month)}}{\text{(Index in Initial Month)}}\right]^{1/N} - 1 \quad \times 100$$

where N equals the number of years between the first and last months

[3] The inflation rate of 7 2 percent is only applicable to the example described in the manual Actual penalty determination will require calculation of the inflation rate using the above formula and the Plant Cost Inflation Indices for the most recent month and the month five years prior to the most recent month

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EXHIBIT II-4

CALCULATION OF THE TAX RATE[1]
FERTILIZER COMPANY

1	Marginal Federal tax rate	46%
2.	Marginal State tax rate	5%
3.	Marginal Local tax rate	2%

CALCULATION OF ADJUSTED LOCAL TAX

(1 - State Tax Rate) x Local Tax Rate

= (1 - 05) x 02

= 95 x 02

= 019 = Adjusted Local Tax Rate

CALCULATION OF ADJUSTED STATE AND LOCAL TAX

(1 - Federal Tax Rate) x (State Tax Rate + Adjusted Local Rate)

= (1 - 46) x (05 + 019)

= 54 x 069

= 0373 = Adjusted Local and State Tax

CALCULATION OF TAX RATE

100 x (Federal Tax Rate + Adjusted Local and State Tax)

= 100 x (46 + 0373)

= 100 x .4973

= 49 73 = Tax Rate

[1]This calculation uses Worksheet C in Attachment V

Discount Rate

The discount rate is an estimate of the firm's cost of new equity capital For a manufacturing firm, calculation of the discount rate requires averaging the twenty most recent quarters of the after-tax return on equity as reported for the firm's industry and for all manufacturing corporations in Table 4 of the Federal Trade Commission's Quarterly Financial Report for Manufacturing, Mining and Trade Corporations Attachment I contains a copy of Table 4 for the first quarter of 1979 The higher of the industry average rate of return on equity or the all-manufacturing rate of return on equity is used as the discount rate

The annual rates of return on equity after taxes are reported by the FTC in broad industrial categories. To categorize a firm, the Standard Industrial Classification Manual, published by the Office of Management and Budget, should be used [1]

The FTC does not report rates of return on equity for public utilities For these organizations, the annual percent return on net worth published in the April Monthly Economic Letter by Citibank (New York) should be used as the discount rate Attachment I includes a table listing this information for 1975 to 1979.

For the Fertilizer Company, the correct industrial category to use is Chemicals and Allied Products The calculation of the average return on equity for twenty quarters is shown in Exhibit II-5 Since the 15 91 percent rate of return for

[1]If the firm is a subsidiary of a larger corporation, the SIC category used should be the category appropriate for the smallest entity with audited financial statements which includes the source not in compliance

EXHIBIT II-5

FERTILIZER COMPANY
JULY 1978
AVERAGE RETURN ON EQUITY, CHEMICALS AND ALLIED PRODUCTS

Year	Quarter	Return on Equity (%) Chemicals & Allied Products	All Manufacturing
1974	2	21 3%	16 7%
	3	19 0	15 4
	4	14 8	13 2
1975	1	14 0	9 0
	2	16 1	11 8
	3	15 5	12 4
	4	15 2	13 1
1976	1	16 6	13 3
	2	17 2	15 7
	3	15 3	13 7
	4	12 8	13 1
1977	1	14 9	13 0
	2	16 8	16 0
	3	14 8	13 3
	4	13 8	14 4
1978	1	14 3	12 4
	2	16 7	16 6
	3	15 2	14 9
	4	16 3	16 1
1979	1	17 6	15 7
TOTAL		318 2	279 8
AVERAGE		15 91%	13 99%

Chemicals and Allied Products exceeds the average rate of return of 13 99 percent for all manufacturing corporations, the discount rate used is 15 91 percent

Interest Rate

The interest rate is the current cost of new debt for the firm [1] Determination of the firm's interest rate requires two steps

- The quality rating for the firm's bonds is found in Moody's Bond Record If the firm does not have rated debt, an "A" rating is assumed If it has more than one issue, that with the highest rating is used
- The most recent yield reported for bonds of the same rating is found in the Corporate Bond Yield Averages section of the Bond Record

Bonds are rated by Moody's in a system ranging from a high of "Aaa" to a low of "C " The lowest average yield reported is "Baa;" a firm whose bonds have a rating of "Baa" or lower will use the yield reported for the "Baa" average The bonds are listed in the Bond Record in alphabetical order by corporation Convertible bonds are considered in the same manner as all other bonds

[1] This discussion assumes that Industrial Development Bonds (IDB's) are not used. If IDB's are sold to finance the pollution control investment, see Section V

Note that the interest rate is not taken from the so-called coupon rate on the bond For example, in Exhibit II-6, rates of 9 75 percent and 4 5 percent are listed These are historical rates which were in affect at the time the bonds were issued They do not reflect current market rates

The Bond Record reports a number of different yields If the firm is a utility, the Public Utility Average is used If the firm is not a utility, the Industrial Bond Average is used

For the Fertilizer Company, the debt was not rated, so the most recent yield reported for the industrial "A" bonds is used (9 75%) Attachment II contains the average bond yields as reported in a recent issue of the Bond Record

Preferred Dividend Rate

The method used for determining the preferred dividend rate is identical to that used to select the interest rate The quality rating of the firm's preferred shares is found in Moody's Bond Record in the Preferred Stock section If the stock is not rated, an "a" rating is assumed

Average yields are reported for only "aa", "a", and "baa" preferred stocks issued by utilities However, these figures should be used for non-utility firms as well. If the stock has a rating of "baa" or lower, the firm should use the "baa" average yield Firms with preferred stock rated "aa" or

higher should use the "aa" yield The latest monthly average is used and entered exactly as shown in the averages Attachment III contains an example of the Bond Record preferred averages

The Fertilizer Company's preferred stock is not rated so the yield entered for the penalty calculation is 9 60 percent, the rate found by using the return on "a" rated preferred stock

Equity Share of Investment

This is the percentage amount of equity in the firm's capital structure The capital structure of the firm is the dollar amount invested in the firm for periods over one year Thus it does not include current liabilities or deferred federal income tax

The equity share of the investment is calculated using data contained in the firm's five most recent annual reports [1] The procedure involves the following steps:

[1] This is available either directly from the firm or, for large corporations, in Moody's Industrial Manual An advantage to using Moody's is that the percent equity is reported and can be used as a check on the calculation

If the firm does not have five years of annual reports, a shorter period of time may be used For firms without audited financial statements, the fraction of preferred stock, debt, and equity used in the penalty calculation will be the five year average preferred stock, debt, and equity share for the firm's industry. This can be calculated from the financial statements provided for the industry by the Federal Trade Commission in its Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations

Firms which are subsidiaries of a larger corporation should use the financial statements of the smallest entity with audited financial statements which includes the source not in compliance

- Step 1 The sum of all the firm's equity accounts on each year's balance sheet is added to the total of its long term debt This total represents the firm's long term financing or its capital structure for that year. It will include paid-in capital, retained earnings, capital surplus, preferred stock, and long term debt. If Treasury stock is shown as an asset on the balance sheet, it should be subtracted from the total capital

- Step 2 The dollar amount of all equity accounts except preferred stock shown in the equity section of the balance sheet for the year is divided by the total capital found in the previous step This is the equity share of the investment for the year

- Step 3. The equity shares for each of the five most recent years are averaged to yield a equity share for input to the penalty calculation

Preferred Stock Share of the Investment

The computation of the preferred stock share of the investment is analogous to the computation of the equity share of the investment, as described above The sum of all preferred stock accounts is divided by the total capital computed in Step 1 above for each of the five most recent years These figures are then averaged to yield a preferred stock share for input to the penalty calculation

Debt Share of the Investment

The sum of all long-term debt accounts is the amount of debt in the capital structure each year This sum is also divided by the yearly total capital found in Step 1 above yielding the debt share of the investment for the year These figures are then averaged to yield a debt share for input to the penalty calculation

The sum of the equity share, the debt share, and the preferred share of the investment must equal one hundred percent

The balance sheet of the hypothetical Fertilizer Company is shown in Exhibit II-6. Exhibit II-7 illustrates the calculation of the equity, preferred stock, and debt share of the investment for a single year.

Depreciation Life in Years

This is the number of years over which the firm's pollution control equipment will be depreciated for tax purposes It is found by taking the lower limit on the asset depreciation range for the appropriate class of assets given in the Internal Revenue Service publication Revenue Procedure 77-10. If the lower limit is greater than ten years, the Clean Air Act requires that ten years be used If the lower limit contains a fractional part of a year, the program should be run with the year lower than the fraction If the rounding reduces the investment tax credit, the depreciation life should be rounded up and the program run again The calculation giving the lower penalty should be used For the Fertilizer Company example, the lower limit on the asset depreciation range for chemicals and allied products is used This is nine years Had it been 8 5 years, it would have been rounded down to 8 years

The Useful Life in Years

The useful life is used to determine the length of each replacement cycle in the penalty calculation It is also provided by Revenue Procedure 77-10. Instead of using the lower limit, the asset guideline period is used If this contains a fractional

EXHIBIT II-6

FERTILIZER COMPANY
BALANCE SHEET
December 31, 1978
(000's)

ASSETS		LIABILITIES	
Cash	$ 18,881	Notes Payable to Bank	$ 122
Marketable Securities	60,552	Accounts Payable & Accruals	54,109
Notes & Accounts Receivable (Net)	79,156	Preferred Dividends Payable	23
Income Tax Refunds		Income Tax	28,335
Inventories	116,940	Current Maturities Long Term Debt	8,929
Prepaid Expenses	4,290		
TOTAL CURRENT ASSETS	$279,819	TOTAL CURRENT LIABILITIES	$ 91,518
Property, Plant and Equipment	828,703	Deferred Federal Income Taxes	57,563
Less: Reserve for Depreciation	423,554	4 5% Debentures	21,531
		9 75% Notes	60,000
		Long Term Lease Oblibation	43,932
NET PROPERTY ACCOUNT	$405,149	Pollution Control Facility Revenue Bonds	46,000
		Other Long Term Debt	9,230
Construction Funds Held by Trustee	3,913	4 5% Preferred Stock ($100 par)	22,044
Other Assets	83,495	Common Stock ($5 par)	100,000
		Capital Surplus	58,236
		Retained Earnings	262,799
		TOTAL STOCKHOLDERS' EQUITY	$443,079
		Less: Treasury Stock	477
		NET STOCKHOLDERS' EQUITY	$442,602
TOTAL ASSETS	$772,376	TOTAL LIABILITIES AND NET WORTH	$772,376

EXHIBIT II-7

CALCULATION OF THE EQUITY, DEBT AND PREFERRED SHARE OF THE INVESTMENT[1]
FERTILIZER COMPANY
(000's)

The first step in obtaining the equity, debt and preferred share of the investment is to sum the equity and long term debt [2]

4 5% Debentures	$ 21, 531
9 75% Notes	60,000
Long Term Lease	43,932
Pollution Control Revenue Bonds	46,000
Other Long Term Debt	9,230
4 5% Preferred Stock	22,044
Common Stock	100,000
Capital Surplus	58,236
Retained Earnings	262,799
	$623,772
Less: Treasury Stock	(477)
TOTAL LONG TERM CAPITAL	$623,295

The second step is to divide the preferred stock by the total long term capital

$$\frac{\text{Preferred Stock}}{\text{Total Long Term Capital}} = \frac{22,044}{623,295} = .035 \text{ or } 3\ 5\%$$

[1] For the purposes of this example, preferred, debt, and equity share are calculated for one year only In actual penalty calculations the preferred, debt, and equity share will be the average of the most recent five years

[2] Deferred taxes are not included in the calculation of the debt; equity, and preferred share of the investment

EXHIBIT II-7
(continued)

CALCULATION OF THE EQUITY, DEBT AND
PREFERRED SHARE OF THE INVESTMENT
FERTILIZER COMPANY
(000's)

The third step is to take the sum of the long-term debt accounts Divide this by the total long-term capital

4 5% Debentures	$ 21,531
9 75% Notes	60,000
Long-Term Lease	43,932
Pollution Control Revenue Bonds	46,000
Other Long-Term Debt	9,230
TOTAL DEBT	$180,693

$$\frac{\text{Total Long-Term Debt}}{\text{Total Long-Term Capital}} = \frac{180,693}{623,295} = 290 \text{ or } 29.0\%$$

The fourth step is to sum all common equity accounts. Do not include the preferred stock. Divide this number by the total long term capital.

Common Stock	$100,000
Capital Surplus	58,236
Retained Earnings	262,799
TOTAL	421,035
Less: Treasury Stock	(477)
TOTAL COMMON EQUITY	$420,588

$$\frac{\text{Total Common Equity}}{\text{Total Long-Term Capital}} = \frac{420,558}{623,295} = .675 \text{ or } 67\ 5\%$$

Thus, 3.5 percent is the preferred stock share of the investment, 29 0 percent is the debt share of the investment and 67.5 percent is the equity share of the investment for a total of 100 0 percent.

part of a year the number should be rounded up to the next integer. The useful life must always be greater than or equal to the depreciation life in years

For the Fertilizer Company example, the "Asset Guideline Period" for chemicals and allied products is used This is eleven years Had it been 11 5 years, it would have been rounded up to twelve.

ATTACHMENT I
(continued)

UTILITY AFTER-TAX RETURN ON EQUITY
(PERCENT)

	ELECTRIC POWER AND GAS	TELEPHONE AND TELEGRAPH
1979	11.7	13.3
1978	11.3	13.5
1977	11.7	12.7
1976	11.5	11.5
1975	11.6	9.9

Source: Monthly Economic Letter, Citibank, New York, April 1980 and April issues of prior years.

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ATTACHMENT I
QUARTERLY FINANCIAL REPORT FOR MANUFACTURING
MINING AND TRADE CORPORATIONS

TABLE 4. ANNUAL RATES OF PROFIT ON STOCKHOLDERS' EQUITY, BY INDUSTRY
(Percent)

Industry	Before income taxes 2/					After taxes				
	1Q 1978 3/	2Q 1978 3/	3Q 1978 3/	4Q 1978 3/	1Q 1979	1Q 1978 3/	2Q 1978 3/	3Q 1978 3/	4Q 1978 3/	1Q 1979
All Manufacturing Corporations	20.7	27.0	24.4	25.8	25.4	12.4	16.6	14.9	16.1	15.7
Nondurable Manufacturing Corporations	19.8	23.6	23.3	23.9	24.1	12.1	14.8	14.4	15.3	15.3
Food and Kindred Products	19.8	24.2	22.6	24.5	20.3	11.4	15.1	13.5	15.3	12.2
Tobacco Manufactures	28.9	33.7	33.1	30.8	30.7	16.5	19.0	18.7	18.3	18.5
Textile Mill Products	16.9	24.1	21.8	20.5	16.8	9.0	13.3	12.0	11.7	9.0
Paper and Allied Products	17.5	22.2	18.8	21.8	24.2	11.3	14.1	12.2	14.1	16.3
Printing and Publishing	26.3	34.7	33.6	36.1	27.6	14.4	19.6	18.3	21.1	16.0
Chemicals and Allied Products	23.5	26.4	24.5	24.0	27.5	14.3	16.7	15.2	16.3	17.6
Industrial chemicals and synthetics 1/	21.2	23.4	20.9	23.5	26.6	12.9	14.6	13.2	17.2	16.9
Drugs 1/	31.2	30.9	28.6	25.9	30.6	20.0	20.6	18.9	17.0	20.7
Petroleum and Coal Products	16.3	19.6	21.1	22.3	23.7	11.0	13.2	14.1	14.9	15.8
Rubber and Miscellaneous Plastics Products	16.3	20.2	18.1	13.5	22.8	10.0	11.5	10.7	8.3	14.1
Other Nondurable Manufacturing Corporations	25.4	22.7	30.6	26.6	22.6	14.0	13.1	16.9	14.3	12.6
Durable Manufacturing Corporations	21.7	30.6	25.6	27.9	26.7	12.7	18.6	15.4	16.9	16.2
Stone, Clay and Glass Products	14.1	30.7	33.5	28.1	15.4	8.0	19.1	21.3	17.8	7.7
Primary Metal Industries	6.2	20.0	15.6	18.5	20.0	3.4	12.8	9.9	11.1	12.7
Iron and steel 1/	4.5	20.7	16.0	16.9	16.5	2.0	13.5	10.3	9.8	10.2
Nonferrous metals 1/	9.3	18.6	14.8	21.2	25.9	6.1	11.6	9.0	13.4	16.9
Fabricated Metal Products	22.3	32.6	28.3	25.8	26.9	12.7	19.6	16.4	15.4	15.8
Machinery, except Electrical	24.0	33.4	26.2	31.6	26.8	14.5	20.6	16.1	19.1	16.3
Electrical and Electronic Equipment	26.1	29.9	30.0	29.0	28.3	14.8	17.1	17.6	17.2	17.2
Transportation Equipment	26.9	32.7	21.4	28.2	32.3	15.9	19.6	12.8	17.8	20.1
Motor vehicles and equipment 1/	28.0	36.8	18.0	27.2	34.5	16.8	22.0	10.9	17.8	21.8
Aircraft, guided missiles and parts 1/	25.0	18.7	30.8	32.9	29.2	14.1	11.4	17.9	19.0	17.6
Instruments and Related Products	25.4	32.6	32.2	31.1	27.4	14.9	19.9	18.4	18.3	16.7
Other Durable Manufacturing Corporations	23.1	34.5	30.5	30.1	27.3	13.0	20.7	18.4	18.2	16.4
All Mining Corporations	15.3	25.3	19.4	25.0	19.2	9.0	17.6	12.0	18.5	12.3
All Retail Trade Corporations	17.2	30.9	31.3	32.9	NA	11.0	22.3	20.9	20.9	NA
All Wholesale Trade Corporations	22.3	30.6	29.8	27.1	29.7	13.6	20.5	18.4	16.9	18.9

1/ Included in major industry above.
2/ Based on profit figure which includes net income (loss) of foreign branches and equity in earnings (losses) of non-consolidated subsidiaries, net of foreign taxes.
3/ Some of the rates in this column have been revised since their first appearance. See footnotes to Tables A - K.

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ATTACHMENT II
MOODY'S CORPORATE BOND YIELD AVERAGE

Moody's Corporate Bond Yield Averages

	Av. Corp.	Corporate by Ratings Aaa	Aa	A	Corporate by Groups Baa	P.U.	Ind.	R.R.		Public Utility Bonds Aaa	Aa	A	Baa		Industrial Bonds Aaa	Aa	A	Baa		Railroad Bonds Aaa	Aa	A	Baa
1973																							
June	7.69	7.37	7.55	7.71	8.13	7.69	7.49	8.07	June	7.51	7.59	7.71	7.94	June	7.23	7.26	7.46	7.99	June	—	7.79	7.97	8.47
July	7.80	7.45	7.64	7.86	8.24	7.81	7.59	8.17	July	7.62	7.70	7.82	8.10	July	7.28	7.36	7.64	8.10	July	—	7.87	8.12	8.51
Aug.	8.04	7.68	7.84	8.11	8.53	8.06	7.91	8.32	Aug.	7.81	7.92	8.04	8.47	Aug.	7.56	7.72	8.02	8.34	Aug.	—	7.90	8.27	8.80
Sept.	8.06	7.63	7.86	8.11	8.63	8.09	7.89	8.37	Sept.	7.78	7.94	8.04	8.61	Sept.	7.48	7.73	7.99	8.35	Sept.	—	7.91	8.29	8.92
Oct.	7.96	7.60	7.84	7.98	8.41	8.04	7.76	8.24	Oct	7.77	7.94	8.02	8.44	Oct.	7.43	7.67	7.80	8.12	Oct.	—	7.92	8.12	8.68
Nov.	8.01	7.67	7.90	8.07	8.42	8.11	7.81	8.28	Nov.	7.83	8.01	8.15	8.44	Nov.	7.50	7.67	7.88	8.17	Nov.	—	8.02	8.17	8.66
Dec.	8.05	7.68	7.92	8.11	8.48	8.17	7.84	8.28	Dec.	7.86	8.07	8.24	8.51	Dec.	7.50	7.69	7.89	8.29	Dec.	—	7.99	8.20	8.66
1974																							
Jan.	8.12	7.83	8.00	8.17	8.48	8.27	7.97	8.34	Jan.	8.00	8.15	8.36	8.58	Jan.	7.65	7.85	7.98	8.38	Jan.	—	7.92	8.32	8.77
Feb.	8.17	7.85	8.05	8.25	8.53	8.33	8.01	8.27	Feb.	8.01	8.20	8.42	8.68	Feb.	7.70	7.90	8.07	8.37	Feb.	—	7.90	8.29	8.72
Mar.	8.28	8.01	8.18	8.32	8.62	8.44	8.12	8.34	Mar.	8.14	8.35	8.46	8.81	Mar.	7.87	8.00	8.19	8.42	Mar.	—	7.90	8.38	8.73
Apr.	8.54	8.25	8.43	8.61	8.87	8.68	8.39	8.51	Apr.	8.36	8.56	8.77	9.04	Apr.	8.13	8.29	8.45	8.69	Apr.	—	7.99	8.63	8.91
May	8.71	8.37	8.58	8.83	9.05	8.85	8.55	8.73	May	8.47	8.71	9.00	9.23	May	8.26	8.44	8.66	8.85	May	—	8.10	8.88	9.20
June	8.89	8.47	8.75	9.07	9.27	9.08	8.69	8.89	June	8.58	8.93	9.32	9.48	June	8.34	8.57	8.82	9.05	June	—	8.14	9.02	9.51
July	9.15	8.72	9.01	9.40	9.48	9.34	8.95	9.07	July	8.83	9.17	9.66	9.72	July	8.60	8.85	9.13	9.23	July	—	8.28	9.27	9.70
Aug.	9.43	9.00	9.28	9.67	9.77	9.70	9.16	9.30	Aug.	9.09	9.53	10.03	10.14	Aug.	8.89	9.03	9.31	9.39	Aug.	—	8.62	9.50	9.77
Sept.	9.78	9.24	9.66	10.04	10.18	10.11	9.44	9.46	Sept.	9.36	10.05	10.45	10.59	Sept.	9.12	9.26	9.62	9.78	Sept.	—	8.74	9.64	10.01
Oct.	9.92	9.27	9.64	10.29	10.48	10.31	9.53	9.64	Oct.	9.50	9.93	10.78	11.03	Oct.	9.03	9.35	9.80	9.92	Oct.	—	8.92	9.71	10.29
Nov.	9.80	9.39	9.34	9.96	10.60	10.12	9.27	9.58	Nov.	9.10	9.54	10.46	11.38	Nov.	8.69	9.13	9.44	9.81	Nov.	—	8.72	9.70	10.30
Dec.	9.63	8.89	9.20	9.80	10.63	10.02	9.23	9.59	Dec.	9.02	9.37	10.27	11.40	Dec.	8.74	9.03	9.31	9.85	Dec.	—	8.69	9.67	10.40
1975																							
Jan.	9.65	8.83	9.13	9.81	10.81	10.10	9.19	9.52	Jan.	8.99	9.45	10.37	11.57	Jan.	8.65	8.81	9.25	10.02	Jan.	—	8.70	9.65	10.23
Feb.	9.43	8.62	8.91	9.51	10.65	9.83	9.01	9.32	Feb.	8.79	9.23	9.99	11.32	Feb.	8.44	8.60	9.03	9.98	Feb.	—	8.59	9.40	9.98
Mar.	9.36	8.67	8.92	9.37	10.48	9.67	9.05	9.25	Mar.	8.82	9.17	9.72	10.94	Mar.	8.52	8.67	9.01	10.01	Mar.	—	8.57	9.25	9.92
Apr.	9.59	8.95	9.19	9.62	10.58	9.88	9.30	9.39	Apr.	9.11	9.48	10.06	10.86	Apr.	8.78	8.89	9.22	10.30	Apr.	—	8.70	9.61	9.87
May	9.66	8.90	9.24	9.79	10.69	9.93	9.37	9.49	May	9.05	9.50	10.23	10.93	May	8.75	8.96	9.34	10.42	May	—	8.67	9.81	10.00
June	9.55	8.77	9.13	9.67	10.62	9.81	9.29	9.40	June	8.93	9.34	10.10	10.85	June	8.61	8.91	9.23	10.39	June	—	8.56	9.68	9.97
July	9.54	8.84	9.13	9.61	10.55	9.81	9.26	9.37	July	9.04	9.38	10.01	10.80	July	8.62	8.88	9.22	10.30	July	—	8.54	9.67	9.90
Aug.	9.61	8.95	9.23	9.68	10.59	9.93	9.29	9.41	Aug.	9.20	9.52	10.12	10.87	Aug.	8.69	8.94	9.24	10.31	Aug.	—	8.62	9.74	9.86
Sept.	9.67	8.95	9.35	9.74	10.61	9.98	9.35	9.42	Sept.	9.21	9.64	10.19	10.89	Sept.	8.68	9.06	9.28	10.35	Sept.	—	8.61	9.75	9.91
Oct.	9.63	8.86	9.32	9.72	10.62	9.94	9.32	9.40	Oct.	9.14	9.55	10.16	10.89	Oct.	8.57	9.08	9.28	10.34	Oct.	—	8.55	9.77	9.87
Nov.	9.55	8.78	9.23	9.64	10.56	9.83	9.27	9.36	Nov.	9.03	9.45	10.04	10.78	Nov.	8.52	9.00	9.24	10.33	Nov.	—	8.46	9.72	9.88
Dec.	9.57	8.79	9.25	9.67	10.56	9.87	9.26	9.37	Dec.	9.07	9.51	10.11	10.79	Dec.	8.51	8.99	9.23	10.33	Dec.	—	8.47	9.69	9.94
1976																							
Jan.	9.42	8.60	9.13	9.54	10.41	9.68	9.16	9.32	Jan.	8.86	9.39	9.90	10.55	Jan.	8.33	8.87	9.18	10.26	Jan.	—	8.45	9.62	9.90
Feb.	9.31	8.55	9.02	9.43	10.24	9.50	9.12	9.25	Feb.	8.80	9.16	9.71	10.31	Feb.	8.29	8.87	9.15	10.17	Feb.	—	8.38	9.54	9.81
Mar.	9.26	8.52	9.01	9.40	10.12	9.43	9.10	9.16	Mar.	8.74	9.12	9.67	10.17	Mar.	8.30	8.88	9.12	10.07	Mar.	—	8.28	9.47	9.74
Apr.	9.12	8.40	8.89	9.26	9.94	9.27	8.98	9.05	Apr.	8.59	9.00	9.53	9.95	Apr.	8.20	8.78	9.00	9.92	Apr.	—	8.23	9.27	9.63
May	9.16	8.58	8.92	9.28	9.86	9.31	9.00	9.06	May	8.73	9.06	9.55	9.91	May	8.43	8.78	9.00	9.81	May	—	8.14	9.17	9.55
June	9.16	8.62	8.89	9.24	9.89	9.36	8.96	8.88	June	8.84	9.07	9.54	10.01	June	8.40	8.71	8.97	9.76	June	—	8.12	9.11	9.40
July	9.08	8.56	8.81	9.14	9.82	9.26	8.90	8.81	July	8.78	9.02	9.47	9.88	July	8.33	8.59	8.91	9.75	July	—	8.04	9.11	9.27
Aug.	8.93	8.45	8.66	8.98	9.64	9.07	8.79	8.75	Aug.	8.64	8.83	9.13	9.67	Aug.	8.26	8.48	8.82	9.61	Aug.	—	7.99	9.06	9.19
Sept.	8.79	8.38	8.54	8.81	9.40	8.91	8.66	8.66	Sept.	8.57	8.69	8.90	9.47	Sept.	8.18	8.39	8.72	9.33	Sept.	—	7.96	8.92	9.01
Oct.	8.71	8.32	8.48	8.73	9.29	8.83	8.58	8.54	Oct.	8.50	8.60	8.79	9.41	Oct.	8.14	8.36	8.66	9.17	Oct.	—	7.82	8.85	8.96
Nov.	8.66	8.25	8.46	8.69	9.23	8.77	8.54	8.48	Nov	8.39	8.61	8.76	9.34	Nov.	8.12	8.30	8.63	9.12	Nov.	—	7.72	8.82	8.91
Dec.	8.47	7.98	8.24	8.53	9.12	8.61	8.33	8.39	Dec.	8.15	8.45	8.62	9.21	Dec.	7.81	8.04	8.43	9.03	Dec.	—	7.67	8.69	8.81
1977																							
Jan.	8.41	7.96	8.16	8.45	9.08	8.59	8.24	8.27	Jan.	8.14	8.41	8.61	9.17	Jan.	7.77	7.90	8.28	8.99	Jan.	—	7.52	8.54	8.76
Feb.	8.48	8.04	8.26	8.49	9.12	8.63	8.33	8.26	Feb.	8.21	8.46	8.65	9.19	Feb.	7.86	8.06	8.33	9.04	Feb.	—	7.59	8.52	8.67
Mar.	8.51	8.10	8.28	8.55	9.12	8.66	8.36	8.26	Mar.	8.27	8.49	8.70	9.20	Mar.	7.92	8.07	8.40	9.04	Mar.	—	7.70	8.48	8.59
Apr.	8.49	8.04	8.28	8.55	9.07	8.65	8.32	8.17	Apr	8.21	8.51	8.71	9.17	Apr.	7.86	8.05	8.39	8.97	Apr.	—	7.63	8.37	8.53
May	8.47	8.05	8.28	8.55	9.01	8.64	8.30	8.12	May	8.22	8.49	8.71	9.13	May	7.87	8.06	8.39	8.88	May	—	7.61	8.21	8.54
June	8.38	7.95	8.19	8.46	8.91	8.53	8.23	8.06	June	8.12	8.37	8.58	9.02	June	7.77	8.00	8.33	8.80	June	—	7.55	8.08	8.55
July	8.33	7.94	8.12	8.40	8.87	8.48	8.18	8.02	July	8.10	8.32	8.51	8.97	July	7.78	7.92	8.28	8.75	July	—	7.53	7.89	8.65
Aug	8.34	7.98	8.17	8.40	8.82	8.47	8.21	8.05	Aug.	8.13	8.36	8.49	8.91	Aug.	7.82	7.97	8.30	8.72	Aug.	—	7.56	7.89	8.71
Sept.	8.31	7.92	8.15	8.37	8.80	8.43	8.19	8.03	Sept	8.07	8.32	8.46	8.85	Sept.	7.76	7.97	8.27	8.74	Sept.	—	7.62	7.83	8.65
Oct	8.42	8.04	8.26	8.48	8.89	8.56	8.27	8.07	Oct.	8.18	8.44	8.61	9.01	Oct.	7.88	8.08	8.35	8.77	Oct.	—	7.74	7.87	8.59
Nov.	8.48	8.08	8.34	8.56	8.95	8.61	8.36	8.10	Nov.	8.23	8.48	8.64	9.06	Nov.	7.93	8.20	8.46	8.84	Nov.	—	7.79	7.91	8.61
Dec.	8.54	8.19	8.40	8.57	8.99	8.65	8.42	8.10	Dec	8.34	8.55	8.64	9.08	Dec.	8.04	8.25	8.49	8.90	Dec.	—	7.83	7.93	8.55
1978																							
Jan.	8.74	8.41	8.59	8.76	9.17	8.87	8.60	8.20	Jan.	8.52	8.76	8.92	9.27	Jan.	8.31	8.42	8.60	9.07	Jan.	—	7.93	8.04	8.63
Feb.	8.78	8.47	8.65	8.79	9.20	8.90	8.65	8.32	Feb	8.57	8.79	8.97	9.29	Feb.	8.37	8.50	8.62	9.11	Feb.	—	8.09	8.18	8.71
Mar.	8.80	8.47	8.66	8.83	9.22	8.93	8.66	8.41	Mar.	8.57	8.79	8.98	9.37	Mar	8.36	8.53	8.69	9.07	Mar.	—	8.10	8.30	8.84
Apr.	8.88	8.56	8.73	8.93	9.32	9.05	8.72	8.49	Apr.	8.69	8.86	9.09	9.54	Apr	8.43	8.59	8.76	9.10	Apr.	—	8.08	8.45	8.93
May	9.02	8.69	8.84	9.05	9.49	9.19	8.84	8.60	May	8.83	9.02	9.22	9.70	May	8.54	8.66	8.87	9.27	May	—	8.14	8.67	9.01
June	9.13	8.76	8.95	9.18	9.60	9.33	8.92	8.68	June	8.92	9.19	9.40	9.78	June	8.60	8.71	8.96	9.40	June	—	8.08	8.89	9.07
July.	9.22	8.88	9.07	9.33	9.60	9.38	9.05	8.70	July	9.02	9.26	9.51	9.73	July	8.73	8.87	9.14	9.46	July	—	7.92	9.05	9.13
Aug.	9.08	8.69	8.96	9.18	9.48	9.21	8.95	8.72	Aug	8.86	9.11	9.32	9.53	Aug.	8.52	8.80	9.04	9.43	Aug.	—	7.85	9.04	9.28
Sept.	9.04	8.69	8.92	9.11	9.42	9.17	8.90	8.68	Sept	8.84	9.09	9.28	9.47	Sept.	8.54	8.75	8.94	9.36	Sept.	—	7.83	8.94	9.27
Oct.	9.20	8.89	9.07	9.26	9.59	9.37	9.03	8.74	Oct.	9.04	9.28	9.46	9.69	Oct.	8.72	8.87	9.06	9.49	Oct.	—	7.94	8.99	9.30
Nov.	9.40	9.03	9.24	9.48	9.83	9.58	9.21	9.01	Nov.	9.19	9.46	9.68	9.99	Nov.	8.87	9.02	9.27	9.66	Nov.	—	8.30	9.23	9.50
Dec.	9.49	9.16	9.33	9.53	9.94	9.67	9.31	9.15	Dec.	9.34	9.56	9.70	10.08	Dec	8.98	9.10	9.35	9.79	Dec.	—	8.32	9.38	9.75
1979																							
Jan	9.65	9.25	9.48	9.72	10.13	9.85	9.44	9.21	Jan.	9.48	9.70	9.90	10.29	Jan.	9.01	9.24	9.54	9.96	Jan.	—	8.33	9.53	9.78
Feb	9.63	9.26	9.50	9.68	10.08	9.84	9.42	9.22	Feb.	9.51	9.74	9.84	10.27	Feb.	9.01	9.25	9.51	9.89	Feb.	—	8.32	9.52	9.81
Mar.	9.76	9.37	9.61	9.81	10.26	10.02	9.50	9.30	Mar.	9.61	9.89	10.04	10.53	Mar	9.11	9.33	9.59	9.98	Mar.	—	8.46	9.62	9.84
Apr.	9.81	9.38	9.65	9.88	10.33	10.05	9.57	9.38	Apr.	9.61	9.92	10.10	10.56	Apr	9.15	9.37	9.65	10.11	Apr.	—	8.50	9.67	9.98
May	9.96	9.50	9.86	10.00	10.47	10.23	9.69	9.48	May	9.71	10.19	10.30	10.70	May	9.30	9.52	9.70	10.24	May	—	8.69	9.65	10.08
June	9.81	9.29	9.66	9.89	10.38	10.04	9.57	9.44	June	9.49	9.95	10.14	10.56	June	9.06	9.36	9.64	10.19	June	—	8.64	9.64	10.04
July	9.69	9.20	9.49	9.75	10.29	9.90	9.47	9.45	July	9.42	9.72	9.98	10.48	July	8.98	9.26	9.52	10.11	July	—	8.76	9.55	10.03

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ATTACHMENT III
MOODY'S PUBLIC UTILITY PREFERRED STOCK YIELD AVERAGE

Moody's Preferred Stock Ratings

Moody's Rating Policy Review Board Extended its rating services to include quality designations on preferred stocks on October 1, 1973. The decision to rate preferred stocks, which Moody's had done prior to 1935, was prompted by evidence of investor interest. Moody's believes that its rating of preferred stocks is especially appropriate in view of the ever-increasing amount of these securities outstanding, and the fact that continuing inflation and its ramifications have resulted generally in the dilution of some of the protection afforded them as well as other fixed-income securities.

Because of the fundamental differences between preferred stocks and bonds, a variation of our familiar bond rating symbols is being used in the quality ranking of preferred stocks. The symbols, presented below, are designed to avoid comparison with bond quality in absolute terms. It should always be borne in mind that preferred stocks occupy a junior position to bonds within a particular capital structure.

Preferred stock rating symbols and their definitions are as follows:

"aaa"

An issue which is rated "aaa" is considered to be a top-quality preferred stock. This rating indicates good asset protection and the least risk of dividend impairment within the universe of preferred stocks.

"aa"

An issue which is rated "aa" is considered a high-grade preferred stock. This rating indicates that there is reasonable assurance that earnings and asset protection will remain relatively well maintained in the foreseeable future.

"a"

An issue which is rated "a" is considered to be an upper-medium grade preferred stock. While risks are judged to be somewhat greater than in the "aaa" and "aa" classifications, earnings and asset protection are, nevertheless, expected to be maintained at adequate levels.

"baa"

An issue which is rated "baa" is considered to be medium grade, neither highly protected nor poorly secured. Earnings and asset protection appear adequate at present but may be questionable over any great length of time.

"ba"

An issue which is rated "ba" is considered to have speculative elementsand its future cannot be considered well assured. Earnings and asset protection may be very moderate and not well safeguarded during adverse periods. Uncertainty of position characterizes preferred stocks in this class.

"b"

An issue which is rated "b" generally lacks the characteristics of a desirable investment. Assurance of dividend payments and maintenance of other terms of the issue over any long period of time may be small.

"caa"

An issue which is rated "caa" is likely to be in arrears on dividend payments. This rating designation does not purport to indicate the future status of payments.

Moody's Public Utility Preferred Stock Yield Averages

"aa"

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1975	—	—	—	—	—	—	9.38	9.55	9.64	9.42	9.31	9.33
1976	8.79	8.74	8.92	8.77	8.90	8.92	8.80	8.72	8.58	8.49	8.57	8.28
1977	8.36	8.23	8.21	8.16	8.14	8.03	7.91	8.02	7.95	8.08	8.15	8.14
1978	8.31	8.38	8.35	8.51	8.61	8.84	8.80	8.56	8.43	8.61	8.75	8.94
1979	9.05	9.11	9.10	9.15	9.19	9.03	8.98	—	—	—	—	—

"a"

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1975	—	—	—	—	—	—	10.39	10.46	10.72	10.27	10.22	10.25
1976	9.43	9.42	9.52	9.24	9.46	9.46	9.37	9.31	9.04	8.95	8.99	8.80
1977	8.83	8.80	8.75	8.61	8.64	8.47	8.23	8.30	8.32	8.50	8.55	8.39
1978	8.70	8.74	8.79	8.88	9.07	9.39	9.33	8.97	8.82	9.07	9.27	9 65
1979	9.61	9.66	9.63	9.71	9.91	9.55	9.60	—	—	—	—	—

"baa"

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1975	—	—	—	—	—	—	10.70	10.98	11.11	10.81	10.55	10.67
1976	9.78	9.57	9.73	9.62	9.76	9.79	9.74	9.67	9.45	9.30	9.30	9.15
1977	9.01	8.98	9.01	9.00	9.04	8.92	8.63	8.72	8.87	8.98	8.96	9 03
1978	9.17	9.17	9.34	9.34	9.54	9.81	9.76	9.54	9.62	9.66	9.89	10.48
1979	10.42	10.37	10.33	10.43	10.82	10.49	10.33	—	—	—	—	—

NOTE: There is no "aaa" average because of the dearth of prime-quality preferred stocks. Yields are based on prices for the last Friday of each month.

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ATTACHMENT IV

This attachment is IRS Revenue Procedure 77-10.

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, Section 167; 1.167(a)-11.)

Rev. Proc. 77-10

SECTION 1. PURPOSE.

.01 The purpose of this Revenue Procedure is to restate, pursuant to sections 167(m) and 263(e) of the Internal Revenue Code of 1954, with certain substantive modifications as noted below, the asset guideline classes, asset guideline depreciation periods and ranges, and annual asset guideline repair allowance percentages for the Class Life Asset Depreciation Range (CLADR) System.

.02 This Revenue Procedure supersedes Rev. Proc. 72-10, 1972-1 C.B. 721, and the supplements and revisions of the asset guideline classes, periods, and repair allowance percentages published since the publication of Rev. Proc. 72-10. These Revenue Procedures are as follows:

73-2, 1973-1 C.B. 747
73-3, 1973-1 C.B. 749
73-23, 1973-2 C.B. 474
73-24, 1973-2 C.B. 475
73-25, 1973-2 C.B. 477
73-26, 1973-2 C.B. 479
73-27, 1973-2 C.B. 480
73-28, 1973-2 C.B. 482
73-30, 1973-2 C.B. 484
74-27, 1974-2 C.B. 480
74-28, 1974-2 C.B. 481
74-29, 1974-2 C.B. 482
74-30, 1974-2 C.B. 483
74-31, 1974-2 C.B. 487
74-32, 1974-2 C.B. 487
74-37, 1974-2 C.B. 491
74-50, 1974-2 C.B. 506
76-16, 1976-1 C.B. 556
76-17, 1976-1 C.B. 557
76-18, 1976-1 C.B. 559
76-27, 1976-2 C.B. 644
76-37, 1976-2 C.B. 659
77-2, page 534
77-3, page 535
77-8, page 541

.03 In addition, certain changes are made in the numbering system of asset guideline classes to facilitate the understanding and use of the CLADR system.

Broad title headings and asset guideline class number designations for several related guideline classes have been deleted wherever feasible to eliminate confusion over the appropriate asset guideline class number designations.

The asset guideline classes for "Office Furniture, Fixtures, and Equipment," "Information System," and "Data Handling Equipment, except Computers," were established in Rev. Proc. 73-2 as asset guideline classes 70.11, 70.12, and 70.13, respectively. These classes have been redesignated asset guideline classes 00.11, 00.12, and 00.13, respectively. In addition, the asset guideline class for Industrial Steam and Electric Generation and Distribution Systems, designated asset guideline class 49.5, has been redesignated asset guideline class 00.4. The redesignations group these asset guideline classes with certain other asset guideline classes by types of depreciable assets rather than by the activity or the product of an activity.

.04 Numerous changes and modifications have been made to the language of the asset guideline class descriptions. These changes are not intended to modify the composition of the existing classes of Rev. Proc. 72-10.

.05 The following substantive modifications of the classes of Rev. Proc. 72-10 have been made:

(i) Assets used in the ginning of cotton have been reclassified from class 39.0 to class 01.1.

(ii) Assets used by plumbing contractors have been reclassified from class 70.2 to class 15.1.

(iii) The description of assets included in class 15.2, "Marine Contract Construction," has been modified to be consistent with Rev. Proc. 66-18, 1966-1 C.B. 646.

(iv) Subclass 49.121, "Electric Utility Nuclear Fuel Assemblies," is part of class 49.12, "Electric Utility Nuclear Production Plant," to which it is related. Assets included in subclass 49.121 are not separately subject to possible exclusion from an election to apply section 1.167(a)-11(b)(5)(v) of the regulations. See Section 2.02(i) of this Revenue Procedure.

SEC. 2. RULE OF APPLICATION

.01 The asset guideline classes, asset guideline periods and ranges, and annual asset guideline repair allowances percentages set forth are for use under the rules set forth in section 1.167(a)-11 of the Income Tax Regulations.

.02 It should be noted that the following special rules apply as specified:

(i) It is expressly provided that asset guideline classes and subclasses 00.4, 20.5, 30.11, 30.21, 32.11, 33.11, 33.21, 34.01, 35.11, 35.21, 36.11, 37.12, 37.32, 37.33, and 49.121 are part of existing activity classes to which the assets included in them relate as stated in the Revenue Procedures establishing these subclasses; therefore, assets included in these classes and subclasses are not separately subject to possible exclusion from an election to apply section 1.167(a)-11(b)(5)(v) of the regulations.

(ii) "Service assets," as defined in classes 50.1 and 70.21, the cost of which is properly deductible under section 162 of the Code, are not eligible property under the CLADR system. Further, service assets may be treated as mass assets as defined in section 1.47-1(e)(4) of the regulations. Service assets may be depreciated under a method not described in section 167(b)(1), (2), or (3), if the requirements of section 1.167(a)-11(b)(5)(v) are met.

(iii) If the asset guideline class repair allowance for class 32.1 is elected in accordance with section 1.167(a)-11(d)(2)(ii) of the regulations, "cold tank repairs," including refractory relining expenditures to glass furnaces, shall be treated as deductible repairs within the provisions and limitations of section 1.167(a)-11(d)(2)(iv)(a) dealing with the application of the asset guideline class repair allowance.

(iv) General rebuilding or rehabilitation costs for the special tools defined in class 30.11 that have been traditionally capitalized as the cost of a new asset are included in class 30.11.

(v) Asset guideline class 00.3, "Land Improvements," includes "other tangible property" that qualifies under section 1.48-1(d) of the regulations. However, a structure that is essentially an item of machinery or equipment or a structure that houses property used as an integral part of an activity specified in section 48(a)(1)(B)(i) of the Code, if the use of the structure is so closely related to the use of the property that the structure clearly can be expected to be replaced when the property it initially houses is replaced, is included in the asset guideline class appropriate to the equipment to which it is related.

.03 Property that is used predominantly outside the United States may be eligible property if the requirements of section 1.167(a)-11(b)(2) of the regulations are met. In the case of property first placed in service and used predominantly outside the United States during the taxable year of election, an asset guideline period, but no asset depreciation range is in effect. Accordingly, such property shall not be treated as included in the same asset guideline class as property used predominantly inside the United States, for purposes of determining the asset depreciation period under section 1.167(a)-11(b)(4). Thus, for this purpose each asset guideline class described in this Revenue Procedure has an exact counterpart that consists of property otherwise includable within the class, but used predominantly outside the United States during the taxable year of election. Generally, for this purpose property is used predominantly outside the United States if such property is physically located outside the United States during more than 50 percent of days of the taxable year of election, beginning with the date the property is first placed in service. However, there are ten exceptions to this general rule and these are contained in section 48(a)(2) of the Code. The asset depreciation period for property, which is determined in the taxable year of election, will not be changed because of a change in predominant use after the close of such taxable year. Although treated as in a separate class for purposes of determining the asset depreciation period, property predominantly used outside the United States shall be included in the same asset guideline class as property predominantly used inside the United States for purposes of applying the asset guideline class repair allowance under section 1.167(a)-11(d)(2).

SEC. 3. ASSET GUIDELINE CLASSES AND PERIODS, ASSET DEPRECIATION RANGES, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGES.

The asset guideline classes, asset guideline periods, asset depreciation ranges, and annual asset guideline repair allowance percentages are prescribed as set forth below:

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
SPECIFIC DEPRECIABLE ASSETS USED IN ALL BUSINESS ACTIVITIES, EXCEPT AS NOTED:					
00.11	Office Furniture, Fixtures, and Equipment: Includes furniture and fixtures which are not a structural component of a building. Includes such assets as desks, files, safes, and communications equipment. Does not include communications equipment that is included in other CLADR classes	8	10	12	2
00.12	Information Systems: Includes computers and their peripheral equipment used in administering normal business transactions and the maintenance of business records, their retrieval and analysis. Information systems are defined as: 1) Computers: A computer is an electronically activated device capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention. It usually consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities. Excluded from this category are adding machines, electronic desk calculators, etc. 2) Peripheral equipment consists of the auxiliary machines which may be placed under control of the central processing unit. Non limiting examples are: Card readers, card punches, magnetic tape feeds, high speed printers, optical character readers, tape cassettes, mass storage units, paper tape equipment, keypunches, data entry devices, teleprinters, terminals, tape drives, disc drives, disc files, disc packs, visual image projector tubes, card sorters, plotters, and collators. Peripheral equipment may be used on-line or off-line. Does not include equipment that is an integral part of other capital equipment and which is included in other CLADR classes of economic activity, i.e., computers used primarily for process or production control, switching and channeling	5	6	7	7.5
00.13	Data Handling Equipment, except Computers: Includes only typewriters, calculators, adding and accounting machines, copiers, and duplicating equipment	5	6	7	15
00.21	Airplanes (airframes and engines), except those used in commercial or contract carrying of passengers or freight, and all helicopters (airframes and engines)	5	6	7	14
00.22	Automobiles, Taxis	2.5	3	3.5	16.5
00.23	Buses	7	9	11	11.5
00.241	Light General Purpose Trucks: Includes trucks for use over the road (actual unloaded weight less than 13,000 pounds)	3	4	5	16.5
00.242	Heavy General Purpose Trucks: Includes heavy general purpose trucks, concrete ready-mix truckers, and ore trucks, for use over the road (actual unloaded weight 13,000 pounds or more)	5	6	7	10

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
00.25	**Railroad Cars and Locomotives, except those owned by railroad transportation companies**	12	15	18	8
00.26	**Tractor Units For Use Over-The-Road**	3	4	5	16.5
00.27	**Trailers and Trailer-Mounted Containers**	5	6	7	10
00.28	**Vessels, Barges, Tugs, and Similar Water Transportation Equipment, except those used in marine contract construction**	14.5	18	21.5	6
00.3	**Land Improvements:** Includes improvements directly to or added to land, whether such improvements are section 1245 property or section 1250 property, provided such improvements are depreciable. Examples of such assets might include sidewalks, roads, canals, waterways, drainage facilities, sewers, wharves and docks, bridges, fences, landscaping, shrubbery, or radio and television transmitting towers. Does not include land improvements that are explicitly included in any other class, and buildings and structural components as defined in section 1.48-1(e) of the regulations. Excludes public utility initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102.		20		
00.4	**Industrial Steam and Electric Generation and/or Distribution Systems:** Includes assets, whether such assets are section 1245 property or 1250 property, providing such assets are depreciable, used in the production and/or distribution of electricity with rated total capacity in excess of 500 Kilowatts and/or assets used in the production and/or distribution of steam with rated total capacity in excess of 12,500 pounds per hour, for use by the taxpayer in his industrial manufacturing process or plant activity and not ordinarily available for sale to others. Does not include buildings and structural components as defined in section 1.48-1(e) of the regulations. Assets used to generate and/or distribute electricity or steam of the type described above of lesser rated capacity are not included, but are included in the appropriate manufacturing equipment classes elsewhere specified. Steam and chemical recovery boiler systems used for the recovery and regeneration of chemicals used in manufacturing, with rated capacity in excess of that described above, with specifically related distribution and return systems are not included but are included in appropriate manufacturing equipment classes elsewhere specified. An example of an excluded steam and recovery boiler system is that used in the pulp and paper manufacturing industry	22.5	28	33.5	2.5
	DEPRECIABLE ASSETS USED IN THE FOLLOWING ACTIVITIES:				
01.1	**Agriculture:** Includes machinery and equipment, grain bins, and fences but no other land improvements, that are used in the production of crops or plants, vines, and trees; livestock; the operation of farm dairies, nurseries, greenhouses, sod farms, mushroom cellars, cranberry bogs, apiaries, and fur farms; the performance of agricultural, animal husbandry, and horticultural services	8	10	12	11
01.11	**Cotton Ginning Assets**	9.5	12	14.5	5.5

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
01.21	Cattle, Breeding or Dairy	5.5	7	8.5	
01.22	Horses, Breeding or Work	8	10	12	
01.23	Hogs, Breeding	2.5	3	3.5	
01.24	Sheep and Goats, Breeding	4	5	6	
01.3	Farm Buildings	20	25	30	5
10.0	Mining: Includes assets used in the mining and quarrying of metallic and nonmetallic minerals (including sand, gravel, stone, and clay) and the milling, beneficiation and other primary preparation of such materials	8	10	12	6.5
13.1	Drilling of Oil and Gas Wells: Includes assets used in the drilling of onshore oil and gas wells and the provisions of geophysical and other exploration services; and the provision of such oil and gas field services as chemical treatment, plugging and abandoning of wells and cementing or perforating well casings. Does not include assets used in the performance of any of these activities and services by integrated petroleum and natural gas producers for their own account	5	6	7	10
13.2	Exploration for and Production of Petroleum and Natural Gas Deposits: Includes assets used by petroleum and natural gas producers for drilling of wells and production of petroleum and natural gas, including gathering pipelines and related storage facilities	11	14	17	4.5
13.3	Petroleum Refining: Includes assets used for the distillation, fractionation, and catalytic cracking of crude petroleum into gasoline and its other components	13	16	19	7
13.4	Marketing of Petroleum and Petroleum Products: Includes assets used in marketing petroleum and petroleum products, such as related storage facilities and complete service stations, but not including any of these facilities related to petroleum and natural gas trunk pipelines	13	16	19	4
15.1	Contract Construction Other than Marine: Includes assets used by general building, special trade, and heavy construction contractors. Does not include assets used by companies in performing construction services for their own account	4	5	6	12.5
15.2	Marine Contract Construction: Includes assets used by general building, special trade, and heavy construction contractors predominantly in marine construction work. Does not include assets used by companies in performing marine construction services for their own account except for floating, self-propelled, and other drilling platforms and support vessels used in offshore drilling for oil and gas which are included whether used for their own account or others	9.5	12	14.5	5
20.1	Manufacture of Grain and Grain Mill Products: Includes assets used in the production of flours, cereals, livestock feeds, and other grain and grain mill products	13.5	17	20.5	6

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
20.2	**Manufacture of Sugar and Sugar Products:** Includes assets used in the production of raw sugar, syrup, or finished sugar from sugar cane or sugar beets	14.5	18	21.5	4.5
20.3	**Manufacture of Vegetable Oils and Vegetable Oil Products:** Includes assets used in the production of oil from vegetable materials and the manufacture of related vegetable oil products	14.5	18	21.5	3.5
20.4	**Manufacture of Other Food and Kindred Products:** Includes assets used in the production of foods and beverages not included in classes 20.1, 20.2 and 20.3	9.5	12	14.5	5.5
20.5	**Manufacture of Food and Beverages-Special Handling Devices:** Includes assets defined as specialized materials handling devices such as returnable pallets, palletized containers, and fish processing equipment including boxes, baskets, carts, and flaking trays used in activities as defined in classes 20.1, 20.2, 20.3, 20.4. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	3	4	5	20
21.0	**Manufacture of Tobacco and Tobacco Products:** Includes assets used in the production of cigarettes, cigars, smoking and chewing tobacco, snuff, and other tobacco products	12	15	18	5
22.1	**Manufacture of Knitted Goods:** Includes assets used in the production of knitted and netted fabrics and lace. Assets used in yarn preparation, bleaching, dyeing, printing, and other similar finishing processes, texturing, and packaging, are elsewhere classified	6	7.5	9	7
22.2	**Manufacture of Yarn, Thread, and Woven Fabric:** Includes assets used in the production of spun yarns including the preparing, blending, spinning, and twisting of fibers into yarns and threads, the preparation of yarns such as twisting, warping, and winding, the production of covered elastic yarn and thread, cordage, woven fabric, tire fabric, braided fabric, twisted jute for packing, mattresses, pads, sheets, and industrial belts, and the processing of textile mill waste to recover fibers, flocks, and shoddies. Assets used to manufacture carpets, man-made fibers, and nonwovens, and assets used in texturing, bleaching, dyeing, printing, and other similar finishing processes, are elsewhere classified	9	11	13	16
22.3	**Manufacture of Carpets, and Dyeing, Finishing, and Packaging of Textile Products:** Includes assets used in the production of carpets, rugs, mats, woven carpet backing, chenille, and other tufted products, and assets used in the joining together of backing with carpet yarn or fabric. Includes assets used in washing, scouring, bleaching, dyeing, printing, drying, and similar finishing processes applied to textile fabrics, yarns, threads, and other textile goods. Includes assets used in the production and packaging of textile products, other than apparel, by creasing, forming, trimming, cutting, and sewing, such as the preparation of carpet and fabric samples, or similar joining together processes (other than the				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	production of scrim reinforced paper products and laminated paper products) such as the sewing and folding of hosiery and panty hose, the creasing, folding, trimming, and cutting of fabrics to produce nonwoven products, such as disposable diapers and sanitary products. Assets used in the manufacture of nonwoven carpet backing, and hard surface floor covering such as tile, rubber, and cork, are elsewhere classified	7	9	11	15
22.4	Manufacture of Textured Yarns: Includes assets used in the processing of yarns to impart bulk and/or stretch properties to the yarn. The principal machines involved are falsetwist, draw, beam-to-beam, and stuffer box texturing equipment and related high-speed twisters and winders. Assets, as described above, which are used to further process man-made fibers are elsewhere classified when located in the same plant in an integrated operation with man-made fiber producing assets. Assets used to manufacture man-made fibers and assets used in bleaching, dyeing, printing, and other similar finishing processes, are elsewhere classified	6.5	8	9.5	7
22.5	Manufacture of Nonwoven Fabrics: Includes assets used in the production of nonwoven fabrics, felt goods including felt hats, padding, batting, wadding, oakum, and fillings, from new materials and from textile mill waste. Nonwoven fabrics are defined as fabrics (other than reinforced and laminated composites consisting of nonwovens and other products) manufactured by bonding natural and/or synthetic fibers and/or filaments by means of induced mechanical interlocking, fluid entanglement, chemical adhesion, thermal or solvent reaction, or by combination thereof other than natural hydration bonding as occurs with natural cellulose fibers. Such means include resin bonding, web bonding, and melt bonding. Specifically includes assets used to make flocked and needle punched products other than carpets and rugs. Assets, as described above, which are used to manufacture nonwovens are elsewhere classified when located in the same plant in an integrated operation with man-made fiber producing assets. Assets used to manufacture man-made fibers and assets used in bleaching, dyeing, printing, and other similar finishing processes, are elsewhere classified	8	10	12	15
23.0	Manufacture of Apparel and Other Finished Products: Includes assets used in the production of clothing and fabricated textile products by the cutting and sewing of woven fabrics, other textile products, and furs; but does not include assets used in the manufacture of apparel from rubber and leather	7	9	11	7
24.1	Cutting of Timber: Includes logging machinery and equipment and roadbuilding equipment used by logging and sawmill operators and pulp manufacturers for their own account	5	6	7	10
24.2	Sawing of Dimensional Stock from Logs: Includes machinery and equipment installed in permanent or well-established sawmills	8	10	12	6.5

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
24.3	**Sawing of Dimensional Stock from Logs:** Includes machinery and equipment installed in sawmills characterized by temporary foundations and a lack, or minimum amount, of lumber-handling, drying, and residue disposal equipment and facilities	5	6	7	10
24.4	**Manufacture of Wood Products, and Furniture:** Includes assets used in the production of plywood, hardboard, flooring, veneers, furniture, and other wood products, including the treatment of poles and timber	8	10	12	6.5
26.1	**Manufacture of Pulp and Paper:** Includes assets for pulp materials handling and storage, pulp mill processing, bleach processing, paper and paperboard manufacturing, and on-line finishing. Includes pollution control assets and all land improvements associated with the factory site or production process such as effluent ponds and canals, provided such improvements are depreciable but does not include buildings and structural components as defined in section 1.48-1(e)(1) of the regulations. Includes steam and chemical recovery boiler systems, with any rated capacity, used for the recovery and regeneration of chemicals used in manufacturing. Does not include assets used either in pulpwood logging, or in the manufacture of hardboard	10.5	13	15.5	10
26.2	**Manufacture of Converted Paper, Paperboard, and Pulp Products:** Includes assets used for modification, or remanufacture of paper and pulp into converted products, such as paper coated off the paper machine, paper bags, paper boxes, cartons and envelopes. Does not include assets used for manufacture of non-wovens that are elsewhere classified	8	10	12	15
27.0	**Printing, Publishing, and Allied Industries:** Includes assets used in printing by one or more processes, such as letterpress, lithography, gravure, or screen; the performance of services for the printing trade, such as book-binding, typesetting, engraving, photoengraving, and electrotyping; and the publication of newspapers, books, and periodicals	9	11	13	5.5
28.0	**Manufacture of Chemicals and Allied Products:** Includes assets used in the manufacture of basic chemicals such as acids, alkalies, salts, and organic and inorganic chemicals; chemical products to be used in further manufacture, such as synthetic fibers and plastics materials, including petrochemical processing beyond that which is ordinarily a part of petroleum refining; and finished chemical products, such as pharmaceuticals, cosmetics, soaps, fertilizers, paints and varnishes, explosives, and compressed and liquified gases. Does not include assets used in the manufacture of finished rubber and plastic products or in the production of natural gas products, butane, propane, and byproducts of natural gas production plants	9	11	13	5.5
30.1	**Manufacture of Rubber Products:** Includes assets used for the production of products from natural, synthetic, or reclaimed rubber, gutta percha, balata, or gütta siak, such as tires, tubes, rubber footwear, mechanical rubber goods, heels and soles,				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	flooring, and rubber sundries; and in the recapping, retreading, and rebuilding of tires	11	14	17	5
30.11	Manufacture of Rubber Products—Special Tools and Devices: Includes assets defined as special tools, such as jigs, dies, mandrels, molds, lasts, patterns, specialty containers, pallets, shells, and tire molds, and accessory parts such as rings and insert plates used in activities as defined in class 30.1. Does not include tire building drums and accessory parts and general purpose small tools such as wrenches and drills, both power and hand-driven, and other general purpose equipment such as conveyors and transfer equipment	3	4	5	
30.2	Manufacture of Finished Plastic Products: Includes assets used in the manufacture of plastics products and the molding of primary plastics for the trade. Does not include assets used in the manufacture of basic plastics materials nor the manufacture of phonograph records	9	11	13	5.5
30.21	Manufacture of Finished Plastic Products—Special Tools: Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 30.2. Special tools are specifically designed for the production or processing of particular parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools, such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	3	3.5	4	5.5
31.0	Manufacture of Leather and Leather Products: Includes assets used in the tanning, currying, and finishing of hides and skins; the processing of fur pelts; and the manufacture of finished leather products, such as footwear, belting, apparel, and luggage	9	11	13	5.5
32.1	Manufacture of Glass Products: Includes assets used in the production of flat, blown, or pressed products of glass, such as float and window glass, glass containers, glassware and fiberglass. Does not include assets used in the manufacture of lenses	11	14	17	12
32.11	Manufacture of Glass Products—Special Tools: Includes assets defined as special tools such as molds, patterns, pallets, and specialty transfer and shipping devices such as steel racks to transport automotive glass, used in activities as defined in class 32.1. Special tools are specifically designed for the production or processing of particular parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	2	2.5	3	10

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
32.2	**Manufacture of Cement:** Includes assets used in the production of cement, but does not include any assets used in the manufacture of concrete and concrete products nor in any mining or extraction process	16	20	24	3
32.3	**Manufacture of Other Stone and Clay Products:** Includes assets used in the manufacture of products from materials in the form of clay and stone, such as brick, tile, and pipe; pottery and related products, such as vitreous-china, plumbing fixtures, earthenware and ceramic insulating materials; and also includes assets used in manufacture of concrete and concrete products. Does not include assets used in any mining or extraction processes	12	15	18	4.5
33.1	**Manufacture of Primary Ferrous Metals:** Includes assets used in the smelting and refining of ferrous metals from ore, pig, or scrap, the rolling, drawing, and alloying of ferrous metals; the manufacture of castings, forgings, and other basic products of ferrous metals; and the manufacture of nails, spikes, structural shapes, tubing, wire, and cable	14.5	18	21.5	8
33.11	**Manufacture of Primary Ferrous Metals—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities as defined in class 33.1, manufacture of Primary Ferrous Metals. Special tools are specifically designed for the production or processing of particular products or parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices. Rolls, mandrels, and refractories are not included in class 33.11 but are included in class 33.1	5	6.5	8	4
33.2	**Manufacture of Primary Nonferrous Metals:** Includes assets used in the smelting, refining, and electrolysis of nonferrous metals from ore, pig, or scrap, the rolling, drawing, and alloying of nonferrous metals; the manufacture of castings, forgings, and other basic products of nonferrous metals; and the manufacture of nails, spikes, structural shapes, tubing, wire, and cable	11	14	17	4.5
33.21	**Manufacture of Primary Nonferrous Metals—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities as defined in class 33.2, Manufacture of Primary Nonferrous Metals. Special tools are specifically designed for the production or processing of particular products or parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven,				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices. Rolls, mandrels, and refractories are not included in class 33.21 but are included in class 33.2	5	6.5	8	4
34.0	Manufacture of Fabricated Metal Products: Includes assets used in the production of metal cans, tinware, nonelectric heating apparatus, fabricated structural metal products, metal stampings, and other ferrous and nonferrous metal and wire products not elsewhere classified	9.5	12	14.5	6
34.01	Manufacture of Fabricated Metal Products—Special Tools: Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and returnable containers and drawings concerning such special tools used in the activities as defined in class 34.0. Special tools are specifically designed for the production or processing of particular machine components, products, or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	2.5	3	3.5	3.5
35.1	Manufacture of Metalworking Machinery: Includes assets used in the production of metal cutting and forming machines, special dies, tools, jigs, and fixtures, and machine tool accessories	9.5	12	14.5	5.5
35.11	Manufacture of Metalworking Machinery—Special Tools: Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 35.1. Special tools are specifically designed for the production or processing of particular machine components and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	5	6	7	12.5
35.2	Manufacture of Other Machines: Includes assets used in the production of such machinery as engines and turbines; farm machinery, construction, and mining machinery; general and special industrial machines including office machines and nonelectronic computing equipment; miscellaneous machines except electrical equipment and transportation equipment	9.5	12	14.5	5.5
35.21	Manufacture of Other Machines—Special Tools: Includes assets defined as special tools, such as jigs. dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 35.2. Special tools are specifically designed for the production or processing of particular machine components and				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	5	6.5	8	12.5
36.1	**Manufacture of Electrical Equipment:** Includes assets used in the production of machinery, apparatus, and supplies for the generation, storage, transmission, transformation, and utilization of electrical energy such as; electric test and distributing equipment, electrical industrial apparatus, household appliances, electric lighting and wiring equipment; electronic components and accessories, phonograph records, storage batteries and ignition systems	9.5	12	14.5	5.5
36.11	**Manufacture of Electrical Equipment Special Tools:** Includes assets defined as special tools such as jigs, dies, molds, patterns, fixtures, gauges, returnable containers, and specialty transfer devices used in activities as defined in class 36.1. Special tools are specifically designed for the production or processing of particular machine components, products or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	4	5	6	
36.2	**Manufacture of Electronic Products:** Includes assets used in the production of electronic detection, guidance, control, radiation, computation, test, and navigation equipment or the components thereof including airborne application. Also includes assets used in the manufacture of electronic airborne communication equipment or the components thereof. Does not include the assets of manufacturers engaged only in the purchase and assembly of components	6.5	8	9.5	7.5
37.11	**Manufacture of Motor Vehicles:** Includes assets used in the manufacture and assembly of finished automobiles, trucks, trailers, motor homes, and buses. Does not include assets used in mining, printing and publishing, production of primary metals, electricity, or steam, or the manufacture of glass, industrial chemicals, batteries, or rubber products, which are classified elsewhere. Includes assets used in manufacturing activities elsewhere classified other than those excluded above, where such activities are incidental to and an integral part of the manufacture and assembly of finished motor vehicles such as the manufacture of parts and subassemblies of fabricated metal products, electrical equipment, textiles, plastics, leather, and foundry and forging operations. Does not include any assets not classified in manufacturing activity classes, e.g., does not include assets classified in asset guideline classes 00.11 through 00.4. Activities will be considered incidental to the manufacture and assembly of finished				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	motor vehicles only if 75 percent or more of the value of the products produced under one roof are used for the manufacture and assembly of finished motor vehicles. Parts that are produced as a normal replacement stock complement in connection with the manufacture and assembly of finished motor vehicles are considered used for the manufacture and assembly of finished motor vehicles. Does not include assets used in the manufacture of component parts if these assets are used by taxpayer not engaged in the assembly of finished motor vehicles	9.5	12	14.5	9.5
37.12	**Manufacture of Motor Vehicles—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, owned by manufacturers of finished motor vehicles and used in qualified activities as defined in class 37.11. Special tools are specifically designed for the production or processing of particular motor vehicle components and have no significant utilitarian value, and cannot be adapted to further or different use, after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	2.5	3	3.5	12.5
37.2	**Manufacture of Aerospace Products:** Includes assets used in the manufacture and assembly of airborne vehicles and their component parts including hydraulic, pneumatic, electrical, and mechanical systems. Does not include assets used in the production of electronic airborne detection, guidance, control, radiation, computation, test, navigation, and communication equipment or the components thereof	8	10	12	7.5
37.31	**Ship and Boat Building Machinery and Equipment:** Includes assets used in the manufacture and repair of ships, boats, caissons, marine drilling rigs, and special fabrications not included in asset guideline classes 37.32 and 37.33. Specifically includes all manufacturing and repairing machinery and equipment, including machinery and equipment used in the operation of assets included in asset guideline class 37.32. Excludes buildings and their structural components	9.5	12	14.5	8.5
37.32	**Ship and Boat Building Dry Docks and Land Improvements:** Includes assets used in the manufacture and repair of ships, boats, caissons, marine drilling rigs, and special fabrications not included in asset guideline classes 37.31 and 37.33. Specifically includes floating and fixed dry docks, ship basins, graving docks, shipways, piers, and all other land improvements such as water, sewer, and electric systems. Excludes buildings and their structural components	[c]13	16	19	2.5
37.33	**Ship and Boat Building—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities defined in classes 37.31 and 37.32. Special tools are specifically designed for the production or processing of particular machine com-				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	ponents, products, or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	5	6.5	8	0.5
37.41	**Manufacture of Locomotives:** Includes assets used in building or rebuilding railroad locomotives (including mining and industrial locomotives). Does not include assets of railroad transportation companies or assets of companies which manufacture components of locomotives but do not manufacture finished locomotives	9	11.5	14	7.5
37.42	**Manufacture of Railroad Cars:** Includes assets used in building or rebuilding railroad freight or passenger cars (including rail transit cars). Does not include assets of railroad transportation companies or assets of companies which manufacture components of railroad cars but do not manufacture finished railroad cars	9.5	12	14.5	5.5
38.0	**Manufacture of Professional, Scientific, and Controlling Instruments:** Includes assets used in the manufacture of mechanical measuring, engineering, laboratory and scientific research instruments, optical instruments and lenses; surgical, medical, and dental instruments, equipment and supplies; ophthalmic goods, photographic equipment and supplies; and watches and clocks	9.5	12	14.5	5.5
39.0	**Manufacture of Athletic, Jewelry and Other Goods:** Includes assets used in the production of jewelry; musical instruments; toys and sporting goods; motion picture and television films and tapes; and pens, pencils, office and art supplies, brooms, brushes, caskets, etc.	9.5	12	14.5	5.5
	Railroad Transportation: Classes with the prefix 40 include the assets identified below that are used in the commercial and contract carrying of passengers and freight by rail. Assets of electrified railroads will be classified in a manner corresponding to that set forth below for railroads not independently operated as electric lines. Excludes the assets included in classes with the prefix beginning 00.1 and 00.2 above, and also excludes any nondepreciable assets included in Interstate Commerce Commission accounts enumerated for this class.				
40.1	**Railroad Machinery and Equipment:** Includes assets classified in the following Interstate Commerce Commission accounts: Roadway Accounts: (16) Station and office buildings (freight handling machinery and equipment only) (25) TOFC/COFC terminals (freight handling machinery and equipment only)				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	(26) Communication systems (27) Signals and interlockers (37) Roadway machines (44) Shop machinery Equipment Accounts: (52) Locomotives (53) Freight train cars (54) Passenger train cars (57) Work equipment	11	14	17	10.5
40.2	**Railroad Structures and Similar Improvements:** Includes assets classified in the following Interstate Commerce Commission road accounts: (6) Bridges, trestles, and culverts (7) Elevated structures (13) Fences, snowsheds, and signs (16) Station and office buildings (stations and other operating structures only) (17) Roadway buildings (18) Water stations (19) Fuel stations (20) Shops and enginehouses (25) TOFC/COFC terminals (operating structures only) (31) Power transmission systems (35) Miscellaneous structures (39) Public improvements construction	24	30	36	5
40.3	**Railroad Wharves and Docks** Includes assets classified in the following Interstate Commerce accounts: (23) Wharves and docks (24) Coal and ore wharves	16	20	24	5.5
40.51	**Railroad Hydraulic Electric Generating Equipment**	40	50	60	1.5
40.52	**Railroad Nuclear Electric Generating Equipment**	16	20	24	3
40.53	**Railroad Steam Electric Generating Equipment**	22.5	28	33.5	2.5
40.54	**Railroad Steam, Compressed Air, and Other Power Plant Equipment**	22.5	28	33.5	7.5
41.0	**Motor Transport-Passengers:** Includes assets used in the urban and interurban commercial and contract carrying of passengers by road, except the transportation assets included in classes with the prefix 00.2	6.5	8	9.5	11.5
42.0	**Motor Transport-Freight:** Includes assets used in the commercial and contract carrying of freight by road, except the transportation assets included in classes with the prefix 00.2	6.5	8	9.5	11
44.0	**Water Transportation:** Includes assets used in the commercial and contract carrying of freight and passengers by water except the transportation assets included in classes with the prefix 00.2. Includes all related land improvements	16	20	24	8

Asset guideline class	Description of assets included.	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
45.0	**Air Transport:** Includes assets (except helicopters) used in commercial and contract carrying of passengers and freight by air. For purposes of section 1.167(a)-11(d)(2)(iv)(*a*) of the regulations, expenditures for "repair, maintenance, rehabilitation, or improvement" shall consist of direct maintenance expenses (irrespective of airworthiness provisions or charges) as defined by Civil Aeronautics Board uniform accounts 5200, maintenance burden (exclusive of expenses pertaining to maintenance buildings and improvements) as defined by Civil Aeronautics Board uniform accounts 5300, and expenditures which are not "excluded additions" as defined by section 1.167(a)-11(d)(2)(vi) of the regulations and which would be charged to property and equipment accounts in the Civil Aeronautics Board uniform system of accounts	9.5	12	14.5	15
45.1	**Air Transport (restricted)** Includes each asset described in the description of class 45.0 which was held by the taxpayer on April 15, 1976, or is acquired by the taxpayer pursuant to a contract which was, on April 15, 1976, and at all times thereafter, binding on the taxpayer. This criterion of classification based on binding contract concept is to be applied in the same manner as under the general rules expressed in section 49(b)(1), (4), (5), and (8) of the Code	5	6	7	15
46.0	**Pipeline Transportation:** Includes assets used in the private, commercial, and contract carrying of petroleum, gas, and other products by means of pipes and conveyors. The trunk lines and related storage facilities of integrated petroleum and natural gas producers are included in this class. Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102, but includes all other related land improvements	17.5	22	26.5	3
	Telephone Communications: Includes the assets identified below and that are used in the provision of commercial and contract telephonic services such as:				
48.11	**Telephone Central Office Buildings:** Includes assets intended to house central office equipment, as defined in Federal Communications Commission Part 31 Account No. 212 whether section 1245 or section 1250 property	36	45	54	1.5
48.12	**Telephone Central Office Equipment:** Includes central office switching and related equipment as defined in Federal Communications Commission Part 31 Account No. 221	16	20	24	6
48.13	**Telephone Station Equipment:** Includes such station apparatus and connections as teletypewriters, telephones, booths, private exchanges, and comparable equipment as defined in Federal Communications Commission Part 31 Account Nos. 231, 232, and 234	8	10	12	10
48.14	**Telephone Distribution Plant:** Includes such assets as pole lines, cable, aerial wire, underground con-				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	duits, and comparable equipment, and related land improvements as defined in Federal Communications Commission Part 31 Account Nos. 241, 242.1, 242.2, 242.3, 242.4, 243, and 244	28	35	42	2
48.2	**Radio and Television Broadcastings:** Includes assets used in radio and television broadcasting, except transmitting towers	5	6	7	10
	Telegraph, Ocean Cable, and Satellite Communications (TOCSC) Includes communications-related assets used to provide domestic and international radio-telegraph, wire-telegraph, ocean-cable, and satellite communications services; also includes related land improvements.				
48.31	**TOCSC-Electric Power Generating and Distribution Systems:** Includes assets used in the provision of electric power by generation, modulation, rectification, channelization, control, and distribution. Does not include these assets when they are installed on customer's premises	15	19	23	
48.32	**TOCSC-High Frequency Radio and Microwave Systems:** Includes assets such as transmitters and receivers, antenna supporting structures, antennas, transmission lines from equipment to antenna, transmitter cooling systems, and control and amplification equipment. Does not include cable and long-line systems	10.5	13	15.5	
48.33	**TOCSC-Cable and Long-line Systems:** Includes assets such as transmission lines, pole lines, ocean cables, buried cable and conduit, repeaters, repeater stations, and other related assets. Does not include high frequency radio or microwave systems	21	26.5	32	
48.34	**TOCSC-Central Office Control Equipment:** Includes assets for general control, switching, and monitoring of communications signals including electromechanical switching and channeling apparatus, multiplexing equipment, patching and monitoring facilities, in-house cabling, teleprinter equipment, and associated site improvements	13	16.5	20	
48.35	**TOCSC-Computerized Switching, Channeling, and Associated Control Equipment:** Includes central office switching computers, interfacing computers, other associated specialized control equipment, and site improvements	8.5	10.5	12.5	
48.36	**TOCSC-Satellite Ground Segment Property:** Includes assets such as fixed earth station equipment, antennas, satellite communications equipment, and interface equipment used in satellite communications. Does not include general purpose equipment or equipment used in satellite space segment property	8	10	12	
48.37	**TOCSC-Satellite Space Segment Property:** Includes satellites and equipment used for telemetry, tracking, control, and monitoring when used in satellite communications	6.5	8	9.5	

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
48.38	**TOCSC-Equipment Installed on Customer's Premises:** Includes assets installed on customer's premises, such as computers, terminal equipment, power generation and distribution systems, private switching center, teleprinters, facsimile equipment, and other associated and related equipment	8	10	12	
48.39	**TOCSC-Support and Service Equipment:** Includes assets used to support but not engage in communications. Includes store, warehouse, and shop tools, and test and laboratory assets	11	13.5	16	
	Cable Television (CATV): Includes communications-related assets used to provide cable television (community antenna television services). Does not include assets used to provide subscribers with two-way communications services.				
48.41	**CATV-Headend:** Includes assets such as towers, antennas, preamplifiers, converters, modulation equipment, and program non-duplication systems. Does not include headend buildings and program origination assets	9	11	13	5
48.42	**CATV-Subscriber Connection and Distribution Systems:** Includes assets such as trunk and feeder cable, connecting hardware, amplifiers, power equipment, passive devices, directional taps, pedestals, pressure taps, drop cables, matching transformers, multiple set connector equipment, and converters	8	10	12	5
48.43	**CATV-Program Origination:** Includes assets such as cameras, film chains, video tape recorders, lighting, and remote location equipment excluding vehicles. Does not include buildings and their structural components	7	9	11	9
48.44	**CATV-Service and Test:** Includes assets such as oscilloscopes, field strength meters, spectrum analyzers, and cable testing equipment, but does not include vehicles	7	8.5	10	2.5
48.45	**CATV-Microwave Systems:** Includes assets such as towers, antennas, transmitting and receiving equipment, and broad band microwave assets if used in the provision of cable television services. Does not include assets used in the provision of common carrier services	7.5	9.5	11.5	2
	Electric, Gas, Water and Steam, Utility Services: Includes assets used in the production, transmission and distribution of electricity, gas, steam, or water for sale, including related land improvements.				
49.11	**Electric Utility Hydraulic Production Plant:** Includes assets used in the hydraulic power production of electricity for sale, including related land improvements, such as dams, flumes, canals, and waterways	40	50	60	1.5
49.12	**Electric Utility Nuclear Production Plant:** Includes assets used in the nuclear power production of electricity for sale and related land improvements. Does not include nuclear fuel assemblies	16	20	24	3

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
49.121	**Electric Utility Nuclear Fuel Assemblies:** Includes initial core and replacement core nuclear fuel assemblies (i.e. the composite of fabricated nuclear fuel and container) when used in a boiling water, pressurized water, or high temperature gas reactor used in the production of electricity. Does not include nuclear fuel assemblies used in breeder reactors	4	5	6	
49.13	**Electric Utility Steam Production Plant:** Includes assets used in the steam power production of electricity for sale, combustion turbines operated in a combined cycle with a conventional steam unit and related land improvements	22.5	28	33.5	5
49.14	**Electric Utility Transmission and Distribution Plant:** Includes assets used in the transmission and distribution of electricity for sale and related land improvements. Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102	24	30	36	4.5
49.15	**Electric Utility Combustion Turbine Production Plant:** Includes assets used in the production of electricity for sale by the use of such prime movers as jet engines, combustion turbines, diesel engines, gasoline engines, and other internal combustion engines, their associated power turbines and/or generators, and related land improvements. Does not include combustion turbines operated in a combined cycle with a conventional steam unit	16	20	24	4
49.21	**Gas Utility Distribution Facilities:** Including gas water heaters and gas conversion equipment installed by utility on customers' premises on a rental basis	28	35	42	2
49.221	**Gas Utility Manufactured Gas Production Plants:** Includes assets used in the manufacture of gas having chemical and/or physical properties which do not permit complete interchangeability with domestic natural gas	24	30	36	2
49.222	**Gas Utility Substitute Natural Gas (SNG) Production Plant (naptha or lighter hydrocarbon feedstocks):** Includes assets used in the catalytic conversion of feedstocks of naphtha or lighter hydrocarbons to a gaseous fuel which is completely interchangeable with domestic natural gas	11	14	17	4.5
49.23	**Natural Gas Production Plant**	11	14	17	4.5
49.24	**Gas Utility Trunk Pipelines and Related Storage Facilities:** Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403	17.5	22	26.5	3
49.25	**Liquefied Natural Gas Plant:** Includes assets used in the liquefaction, storage, and regasification of natural gas including loading and unloading connections, instrumentation equipment and controls, pumps, vaporizers and odorizers, tanks, and related land improvements. Also includes pipeline interconnections with gas transmission lines and distribution systems and marine terminal facilities	17.5	22	26.5	4.5

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	functions (e.g. food and beverage retailing, souvenir vending and other nonlodging accommodations) if owned by the park and provided exclusively for the benefit of park patrons. Theme and amusement parks are defined as combinations of amusements, rides, and attractions which are permanently situated on park land and open to the public for the price of admission. This guideline class is a composite of all assets used in this industry except transportation equipment (general purpose trucks, cars, airplanes, etc., which are included in asset guideline classes with the prefix 00.2), assets used in the provision of administrative services (asset guideline classes with the prefix 00.1), and warehouses, administration buildings, hotels and motels	10	12.5	15	12.5

SEC. 4. EFFECT ON OTHER DOCUMENTS.

Rev. Procs. 72-10, 73-2, 73-3, 73-23, 73-24, 73-25, 73-26, 73-27, 73-28, 73-30, 74-27, 74-28, 74-29, 74-30, 74-31, 74-32, 74-37, 74-50, 76-16 76-17, 76-18, 76-27, 76-37, 77-2, 77-3 and 77-8 are superseded for property placed in service in taxable years ending on or after March 21, 1977, the date of publication of this Revenue Procedure in the Internal Revenue Bulletin, in accordance with section 1.167(a)-11(b)(4) of the regulations. However, the taxpayer may at his option apply Rev. Proc. 72-10, as previously modified by the aforementioned documents, without regard to this Revenue Procedure for such property placed in service in a taxable year beginning before March 21, 1977, and ending on or after that date. Such option shall be exercised in making the election to apply section 1.167(a)-11 for such year and may not be revoked after the latest time for making such election.

The asset guideline classes, asset guideline depreciation periods and ranges, and asset guideline repair allowance percentages set forth in this Revenue Procedure will, from time to time be supplemented and revised as provided by section 1.167(a)-11(b)(4) of the regulations. Taxpayers using this Revenue Procedure should apply it as supplemented and revised.

Rev. Proc. 78-4 [1]

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to establish under section 1.167(a)-11 of the Income Tax Regulations a new class 35.0, Manufacture of Machinery, and to prescribe an asset guideline period, asset depreciation range, and annual asset guideline repair allowance percentage for the class. This new class replaces asset guideline classes 35.1, Manufacture of Metalworking Machinery, 35.11, Manufacture of Metalworking Machinery-Special Tools, 35.2, Manufacture of Other Machines, and 35.21, Manufacture of Other Machines-Special Tools.

Its further purpose is to modify the definition of asset guideline class 34.0, Manufacture of Fabricated Metal Products, to remove assets used in the manufacture of non-electric heating apparatus from that class. These assets, plus assets used to manufacture turbines that power electrical generators and assets used in the production of space heating, air-conditioning and ventilating equipment, and office machines and non-electronic computing equipment are now classified in asset guideline class 36.1, Manufacture of Electrical Equipment. There is no change in the asset guideline periods, the depreciation ranges, or annual asset guideline repair allowance percentages for classes 34.0 or 36.1.

The new and the modified asset guideline classes, asset guideline periods, asset depreciation ranges, and annual asset guideline repair allowance percentages are set forth in Section 2 of this Revenue Procedure.

SEC. 2. ASSET GUIDELINE CLASSES, ASSET GUIDELINE PERIODS, ASSET DEPRECIATION RANGES, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGES FOR ASSETS USED IN THE MANUFACTURE OF MACHINERY, MANUFACTURE OF FABRICATED METAL PRODUCTS, AND THE MANUFACTURE OF ELECTRICAL EQUIPMENT.

[1] Also release as IR-1925, dated December 30, 1977.

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years) Lower Limit	Asset Guideline Period	Upper Limit	Annual Asset Guideline Repair Allowance Percentage
34.0	**Manufacture of Fabricated Metal Products:** Includes assets used in the production of metal cans, tinware, fabricated structural metal products, metal stampings, and other ferrous and non-ferrous metal and wire products not elsewhere classified. Does not include assets used to manufacture non-electric heating apparatus	9.5	12	14.5	6
35.0	**Manufacture of Machinery:** Includes assets used to manufacture or rebuild finished machinery and equipment and replacement parts thereof, such as metal cutting and forming machinery, dies, tools, jigs and fixtures, general industrial and special industry machinery, farm and garden machinery, construction machinery, mining and oil field machinery, turbines (except those that power electrical generators or airborne vehicles), and internal combustion engines (except those elsewhere classified) Includes assets used by manufacturers or rebuilders of such finished machinery and equipment in activities elsewhere classified such as the manufacture of castings, forgings, electronic products, rubber products, or other manufacturing classes if the products of these activities are used by the manufacturer primarily in the manufacture, assembly, or rebuilding of the finished machinery and equipment included in this class. Does not include assets used in mining, assets used in the manufacture of primary ferrous and non-ferrous metals, and those assets included in asset guideline classes 00.11 through 00.4	8	10	12	11
36.1	**Manufacture of Electrical Equipment:** Includes assets used in the production of machinery, apparatus, and supplies for the generation, storage, transmission, transformation, and utilization of electric energy such as electrical generating equipment, electrical test and distributing equipment, electrical industrial apparatus, domestic and commercial appliances, space heating (including electrical and non-electric), air-conditioning and ventilating equipment, office machines and non-electronic computing equipment, electric lighting and wiring equipment, electronic components and accessories, phonograph records, storage batteries, and ignition systems	9.5	12	14.5	5.5

SEC. 3. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 77-10, 1977-1 C.B. 548, is modified by the establishment of the new class 35.0, Manufacture of Machinery, with an asset guideline period, asset depreciation range, and annual asset guideline repair allowance percentage for the class. This new class replaces asset guideline classes 35.1, Manufacture of Metalworking Machinery, 35.11, Manufacture of Metalworking Machinery-Special Tools, 35.2, Manufacture of Other Machines, and 35.21, Manufacture of Other Machines-Special Tools.

Rev. Proc. 77-10 is also modified by the revision of asset guideline classes 34.0, Manufacture of Fabricated Metal Products, and 36.1, Manufacture of Electrical Equipment.

SEC. 4. EFFECTIVE DATE.

The revisions set forth in this Revenue Procedure are effective for property placed in service in taxable years beginning after December 31, 1976.

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, Section 167; 1.167(a)-11.)

Rev. Proc. 78-5 [1]

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to prescribe under section 1.167(a)-11 of the Income Tax Regulations a revised asset guideline class for assets used in the exploration for and production of petroleum and natural gas deposits to include assets used by petroleum and natural gas producers and others in the offshore pipeline transportation of oil and natural gas. These assets were formerly included in Class 46.0.

The revised asset guideline class, the associated asset guideline depreciation period and range, and annual asset guideline repair allowance percentage are set forth in Section 2 of this Revenue Procedure.

SEC. 2. ASSET GUIDELINE CLASS, ASSET GUIDELINE DEPRECIATION PERIOD AND RANGE, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGE FOR ASSETS USED IN THE EXPLORATION FOR AND PRODUCTION OF PETROLEUM AND NATURAL GAS DEPOSITS.

The asset guideline class, asset guideline depreciation period and range, and the annual asset guideline repair allowance percentage are prescribed as set forth below.

[1] Also released as News Release IR-1924, dated December 30, 1977.

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years) Lower Limit	Asset Guideline Period	Asset Depreciation Range (in years) Upper Limit	Annual Asset Guideline Repair Allowance Percentage
13.2	**Exploration for and Production of Petroleum and Natural Gas Deposits:** Includes assets used by petroleum and natural gas producers for drilling of wells and production of petroleum and natural gas, including gathering pipelines and related storage facilities. Also includes petroleum and natural gas offshore transportation facilities used by producers and others consisting of platforms (other than drilling platforms classified in Class 15.2), compression and pumping equipment, and gathering and transmission lines to the first onshore transshipment facility. The assets used in the first onshore transshipment facility are also included and consist of separation equipment (used for separation of natural gas, liquids, and solids), compression or pumping equipment (other than equipment classified in Class 49.23), and liquid holding or storage facilities (other than those classified in Class 49.25). Does not include support vessels	11	14	17	4.5

SEC. 3. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 77-10, 1977-1 C.B. 548, is modified by the prescription of revised asset guideline class 13.2, Exploration for and Production of Petroleum and Natural Gas Deposits, with the associated asset guideline depreciation period and range and annual asset guideline repair allowance percentage as set forth in Section 2 of this Revenue Procedure. Class 13.2, as modified, now includes offshore transportation asset formerly included in Class 46.0.

SEC. 4 EFFECTIVE DATE.

The asset guideline class, asset guideline depreciation period and range, and the annual asset guideline repair allowance percentage for the activity class set forth in this Revenue Procedure are effective for property first placed in service in taxable years beginning after December 31, 1976.

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, Sections 446, 481, 805, 809, 815; 1.446-1, 1.481-1, 1.805-4, 1.809-4, 1.815-4.)

Rev. Proc. 79-26

SECTION 1. PURPOSE.

In this Revenue Procedure, the Assistant Secretary (Tax Policy) of the Treasury prescribes certain changes with respect to the Class Life Asset Depreciation Range System. One purpose of this Revenue Procedure is to establish a new asset guideline class for assets used in waste reduction and resource recovery plants, formerly included in class 39.0, an asset guideline depreciation period and range, and annual asset guideline repair allowance percentage. A further purpose is to modify the asset guideline depreciation period and range for asset guideline class 00.4, Industrial Steam and Electric Generation and/or Distribution Systems, and to prescribe other clarified asset guideline classes containing related activities. These changes are adopted pursuant to section 1.167(a)-11 of the Income Tax Regulations.

The new and clarified asset guideline classes, asset guideline depreciation periods and ranges, and annual asset guideline repair allowance percentages are set forth in Section 2 of this Revenue Procedure.

SEC. 2. ASSET GUIDELINE CLASSES, ASSET DEPRECIATION PERIODS AND RANGES, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGES FOR ASSETS USED IN WASTE REDUCTION AND RESOURCE RECOVERY PLANT, CENTRAL STEAM UTILITY PRODUCTION AND DISTRIBUTION, ELECTRIC UTILITY STEAM PRODUCTION PLANT, GAS UTILITY MANUFACTURED GAS PRODUCTION PLANTS, AND INDUSTRIAL STEAM AND ELECTRIC GENERATION AND/OR DISTRIBUTION SYSTEMS.

The asset guideline classes, asset guideline depreciation periods and ranges, and annual asset guideline repair allowance percentages are prescribed as set forth below.

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years) Lower Limit	Asset Guideline Period	Upper Limit	Annual Asset Guideline Repair Allowance Percentage
00.4	Industrial Steam and Electric Generation and/or Distribution Systems: Includes assets, whether such assets are section 1245 property or 1250 property; providing such assets are depreciable, used in the production and/or distribution of electricity with rated total capacity in excess of 500 Kilowatts and/or assets used in the production and/or distribution of steam with rated total capacity in excess of 12,500 pounds per hour for use by the taxpayer in his industrial manufacturing process or plant activity and not ordinarily available for sale to others. Does not include buildings and structural components as defined in section 1.48-1(e) of the regulations. Assets used to generate and/or distribute electricity or steam of the type described above but of lesser rated capacity are not included, but are included in the appropriate manufacturing equipment classes elsewhere specified. Also includes				

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years) Lower Limit	Asset Guideline Period	Upper Limit	Annual Asset Guideline Repair Allowance Percentage
	electric generating and steam distribution assets, which may utilize steam produced by a waste reduction and resource recovery plant, used by the taxpayer in his industrial manufacturing process or plant activity. Steam and chemical recovery boiler systems used for the recovery and regeneration of chemicals used in manufacturing, with rated capacity in excess of that described above, with specifically related distribution and return systems are not included but are included in appropriate manufacturing equipment classes elsewhere specified. An example of an excluded steam and chemical recovery boiler system is that used in the pulp and paper manufacturing industry	17.5	22	26.5	2.5
49.13	Electric Utility Steam Production Plant: Includes assets used in the steam power production of electricity for sale, combustion turbines operated in a combined cycle with a conventional steam unit and related land improvements. Also includes package boilers, electric generators and related assets such as electricity and steam distribution systems as used by a waste reduction and resource recovery plant if the steam or electricity is normally for sale to others	22.5	28	33.5	5.0
49.221	Gas Utility Manufactured Gas Production Plants: Includes assets used in the manufacture of gas having chemical and/or physical properties which do not permit complete interchangeability with domestic natural gas. Does not include gas producing systems and related systems used in waste reduction and resource recovery plants which are elsewhere classified	24	30	36	2.0
49.4	Central Steam Utility Production and Distribution: Includes assets used in the production and distribution of steam for sale. Does not include assets used in waste reduction and resource recovery plants which are elsewhere classified	22.5	28	33.5	2.5

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years) Lower Limit	Asset Guideline Period	Upper Limit	Annual Asset Guideline Repair Allowance Percentage
49.5	Waste Reduction and Resource Recovery Plants: Includes assets used in the conservation of refuse or other solid waste or biomass to heat or to a solid, liquid, or gaseous fuel. Also includes all process plant equipment and structures at the site used to receive, handle, collect, and process refuse or other solid waste or biomass to a solid, liquid, or gaseous fuel or to handle and burn refuse or other solid waste or biomass in a waterwall combustion system, oil or gas pyrolysis system, or refuse derived fuel system to create hot water, gas, steam and electricity. Includes material recovery and support assets used in refuse or solid refuse or solid waste receiving, collecting, handling, sorting, shredding, classifying, and separation systems. Does not include any package boilers, or electric generators and related assets such as electricity, hot water, steam and manufactured gas production plants classified in classes 00.4, 49.13, 49.221, and 49.4. Does include, however, all other utilities such as water supply and treatment facilities, ash handling and other related land improvements of a waste reduction and resource recovery plant	8	10	12	15.0

SEC. 3. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 77-10, 1977-1 C.B. 548, is modified by the establishment of the new asset guideline class 49.5, Waste Reduction and Resource Recovery Plant, with an asset guideline depreciation period, range, and annual asset guideline repair allowance percentage. This new class modifies the content of assets guideline class 39.0, Manufacture of Athletic, Jewelry and Other Goods. Rev. Proc. 77-10 is modified by the revision of guideline class 00.4, Industrial Steam and Electric Generation and/or Distribution Systems, and its asset guideline depreciation period and range, and by revisions of related activities described in guideline classes 49.13, Electric Utility Steam Production Plant, 49.221, Gas Utility Manufactured Gas Production Plants and 49.4, Central Steam Utility Production and Distribution.

SEC. 4. EFFECTIVE DATE.

The revisions set forth in this Revenue Procedure are effective for property first placed in service in taxable years beginning after December 31, 1978.

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, Section 167; 1.167(a)-11.)

Rev. Proc. 79-35

SECTION 1. PURPOSE.

The Assistant Secretary (Tax Policy) of the Treasury prescribes, in this Revenue Procedure, under section 1.167(a)-11 of the Income Tax Regulations, a revised class 28.0, Manufacture of Chemicals and Allied Products, with an associated asset guideline period and ranges, and annual asset guideline repair allowance percentage; and a revised class 38.0, Manufacture of Professional, Scientific and Controlling Instruments.

The revised guideline classes, and associated asset guideline depreciation periods, asset depreciation ranges, and annual asset guideline repair allowance percentages are set forth in Section 2 of this Revenue Procedure.

SEC. 2. ASSET GUIDELINE CLASSES AND PERIODS, ASSET DEPRECIATION RANGES, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGES FOR ASSETS USED IN THE MANUFACTURE OF CHEMICALS AND ALLIED PRODUCTS AND IN THE MANUFACTURE OF PROFESSIONAL, SCIENTIFIC AND CONTROLLING INSTRUMENTS.

The asset guideline classes, asset guideline depreciation periods and ranges, and annual asset guideline repair allowance percentages are prescribed as set forth below.

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years) Lower Limit	Asset Guideline Period	Upper Limit	Annual Asset Guideline Repair Allowance Percentage
28.0	Manufacture of Chemicals and Allied Products: Includes assets used to manufacture basic organic and inorganic chemicals; chemical products to be used in further manufacture, such as synthetic fibers and plastics materials; and finished chemical products. Includes assets used to further process man-made fibers, to manufacture plastic film, and to manufacture non-woven fabrics, when such assets are located in the same plant in an integrated operation with chemical products producing assets. Also includes assets used to manufacture photographic supplies, such as film, photographic paper, sensitized photographic paper, and developing chemicals. Includes all land improvements associated with plant site or production processes, such as effluent ponds and canals, provided such land improvements are depreciable but does not include buildings and structural components as defined in section 1.48-1(e) of the regulations. Does not include assets used in the manufacture of finished rubber and plastic products or in the production of natural gas products, butane, propane, and byproducts of natural gas production plants	7.5	9.5	11.5	12.5
38.0	Manufacture of Professional, Scientific, and Controlling Instruments: Includes assets used in the manufacture of mechanical measuring, engineering, laboratory and scientific research instruments, optical instruments and lenses; surgical, medical, and dental instruments, equipment and supplies; ophthalmic goods, photographic equipment, and watches and clocks	9.5	12.0	14.5	5.5

SEC. 3. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 77-10, 1977-1 C.B. 548, is modified by the establishment of a revised guideline class 28.0, Manufacture of Chemicals and Allied Products, with revised asset guideline period and ranges, and an annual asset guideline repair allowance percentage and a revised guidelines class 38.0, Manufacture of Professional, Scientific, and Controlling Instruments. Revised class 28.0 includes assets used to manufacture photographic supplies which were formerly in Class 38.0, Manufacture of Professional, Scientific and Controlling Instruments, as well as land improvement assets formerly included in class 00.3, Land Improvements.

SEC. 4. EFFECTIVE DATE.

The revisions set forth in this Revenue Procedure are effective for property placed in service in taxable years beginning after December 31, 1978.

26 CFR 601.105 Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, Section 167; 1.167(a)-11.)

Rev. Proc. 79-41

SECTION 1. PURPOSE

In this Revenue Procedure, the Assistant Secretary (Tax Policy) of the Treasury prescribes certain changes with respect to the Class Life Asset Depreciation Range System. One purpose of this Revenue Procedure is to eliminate existing asset guideline classes 33.1 (Manufacture of Primary Ferrous Metals) and 33.11 (Manufacture of Primary Ferrous Metals—Special Tools). A further purpose is to establish a new asset guideline class, depreciation period and range, and annual repair allowance percentage for assets used in the manufacture of foundry products, formerly included in classes 33.1 and 33.11 (Rev. Proc. 79-42, relating to property used in the manufacture of primary steel mill products, prescribes changes for the other assets formerly included in classes 33.1 and 33.11.) These changes are adopted pursuant to section 1.167(a)-11 of the Income Tax Regulations.

SEC. 2. ASSET GUIDELINE CLASS, ASSET GUIDELINE DEPRECIATION PERIOD AND RANGE, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGE FOR ASSETS USED IN THE MANUFACTURE OF FOUNDRY PRODUCTS

The new asset guideline class, asset guideline depreciation period and range, and the annual asset guideline repair allowance percentage are prescribed as set forth below.

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years)			Annual Asset Guideline Repair Allowance Percentage
		Lower Limit	Asset Guideline Period	Upper Limit	
33.3	Manufacture of Foundry Products: Includes assets used in the casting of iron and steel, including related operations such as molding and coremaking. Also includes assets used in the finishing of castings and pattern-making when performed at the foundry, all special tools and related land improvements	11	14	17	18

SEC. 3. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 77-10, 1977-1 C.B. 548, as modified, is further modified by the elimination of existing asset guideline classes 33.1 (Manufacture of Primary Ferrous Metals) and 33.11 (Manufacture of Primary Ferrous Metals - Special Tools) and the prescription of a new asset guideline class 33.3 (Manufacture of Foundry Products), with a new asset guideline depreciation period and range and annual asset guideline repair percentage.

SEC. 4. EFFECTIVE DATE

The revision set forth in this Revenue Procedure is effective for property placed in service in taxable years ending on or after August 17, 1979.

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, Section 167; 1.167(a)-11.)

Rev. Proc. 79-42

SECTION 1. PURPOSE

In this Revenue Procedure, the Assistant Secretary (Tax Policy) of the Treasury prescribes certain changes with respect to the Class Life Asset Depreciation Range System. The purpose of this Revenue Procedure is to establish under section 1.167(a)-11 of the Income Tax Regulations a new asset guideline class, depreciation period and range and annual repair allowance percentage for assets used in the manufacture of primary steel mill products. These assets were formerly included in asset guideline classes 33.1 (Manufacture of Primary Ferrous Metals) and 33.11 (Manufacture of Primary Ferrous Metals—Special Tools).

The new asset guideline class, asset guideline period and range, and annual asset guideline repair allowance percentage are set forth in Section 2 of this Revenue Procedure.

SEC. 2. ASSET GUIDELINE CLASS, ASSET GUIDELINE DEPRECIATION PERIOD AND RANGE, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGE FOR ASSETS USED IN THE MANUFACTURE OF PRIMARY STEEL MILL PRODUCTS

The new asset guideline class, asset guideline depreciation period and range, and the annual asset guideline repair allowance percentage are prescribed as set forth below.

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years) Lower Limit	Asset Guideline Period	Upper Limit	Annual Asset Guideline Repair Allowance Percentage
33.4	Manufacture of Primary Steel Mill Products: Includes assets used in the smelting, reduction, and refining of iron and steel from ore, pig, or scrap; the rolling, drawing and alloying of steel; the manufacture of nails, spikes, structural shapes, tubing, wire, and cable. Includes assets used by steel service centers, ferrous metal forges, and assets used in coke production, regardless of ownership. Also includes related land improvements and all special tools used in the above activities	12	15	18	18

SEC. 3. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 77-10, 1977-1 C.B. 548, as modified, is further modified by the prescription of a new asset guideline class 33.4 (Manufacture of Primary Steel Mill Products), with a new asset guideline depreciation period and range and annual asset guideline repair percentage.

SEC. 4. EFFECTIVE DATE

This revenue procedure is effective for assets placed in service during a taxpayer's first taxable year ending on or after August 17, 1979 and for assets placed in service during the four succeeding consecutive taxable years. For instance, in the case of a calendar year taxpayer this revenue procedure is effective for assets placed in service through the taxable year ending December 31, 1983.

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, Section 167; 1.167(a)-11.)

Rev. Proc. 79-60

SECTION 1. PURPOSE.

The purpose of this revenue procedure is to modify section 2.02(i) of Rev. Proc. 77-10, 1977-1 C.B. 548, which provides a special rule of application regarding certain asset guideline classes and subclasses of Class Life Asset Depreciation Range (CLADR) system.

SECTION 2. BACKGROUND.

.01 Section 1.167(a)-11(b)(4)(ii) of the Income Tax Regulations provides that when asset guideline periods or the lower limit of the asset depreciation range are supplemented or revised, the asset guideline period or lower limit of the asset depreciation range shall not be longer for any vintage account than that in effect for the first day of the taxable year.

.02 If a new class is established by combining a class with long-lived assets and a subclass with short-lived assets, the asset depreciation range of the new class is determined by weighting the lives of all the assets. If a taxpayer were able to exclude all the short-lived assets from the new class, the lives of the remaining assets would not reflect the asset depreciation range of the new class.

SECTION 3. CHANGE.

Section 2.02(i) of Rev. Proc. 77-10 is modified to read as follows:

"It is expressly provided that asset guideline classes and subclasses 00.4, 20.5, 30.11, 30.21, 32.11, 33.11, 33.21, 34.01, 35.11, 35.21, 36.11, 37.12, 37.32, 37.33, and 49.121 are part of existing activity classes to which the assets included in them relate as stated in the revenue procedures establishing these subclasses; therefore, assets included in these classes and subclasses are not separately subject to possible exclusion from an election to apply sections 1.167(a)-11(b)(4)(ii) and 1.167(a)-11(b)(5)(v) of the Income Tax Regulations."

SECTION 4. APPLICATION.

The following examples set forth the application of the revision of section 2.02(i) of Rev. Proc. 77-10:

Example 1

During 1979, class Y (asset depreciation range, 11-17 years) and subclass Y.1 (asset depreciation range, 4-6 years) are established effective for assets placed in service in taxable years ending after the date of publication of the revenue procedure establishing classes Y and Y.1. The assets in class Y and subclass Y.1 formerly were included in class X (asset depreciation range, 8-12 years). For the first taxable year ending after the date of publication of the revenue procedure establishing classes Y and Y.1, a taxpayer has the option of using (1) class X or (2) class Y and subclass Y.1. The taxpayer may not use subclass Y.1 for the assets described in that subclass and class X for the remaining assets.

Example 2

During 1979, class Z (asset depreciation range, 16-24 years) is established effective for assets placed in service in taxable years ending after the date of publication of the revenue procedure establishing class Z. The assets in this class formerly were included in class W (asset depreciation range, 22-34 years), and subclass W.1 (asset depreciation range, 4-6 years). For the first taxable year ending after the date of publication of the revenue procedure establishing class Z, a taxpayer has the option of using (1) class W and subclass W.1 or (2) class Z.

The taxpayer may not use subclass W.1 for the assets described in that subclass and class Z for the remaining assets.

SECTION 5. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 77-10, Section 2.02(i) is modified to the extent set forth in section 3 of this Revenue Procedure.

SECTION 6. EFFECTIVE DATE.

This Revenue Procedure is effective for property placed in service in taxable years ending after December 3, 1979, the date of publication of this Revenue Procedure in the Internal Revenue Bulletin.

26 CFR 601.105: Examinations of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, Sections 167, 263; 1.167(a)-11, 1.263(f)-1.)

Rev. Proc. 79-64

In this Revenue Procedure, the Assistant Secretary (Tax Policy) of the Treasury prescribes a revised Annual Asset Guideline Repair Allowance Percentage for Asset Guideline Class 40.1, Railroad Machinery and Equipment, of 16.5. This change is effective for taxable years ending on or after December 31, 1979. The Description of Assets Included, Asset Guideline Period, and Asset Depreciation Range of Class 40.1 remain unchanged.

Rev. Proc. 77-10, 1977-1 C.B. 548, is modified.

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, Section 167; 1.167(a)-11.)

Rev. Proc. 79-65

SECTION 1. PURPOSE

The Assistant Secretary (Tax Policy) of the Treasury prescribes, in this Revenue Procedure, under section 1.167(a)-11 of the Income Tax Regulations, a revised class 35.0, Manufacture of Electrical and Non-Electrical Machinery and Other Mechanical Products; a new class 36.0, Manufacture of Electronic Components, Products, and Systems; and a revised class 22.3, Manufacture of Carpets, and Dyeing, Finishing, and Packaging of Textile Products and Manufacture of Medical and Dental Supplies.

The new and revised asset guideline classes, and associated asset guideline depreciation periods, asset depreciation range periods, and annual asset guideline repair allowance percentages are set forth in Section 2 of this Revenue Procedure.

SEC. 2. ASSET GUIDELINE CLASSES, ASSET GUIDELINE PERIODS, ASSET DEPRECIATION RANGES, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGES

The asset guideline classes, asset guideline periods, asset depreciation ranges, and annual asset guideline repair allowance percentages are prescribed as set forth below.

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
22.3	**Manufacture of Carpets, and Dyeing, Finishing, and Packaging of Textile Products and Manufacture of Medical and Dental Supplies:** Includes assets used in the production of carpets, rugs, mats, woven carpet backing, chenille, and other tufted products, and assets used in the joining together of backing with carpet yarn or fabric. Includes assets used in washing, scouring, bleaching, dyeing, printing, drying, and similar finishing processes applied to textile fabrics, yarns, threads, and other textile goods. Includes assets used in the production and packaging of textile products, other than apparel, by creasing, forming, trimming, cutting, and sewing, such as the preparation of carpet and fabric samples, or similar joining together processes (other than the production of scrim reinforced paper products and laminated paper products) such as the sewing and folding of hosiery and panty hose, and the creasing, folding, trimming, and cutting of fabrics to produce nonwoven products, such as disposable diapers and sanitary products. Also includes assets used in the production of medical and dental supplies other than drugs and medicines. Assets used in the manufacture of nonwoven carpet backing, and hard surface floor covering such as tile, rubber, and cork, are elsewhere classified	7	9	11	15
35.0	**Manufacture of Electrical and Non-Electrical Machinery and Other Mechanical Products:** Includes assets used to manufacture or rebuild finished machinery and equipment and replacement parts thereof such as machine tools, general industrial and special industry machinery, electrical power generation, transmission, and distribution systems, space heating, cooling, and refrigeration systems, commercial and home appliances, farm and garden machinery, construction machinery, mining and oil field machinery, internal combustion engines (except those elsewhere classified), turbines (except those that power airborne vehicles), batteries, lamps and lighting fixtures, carbon and graphite products, and electro-				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	mechanical and mechanical products including business machines, instruments, watches and clocks, vending and amusement machines, photographic equipment, medical and dental equipment and appliances, and ophthalmic goods. Includes assets used by manufacturers or rebuilders of such finished machinery and equipment in activities elsewhere classified such as the manufacture of castings, forgings, rubber and plastic products, electronic subassemblies or other manufacturing activities if the interim products are used by the same manufacturer primarily in the manufacture, assembly, or rebuilding of such finished machinery and equipment. Does not include assets used in mining, assets used in the manufacture of primary ferrous and nonferrous metals, assets included in guideline class 00.11 through 00.4 and assets elsewhere classified	8	10	12	11
36.0	**Manufacture of Electronic Components, Products, and Systems:** Includes assets used in the manufacture of electronic communication, computation, instrumentation and control systems, including airborne applications; also includes assets used in the manufacture of electronic products such as frequency and amplitude modulated transmitters and receivers, electronic switching stations, television cameras, video recorders, record players and tape recorders, computers and computer peripheral machines, and electronic instruments, watches, and clocks; also includes assets used in the manufacture of components, provided their primary use is in products and systems defined above such as semiconductors, electron tubes, capacitors, coils, resistors, printed circuit substrates, switches, harness cables, lasers, fiber optic devices, and magnetic media devices. Specifically excludes assets used to manufacture electronic products and components, photocopiers, typewriters, postage meters and other electromechanical and mechanical business machines and instruments that are elsewhere classified	5	6	7	8

SEC. 3. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 77-10, 1977-1 C.B. 548, as revised by Rev. Proc. 78-4, 1978-1 C.B. 555, and by Rev. Proc 79-35, 1979-29 I.R.B. 13, is modified by the revision of class 35.0, Manufacture of Machinery, and deletion of classes 36.1, Manufacture of Electrical Equipment; 36.11, Manufacture of Electrical Equipment—Special Tools; 36.2, Manufacture of Electronic Products; and 38.0, Manufacture of Professional, Scientific, and Controlling Instruments.

Rev. Proc. 77-10, as subsequently modified, is revised by the revision and new designation of class 35.0 as Manufacture of Electrical and Non-Electrical Machinery and Other Mechanical Products. Revised class 35.0 includes assets used to manufacture machinery formerly included in that class, assets used to manufacture electrical equipment formerly included in classes 36.1 and 36.11, and assets used to manufacture electromechanical and mechanical products including instruments, medical and dental equipment and appliances, photographic equipment, and ophthalmic goods formerly included in class 38.0.

Rev. Proc. 77-10 is also revised by the prescription of new class 36.0, Manufacture of Electronic Components, Products, and Systems. New class 36.0 includes assets used to manufacture electronic products, components and accessories formerly included in classes 36.1 and 36.11, electronic products formerly included in class 36.2, and electronic instruments, watches, and clocks formerly included in class 38.0.

Rev. Proc. 77-10 is also modified by the revision of class 22.3, now designated Manufacture of Carpets, and Dyeing, Finishing, and Packaging of Textile Products and Manufacture of Medical and Dental Supplies. Revised class 22.3 includes assets used to manufacture medical and dental supplies that were formerly included in class 38.0.

SEC. 4. EFFECTIVE DATE

This Revenue Procedure is effective for assets placed in service in taxable years ending on or after December 31, 1979.

26 C.F.R 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part 1, Section 167; 1.167(a)-11.)

Rev. Proc. 80-15

SECTION 1. PURPOSE

In this revenue procedure, the Assistant Secretary (Tax Policy) of the Treasury prescribes certain changes with respect to the Class Life Asset Depreciation Range System. One purpose of this Revenue Procedure is to establish under section 1.167(a)-11 of the Income Tax Regulations a new class 57.0, Distributive Trades and Services, and a new class 57.1, Distributive Trades and Services—Billboards, Service Station Buildings and Petroleum Marketing Land Improvements. A further purpose is to clarify the description of assets included in class 00.12, Information Systems.

Class 57.0 includes assets formerly included in classes 13.4, Marketing of Petroleum and Petroleum Products (section 1245 property), 50.0, Wholesale and Retail Trade, 70.2, Personal and Professional Services, and 50.1 and 70.21 (Service Assets). Class 57.1 includes assets formerly included in class 13.4, Marketing of Petroleum and Petroleum Products (Section 1250 property, including service station buildings and all depreciable land improvements).

The new and clarified asset guideline classes, and associated asset guideline depreciation periods, asset depreciation ranges, and annual asset guideline repair allowance percentages are set forth in Section 2 of this Revenue Procedure.

SEC. 2. ASSET GUIDELINE CLASSES, ASSET GUIDELINE PERIODS, ASSET DEPRECIATION RANGES, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGES

The asset guideline classes, asset guideline periods, asset depreciation ranges, and annual asset guideline repair allowance percentages are prescribed as set forth below.

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years) Lower Limit	Asset Guideline Period	Upper Limit	Annual Asset Guideline Repair Allowance Percentage
00.12	Information Systems: Includes computers and their peripheral equipment used in administering normal business transactions and the maintenance of business records, their retrieval and analysis. Information systems are defined as: 1) Computers: A computer is an electronically activated device capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention. It usually consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities. Excluded from this category are adding machines, electronic desk calculators, etc. 2) Peripheral equipment consists of the auxiliary machines that may be placed under control of the central processing unit. Non-limiting examples are: Card readers, card punches, magnetic tape feeds, high speed printers, optical character readers, tape cassettes, mass storage units, paper tape equipment, keypunches, data entry devices, teleprinters, terminals, tape drives, disc drives, disc files, disc packs, visual image projector tubes, card sorters, plotters, and collators. Peripheral equipment may be used on-line or off-line. Does not include equipment that is an integral part of other capital equipment that is included in other CLADR classes of economic activity, i.e., computers used primarily for process or production control, switching, channeling, and automating distributive trades and services such as point of sale (POS) computer systems	5	6	7	7.5
57.0	Distributive Trades and Services: Includes assets used in wholesale and retail trade, and personal and professional services. Includes Section 1245 assets used in marketing petroleum and petroleum products	7	9	11	8

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years) Lower Limit	Asset Guideline Period	Upper Limit	Annual Asset Guideline Repair Allowance Percentage
57.1	Disrtibutive Trades and Services—Billboard, Service Station Buildings and Petroleum Marketing Land Improvements: Includes section 1250 assets, including service station buildings and depreciable land improvements, whether section 1245 property or section 1250 property, used in the marketing of petroleum and petroleum products, but not including any of these facilities related to petroleum and natural gas trunk pipelines. Includes car wash buildings and related land improvements. Includes billboards, whether such assets are section 1245 property or section 1250 property. Excludes all other land improvements, buildings and structural components as defined in section 1.48-1(e) of the regulations	16	20	24	5

SEC. 3. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 77-10, 1977-1 C.B. 548, as modified, is further modified by the deletion of classes 13.4, Marketing of Petroleum and Petroleum Products; 50.0, Wholesale and Retail Trade; 50.1, Wholesale and Retail Trade Service Assets; 70.2, Personal and Professional Services; and 70.21, Personal and Professional Services Service Assets.

Rev. Proc. 77-10, as subsequently modified, is revised by the prescription of new classes 57.0, Distributive Trades and Services, and 57.1, Distributive Trades and Services--Billboards, Service Station Buildings and Petroleum Marketing Land Improvements, and the clarification of class 00.12, Information Systems.

SEC. 4. EFFECTIVE DATE

This revenue procedure is effective for assets placed in service in taxable years ending on or after April 28, 1980. For taxable years ending prior to April 28, 1980, distributive trades and services automated equipment such as POS computer systems described herein are properly classified in asset guideline class 00.12, 50.0, or 70.2, depending upon which class was selected by the taxpayer on its original return.

ATTACHMENT V

WORKSHEETS

This attachment contains worksheets which can be used to calculate input data Each worksheet will also contain reminders for points which may be overlooked in calculations

WORKSHEET A

CALCULATION OF THE CAPITAL EXPENDITURE INPUT

1	List price or estimated price of the equipment:	$
2	Less: Discount from manufacturer =	
3	Equals net price of equipment =	
4	Plus: Sales tax on equipment[1] =	
5	Plus: Freight and delivery charge =	
6	Plus: Installation charge =	
7.	Equals estimated cost of equipment installed =	
8	Plus: Value of lost production =	
9	Plus: Cost of building construction or modifications =	
10	Equals TOTAL CAPITAL EXPENDITURE =	$

Note: Line 7 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit

QUALIFIED PERCENTAGE INVESTMENT TAX CREDIT

$\frac{\text{Line 7}}{\text{Line 10}}$ = _____ X 10 = _____%

If the depreciable life of the equipment is less than 7 years, this figure must be adjusted as described on page II-16

[1]Some corporations subtract sales tax from revenue in the year of purchase If this is the case, the sales tax is multiplied by (1 - Tax Rate) and subtracted from the cost of the equipment rather than added as in Step 4

WORKSHEET B

OPERATING AND MAINTENANCE EXPENSE[1]

1. Annual Labor Expense

_____ hours x $_____ per hour = _____

2. Power Cost

_____ kwh x $_____ per kwh = _____

3. Water Cost

_____ gallons x $_____ per gallon = _____

4. Raw Materials and Supplies

_____ lbs. x $_____ per lb = _____

5 Yearly Increase in Property Tax = _____

6 Cost of Production Lost Due to Maintenance or Use of Equipment = _____

7. TOTAL COST (1 + 2 + 3 + 4 + 5 + 6) = _____

8. Less: Value of Byproducts

_____ lbs at $_____ per lb = _____

9. Annual Operating and Maintenance (7-8) = _____

10 AVERAGE MONTHLY OPERATING AND MAINTENANCE (9÷12) $_____

[1]All costs should be stated in dollars as of the date compliance is expected to be achieved

WORKSHEET C

CALCULATION OF INCOME TAX RATE

1 Marginal Federal Tax Rate _____

2 Marginal State Tax Rate _____

3 Marginal Local Tax Rate _____

CALCULATION OF ADJUSTED LOCAL TAX

(1 - State Tax Rate) x Local Tax Rate

= (1 - _____) x _____

= _____ x _____

= _____ = Adjusted Local Tax Rate

CALCULATION OF ADJUSTED STATE AND LOCAL TAX

(1 - Federal Tax Rate) x (State Tax Rate + Adjusted Local Rate)

= (1 - _____) x (_____ + _____)

= _____ x _____

= _____ = Adjusted Local State Tax

CALCULATION OF TAX RATE

100 x (Federal Tax Rate + Adjusted Local and State Tax)

= 100 x (_____ + _____)

= 100 x _____

= _____ = Tax Rate

WORKSHEET D

WEIGHTED AVERAGE INTEREST RATE

1. Total Capital Expenditure _____

2. Debt Percent of the Investment _____

3. Amount of the Investment Financed with Debt

(1) _____ * (2) _____ ÷ 100 = _____

4. Dollar Value of Issued Industrial Development Bonds _____

5 Interest Rate on Corporate (or Public Utility) Bonds _____

6 Interest Rate on Industrial Development Bonds _____

A If (4) is larger than or equal to (1), the interest rate entered into the computer is (6)

B If (4) is larger than (3), the interest rate entered into the computer is (6)

C If (4) equals zero, the interest rate entered into the computer is (5)

D. If A, B, and C are not true, the interest rate is found using the following formulae:

7 Portion of investment financed with Industrial Development Bonds

$$\frac{(4)}{(6)} \text{ _____ } = (7) \text{ _____}$$

8 Weighted Average Interest Rate

(7) _____ * (6) _____ +

1-(7) _____ * (5) _____ =

_____ + _____ = (8) _____

The interest rate entered into the computer is (8)

SECTION III

USING THE COMPUTER PROGRAM

GAINING ACCESS TO THE SYSTEM

The computer program used to calculate the noncompliance penalty is written in the language FORTRAN It is designed to operate on a time sharing computer only The method used to access, or load, the program on a particular computer system will vary slightly from that on any other system The following description of the accessing procedure should only be considered a general guide to time sharing and not as an exact procedure for any one system

1 Switch on the terminal The on/off switch is usually located on the keyboard, but some models have switches on the top or back of the terminal

2 Contact the computer system This can be done by one of two methods: an acoustic coupler or a so-called "hardwire" connection The hardwire is easiest to use; it only requires pushing the "return" key on the keyboard The computer will then respond with some indication that contact is established

If an acoustic coupler is used, the computer's telephone number must be dialed When the system responds, a loud piercing sound is heard At this time, the telephone receiver is placed in the coupler and the "return" key is pushed The computer will respond as in the case of the hardwire

3 Account and code number At this time the computer will ask for an account number This number is specific to the computer system and must be known beforehand The number is entered by typing it on the keyboard and pressing the "return" key The same procedure applies to the code number After every entry, push "return "

4. Obtaining access to the FORTRAN language Different computers have different ways of indicating that FORTRAN is to be used The specific command will vary, but it is probably something like: USE 16K FORTRAN or LOAD 16K FORTRAN The computer will then signal that the command is understood.

5 Loading program The program must now be retrieved from its storage area within the computer and be loaded into the working area The command that accomplishes this is PENALTY The computer will respond with a message that the command is understood and that the program is ready to be used

6 Running the program The command RUN will start the program From this point forward, the computer will ask specific questions Each time a question is answered, the "return" key must be pushed

Once the program PENALTY has been loaded into the computer, it is necessary to enter the data The following section describes the data entry procedure

ENTERING THE DATA

It is important in using a computer to understand that the computer requires a specific form of data entry For example, if the item in question has the value of ten percent and the computer program is designed to accept a figure expressed in percentage terms, only the entry 10.0 is acceptable. Entries such as 10%, TEN, and .10 are all incorrect The first two will result in an error message being typed at the terminal, followed by a command to re-enter the data. The third entry will be interpreted by the computer as 0 10 percent and used in the computation as that value The result will be an incorrect figure for that penalty.

If a wrong number is entered and the return key has not been pushed, the mistake can be corrected by detecting the error and re-entering the number The procedure for deleting a number before the return is pushed varies with the computer system The deletion procedure should be checked before the program is run If during data entry a wrong number is entered and the return key is pushed, operation of the program can be halted by pushing the Break key The computer will respond by printing STOP and some system accounting data To start the program again, type RUN

The following paragraphs discuss general rules to be followed in entering data into the computer program Exhibit II-1 contains an example of the completed entry for the Fertilizer Company Figures which are underlined have been entered by the program user After each line is entered the carriage return should be pressed It should also be noted that each question asked by the computer must be answered Thus, for example, if a firm has no debt and the interest rate is inapplicable, a zero must be entered for the interest rate Certain questions asked by the computer refer to special types of analysis such as post-compliance settlements, limited life facilities and industrial development bonds These special cases are discussed in later sections.

1. Post-Compliance Settlement. This number is entered only as a 0 or 1 For the Fertilizer Company this is an initial calculation and a 0 is entered.

2. Limited Life Facility This number is entered as 0 or 1 For the Fertilizer Company this is not a limited life facility and a 0 is entered

3. Percent Financed by Industrial Development Bonds This is entered as a percent For the Fertilizer Company, a 0 is entered.

EXHIBIT III-1
ENTERING DATA

```
1  IS THIS AN INITIAL PENALTY CALCULATION
   OR A POST-COMPLIANCE SETTLEMENT CALCULATION?
   0=INITIAL, 1=POST-COMPLIANCE:
?
0
2  IS THIS A LIMITED LIFE FACILITY? 1=YES 0=NO
?
0
3. PERCENTAGE FINANCED BY INDUSTRIAL DEVELOPMENT BONDS=
?
0
4. MONTHS OUT OF COMPLIANCE=
?
9
HOW MANY MONTHS HAVE PRECOMPLIANCE CAPITAL OR
PRECOMPLIANCE O&M EXPENDITURES?
?
5
FOR EACH MONTH OF PRECOMPLIANCE CAPITAL OR O&M
ENTER THE NUMBER OF THE MONTH,THE CAPITAL EXPENDITURE
AND THE O&M EXPENSE SEPARATED BY COMMAS.

MONTH,CAPITAL,O&M
?
2,166666.67,0
?
4,166666.67,0
?
7,0,100.00
?
8,0,1050.00
?
9,166666.67,740.00
5. INITIAL MONTHLY O & M EXPENSE=
?
1250.00
6  INVESTMENT TAX CREDIT RATE=
?
10.0
7. INCOME TAX RATE=
?
49.73
8  FORECAST INFLATION RATE=
?
7.2
9. DISCOUNT RATE=
?
15.91
```


EXHIBIT III-1
ENTERING DATA
(continued)

```
10. INTEREST RATE=
?
9.75
11. PREFERRED STOCK DIVIDEND RATE=
?
9.60
12. EQUITY SHARE OF INVESTMENT=
?
67.5
13. PREFERRED STOCK SHARE=
?
3.5
14. DEBT SHARE OF INVESTMENT=
?
29.0
15. DEPRECIATION LIFE=
?
9
16. USEFUL LIFE=
?
11
17. HOW MANY MONTHS AFTER THE FIRST DAY OF
    NONCOMPLIANCE WILL THE INITIAL PENALTY
    PAYMENT BE MADE?
?
0
18. DO YOU WISH TO SEE A LUMP SUM
    SETTLEMENT? 1=YES,0=NO:
?
1
19. HOW MANY MONTHS AFTER THE FIRST DAY OF
    NONCOMPLIANCE WILL THE LUMP SUM
    SETTLEMENT BE MADE?
?
0
```

Number of Months Out of Compliance This number is entered only as an integer Fractions or decimals are not allowed. For the Fertilizer Company, compliance will be achieved in nine months This is entered as 9

Schedule of Precompliance Capital and Precompliance Operating and Maintenance Expenditures The program will then ask for the number of months the firm will make precompliance capital or operating and maintenance expenditures For the Fertilizer Company, the firm will make precompliance capital expenditures in months 2, 4, and 9 Precompliance operating and maintenance expenditures will be made in months 7, 8, and 9. Thus there are five months in which either precompliance capital or operating and maintenance expenditures are made (months 2, 4, 7, 8, and 9)

If no precompliance capital expenditures are to be made, the entire capital expenditure is entered in the last month of the noncompliance period If the Fertilizer Company made no precompliance capital expenditures, the entire $500,000 would be entered in month 9

The program will then ask for the number of the month, the capital expenditure and the operating and maintenance expenditure separated by commas for each month with precompliance capital or operating and maintenance expenditures For months which have precompliance capital expenditures but no operating and maintenance expenditure, a zero must be entered for the operating and maintenance expenditure Similarly, if the firm makes a precompliance operating and maintenance expenditure but no capital expenditure in a month, a zero must be entered for the capital expenditure All dollar values are entered without dollar signs The number of cents, however, should be entered following a decimal point

For the Fertilizer Company, the schedule of precompliance capital and operating and maintenance expenditures is:

Month	Capital Expenditure	Operating and Maintenance Expenditure
2	166,666 67	0
4	166,666 67	0
7	0	100 00
8	0	1,050.00
9	166,666 67	740 00

5. Initial Monthly O&M Expense The initial monthly operating and maintenance expense is the expense which would be incurred if the equipment were installed and operating For the Fertilizer Company, the initial monthly operating and maintenance expense is $1,250 00

6. Investment Tax Rate This is entered as a percent and not as a decimal Thus, for example, 7 5 percent would be entered as 7 5 The program is designed to test for data entered as a decimal and print an error message In the Fertilizer Company example, the investment tax rate was 10 0 percent

7. Income Tax Rate. This is also entered as a percent For the Fertilizer Company the tax rate is 49 73 percent

8. Inflation Rate The inflation rate is entered as 7 2 percent

9. Discount Rate This is entered as a percent The lower bound for any discount rate used is the rate of inflation The program will not accept discount rates lower than the rate of inflation and will print message to that effect. If the discount rate entered is lower than the inflation rate, the program will set the discount rate equal to the inflation rate

For the Fertilizer Company, the discount rate is the higher of the twenty quarter average after-tax return on equity for the chemicals and allied products industry, or the twenty quarter average after-tax return on equity for all manufacturing corporations This is calculated to be 15 91 percent.

10. Interest Rate The interest rate is entered as a percent For the Fertilizer Company this is the average return on "A" rated industrial bonds The latest reported average is 9 75 percent.

11. Preferred Dividend Rates This is entered as a percent If the firm does not have preferred stock, both the dividend rate and the preferred share of the investment are entered as zero For the Fertilizer Company this was the latest monthly average yield on "a" rated utility preferred stocks It is entered as 9.60 percent

12. Equity Share of Investment This is entered as a percent It was computed to be 67 5 percent for the Fertilizer Company

13. Preferred Share of Investment The preferred share of the investment is entered as a percent For the Fertilizer Company this was computed at 3 5 percent

14 Debt Share of Investment. This is entered as a percent For the Fertilizer Company the debt share is 29 0 percent If the sum of the preferred share, the debt share and the equity share of the investment is not equal to 100.0 percent, an error message is printed

15. Depreciation Life in Years This number must be entered as an integer Decimals or fractions cannot be used. For the Fertilizer Company the depreciation life was nine (9) years

16. Useful Life in Years The useful life in years must also be entered as an integer. For the Fertilizer Company, the useful life is eleven (11) years

17. Month of Initial Penalty Payment. The program asks "how many months after the first day of noncompliance will the initial penalty payment be made?" The Fertilizer Company paid the first quarterly penalty on the day the notice of noncompliance was issued. Therefore a zero (0) was entered into the computer in response to this question

18. Lump Sum Settlement. The firm has the option to have the computer calculate a lump sum settlement The Fertilizer Company selects this option by entering a 1

19. Month of Lump Sum Settlement The program requests the number of months from the first day of noncompliance the lump sum settlement will be made The Fertilizer Company wants to see the value of the lump sum settlement as of the first day of noncompliance so a zero (0) is entered

ERROR MESSAGES FOR DATA ENTRY

The program for computing the noncompliance penalty was designed to test for errors in the data as it is entered into the computer If the program detects an error, a message is printed informing the user and requesting that the mistake be corrected Examples of such error messages follow

1 Equity, Debt and Preferred Share The program will print an error message if the sum of the equity share, debt share, and the preferred share of the investment is not equal to 100 percent This is illustrated in Exhibit III-2 [1]

2. Entering Data as a Decimal An error message will be printed if the investment tax rate is entered as a decimal This is illustrated in Exhibit III-3.

3 Inflation Rate Higher Than Discount Rate The program will print message if the inflation rate is higher than the discount rate For this type of error the program continues If the user wishes to stop the program at this point, the break key should be pushed If the user continues only the O&M portion of the penalty will be calculated and the discount rate will be set equal to the inflation rate. This is illustrated in Exhibit III-4 where the discount rate of 15 91 percent was erroneously entered as 5 91 percent

[1] The computer program allows for some rounding errors and hence an error message is not printed if the sum of the debt, equity, and preferred stock shares is within one half of one percent of 100 percent Thus the error message will be printed only if the sum exceeds 100 5 percent or is below 99 5 percent

EXHIBIT III-2

EQUITY DEBT AND PREFERRED SHARE OF INVESTMENT
GREATER THAN 100 PERCENT

```
    12. EQUITY SHARE OF INVESTMENT=
?
65.0
    13. PREFERRED STOCK SHARE=
?
3.5
    14. DEBT SHARE OF INVESTMENT=
?
29.0

    EQUITY+PREFERRED+DEBT NOT = 100, TRY AGAIN
    12. EQUITY SHARE OF INVESTMENT=
?
67.5
    13. PREFERRED STOCK SHARE=
?
3.5
    14. DEBT SHARE OF INVESTMENT=
?
29.0
```


EXHIBIT III-3

DATA ENTERED AS A DECIMAL AND THE WARNING MESSAGE

```
    6. INVESTMENT TAX CREDIT RATE=
?
0.10
    7. INCOME TAX RATE=
?
49.73
    8. FORECAST INFLATION RATE=
?
7.2
    9. DISCOUNT RATE=
?
15.91
    10. INTEREST RATE=
?
9.75
    11. PREFERRED STOCK DIVIDEND RATE=
?
9.60

    18. DO YOU WISH TO SEE A LUMP SUM
        SETTLEMENT? 1=YES,0=NO!
?
1
    19. HOW MANY MONTHS AFTER THE FIRST DAY OF
        NONCOMPLIANCE WILL THE LUMP SUM
        SETTLEMENT BE MADE?
?
0
    NOTE THAT AT LEAST ONE OF YOUR DATA ENTRIES
    HAS A PERCENTAGE VALUE OF LESS THAN ONE
```

EXHIBIT III-4

ENTERING INFLATION RATE
THAT IS HIGHER THAN DISCOUNT RATE

```
 8. FORECAST INFLATION RATE=
?
7.2
 9. DISCOUNT RATE=
?
5.91
DISCOUNT RATE NOT GREATER THAN INFLATION RATE.
ONLY THE O & M COMPONENT OF THE PENALTY WILL BE  CALCULATED.
THE DISCOUNT RATE IS SET EQUAL TO  THE INFLATION RATE.
```


OUTPUT FROM THE PROGRAM

The output from the computer program is structured in the following way

- The amortization and depreciation method used in calculating the penalty is printed For example, for the Fertilizer Company, rapid amortization and straight line depreciation are used
- The program prints the quarterly penalty payments the firm must make during the period of noncompliance
- If the option to compute a lump sum settlement if selected, the program prints the value of the lump sum settlement
- The program asks if changes to the input data are desired.

An example of the output for the Fertilizer Company appears in Exhibit III-5

The output printed in Exhibit III-5 illustrates only a few of the possible variations in penalty calculation possible with the computer program The remainder of this section discusses in detail the output from the Fertilizer Company example and the program options available to alter that output

EXHIBIT III-5
CALCULATION OF NONCOMPLIANCE PENALTY

STRAIGHT LINE, RAPID AMORTIZATION

MONTH	PAYMENT
1	5544.35
4	5641.56
7	5740.47

THE VALUE OF THE NONCOMPLIANCE PENALTY COMPUTED AS OF 0 MONTHS AFTER THE DATE OF NONCOMPLIANCE IS 16313.45

1. Amortization and Depreciation Method. The computer program calculates the capital investment portion of the penalty using standard and rapid amortization Under both types of amortization the program calculates the depreciation tax savings using straight line, sum-of-the-years-digits and double-declining balance depreciation methods The formulae for these calculations are contained in the Technical Support Document The program automatically chooses the method which will result in the lowest penalty This method is then used to calculate the penalty shown

2. Quarterly Penalty Payments. Exhibit III-5 illustrated the payment made if the firm paid the first quarterly penalty on the day that the notice of noncompliance was issued. The first quarterly payment was $5,544 35 The second payment would be made ninety days later and it would equal the penalty shown for the fourth month $5,641 56 The final payment is in month seven and equals $5,740 47

   A more realistic example might involve a three-month delay in the first payment In this case, the output would appear as in Exhibit III-6 The first penalty payment includes the amounts that should have been paid at the first and fourth months, escalated forward to the time of actual payment Such escalation is required to keep the present value of all penalties paid equal to the present value of savings from noncompliance The next quarter penalty payment is due three months later, putting the firm back on the original penalty schedule The present value of the payments in Exhibit III-6 is equal to the present value of the penalty payments in Exhibit III-5

3. Lump Sum Settlement A lump sum settlement is sometimes made instead of quarterly payments. For example, if the firm was going to be out of compliance for three quarters, it could either pay the three quarterly payments shown in the output or pay the lump sum settlement In terms of present value, the amount eventually paid is the same in each case Exhibit III-7 illustrates a six month delay in the lump sum settlement

EXHIBIT III-6
THREE-MONTH DELAY IN PAYMENT OF PENALTY

17. HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE WILL THE INITIAL PENALTY PAYMENT BE MADE?

? 3

18. DO YOU WISH TO SEE A LUMP SUM SETTLEMENT? 1=YES,0=NO:

? 1

19. HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE WILL THE LUMP SUM SETTLEMENT BE MADE?

? 0

STRAIGHT LINE, RAPID AMORTIZATION

MONTH	PAYMENT
4	11394.37
7	5740.47

THE VALUE OF THE NONCOMPLIANCE PENALTY COMPUTED AS OF 0 MONTHS AFTER THE DATE OF NONCOMPLIANCE IS 16313 45

EXHIBIT III-7
SIX MONTH DELAY IN PAYMENT OF LUMP SUM SETTLEMENT

19. HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE WILL THE LUMP SUM SETTLEMENT BE MADE?

? 6

STRAIGHT LINE, RAPID AMORTIZATION

MONTH	PAYMENT
1	5544.35
4	5641.56
7	5740.47

THE VALUE OF THE NONCOMPLIANCE PENALTY COMPUTED AS OF 6 MONTHS AFTER THE DATE OF NONCOMPLIANCE IS 17563.25

Thus, for the Fertilizer Company, delaying the lump sum settlement six months increased the settlement to $17,563 25 from the $16,313 45 shown in Exhibit III-5 The $1,249 80 difference between the lump sum settlement delayed six months and the settlement paid on the date of noncompliance is the result of escalating the initial lump sum settlement forward to the time of actual payment

Only a single payment is required if the first penalty payment is delayed longer than the firm is out of compliance In this event, the firm will not make quarterly payments but will make one lump sum settlement Exhibit III-8 shows the output from the program if a ten-month delay in penalty payment occurs The Fertilizer Company was out of compliance nine months

4 New Computation The user has several options here By typing in 0 (zero) and pushing the carriage return, the program can be terminated Typing 999 will result in all of the data that is currently in the program being printed; the program will then once again ask if any changes are to be made. An example of typing 999 is shown in Exhibit III-9

If changes are desired in the input, the following steps must be taken:

- The number of changes desired must be entered
- For each change, the computer will respond with a question mark When the question mark is printed, type in the number of the item that you wish to change. (For example, 4 for the marginal income tax rate)
- The computer will print the name of the item Enter the new data desired and push the carriage return

EXHIBIT III-8
PENALTY PAYMENT WHEN DELAY
IS LONGER THAN NONCOMPLIANCE PERIOD

17. HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE WILL THE INITIAL PENALTY PAYMENT BE MADE?

7
10

STRAIGHT LINE, RAPID AMORTIZATION

MONTH	PAYMENT
11	18449.21

EXHIBIT III-9
PRINTING DATA THAT HAS BEEN ENTERED IN PROGRAM

```
   HOW MANY VARIABLES DO YOU WISH TO CHANGE ?
?
999
    1. IS THIS AN INITIAL PENALTY CALCULATION
       OR A POST-COMPLIANCE SETTLEMENT CALCULATION?
       0=INITIAL, 1=POST-COMPLIANCE:   0
    2. IS THIS A LIMITED LIFE FACILITY? 1=YES 0=NO   0
    3. PERCENTAGE FINANCED BY INDUSTRIAL DEVELOPMENT BONDS=  0.0
    4. MONTHS OUT OF COMPLIANCE=   9 /
       PRECOMPLIANCE EXPENDITURES
         MONTH      CAPITAL          O & M
           2      166666.67          0.0
           4      166666.67          0.0
           7           0.0         100.00
           8           0.0        1050 00
           9      166666.67         740.00
    5. INITIAL MONTHLY O & M EXPENSE=   1250.00
    6. INVESTMENT TAX CREDIT RATE= 10.00
    7. INCOME TAX RATE= 49.73
    8. FORECAST INFLATION RATE=  7.20
    9. DISCOUNT RATE= 15.91
   10. INTEREST RATE=  9.75
   11. PREFERRED STOCK DIVIDEND RATE=  9.60
   12. EQUITY SHARE OF INVESTMENT= 67 50
   13. PREFERRED STOCK SHARE=  3.50
   14. DEBT SHARE OF INVESTMENT= 29.00
   15. DEPRECIATION LIFE=   9
   16. USEFUL LIFE=  11
   17. HOW MANY MONTHS AFTER THE FIRST DAY OF
       NONCOMPLIANCE WILL THE INITIAL PENALTY
       PAYMENT BE MADE?   0
   18. DO YOU WISH TO SEE A LUMP SUM
       SETTLEMENT? 1=YES,0=NO:  1.
   19. HOW MANY MONTHS AFTER THE FIRST DAY OF
       NONCOMPLIANCE WILL THE LUMP SUM
       SETTLEMENT BE MADE?   0
   HOW MANY VARIABLES DO YOU WISH TO CHANGE ?
?
0
```


EXHIBIT III-10
ALTERING DATA IN THE PROGRAM

```
   HOW MANY VARIABLES DO YOU WISH TO CHANGE ?
?
3
ENTER A LIST OF VARIABLES TO BE CHANGED
SEPARATED BY COMMAS.
?
10,13,14
   10. INTEREST RATE=
?
9.75
   13. PREFERRED STOCK SHARE=
?
10.0
   14. DEBT SHARE OF INVESTMENT=
?
22.5
```

SECTION IV

CALCULATION OF THE POST-COMPLIANCE SETTLEMENT

The post-compliance settlement adjusts the penalty payment to reflect the firm's actual capital and operating expenditures rather than the estimates used in the original penalty calculation More current estimates of the inflation rate, the discount rate, and the capital structure of the firm are also used For this purpose, ten types of data are needed:

- A schedule of actual capital expenditures made by the firm in reaching compliance
- A schedule of actual operating and maintenance expenditures made by the firm prior to compliance
- A new estimate of post-compliance monthly operating and maintenance expense based on the firm's experience and any additional information which becomes available prior to the post-compliance settlement
- The compound annual inflation rate over the most recent sixty months
- The discount rate averaged over the most recent twenty quarters
- The average equity, preferred stock, and debt share of the capital structure over the most recent five years
- The number of months between the day of compliance and date of post-compliance settlement
- A post-compliance settlement interest rate chosen by the Department of Treasury for overpayments
- A listing of the actual penalty payments made by the firm and the months in which they were made
- The actual portion of the investment financed with industrial development bonds [1]

[1] If this portion differs from the original estimate, the interest rate must be adjusted as discussed below

In addition to these new data, it will be necessary to have available the remaining financial parameters originally used to calculate the noncompliance penalty for the firm To continue the example of the hypothetical Fertilizer Company, Exhibit IV-1 contains the data originally used to calculate the noncompliance penalty

PREPARING NEW DATA FOR ENTRY INTO THE PROGRAM

In order to calculate the post-compliance settlement, the computer program should be accessed in the manner described on pages III-1 to III-3 After the RUN command has been typed, the terminal will ask if the penalty calculation is for a post-compliance settlement The computer program will then ask for the data requested in the initial penalty calculation These data should be entered in the following manner

1 Limited Life Facility. The same response as entered in the initial calculation should be entered For the Fertilizer Company this value is zero (0)

2 Industrial Development Bonds. The actual percentage of the investment financed with industrial development bonds should be entered For the Fertilizer Company this percentage is zero (0)

3 Months Out of Compliance. The actual number of months the firm is out of compliance should be entered. The Fertilizer Company was actually out of compliance nine (9) months

4 Months With Precompliance Expenditures The actual number of months with precompliance capital or operating and maintenance expenditures should be entered. The Fertilizer Company made precompliance expenditures in three (3) months

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EXHIBIT IV-1

FERTILIZER COMPANY
JULY 1979

DATA USED FOR ORIGINAL NONCOMPLIANCE PENALTY CALCULATIONS[1]

1. IS THIS AN INITIAL PENALTY CALCULATION OR A POST-COMPLIANCE SETTLEMENT CALCULATION? 0=INITIAL, 1=POST-COMPLIANCE: 0
2. IS THIS A LIMITED LIFE FACILITY? 1=YES 0=NO 0
3. PERCENTAGE FINANCED BY INDUSTRIAL DEVELOPMENT BONDS= 0.0
4. MONTHS OUT OF COMPLIANCE= 9
   PRECOMPLIANCE EXPENDITURES

MONTH	CAPITAL	O & M
2	166666.67	0.0
4	166666.67	0.0
7	0.0	100.00
8	0.0	1050.00
9	166666.67	740.00

5. INITIAL MONTHLY O & M EXPENSE= 1250.00
6. INVESTMENT TAX CREDIT RATE= 10.00
7. INCOME TAX RATE= 49.73
8. FORECAST INFLATION RATE= 7.20
9. DISCOUNT RATE= 15.91
10. INTEREST RATE= 9.75
11. PREFERRED STOCK DIVIDEND RATE= 9.60
12. EQUITY SHARE OF INVESTMENT= 67.50
13. PREFERRED STOCK SHARE= 3.50
14. DEBT SHARE OF INVESTMENT= 29.00
15. DEPRECIATION LIFE= 9
16. USEFUL LIFE= 11
17. HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE WILL THE INITIAL PENALTY PAYMENT BE MADE? 0
18. DO YOU WISH TO SEE A LUMP SUM SETTLEMENT? 1=YES,0=NO: 1.
19. HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE WILL THE LUMP SUM SETTLEMENT BE MADE? 0

[1] Listed during original penalty calculation by typing 999 when changes in input data were requested

5 Schedule of Precompliance Expenditures The actual precompliance expenditures should be entered Exhibits IV-2 and IV-3 present the actual precompliance capital and operating and maintenance expenditures, respectively, made by the Fertilizer Company These expenditures were:

Month	Capital Expenditure	Operating & Maintenance Expenditure
7	$184,050 00	$ 0 00
8	184,050 00	879 96
9	184,050 00	1,324 40

6 Initial Monthly O&M Expense An estimate of the average monthly operating and maintenance expense which will be incurred over the first year of operating the pollution control equipment should be entered. This can be the estimate used in the initial calculation or, if better information is available, an updated estimate based on this better information Exhibit IV-4 illustrates the new estimate of monthly operating and maintenance expense for the Fertilizer Company The new estimate is $1,333 33

7. Investment Tax Credit Rate. This should be the actual investment tax credit as a percent of the initial investment In the case of the Fertilizer Company this will be line (7) of Exhibit IV-2 divided by line (10) of Exhibit IV-2 multiplied by the statutory rate of 10 percent This will be 10 percent since the entire investment qualifies for the full investment tax credit.

8 Income Tax Rate The income tax rate used in the initial calculation should be entered For the Fertilizer Company this rate is 49.73 percent.

9 Inflation Rate The most recent five year average inflation as recorded by the Chemical Engineering plant cost index should be entered In the Fertilizer Company example, this is 7.0 percent

10. Discount Rate The most recent five year average of the discount rate should be calculated using the data source which was used in the initial calculation. For the Fertilizer Company the discount rate is 15.62 percent

EXHIBIT IV-2

FERTILIZER COMPANY
CALCULATION OF ACTUAL CAPITAL EXPENDITURE
June 1, 1980

1.	List price or estimated price of the equipment =	$536,588 92
2.	Less: Discount from manufacturer =	(10,731.78)
3.	Equals net price of equipment =	525,857 14
4	Plus: Sales tax on equipment[1] =	26,292 86
5	Plus: Freight and delivery charge =	0
6.	Plus: Installation charge =	0
7.	Equals estimated cost of equipment installed =	$552,150.00
8.	Plus: Value of lost production =	0
9.	Plus: Cost of building construction or modifications =	0
10	Equals TOTAL CAPITAL EXPENDITURE =	$552,150 00

The capital expenditures were made in three equal monthly payments of $184,050.00 starting in the seventh month of noncompliance.

[1]Sales tax in this case was not subtracted from revenue in the year of purchase

EXHIBIT IV-3

ACTUAL MONTHLY PRE-COMPLIANCE OPERATING AND MAINTENANCE EXPENSE

FERTILIZER COMPANY
June 1, 1980

PRE-COMPLIANCE OPERATING EXPENSE

Months 1-9		$ 0
Month 10		
Labor (84 hrs @ $10)	$840 00	
Power (1200 kwh @ 0333 kwh)	39.96	
TOTAL		$ 879.96
Month 11		
Labor (110 hrs @ $10)	$1,100 00	
Power (6739 kwh @ .0333 kwh)	224.40	
TOTAL		$1,324.40

EXHIBIT IV-4

FERTILIZER COMPANY
OPERATING AND MAINTENANCE EXPENSE
June 1, 1980

1	Annual Labor Expense	
	1072 Hours x $10.81 per hour =	$11,588 32
2	Power Cost	
	89991.5 kwh x $.038 per kwh =	3,419 68
3	Water Cost	
	_____ gallons x $_____ per gallon =	0
4	Raw Materials and Supplies	
	1200 lbs x $1.20 per lb =	1,440 00
5	Yearly Increase in Property Tax =	0
6	Cost of Production Lost Due to Maintenance or Use of Equipment =	0
7	Total Cost (1 + 2 + 3 + 4 + 5 + 6) =	16,448 00
8.	Less: Value of Byproducts	
	800 lbs at $.56 per lb. =	(448.00)
9.	Annual Operating and Maintenance (7-8) =	$16,000 00
10	Average Monthly Operating and Maintenance (9÷12) =	1,333.33

11 Interest Rate. The interest rate used in the initial calculation should be entered unless the amount of industrial development bonds sold differs from the estimated amount used in the initial penalty calculation If the amount of industrial development bonds sold differs from the estimated amount, the interest rate must be altered to reflect this.

To re-estimate the interest rate, the total capital expenditure and the dollar value of issued industrial development bonds should be updated on Worksheet D, and the interest rate should be recalculated (See Worksheet D, lines 1 and 3) The interest rates on corporate bonds and industrial development bonds entered on the worksheet should not be updated.

For the Fertilizer Company, the interest rate used in the initial calculation, 9 75 percent, is entered

12. Preferred Stock Dividend Rate The rate used in the initial calculation should be entered For the Fertilizer Company, the preferred stock dividend rate is 9 60 percent

13 Equity Share, Debt Share, and Preferred Stock Share of the Investment The equity, debt, and preferred stock share should be calculated as illustrated in Section II using the most recent five years of annual statements The Fertilizer Company's five year average equity share, preferred stock share, and debt share are 67.5 percent, 3 5 percent, and 29 0 percent, respectively

14. Depreciation Life. The depreciation life used in the initial calculation should be entered This is nine (9) years for the Fertilizer Company.

15. Useful Life The useful life used in the initial calculation should be entered This is eleven (11) years for the Fertilizer Company.

After these data are provided, the computer program will ask for data on the actual penalty payments made by the firm and the month in which each payment was made. The data are entered in the following manner.

1 Number of Penalty Payments Made by the Firm This is the actual number of payments made by the firm If more than one payment is made in a month, they should be totaled and counted as one payment

2 Month of Penalty Payment This is the number of the month in which the penalty payment is received by EPA, beginning with the month the firm is out of compliance. For example, a firm making a payment at the time notice of noncompliance is issued would enter a one If a six-month delay in payment occurred, a seven would be entered

3 Actual Penalty Payment This is the dollar amount of the penalty actually paid by the firm in each month The payment entered should not include any of the penalty for late payment The data entered in the Fertilizer Company example are identical to the penalties calculated in the last section and shown in Exhibit III-5 They are:

Month	Penalty Payment
1	$5,544 35
4	5,641 56
7	5,740 47

The program now asks for the Treasury interest rate to be used in the calculation of the interest on overpayments[1] and the number of months from compliance until settlement These data are entered in the following manner

1. Treasury Interest Rate This is an annual interest rate set by the Secretary of the Treasury for the calculation of interest on overpayments It is entered as a percent. For the Fertilizer Company, the rate chosen was 9.25 percent

2. Months From Compliance to Settlement The firm should enter the number of months from the date it comes into compliance to the date of the post-compliance settlement. In the example, the post-compliance settlement was made 2 months after the Fertilizer Company came into compliance

[1]The Treasury has determined that the interest rate used to calculate the interest owed on underpayments will be the discount rate which has already been entered into the computer

Exhibit IV-5 illustrates all the input for the post-compliance settlement for the Fertilizer Company

OUTPUT FROM THE POST-COMPLIANCE *SETTLEMENT CALCULATION*

The output from the post-compliance settlement calculation incorporates the data on penalty payments made by the firm and compares these payments to a penalty schedule based on actual expenditures made to achieve compliance The output consists of two parts:

- Printing of the penalty paid in each month and the penalty determined from actual expenditures The difference between the actual penalty and the payment made by the firm is calculated in each month
- The settlement due EPA or due to the firm is calculated

The output from the post-compliance settlement for the Fertilizer Company is shown in Exhibit IV-6. The first column prints the month in which a penalty payment was made or a penalty payment was required based on the post-compliance penalty calculation The second column contains the actual payment made by the firm The third column is the penalty based on actual expenditures made by the firm coming into compliance

The program next calculates the difference between the penalty payment in each month and the new penalty calculation based on actual expenditures The difference between the payment made and the actual penalty is then charged interest at the rate specified by the Treasury for overpayments if the penalty paid exceeds the actual penalty or at the discount rate if the penalty paid is less than the actual penalty [1]

[1]The method for calculating the interest on the amount of overpayment or underpayment is described in detail in Section V of the Technical Support Document

EXHIBIT IV-5
INPUT FOR CALCULATION OF POST-COMPLIANCE SETTLEMENT

```
    1. IS THIS AN INITIAL PENALTY CALCULATION
       OR A POST-COMPLIANCE SETTLEMENT CALCULATION?
       0=INITIAL, 1=POST-COMPLIANCE:
?
1
    ITEMS 4 AND 5 SHOULD SHOW AMOUNTS ACTUALLY
    EXPENDED
     2. IS THIS A LIMITED LIFE FACILITY? 1=YES 0=NO
?
0
     3. PERCENTAGE FINANCED BY INDUSTRIAL DEVELOPMENT BONDS=
?
0
     4. MONTHS OUT OF COMPLIANCE=
?
9
    HOW MANY MONTHS HAVE PRECOMPLIANCE CAPITAL OR
    PRECOMPLIANCE O&M EXPENDITURES?
?
3
    FOR EACH MONTH OF PRECOMPLIANCE CAPITAL OR O&M
    ENTER THE NUMBER OF THE MONTH,THE CAPITAL EXPENDITURE
    AND THE O&M EXPENSE SEPARATED BY COMMAS.

    MONTH,CAPITAL,O&M
?
7,184050.00,0
?
8,184050.00,879.96
?
9,184050.00,1324.40
     5. INITIAL MONTHLY O & M EXPENSE=
?
1333.33
     6. INVESTMENT TAX CREDIT RATE=
?
10.0
     7  INCOME TAX RATE=
?
49.73
     8. FORECAST INFLATION RATE=
?
7.0
     9. DISCOUNT RATE=
?
15.62
     10. INTEREST RATE=
?
9.75
```


EXHIBIT IV-5
INPUT FOR CALCULATION OF POST-COMPLIANCE SETTLEMENT
(continued)

```
     11. PREFERRED STOCK DIVIDEND RATE=
?
9.60
     12. EQUITY SHARE OF INVESTMENT=
?
67.5
     13. PREFERRED STOCK SHARE=
?
3.5
     14. DEBT SHARE OF INVESTMENT=
?
29.0
     15. DEPRECIATION LIFE=
?
9
     16. USEFUL LIFE=
?
11
     20. HOW MANY PENALTY PAYMENTS WERE MADE?
?
3
     20. PAYMENT NUMBER  1: ENTER MONTH,AMOUNT
?
1,5544.35
     20. PAYMENT NUMBER  2: ENTER MONTH,AMOUNT
?
4,5641.56
     20. PAYMENT NUMBER  3: ENTER MONTH,AMOUNT
?
7,5740.47
     21. TREASURY INTEREST RATE=
?
9.25

     22. MONTHS FROM COMPLIANCE UNTIL SETTLEMENT=
?
2
```

EXHIBIT IV-6
THE POST-COMPLIANCE SETTLEMENT

STRAIGHT LINE, RAPID AMORTIZATION

MONTH	PAID	PENALTY	DUE EPA	DUE FIRM
1	5544.35	8616.09	3071.74	0.0
4	5641.56	8763.06	3121.50	0.0
7	5740.47	8912.55	3172.08	0.0

SETTLEMENT DUE EPA= 10317.30

The post-compliance settlement was calculated and paid two months after the Fertilizer Company came into compliance The total post-compliance settlement paid by the firm to EPA is $10,317 30

SECTION V

SPECIAL CONDITIONS

The preceding four sections enable the user to calculate the noncompliance penalty and post-compliance settlement when the source is privately-owned and when compliance is achieved by modification of existing plant and equipment In addition, it is assumed that financing would not involve industrial development bonds. Section V will expand the number of cases in which the penalty program is applicable and enable the user to compute the noncompliance penalty in the following situations

- Plant and equipment necessary for compliance are financed through the sale of tax-exempt industrial development bonds
- The source is operated by a local, state or federal government
- The source has a limited useful life

The noncompliance penalty in all three cases is calculated using the program PENALTY However, it is necessary to modify some of the data entered into the program to reflect the unique characteristics of each of these situations The following section describes special data requirements and modifications in data entry It should be stressed that all data and data entry procedures discussed in the four previous sections are applicable to these special conditions except where specific changes are required

INDUSTRIAL DEVELOPMENT BONDS

Industrial development bonds for pollution control equipment are used by firms in order to secure debt financing at an interest cost lower than the current rate on industrial bonds This lower interest rate is possible because the development bonds are issued by a local or state government for the corporation and the interest payments received by the bondholder are exempt from federal income tax The corporation pays the principal and interest payments, but because of the tax-exempt status of the interest, the interest charges are often a few percentage points below corporate debt of similar quality

The Revenue Act of 1978 requires that firms financing with industrial development bonds receive only one-half of the investment tax credit when rapid amortization is used For firms financing in part with development bonds, a pro-rata portion of this financing should be applied to the facility for determining the investment tax credit The computer program will automatically pro-rate the investment tax credit The user must provide two types of data

- The percentage of the investment financed by industrial development bonds
- The weighted average interest rate for the investment [1]

Data are gathered for the calculation of the penalty in the same manner as described in Section II In addition, the user must perform the following calculations

[1] A worksheet is included in Section II (Worksheet D) to aid in calculating the weighted average interest rate

1 Percent financed with industrial development bonds This percentage is obtained by dividing the total issue of tax-exempt pollution control industrial development bonds by the capital investment In the Fertilizer Company example, the estimated capital investment was $500,000 If the firm sold $200,000 in industrial development bonds, the percentage entered would be forty This would be entered as 40.0 If the percentage exceeds one hundred, 100.0 should be entered.[1]

2 Interest rate on industrial development bonds The interest rate used for pollution control industrial development bonds is published by Smith, Barney, Harris, Upham & Co , in the Bond Markets Review The review is published weekly and the current yield on bonds is printed on the last page The most recent yield published will be the interest rate used for industrial development bonds

There are thus only two changes in the data entered for industrial development bonds A percentage of the project financed with tax-exempt bonds is entered, and the interest rate used is the weighted average calculated using Worksheet D of Section II All other data entry remains the same

[1]The firm may issue bonds in a volume much higher than the capital investment In this case financing is entered as 100 percent The program will not accept data higher than 100 percent

GOVERNMENT-OWNED FACILITIES

The use of the noncompliance penalty program for government facilities requires that all cash flows related to taxes be eliminated In addition, the discount rate for all cash flows is entered at ten percent Exhibit V-1 shows the data entry procedure for noncomplying sources owned by governments Data labeled "no change" are calculated using the methods described in Section II

FACILITIES WITH LIMITED USEFUL LIVES

The noncompliance penalty computer program will calculate penalties for facilities with limited useful lives In cases where a noncomplying facility is to be operated for a period of time and then retired, the current program may be used Capital and operating and maintenance cost estimates are made based on what it would cost to bring the source into compliance and the calculation proceeds in the normal manner In such cases there are no precompliance operating and maintenance expenditures and the total capital expenditure is entered in the last month There is no post-compliance settlement

In cases where the noncomplying source is to be replaced by a new, complying facility after some period of noncompliance, program inputs and operation will be slightly different than at present In such cases the program will:

- Ask if the calculation is for a limited life facility that is being replaced,
- Request an estimate of the capital and annual operating expenses required to bring the old source into compliance,

EXHIBIT V-1

DATA ENTRY FOR GOVERNMENT FACILITIES

DATA CATEGORY	PROGRAM ENTRY
Precompliance Capital Expenditures	No Change
Precompliance Operating and Maintenance	No Change
Initial Monthly Operating and Maintenance	No Change
Investment Tax Credit	0
Income Tax Rate	0
Inflation Rate	No Change
Discount Rate	10 0
Interest Rate	0
Preferred Dividend Rate	0
Equity Share of the Investment	100.0
Preferred Share of Investment	0
Debt Share of Investment	0
Depreciation Life in Years	No Change
Useful Life in Years	No Change

- Request a schedule of precompliance total capital expenditures (for productive capability plus pollution control equipment) required to build the new source,
- Request a schedule of precompliance O&M expenditures (for productive capability and pollution control equipment) associated with the new source, and
- Request an estimate of monthly production costs including pollution control operating and maintenance expenses at the new source

The program will then calculate the penalty based on the costs of compliance at the old source but will be adjusted for precompliance expenditures at the new source. Once the new source is in operation and the old source is retired (and, thus, full compliance is achieved), a post-compliance settlement can be made. Such a settlement will consider changes in the compliance expenditures associated with the new source relative to the estimates made when the initial penalty calculation was carried out and updates of the monthly production costs, the inflation rate, the discount rate, and the capital structure of the firm

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APPENDIX C - COMPUTER PROGRAM

Note:

After Administration Docket EN79-1 was closed, a technical error was found in the computer program contained in Appendix C. The effect of the error was that the computer program did not conform to the Technical Support Document's (Appendix A) provisions for computing the investment tax credit when a source uses industrial development bonds and rapid amortization. A corrected Appendix C has been placed in the docket. Appendix C as it appears below contains the corrected program.

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C                                                                       00000100
C       THIS PROGRAM COMPUTES THE NONCOMPLIANCE PENALTY                 00000200
C       PRESCRIBED IN SECTION 120 OF THE CLEAN AIR ACT.                 00000300
C                                                                       00000400
C       IT WAS WRITTEN BY ICS MANAGEMENT GROUP, INC.,                   00000500
C       NASHVILLE, TENNESSEE, UNDER CONTRACT WITH THE                   00000600
C       UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.                  00000700
C                                                                       00000900
C       THE PROGRAM FOLLOWS CLOSELY THE TECHNICAL SUPPORT               00001000
C       DOCUMENT DESCRIPTION OF THE CALCULATION OF                      00001100
C       SECTION 120 NONCOMPLIANCE PENALTIES.                            00001200
C                                                                       00001300
C                                                                       00001400
C                                                                       00001500
C VARIABLE DICTIONARY                                                   00001600
C                                                                       00001700
C   VECTORS                                                             00001800
C       AC(J)          ADJUSTED CAPITAL COMPONENT IN MONTH J            00001900
C       AO(J)          ADJUSTED O & M COMPONENT IN MONTH J              00002000
C       BOOK(J)        REMAINING BOOK VALUE IN MONTH J                  00002050
C       D(K,J)         DEPRECIATION FRACTION IN MONTH J, TYPE K         00002100
C       DEP(J)         DEPRECIATION TAX SAVINGS IN YEAR J               00002200
C       DELTA(J)       RECOMPUTED PENALTY LESS AMOUNT PAID              00002600
C       DEPCUM(J)      CUMULATIVE DEPRECIATION IN MONTH J               00002650
C       DIV(J)         PREFERRED STOCK DIVIDENDS PAID                   00002700
C                        AT END OF MONTH J                              00002800
C       INIT(J)        INITIAL INVESTMENT IN MONTH J                    00002859
C       INT(J)         INTEREST PAID AT END OF MONTH J                  00002900
C       MCF(J)         CASH FLOW IN MONTH J - ON TIME CASE              00003010
C       MCFP(J)        CASH FLOW IN MONTH J - DELAY CASE                00003020
C       MCR(J)         CAPITAL RELATED EXPENDITURES IN MONTH J          00003030
C       OM(J)          O & M EXPENSE AT END OF MONTH J                  00003040
C       P(J)           PENALTY PAYMENT DUE IN MONTH J                   00003100
C       PAID(J)        PENALTY ACTUALLY PAID IN MONTH J                 00003200
C       PRIN(J)        PRINCIPAL REPAYMENT AT END OF                    00003300
C                        YEAR J                                         00003400
C       PRNOUT(J)      PRINCIPAL OUTSTANDING AT THE BEGINNING           00003500
C                        OF MONTH J                                     00003600
C       PRECAP(J)      PRE-COMPLIANCE CAP EXP IN MONTH J                00003700
C       PREF(J)        PREFERRED STOCK REDEEMED AT END OF               00003800
C                        MONTH J                                        00003900
C       PRFOUT(J)      PREFERRED STOCK OUTSTANDING AT BEGINNING         00004000
C                        OF MONTH J                                     00004100
C       PROM(J)        PRE-COMPLIANCE O & M EXP IN MONTH J              00004200
C       PVMCF(J)       PRESENT VALUE OF CASH FLOWS IN MONTH J           00004250
C       QUART(J)       QUARTERLY PENALTY DUE IN MONTH J                 00004300
C       SC(J)          EQUIVALENT CAPITAL COMPONENT IN MONTH J          00004400
C       SO(J)          EQUIVALENT O & M COMPONENT IN MONTH J            00004500
C       X(J)           FRACTION OF CAPITAL SPENT PRIOR TO MONTH J       00004700
C       Y(J)           PRESENT VALUE OF O & M EXPENSE IN MONTH J        00004800
C       Z(J)           DELTA(J) ADJUSTED TO COMPLIANCE DATE             00004900
C                                                                       00005000
C   VARIABLES                                                           00005100
C       AM       ADJUSTED O & M PENALTY                                 00005150
C       B        DEBT FRACTION OF CAPITAL STRUCTURE                     00005200
C       CUMDEP   FRACTION OF ASSET ALREADY DEPRECIATED                  00005300
C       DBTSHR   DEBT SHARE OF CAPITAL INVESTMENT ($)                   00005400
C       DD       MONTHS FROM COMPLIANCE DATE TO SETTLEMENT              00005500
C       DDIV     DUMMY INDICATING COSTS DIVIDED BY 1000                 00005600
C       DLIM     DUMMY INDICATING LIMITED LIFE FACILITY                 00005700
C       DLOOP    DUMMY INDICATING VARIABLES BEING CHANGED               00005800
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62.      C        DLUMP   DUMMY INDICATING A LUMP SUM SETTLEMENT                  00005900
63.      C        DPOST   DUMMY INDICATING POST-COMPLIANCE SETTLEMENT             00006000
64.      C        E       DISCOUNT RATE                                           00006100
65.      C        E1      DISCOUNT RATE ON MONTHLY BASIS                          00006200
66.      C        E4      DISCOUNT RATE ON A QUARTERLY BASIS                      00006300
67.      C        EI      EQUITY SHARE OF CAPITAL INVESTMENT ($)                  00006400
68.      C        F       PREFERRED STOCK FRACTION OF CAPITAL STRUCTURE           00006500
69.      C        FIDB    FRACTION FINANCED BY INDUSTRIAL DEVELOPMENT BONDS       00006600
70.      C        FRAPID  FRACTION OF DEPRECIATION SUBJECT TO RAPID               00006700
71.      C                 AMORTIZATION                                           00006800
72.      C        I       FORECAST INFLATION RATE                                 00006900
73.      C        I1      INFLATION RATE ON MONTHLY BASIS                         00007000
74.      C        I4      INFLATION RATE ON A QUARTERLY BASIS                     00007100
75.      C        II      CAPITAL COST IN DOLLARS (INITIAL INVESTMENT)            00007200
76.      C        IIOLD   CAPITAL COST FOR OLD FACILITY                           00007300
77.      C        J       INDEX INDICATING THE YEAR                               00007400
78.      C        K       INDEX INDICATING THE YEAR                               00007500
79.      C        L       PERIOD OF DELAYED COMPLIANCE(MONTHS)                    00007600
80.      C        LDPP    DELAY BEFORE INITIAL PENALTY PAYMENT (MONTHS)           00007700
81.      C        LDTS    DUMMY INDICATING DEPRECIATION METHOD                    00007800
82.      C        MDS     MONTHS DELAY IN SETTLEMENT                              00007900
83.      C        MO      INITIAL MONTHLY O & M EXPENSE ($)                       00008000
84.      C        MOOLD   O & M COST FOR OLD FACILITY                             00008100
85.      C        NDEP    DEPRECIATION LIFE (YEARS)                               00008300
86.      C        NLOOP   NUMBER OF VARIABLES TO BE CHANGED                       00008400
87.      C        NPP     NUMBER OF PENALTY PAYMENTS ACTUALLY MADE                00008500
88.      C        NUSE    USEFUL LIFE (YEARS)                                     00008600
89.      C        NVAR    VARIABLE NUMBER BEING CHANGED                           00008700
90.      C        PVACR   PRESENT VALUE OF ANNUAL CAPITAL RELATED FLOWS           00008800
91.      C        PVADJ   PRESENT VALUE OF CASH FLOWS ADJ FOR PRE-COMPL EXP       00008900
92.      C        PVDLA   PRESENT VALUE OF DELAYED CASH FLOWS                     00009000
93.      C        PVIN    PRESENT VALUE OF INITIAL CASH FLOWS                     00009100
94.      C        PVOM    PRESENT VALUE OF O & M CASH FLOWS                       00009200
95.      C        PVPCE   PRESENT VALUE OF CASH FLOWS IN ALL CYCLES               00009300
96.      C        PVPEN   PRESENT VALUE OF PENALTY                                00009400
97.      C        PV1PCE  PRESENT VALUE OF CASH FLOWS IN FIRST CYCLE              00009500
98.      C        Q       EQUITY FRACTION OF CAPITAL STRUCTURE                    00009600
99.      C        R       INTEREST RATE FOR POST-COMPL SETTLEMENT                 00009700
100.     C        RDIV    PREFERRED STOCK DIVIDEND RATE                           00009800
101.     C        RDIV12          MONTHLY PREFERRED STOCK DIVIDEND RATE           00009850
102.     C        RINT    INTEREST RATE ON DEBT                                   00009900
103.     C        RINT12          MONTHLY INTEREST ON DEBT                        00009950
104.     C        SAVING  PRESENT VALUE OF ECONOMIC SAVINGS OF DELAY              00010000
105.     C        SETTLE  POST-COMPLIANCE SETTLEMENT AMOUNT                       00010100
106.     C        TITC    INVESTMENT TAX CREDIT RATE(%)                           00010200
107.     C        TTR     MARGINAL INCOME TAX RATE (%)                            00010300
108.     C        ZDELAY  ZTOTAL ADJUSTED TO SETTLEMENT DATE                      00010400
109.     C        ZTOTAL  SUM OF Z(J) ADJUSTED TO COMPLIANCE DATE                 00010500
110.     C                                                                        00010600
111.     C       OTHER VARIABLES BEGINNING WITH Z ARE USED TO CONVERT             00010700
112.     C         FROM INTEGER TO REAL                                           00010800
113.     C                                                                        00010900
114.     C                                                                        00011000
115.     C                                                                        00011100
116.     C MAIN PROGRAM                                                           00011200
117.     C                                                                        00011300
118.     C                                                                        00011400
119.              IMPLICIT REAL*8(A-H,O-Z)                                       00011450
120.     C                                                                        00011500
121.              DIMENSION U(6,144),DEP(360)                                    00011600
122.              DIMENSION PRIN(360),PRNOUT(360),PREF(360)                      00011700
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      DIMENSION PRFOUT(360),INT(360)                                    00011800
      DIMENSION DELTA(100),Z(100)                                       00011900
      DIMENSION DIV(360)                                                00012000
      DIMENSION X(360),PRECAP(360),PRUM(360),P(360)                     00012100
      DIMENSION SC(360),SU(360),AC(360),AD(360),PAID(360)               00012200
      DIMENSION PVDIS(6),QUART(360),Y(360)                              00012300
      DIMENSION BOOK(360),DEPCUM(360),INIT(360),MCF(360)                00012400
      DIMENSION MCK(360),MCFP(360),UM(360),PVMCF(360)                   00012425
C                                                                       00012500
C                                                                       00012600
      INTEGER DEPMET,DKAPID,DLOOP,DDIV,DLIM,DEL(23)                     00012800
      INTEGER DPRCAP,DPRUM,DPOST,DD,DATA                                00012900
      REAL II,I,IIC,II,MO,M12,M9                                        00013000
      REAL INT,M,I4,LUMP,MONEW,MOULD,IIOLD                              00013100
      REAL E1,E4,M4,IACT,IACII,INIT,MCF,MCFP,MCK                        00013200
C                                                                       00013300
C                                                                       00013400
C   DATA INPUT                                                          00013500
C                                                                       00013600
C                                                                       00013700
  100 DLOOP=1                                                           00013800
      KW=6                                                              00013900
      KR=5                                                              00014000
   90 WRITE(KW,7400)                                                    00014100
      WRITE(KW,7401)                                                    00014200
      WRITE(KW,7402)                                                    00014300
 7400 FORMAT(5X,' 1. IS THIS AN INITIAL PENALTY CALCULATION')           00014400
 7401 FORMAT(9X, 'OR A POST-COMPLIANCE SETTLEMENT CALCULATION?')        00014500
 7402 FORMAT(9X,'0=INITIAL, 1=POST-COMPLIANCE:',I4)                     00014600
      READ(KR,*)DPOST                                                   00014700
      IF(DPOST)94,94,80                                                 00014800
   80 WRITE(KW,7410)                                                    00014900
      WRITE(KW,7411)                                                    00015000
 7410 FORMAT(5X,'ITEMS 4 AND 5 SHOULD SHOW AMOUNTS ACTUALLY')           00015100
 7411 FORMAT(5X, 'EXPENDED')                                            00015200
   94 GO TO(93,3000),DLOOP                                              00015300
C                                                                       00015400
   93 WRITE(KW,7422)                                                    00015500
 7422 FORMAT(5X,' 2. IS THIS A LIMITED LIFE FACILITY? 1=YES',           00015600
     &  ' 0=NO',I4)                                                     00015700
      READ(KR,*)DLIM                                                    00015800
      IF(DLIM)96,96,95                                                  00015900
   95 WRITE(KW,7425)                                                    00016000
      WRITE(KW,7426)                                                    00016100
 7425 FORMAT(5X,'ITEMS 4 AND 5 SHOULD SHOW COSTS FOR THE')              00016200
 7426 FORMAT(5X,'REPLACEMENT FACILITY')                                 00016300
   96 GO TO(97,3000),DLOOP                                              00016400
C                                                                       00016500
   97 WRITE(KW,7535)                                                    00016600
 7535 FORMAT(5X,' 3. PERCENTAGE FINANCED BY INDUSTRIAL DEVELOP',        00016700
     &  'MENT BONDS=',F6.2)                                             00016800
      READ(KR,*)FIDB                                                    00016900
      FIDB=FIDB/100.                                                    00017000
      GO TO(101,3000),DLOOP                                             00017100
C                                                                       00017200
  101 DDIV=1                                                            00017400
      DATA=0                                                            00017500
      R=0.                                                              00017600
 4000 FORMAT(F20.5)                                                     00017700
 4001 FORMAT(I20)                                                       00017800
 4002 FORMAT(I5,5F10.2)                                                 00017900
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184.      6000   FORMAT(10X)                                                    00018000
185.       110   WRITE(KW,4005)                                                 00018100
186.      4005   FORMAT(5X,29H 4. MONTHS OUT OF COMPLIANCE=,I4)                 00018200
187.             READ(KK,*)L                                                    00018300
188.             DO 4003 J=1,L                                                  00018400
189.             PRECAP(J)=0.                                                   00018500
190.      4003   PROM(J)=0.                                                     00018600
191.             WRITE(KW,4010)                                                 00018700
192.             WRITE(KW,4011)                                                 00018800
193.      4010   FORMAT(5X,'HOW MANY MONTHS HAVE PRECOMPLIANCE CAPITAL OR')     00018900
194.      4011   FORMAT(5X,'PRECOMPLIANCE O&M EXPENDITURES?')                   00019000
195.             READ(KK,*)INUM                                                 00019100
196.             IF(INUM.LT.1)GO TO 200                                         00019150
197.             WRITE(KW,9001)                                                 00019200
198.      9001   FORMAT(5X,'FOR EACH MONTH OF PRECOMPLIANCE CAPITAL OR O&M'     00019300
199.         &   ,/,5X,'ENTER THE NUMBER OF THE MONTH, THE CAPITAL EXPEND',     00019400
200.         &   'ITURE',/,5X,'AND THE O&M EXPENSE SEPARATED BY COMMAS.')       00019500
201.             WRITE(KW,6000)                                                 00019600
202.             II=0.                                                          00019700
203.             WRITE(KW,4015)                                                 00019800
204.      4015   FORMAT(5X,'MONTH,CAPITAL,O&M')                                 00019900
205.             DO 133 J=1,INUM                                                00020000
206.             READ(KK,*)J1,X1,Y1                                             00020100
207.             PRECAP(J1)=X1                                                  00020200
208.       133   PROM(J1)=Y1                                                    00020300
209.       200   GO TO (210,3000),OLOOP                                         00020400
210.       210   WRITE(KW,4020)                                                 00020500
211.      4020   FORMAT(5X,34H 5. INITIAL MONTHLY O & M EXPENSE=,F10.2)         00020600
212.             READ (KK,*)MONEH                                               00020700
213.             GO TO (220,3000),OLOOP                                         00021100
214.       220   WRITE(KW,4030)                                                 00021700
215.      4030   FORMAT(5X,31H 6. INVESTMENT TAX CREDIT RATE=,F6.2)             00021800
216.             READ(KK,*)TITC                                                 00021900
217.             IF(TITC-1.)223,227,227                                         00022000
218.       223   IF(TITC)227,227,224                                            00022100
219.       224   DATA=1                                                         00022200
220.       227   TITC=TITC/100.                                                 00022300
221.             GO TO (230,3000),OLOOP                                         00022400
222.       230   WRITE(KW,4040)                                                 00022500
223.      4040   FORMAT(5X,20H 7. INCOME TAX RATE=,F6.2)                        00022600
224.             READ(KK,*)TTR                                                  00022700
225.             IF(TTR-1.)233,237,237                                          00022800
226.       233   IF(TTR)237,237,234                                             00022900
227.       234   DATA=1                                                         00023000
228.       237   TTR=TTR/100.                                                   00023100
229.             GO TO (240,3000),OLOOP                                         00023200
230.       240   WRITE(KW,4050)                                                 00023300
231.      4050   FORMAT(5X,28H 8. FORECAST INFLATION RATE=,F6.2)                00023400
232.             READ(KK,*)I                                                    00023500
233.             IF(I-1.)243,247,247                                            00023600
234.       243   IF(I)247,247,244                                               00023700
235.       244   DATA=1                                                         00023800
236.       247   I=I/100.                                                       00023900
237.             II=(1.+I)**(1./12.)-1.                                         00024000
238.             GO TO (250,3000),OLOOP                                         00024100
239.       250   WRITE(KW,4060)                                                 00024200
240.      4060   FORMAT(5X,18H 9. DISCOUNT RATE=,F6.2)                          00024300
241.             READ(KK,*)E                                                    00024400
242.             IF(E-1.)253,255,255                                            00024500
243.       253   IF(E)255,255,254                                               00024600
244.       254   DATA=1                                                         00024700
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  255   E=E/100.
  256   IF(E-1)258,258,259
  258   WRITE(KW,4065)
 4065   FORMAT(' DISCOUNT RATE NOT GREATER THAN INFLATION RATE.',
     &       /,' ONLY THE O & M COMPONENT OF THE PENALTY WILL BE',
     &       '  CALCULATED.',/,' THE DISCOUNT RATE IS SET EQUAL TO',
     &       '  THE INFLATION RATE.')
        E=1
  259   GO TO (260,3000),DLOOP
  260   WRITE(KW,4070)
 4070   FORMAT(5X,18H10. INTEREST RATE=,F6.2)
        READ(KR,*)RINT
        IF(RINT-1.)263,267,267
  263   IF(RINT)267,267,264
  264   DATA=1
  267   RINT=RINT/100.
        GO TO (270,3000),DLOOP
  270   WRITE(KW,4080)
 4080   FORMAT(5X,34H11. PREFERRED STOCK DIVIDEND RATE=,F6.2)
        READ(KR,*)RDIV
        IF(RDIV-1.)273,277,277
  273   IF(RDIV)277,277,274
  274   DATA=1
  277   RDIV=RDIV/100.
        GO TO (300,3000),DLOOP
  300   WRITE(KW,4090)
 4090   FORMAT(5X,31H12. EQUITY SHARE OF INVESTMENT=,F6.2)
        READ(KR,*)Q
        IF(Q-1.)303,307,307
  303   IF(Q)307,307,304
  304   DATA=1
  307   Q=Q/100
        GO TO (280,3000),DLOOP
  280   WRITE(KW,4100)
 4100   FORMAT(5X,26H13. PREFERRED STOCK SHARE=,F6.2)
        READ(KR,*)F
        IF(F-1.)283,287,287
  283   IF(F)287,287,284
  284   DATA=1
  287   F=F/100.
        GO TO (290,3000),DLOOP
  290   WRITE(KW,4110)
 4110   FORMAT(5X,29H14. DEBT SHARE OF INVESTMENT=,F6.2)
        READ(KR,*)B
        IF(B-1.)313,317,317
  313   IF(B)317,317,314
  314   DATA=1
  317   B=B/100.
        GO TO (324,3000),DLOOP
  324   IF(DABS(Q+F+B-1.)-.005)350,325,325
  325   WRITE(KW,6000)
        WRITE(KW,4500)
 4500   FORMAT(5X,'EQUITY+PREFERRED+DEBT NOT = 100, TRY AGAIN')
        GO TO 300
  350   WRITE(KW,4130)
 4130   FORMAT(5X,22H15. DEPRECIATION LIFE=,I4)
        READ(KR,*)NDEP
        GO TO (320,3000),DLOOP
  320   WRITE(KW,4140)
 4140   FORMAT(5X,16H16. USEFUL LIFE=,I4)
        READ(KR,*)NUSE
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306.            IF(NUSE.GE.NUEP)GO TO 4441                              00030505
307.            WRITE(6,4142)                                           00030510
308.      4142  FORMAT(' ERROR:DEPRECIABLE LIFE CANNOT BE GREATER THAN',  00030515
309.         &         ' USEFUL LIFE.')                                  00030520
310.            GO TO 350                                               00030525
311.      4441  GO TO (321,3000),OLOOP                                  00030600
312.       321  IF(OPOST)360,360,322                                    00030700
313.       360  WRITE(KW,7601)                                          00030800
314.            WRITE(KW,7602)                                          00030900
315.            WRITE(KW,7603)                                          00031000
316.      7601  FORMAT(5X,'17. HOW MANY MONTHS AFTER THE FIRST DAY OF')  00031100
317.      7602  FORMAT(9X,'NONCOMPLIANCE WILL THE INITIAL PENALTY')      00031200
318.      7603  FORMAT(9X,'PAYMENT BE MADE?',I4)                        00031300
319.            READ(KR,*)LOPP                                          00031400
320.            GO TO(9040,3000),OLOOP                                  00031500
321.      9040  WRITE(KW,7560)                                          00031600
322.            WRITE(KW,7561)                                          00031700
323.      7560  FORMAT(5X,'18. DO YOU WISH TO SEE A LUMP SUM')          00031800
324.      7561  FORMAT(9X,'SETTLEMENT? 1=YES,0=NO:',F4.0)               00031900
325.            READ(KR,*)OLUMP                                         00032000
326.            IF(OLUMP)367,367,6380                                   00032100
327.      6380  WRITE(KW,7515)                                          00032500
328.            WRITE(KW,7516)                                          00032600
329.            WRITE(KW,7517)                                          00032700
330.      7515  FORMAT(5X,'19. HOW MANY MONTHS AFTER THE FIRST DAY OF')  00032800
331.      7516  FORMAT(9X,'NONCOMPLIANCE WILL THE LUMP SUM')            00032900
332.      7517  FORMAT(9X,'SETTLEMENT BE MADE?',I4)                     00033000
333.            READ(KR,*)MOS                                           00033100
334.            GO TO (367,3000),OLOOP                                  00033200
335.       322  WRITE(KW,4190)                                          00033300
336.      4190  FORMAT(5X,'20. HOW MANY PENALTY PAYMENTS WERE MADE?',I4) 00033400
337.            READ(KR,*)NPP                                           00033500
338.            DO 412 J=1,100                                          00033600
339.       412  PAID(J)=0.                                              00033700
340.            IF(NPP)416,416,411                                      00033800
341.       411  DO 415 J=1,NPP                                         00033900
342.            WRITE(KW,7420)J                                         00034000
343.      7420  FORMAT(9X,'20. PAYMENT NUMBER',I3,': ENTER MONTH,AMOUNT') 00034100
344.            READ(KR,*)N9,PYMT                                       00034200
345.            IF(J-1)413,413,415                                      00034300
346.       413  LOPP=N9-1                                               00034400
347.       415  PAID(N9)=PYMT                                           00034500
348.       416  GO TO (417,3000),OLOOP                                  00034600
349.       417  WRITE(KW,7415)                                          00034700
350.      7415  FORMAT(5X,'21. TREASURY INTEREST RATE=',F6.2)           00034800
351.            READ(KR,*)R                                             00034900
352.            IF(R-1.)403,407,407                                     00035000
353.       403  IF(R)407,407,404                                        00035100
354.       404  DATA=1                                                  00035200
355.       407  R=R/100.                                                00035300
356.            GO TO (9070,3000),OLOOP                                 00035400
357.      9070  WRITE(KW,6000)                                          00035410
358.            WRITE(KW,7755)                                          00035420
359.      7755  FORMAT(5X,'22. MONTHS FROM COMPLIANCE UNTIL SETTLEMENT=') 00035430
360.            READ(KR,*)DD                                            00035440
361.            GO TO(367,3000),OLOOP                                   00035450
362.       367  IF(OLIN)420,420,365                                     00035500
363.       365  WRITE(KW,7440)                                          00035600
364.            WRITE(KW,7441)                                          00035700
365.      7440  FORMAT(5X,'23. CAPITAL COST WHICH WOULD HAVE ',         00035800
366.         C   'BEEN INCURRED')                                       00035900
```

```
 7441   FORMAT(5X,'     TO BRING EXISTING FACILITY INTO',
     C   ' COMPLIANCE',F10.2)
        READ(KR,*)IIOLD
  375   GO TO (385,3000),DLOOP
  385   WRITE(KW,7447)
        WRITE(KW,7448)
 7447   FORMAT(5X,'24. MONTHLY O & M COST TO KEEP EXISTING FACILITY')
 7448   FORMAT(5X,'     IN COMPLIANCE=',F10.2)
        READ(KR,*)MOOLD
  389   GO TO (420,3000),DLOOP
C
C
C
C       DATA CHECKS AND INITIALIZATIONS
C
C
C
C       COMPUTE MONTHLY AND QUARTERLY EQUIVALENT VALUES OF
C       E AND I FOR USE LATER IN THE PROGRAM.
  420   E1=(1.+E)**(1./12.)-1.
        E4=(1.+E)**(.25)-1.
        I4=(1.+I)**(.25)-1.
        R1=(1.+R)**(1./12.)-1.
        RDIV12=(1.+RINT)**(1./12.)-1.
        RINT12=(1.+RINT)**(1./12.)-1.
C
        IERR1=0
        IERR2=0
        IERR3=0
        IF(DPOST.EQ.1.AND.NPP.EQ.0)IERR1=1
        IF(DPOST.EQ.1.AND.R.EQ.0.)IERR2=1
        IF(DLIM.NE.1)GO TO 6302
        IF(IIOLD.EQ.0..AND.MOOLD.EQ.0.)IERR3=1
 6302   IF(IERR1.EQ.1)WRITE(6,6303)
 6303   FORMAT(' ERROR: NO PENALTY PAYMENTS(VARIABLE #20)',
     &  /,' INPUT FOR A POST-COMPLIANCE SETTLEMENT.')
        IF(IERR2.EQ.1)WRITE(6,6304)
 6304   FORMAT(' ERROR: TREASURY INTEREST RATE(VARIABLE #21)',
     &  /,' IS ZERO IN A POST-COMPLIANCE SETTLEMENT.')
        IF(IERR3.EQ.1)WRITE(6,6305)
 6305   FORMAT(' ERROR: NO CAPITAL OR O & M COSTS(VARIABLES',
     &  '  23 & 24)',/,' TO BRING EXISTING FACILITY INTO ',
     &  'COMPLIANCE ON A LIMITED LIFE FACILITY.')
        IERR=IERR1+IERR2+IERR3
        IF(IERR.GT.0)GO TO 7299
        MO=MONEW
        IF(DABS(Q+F+B-1.)-.005)422,421,421
  421   WRITE(KW,4500)
        GO TO 100
  422   CONTINUE
        II=0
        DO 153 J=1,L
  130   II=II+PRECAP(J)/(1.+II)**J
  153   CONTINUE
 6059   X(1)=0.
        IF(II)6060,6060,6070
 6060   DO 6065 K=1,L
 6065   X(K)=1.
        GO TO 154
 6070   DO 6077 K=2,L
 6076   X(K)=X(K-1)+PRECAP(K-1)/(1.+II)**(K-1)
```

```
428.      6077   CONTINUE                                                    00041000
429.             DO 6078 K=1,L                                               00041100
430.      6078   X(K)=X(K)/II                                                00041200
431.      C                                                                  00041300
432.      C                                                                  00041400
433.        154  IF(DLIM)432,432,430                                         00041500
434.        430  II=IIOLD/(1.+II)**L                                         00041600
435.             MO=MOOLD                                                    00041700
436.        432  CONTINUE                                                   00041800
437.        440  IF(II-1000000.)445,450,450                                 00041900
438.        445  IF(MO-100000.)475,450,450                                  00042000
439.        450  II=II/1000.                                                00042100
440.             DDIV=2                                                      00042200
441.             MO=MO/1000.                                                 00042300
442.             DO 460 J=1,L                                                00042400
443.             IF(DPOST)455,455,454                                        00042500
444.        454  PAID(J)=PAID(J)/1000.                                      00042600
445.        455  PRECAP(J)=PRECAP(J)/1000.                                   00042700
446.        460  PROM(J)=PROM(J)/1000.                                       00042800
447.             WRITE(KW,6000)                                              00042900
448.             WRITE(KW,6000)                                              00043000
449.             WRITE(KW,4600)                                              00043100
450.      4600   FORMAT(5X,'NOTE THAT FIGURES BELOW ARE IN THOUSANDS')       00043200
451.        475  CONTINUE                                                    00043300
452.             IF(DATA)457,457,453                                         00043400
453.        453  WRITE(KW,4570)                                              00043500
454.             WRITE(KW,4571)                                              00043600
455.      4570   FORMAT(5X,'NOTE THAT AT LEAST ONE OF YOUR DATA ENTRIES')    00043700
456.      4571   FORMAT(5X,'HAS A PERCENTAGE VALUE OF LESS THAN ONE')        00043800
457.             DATA=0                                                      00043900
458.        457  CONTINUE                                                    00044000
459.             ZNDEP=NDEP                                                  00044500
460.             DO 490 J=1,360                                              00044600
461.             AC(J)=0.                                                    00044610
462.             AD(J)=0.                                                    00044620
463.             DEP(J)=0.                                                   00044700
464.             BOOK(J)=0.                                                  00045000
465.             DEPCUM(J)=0.                                                00045100
466.             INIT(J)=0.                                                  00045200
467.             PRIN(J)=0.                                                  00045300
468.             PRNOUT(J)=0.                                                00045400
469.             PREP(J)=0.                                                  00045500
470.             PRPOUT(J)=0.                                                00045600
471.             INT(J)=0.                                                   00045700
472.             MCP(J)=0.                                                   00045900
473.             DIV(J)=0.                                                   00046000
474.             P(J)=0.                                                     00046200
475.             QUART(J)=0.                                                 00046300
476.             MCR(J)=0.                                                   00046310
477.             MCPP(J)=0.                                                  00046320
478.             UM(J)=0.                                                    00046330
479.             PVUMN=0.                                                    00046332
480.             PVPROM=0.                                                   00046334
481.        490  PVMCP(J)=0.                                                00046340
482.             DO 491 K=1,6                                                00046500
483.             PVDIS(K)=0.                                                 00046600
484.             DO 491 J=1,144                                              00046700
485.        491  D(K,J)=0.                                                  00046800
486.             DO 493 J=1,100                                              00046810
487.             DELTA(J)=0.                                                 00046820
488.        493  Z(J)=0.                                                    00046830
```

```
C                                                                       00046900
C                                                                       00047000
C                                                                       00047400
  492   DO 495 J=1,L                                                    00047500
        PRECAP(J)=PRECAP(J)/(1.+I1)**J                                  00047600
  495   PKUM(J)=PKUM(J)/(1.+I1)**J                                      00047700
        MO=MO/(1.+I1)**L                                                00047800
        DO 146 J=1,L                                                    00047810
        Y(J)=PKUM(J)/((1.+E1)/(1.+I1))**J                               00047820
        PVPKUM=PVPKUM+Y(J)*(1.-TIR)                                     00047830
  146   PVUMN=PVUMN+MO*(1.-TIK)/((1+E1)/(1+I1))**(J)                    00047840
C                                                                       00047900
C       BEGIN COMPUTING PENALTY                                         00048000
C                                                                       00048100
C                                                                       00048200
C       EQUATION (1) - EQUITY INVESTMENT                                00048300
  499   E1=I1*Q                                                         00048400
C                                                                       00048500
C       EQUATION (2) - INVESTMENT TAX CREDIT                            00048600
        ITC=I1*TITC                                                     00048700
C                                                                       00048800
C       DEPRECIATION CALCULATIONS FROM APPENDIX C                       00048900
C                                                                       00049000
        DTSMAX=0.                                                       00049100
        LDTS=1                                                          00049200
C                                                                       00049300
C       STRAIGHT LINE DEPRECIATION                                      00049400
        KMON=NDEP*12                                                    00049450
  500   DO 550 J=1,KMON                                                 00049500
        D(1,J)=1/(2NDEP*12.)                                            00049600
  550   PVDTS(1)=PVDTS(1)+D(1,J)/(1.+E1)**J                             00049700
        PVDTS(1)=PVDTS(1)*TIR                                           00049750
        IF(PVDTS(1)-DTSMAX)600,600,560                                  00049800
  560   DTSMAX=PVDTS(1)                                                 00049900
        LDTS=1                                                          00050000
C                                                                       00050100
C       SUM OF YEARS DIGITS                                             00050200
  600   ZNB=ZNDEP*(ZNDEP+1)/2                                           00050300
        DO 650 J=1,NDEP                                                 00050400
        DO 651 K=1,12                                                   00050450
        D(2,((J-1)*12+K))=(ZNDEP+1-J)/(ZNB*12)                          00050500
  651   PVDTS(2)=PVDTS(2)+D(2,((J-1)*12+K))/(1.+E1)**((J-1)*12+K)       00050600
  650   CONTINUE                                                        00050650
        PVDTS(2)=PVDTS(2)*TIR                                           00050675
        IF(PVDTS(2)-DTSMAX)700,700,660                                  00050700
  660   DTSMAX=PVDTS(2)                                                 00050800
        LDTS=2                                                          00050900
C                                                                       00051000
C       DOUBLE DECLINING BALANCE                                        00051100
  700   IF(NDEP-1)800,800,705                                           00051200
  705   CUMDEP=0                                                        00051300
        DO 750 J=1,NDEP                                                 00051400
        T1=0.                                                           00051450
        DO 751 K=1,12                                                   00051475
        IF (NDEP-2*J+2) 725,710,710                                     00051500
  710   D(3,((J-1)*12+K))=(1-CUMDEP)*2/(2NDEP*12)                       00051600
        PVDTS(3)=PVDTS(3)+D(3,((J-1)*12+K))/(1.+E1)**((J-1)*12+K)       00051700
        GO TO 751                                                       00051800
  725   D(3,((J-1)*12+K))=(1-CUMDEP)/((2NDEP-J+1)*12)                   00051900
        PVDTS(3)=PVDTS(3)+D(3,((J-1)*12+K))/(1.+E1)**((J-1)*12+K)       00052000
  751   T1=T1+D(3,((J-1)*12+K))                                         00052050
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  750   CUMDEP=CUMDEP+TI                                          00052100
        PVDTS(3)=PVDTS(3)*TTR                                     00052150
        IF(PVDTS(3)-DTSMAX)800,800,760                            00052200
  760   DTSMAX=PVDTS(3)                                           00052300
        LDTS=3                                                    00052400
C                                                                 00052500
C       RAPID AMORTIZATION                                        00052600
  800   IF(NDEP-15)790,795,795                                    00052700
  790   FRAPID=1.                                                 00052800
        GO TO 799                                                 00052900
  795   FRAPID=15./ZNDEP                                          00053000
  799   DO 810 K=4,6                                              00053100
        DO 801 J=1,KMON                                           00053200
        D(K,J)=D(K-3,J)*(1.-FRAPID)                               00053300
  801   PVDTS(K)=PVDTS(K)+D(K,J)/(1.+EI)**J                       00053400
        DO 805 J=1,60                                             00053500
        D(K,J)=D(K,J)+FRAPID/60.                                  00053600
  805   PVDTS(K)=PVDTS(K)+(FRAPID/60.)/(1.+EI)**J                 00053700
        PVDTS(K)=PVDTS(K)*TTR-TITC*FIDB/2.                        00053800
        IF(PVDTS(K)-DTSMAX)810,810,808                            00053900
  808   DTSMAX=PVDTS(K)                                           00054000
        LDTS=K                                                    00054100
  810   CONTINUE                                                  00054200
        IF(LDTS-3)900,900,820                                     00054250
  820   ITC=II*TITC*(1.-FIDB/2.)                                  00054275
C                                                                 00054300
C                                                                 00054400
C       EQUATION (3) - INITIAL CASH FLOW                          00054410
  900   INIT(1)=EI-ITC                                            00054420
C                                                                 00054430
C       EQUATION (4) - DEPRECIATION TAX SAVINGS                   00054500
        DO 950 J=1,KMON                                           00054600
  950   DEP(J)=II*D(LDTS,J)*TTR                                   00054605
C                                                                 00054610
C       CALCULATE CUMULATIVE DEPRECIATION RATE                    00054620
        DEPCUM(1)=0.                                              00054630
        DO 601 J=2,KMON                                           00054640
  601   DEPCUM(J)=DEPCUM(J-1)+D(LDTS,J-1)                         00054650
C                                                                 00054655
C       EQUATION (5) - BOOK VALUE                                 00054660
        DO 602 J=1,KMON                                           00054670
  602   BOOK(J)=II*(1.-DEPCUM(J))                                 00054680
C                                                                 00054800
C       EQUATION (6) - DEBT SHARE OF INVESTMENT                   00054900
        DBTSHR=II*B                                               00055000
C                                                                 00055100
C                                                                 00055500
        DO 604 J=1,KMON                                           00055600
C                                                                 00055602
C       EQUATION (7) - PRINCIPAL REPAYMENT                        00055605
        PRIN(J)=D(LDTS,J)*II*B                                    00055610
C                                                                 00055700
C       EQUATION (11) - PRINCIPAL OUTSTANDING                     00055800
        PRNOUT(J)=II*B*(1.-DEPCUM(J))                             00056000
C                                                                 00056020
C       EQUATION (14) - PREFERRED REDEMPTION                      00056040
        PREF(J)=D(LDTS,J)*II*F                                    00056060
C                                                                 00056100
C       EQUATION (17) - PREFERRED OUTSTANDING                     00056200
        PRFOUT(J)=II*F*(1.-DEPCUM(J))                             00056300
C                                                                 00056400
```

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611.      C        EQUATION (12) - INTEREST CHARGE                          00056500
612.               INT(J)=RINI12*II*B*(1-TTR)*(1-DEPCUM(J))                 00056600
613.      C                                                                 00056700
614.      C        EQUATION (18) - DIVIDENDS PAID                           00056800
615.               DIV(J)=RDIV12*II*F*(1-DEPCUM(J))                         00056900
616.      C                                                                 00057000
617.      C        EQUATION (19) - MONTHLY CAPITAL RELATED                  00057100
618.       604     MCR(J)=-DEP(J)+PRIN(J)+INT(J)+PREF(J)+DIV(J)             00057200
619.      C                                                                 00057210
620.      C        EQUATION (21) - O & M                                    00057220
621.               MONUSE=NUSE*12                                           00057225
622.               DO 605 J=1,MONUSE                                        00057230
623.       605     OM(J)=MO*(1.+TTR)*(1.+II)**J                             00057240
624.      C                                                                 00057300
625.      C        CALCULATE THE NUMBER OF COMPLETE CYCLES                  00057400
626.               LFULL=30/NUSE                                            00057500
627.      C                                                                 00057600
628.      C        CALCULATE THE NUMBER OF MONTHS IN THE LAST PARTIAL CYCLE  00057700
629.               LPART=(30-(NUSE*LFULL))*12                               00057800
630.      C                                                                 00057900
631.      C        CALCULATE THE MONTHLY CASH FLOWS IN ALL THE FULL CYCLES.  00058000
632.               DO 606 K1=1,LFULL                                        00058100
633.               DO 607 J=1,MONUSE                                        00058200
634.               MCR((K1-1)*MONUSE+J)=MCR(J)*(1.+I)**(NUSE*(K1-1))        00058300
635.               BOOK((K1-1)*MONUSE+J)=BOOK(J)*(1.+I)**(NUSE*(K1-1))      00058310
636.               PRFOUT((K1-1)*MONUSE+J)=PRFOUT(J)*(1.+I)**(NUSE*(K1-1))  00058320
637.               PRNOUT((K1-1)*MONUSE+J)=PRNOUT(J)*(1.+I)**(NUSE*(K1-1))  00058330
638.               DEP((K1-1)*MONUSE+J)=DEP(J)*(1.+I)**(NUSE*(K1-1))        00058340
639.               PREF((K1-1)*MONUSE+J)=PREF(J)*(1.+I)**(NUSE*(K1-1))      00058350
640.               PRIN((K1-1)*MONUSE+J)=PRIN(J)*(1.+I)**(NUSE*(K1-1))      00058360
641.        607    OM((K1-1)*MONUSE+J)=OM(J)*(1.+I)**(NUSE*(K1-1))          00058400
642.               IF(K1.EQ.LFULL.AND.LPART.EQ.0)GO TO 606                  00058500
643.               INIT(K1*MONUSE)=INIT(1)*(1.+I)**(NUSE*K1)                00058505
644.       606     CONTINUE                                                 00058510
645.      C                                                                 00058550
646.      C        CALCULATE CASH FLOWS IN THE LAST PARTIAL CYCLE.          00058600
647.               DO 609 J=1,LPART                                         00058700
648.               MCR(MONUSE*LFULL+J)=MCR(J)*(1.+I)**(NUSE*LFULL)          00058800
649.               BOOK(MONUSE*LFULL+J)=BOOK(J)*(1.+I)**(NUSE*LFULL)        00058810
650.               PRFOUT(MONUSE*LFULL+J)=PRFOUT(J)*(1.+I)**(NUSE*LFULL)    00058820
651.               PRNOUT(MONUSE*LFULL+J)=PRNOUT(J)*(1.+I)**(NUSE*LFULL)    00058830
652.               DEP(MONUSE*LFULL+J)=DEP(J)*(1.+I)**(NUSE*LFULL)          00058840
653.               PREF(MONUSE*LFULL+J)=PREF(J)*(1.+I)**(NUSE*LFULL)        00058850
654.               PRIN(MONUSE*LFULL+J)=PRIN(J)*(1.+I)**(NUSE*LFULL)        00058860
655.       609     OM(MONUSE*LFULL+J)=OM(J)*(1.+I)**(NUSE*LFULL)            00058900
656.               MCF(1)=MCR(1)+OM(1)                                      00058910
657.               DO 610 J=2,360                                           00059000
658.      C                                                                 00059010
659.      C        EQUATION 25 - MONTHLY CASH FLOW                          00059020
660.       610     MCF(J)=MCR(J)+OM(J)+INIT(J)                              00059100
661.      C                                                                 00059110
662.      C        EQUATION 27 - FINAL DEPRECIATION CASH FLOW               00059120
663.               DEPFIN=TTR*BOOK(360)-DEP(360)                            00059200
664.      C                                                                 00059210
665.      C        EQUATION 31 - FINAL PREFERRED STOCK CASH FLOW            00059220
666.               PREFIN=PRFOUT(360)-PREF(360)                             00059300
667.      C                                                                 00059310
668.      C        EQUATION 29 - FINAL PRINCIPAL CASH FLOW                  00059320
669.               PRNFIN=PRNOUT(360)-PRIN(360)                             00059325
670.               PVPCE=0.                                                 00059350
671.      C                                                                 00059360
```

```
      C        EQUATIONS (33 & 34) - PRESENT VALUE OF MONTHLY CASH FLOWS.
               DO 611 J=1,360
               PVMCF(J)=MCF(J)/(1.+E1)**J
      611      PVPCE=PVPCE+PVMCF(J)
               PVPCE=PVPCE+INIT(1)+(-DEPFIN+PRNFIN+PREFIN)/(1.+E1)**360
      C
      C        EQUATION 35 - MONTHLY CASH FLOWS IN THE DELAYED CASE.
               DO 612 J=1,L
      612      MCFP(J)=0.
               K=360-L
               MCFP(L)=INIT(1)*(1.+I1)**L
               DO 613 J=1,K
      613      MCFP(J+L)=MCF(J)*(1.+I1)**L
               IF(L.EQ.LPART)MCFP(360)=MCFP(360)-INIT(360-L)*(1.+I1)**L
               PVDEL=0.
               DO 614 J=1,360
      614      PVDEL=PVDEL+MCFP(J)/(1.+E1)**J
      C
      C        EQUATION 36 - FINAL CASH FLOW IN THE DELAYED CASE.
               CFPFIN=(-TTR*BOOK(360-L)+DEP(360-L)
           &   +PRNOUT(360-L)-PRIN(360-L)
           &   +PREOUT(360-L)-PREF(360-L))*(1.+I1)**L
      C
      C        EQUATION 37 - PRESENT VALUE OF THE DELAYED CASE.
               PVDEL=PVDEL+CFPFIN/(1.+E1)**360
      C        EQUATION 38 - SAVINGS FROM DELAY
               SAVING=PVPCE-PVDEL
      C
      C
      C        EQUATIONS (39 & 40) - CALCULATION OF CAPITAL SAVINGS.
               PVOM=0.
               DO 615 J=1,L
        615    PVOM=PVOM+OM(J)/(1.+E1)**J
               SAVCAP=SAVING-PVOM
               IF(PVPROM.GT.PVOMN)PVPROM=PVOMN
               AM=PVOM-PVPROM
      C
      C
      C
      C
      C        CONVERT SAVINGS INTO A MONTHLY PENALTY
      C
               DENOM=0.
               DO 6010 J=1,L
      6010     DENOM=DENOM+((1.+I1)/(1.+E1))**(J-1)
      C
      C        EQUATION 44 - FIRST TERM IN SERIES OF MONTHLY SAVINGS
      C                      EQUIVALENTS.
               S1=SAVING/DENOM
      C
      C        EQUATION 46 - DIVIDE SAVINGS BETWEEN CAPITAL AND O & M.
      6025     SC(1)=(SAVCAP/SAVING)*S1
               SU(1)=(AM/SAVING)*S1
      C
      C        EQUATION 47 - CALCULATE CAPITAL AND O & M SERIES.
      6040     DO 6050 K=1,L
               SC(K)=SC(1)*(1.+I1)**(K-1)
      6050     SU(K)=SU(1)*(1.+I1)**(K-1)
      C
      C        EQUATIONS (48 & 49) - ADJUSTED SAVINGS EQUIVALENT
      6080     DO 6100 K=1,L
```

```
                IF(E.NE.1)AC(K)=(1.-X(K))*SC(K)                                  00063700
                AU(K)=SU(K)                                                      00063800
                IF(AU(K))6090,6100,6100                                          00063900
 6090           AU(K)=0                                                          00064000
 6100           CONTINUE                                                         00064100
      C                                                                          00064200
      C         EQUATION (50) - PRESENT VALUE OF ADJUSTED SERIES                 00064300
                PVADJ=0.                                                         00064400
                DO 6150 K=1,L                                                    00064500
 6150           PVADJ=PVADJ+(AC(K)+AU(K))/((1.+E1)**(K-1))                       00064600
      C                                                                          00064700
      C         EQUATIONS (52) & (53) - PENALTY PAYMENT SERIES                   00064800
                DENOM=0.                                                         00064900
                DO 6175 K=1,L                                                    00065000
 6175           DENOM=DENOM+((1.+I1)/(1.+E1))**(K-1)                             00065100
                P(1)=PVADJ/DENOM                                                 00065200
                DO 6200 K=1,L                                                    00065300
 6200           P(K)=P(1)*(1.+I1)**(K-1)                                         00065400
      C                                                                          00065500
      C                                                                          00065600
      C         PRINT OUT THE DEPRECIATION METHOD                                00065700
                WRITE(KW,6000)                                                   00065800
                WRITE(KW,6000)                                                   00065900
                GO TO (6210,6215,6220,6225,6230,6235),LOTS                       00066000
 6210           WRITE(KW,6211)                                                   00066100
 6211           FORMAT(5X,'STRAIGHT LINE, STANDARD AMORTIZATION')                00066200
                GO TO 6240                                                       00066300
 6215           WRITE(KW,6216)                                                   00066400
 6216           FORMAT(5X,'SUM OF YEARS DIGITS, STANDARD AMORTIZATION')          00066500
                GO TO 6240                                                       00066600
 6220           WRITE(KW,6221)                                                   00066700
 6221           FORMAT(5X,'DOUBLE DECLINING BALANCE, STANDARD AMORTIZATION')     00066800
                GO TO 6240                                                       00066900
 6225           WRITE(KW,6226)                                                   00067000
 6226           FORMAT(5X,'STRAIGHT LINE, RAPID AMORTIZATION')                   00067100
                GO TO 6240                                                       00067200
 6230           WRITE(KW,6231)                                                   00067300
 6231           FORMAT(5X,'SUM OF YEARS DIGITS, RAPID AMORTIZATION')             00067400
                GO TO 6240                                                       00067500
 6235           WRITE(KW,6236)                                                   00067600
 6236           FORMAT(5X,'DOUBLE DECLINING BALANCE, RAPID AMORTIZATION')        00067700
 6240           CONTINUE                                                         00067800
      C                                                                          00067900
      C                                                                          00068000
                PVPEN=0.0                                                        00068100
                DO 6300 K=1,L                                                    00068200
 6300           PVPEN=PVPEN+P(K)/(1.+E1)**(K-1)                                  00068300
                WRITE(KW,6000)                                                   00068400
      C                                                                          00068500
      C                                                                          00068600
      C         COMPUTE QUARTERLY PENALTY AMOUNTS AND PRINT THEM                 00068700
 6308           ZL=L                                                             00068800
                Z6=0                                                             00068900
                NQ=IDINT((ZL-.01)/3.)+1                                          00069000
                DO 6310 J=1,NQ                                                   00069100
 6310           Z6=Z6+((1.+I4)/(1.+E4))**(J-1)                                   00069200
                QUART(1)=PVPEN/Z6                                                00069300
                IF(NQ-1)6315,6315,6312                                           00069400
 6312           DO 6314 J=2,NQ                                                   00069500
 6314           QUART(3*J-2)=QUART(3*J-5)*(1.+I4)                                00069600
 6315           CONTINUE                                                         00069700
```

```
C                                                                       00069800
C       CALCULATE BASE FOR LUMP SUM SETTLEMENT                          00069900
        SETTLE=0.                                                       00070000
        DO 6316 J=1,L                                                   00070100
 6316   SETTLE=SETTLE+QUART(J)/(1.+E1)**(J-1)                           00070200
C                                                                       00070300
        IF(LUPP)7150,7150,6317                                          00070400
 6317   DO 6335 J=1,LUPP                                                00070500
        QUART(LUPP+1)=QUART(LUPP+1)+QUART(J)*(1.+E1)**(LUPP-J+1)        00070600
 6335   QUART(J)=0.                                                     00070700
 7150   IF(UPOST)7151,7151,6390                                         00070800
 7151   WRITE(KW,6000)                                                  00070900
        WRITE(KW,7550)                                                  00071000
 7550   FORMAT(5X,'      MONTH        PAYMENT')                         00071100
        DO 6343 J=1,50                                                  00071200
        IF(QUART(J))6343,6343,6340                                      00071300
 6340   WRITE(KW, 7505)J,QUART(J)                                       00071400
 6343   CONTINUE                                                        00071500
        WRITE(KW,6000)                                                  00071600
C                                                                       00071700
C                                                                       00071800
C                                                                       00071900
C                                                                       00071910
C       COMPUTE THE VALUE OF THE NONCOMPLIANCE PENALTY MDS              00071920
C       MONTHS AFTER THE DATE OF NONCOMPLIANCE                          00071930
        IF(DLUMP)7299,7299,7195                                         00072000
 7195   SETTLE=SETTLE*(1.+E1)**MDS                                      00072100
 7199   WRITE(KW,7200)                                                  00072200
 7200   FORMAT(5X,'THE VALUE OF THE NONCOMPLIANCE PENALTY')             00072300
        WRITE(KW,7201)MDS                                               00072400
 7201   FORMAT(5X,'COMPUTED AS OF',I4,' MONTHS AFTER THE DATE')         00072500
        WRITE(KW,7203)SETTLE                                            00072600
 7203   FORMAT(5X,'OF NONCOMPLIANCE IS',28X,F13.2)                      00072700
        WRITE(KW,7205)                                                  00072800
 7205   FORMAT(57X,8H========)                                          00072900
        GO TO 7299                                                      00073000
C                                                                       00073100
C                                                                       00073200
C       COMPUTE POST-COMPLIANCE SETTLEMENT                              00073300
C                                                                       00073400
C                                                                       00073500
 6390   ZTOTAL=0.0                                                      00073600
        IIOI=DO+L                                                       00073650
 6385   DO 6350 J=1,IIOI                                                00073700
        DELTA(J)= PAID(J)-QUART(J)                                      00073800
        ZTOTAL=ZTOTAL+DELTA(J)                                          00073805
        IF((DELTA(J)+ZTOTAL).GE.0.)GO TO 6351                           00073807
        ZTOTAL=ZTOTAL*(1.+E1)                                           00073810
        GO TO 6350                                                      00073812
 6351   ZTOTAL=ZTOTAL*(1.+R1)                                           00073814
 6350   CONTINUE                                                        00073850
C                                                                       00074100
        WRITE(KW,7580)                                                  00074200
 7580   FORMAT(1X,'MONTH      PAID    PENALTY    DUE EPA    DUE FIRM')  00074300
        DO 6440 J=1,100                                                 00074400
        ZE=0                                                            00074500
        ZF=0                                                            00074600
        IF(QUART(J))6410,6410,6420                                      00074700
 6410   IF(PAID(J))6440,6440,6420                                       00074800
 6420   IF(DELTA(J))6450,6450,6460                                      00074900
 6450   ZE=-DELTA(J)                                                    00075000
```

```
      GO TO 6430
 6460 ZF=DELTA(J)
 6430 WRITE(KW,4002)J,PAID(J),QUART(J),ZE,ZF
 6440 CONTINUE
C
C     EQUATION (56) - TOTAL SETTLEMENT AS OF THE DATE OF SETTLEMENT
      ZDELAY=ZTOTAL
      WRITE(KW,6000)
      IF(ZDELAY)6461,6461,6465
 6461 ZDELAY=-ZDELAY
      WRITE(KW,7756)ZDELAY
 7756 FORMAT(5X,'SETTLEMENT DUE EPA=',F10.2)
      GO TO 6475
 6465 WRITE(KW,7757)ZDELAY
 7757 FORMAT(5X,'SETTLEMENT DUE FIRM=',F10.2)
 6475 CONTINUE
C
C
C
C
C     CREATE THE OPTION TO CHANGE SOME OF THE VARIABLES
C
      WRITE(KW,6000)
      WRITE(KW,6000)
      WRITE(KW,6000)
 7299 CONTINUE
      WRITE(KW,7300)
 7300 FORMAT(5X,'HOW MANY VARIABLES DO YOU WISH TO CHANGE ',
     C '?')
      READ(KR,*)NLOOP
      IF(NLOOP)99999,99999,2700
 2700 IF(NLOOP-999)2800,2710,2710
 2710 WRITE(KW,7400)
      WRITE(KW,7401)
      WRITE(KW,7402)DPOST
      WRITE(KW,7422)DLIM
      ZFIDB=FIDB*100.
      WRITE(KW,7535)ZFIDB
      WRITE(KW,4005)L
      WRITE(KW,7501)
 7501 FORMAT(5X,'    PRECOMPLIANCE EXPENDITURES')
      WRITE(KW,7502)
 7502 FORMAT(5X,'      MONTH       CAPITAL          O & M')
      DO 2715 J=1,L
      ZT=PRECAP(J)+PROM(J)
      IF(ZT)2715,2715,2714
 2714 ZC=PRECAP(J)*(1.+I1)**J
      ZM=PROM(J)*(1.+I1)**J
      WRITE(KW,7505)J,ZC,ZM
 2715 CONTINUE
 7505 FORMAT(12X,I2,F15.2,F15.2)
      IF(DLIM)2723,2723,2718
 2718 ZMO=MONEW
      GO TO 2724
 2723 ZMO=MO*(1.+I1)**L
 2724 WRITE(KW,4020)ZMO
      ZTITC=100*TITC
      WRITE(KW,4030)ZTITC
      ZTTR=100.*TTR
      WRITE(KW,4040)ZTTR
      ZI=100.*I
```

```
916.              WRITE(KW,4050)ZI                                    00080400
917.              ZE=100.*E                                           00080500
918.              WRITE(KW,4060)ZE                                    00080600
919.              ZRINT=100.*RINT                                     00080700
920.              WRITE(KW,4070)ZRINT                                 00080800
921.              ZRDIV=100.*RDIV                                     00080900
922.              WRITE(KW,4080)ZRDIV                                 00081000
923.              ZQ=100.*Q                                           00081100
924.              WRITE(KW,4090)ZQ                                    00081200
925.              ZF=100.*F                                           00081300
926.              WRITE(KW,4100)ZF                                    00081400
927.              ZB=100.*B                                           00081500
928.              WRITE(KW,4110)ZB                                    00081600
929.              WRITE(KW,4130)NDEP                                  00081700
930.              WRITE(KW,4140)NUSE                                  00081800
931.              IF(DPUST)9075,9075,2725                             00081900
932.     9075     WRITE(KW,7601)                                      00081905
933.              WRITE(KW,7602)                                      00081910
934.              WRITE(KW,7603)LOPP                                  00081915
935.              WRITE(KW,7560)                                      00081920
936.              WRITE(KW,7561)DLUMP                                 00081925
937.              IF(DLUMP)8001,8001,9076                             00081930
938.     9076     WRITE(KW,7515)                                      00081935
939.              WRITE(KW,7576)                                      00081940
940.              WRITE(KW,7577)MDS                                   00081945
941.              GO TO 8001                                          00081950
942.     2725     WRITE(KW,4190)NPP                                   00081955
943.              WRITE(KW,7524)                                      00082000
944.     7524     FORMAT(5X,'     PENALTY PAYMENTS')                  00082100
945.              WRITE(KW,7525)                                      00082200
946.     7525     FORMAT(5X,'      MONTH        PAYMENT')             00082300
947.              DO 2733  J=1,100                                    00082400
948.              IF(PAID(J))2733,2733,2730                           00082500
949.     2730     WRITE(KW,7505)J,PAID(J)                             00082600
950.     2733     CONTINUE                                            00082700
951.              ZK=K*100.                                           00082800
952.              WRITE(KW,7415)ZR                                    00082900
953.              WRITE(KW,6000)                                      00083000
954.     8001     IF(OLIM)2735,2735,8000                              00083100
955.     8000     WRITE(KW,7440)                                      00083200
956.              WRITE(KW,7441)IIOLD                                 00083300
957.              WRITE(KW,6000)                                      00083400
958.              WRITE(KW,7447)                                      00083500
959.              WRITE(KW,7448)MOOLD                                 00083600
960.     2735     GO TO 7299                                          00083700
961.     2800     IF(NLOOP.EQ.99)GO TO 100                            00083800
962.              WRITE(KW,9010)                                      00083810
963.     9010     FORMAT(' ENTER A LIST OF VARIABLES TO BE CHANGED',  00083900
964.         &    /,' SEPARATED BY COMMAS.')                          00084000
965.              READ(KR,*)(DEL(J),J=1,NLOOP)                        00084100
966.              OLOOP=2                                             00084200
967.              IF(IERR.GT.0)GO TO 2820                             00084250
968.     2805     DO 2809 J=1,L                                       00084300
969.              PRECAP(J)=PRECAP(J)*(1.+II)**J                      00084400
970.     2809     PROM(J)=PROM(J)*(1.+II)**J                          00084500
971.              II=II*(1.+II)**L                                    00084600
972.              MO=MO*(1.+II)**L                                    00084700
973.     2811     IF(DDIV-1)2820,2820,2812                            00084800
974.     2812     II=II*1000.                                         00084900
975.              MO=MO*1000.                                         00085000
976.              DO 2815 J=1,L                                       00085100
```

```
      IF(DPOST)2814,2814,2813
 2813 PAID(J)=PAID(J)*1000.
 2814 PRECAP(J)=PRECAP(J)*1000.
 2815 PROM(J)=PROM(J)*1000.
      DDIV=1
 2820 IERR=0
      DO 9020 JLOOP=1,NLOOP
      NVAR=DEL(JLOOP)
      GO TO(90,93,97,110,210,220,230,240,250,260,270,300,
     &  280,290,350,320,360,9040,6380,322,417,9070,365,385),NVAR
 3000 CONTINUE
 9020 CONTINUE
      GO TO 420
99999 STOP
      END
```

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Federal Register

Monday
July 28, 1980

Part III

National Credit Union Administration

Final Consumer Program

NATIONAL CREDIT UNION ADMINISTRATION

Final Consumer Program

AGENCY: National Credit Union Administration.

ACTION: Final Notice of Consumer Program.

SUMMARY: The NCUA Board is publishing its final Consumer Program in response to Executive Order 12160.

ADDRESS: Office of Consumer Affairs, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:
Linda M. Cohen, Director, Office of Consumer Affairs, at the above address or telephone (202) 357–1080.

SUPPLEMENTARY INFORMATION: A draft Consumer Program was published by the NCUA Board on February 4, 1980 (45 FR 7738). A comment period of two months was established. Copies of the draft, along with a letter requesting comments, were sent to 9 consumer groups, 6 trade associations, all state credit union leagues and all state credit union supervisors. On April 15, 1980, as requested by both major trade associations, the comment period was extended another month.

Thirty-two letters were received commenting on various aspects of the Consumer Program. These consisted of 5 from trade associations and leagues, 15 from credit unions, 2 from state credit union supervisors, 1 from a credit union member, 7 from consumer groups and 2 from other individuals.

The strongest opposition to the Consumer Program came from certain of the trade associations and credit unions. These negative comments generally addressed the creation of the separate Office of Consumer Affairs and the separate consumer compliance examination program established by the NCUA Board on December 6, 1979. However, the separate Office and examination program were outside the scope of the draft Consumer Program. A description of the Office and separate compliance examination program was included in order to conform to the format prescribed by the White House to provide an explanation of the agency staff and procedures available to administer the Consumer Program.

Comments on specific aspects of the program which were subject to comment were given thorough consideration and evaluation prior to development of the final Consumer Program. Several comments addressed the funding of consumer participation. These comments were almost equally divided between favorable and unfavorable reactions. Six commenters (trade associations and credit unions) questioned the validity of funding participation by consumer organizations or groups outside of credit union membership. One league was strongly supportive of a consumer participation program. Seven other commenters (consumer groups) strongly endorsed the concept of funding consumer participation.

Education and training aspects of the draft plan also received several comments. Some stressed the need for extensive training for the consumer examiners. One state supervisor expressed the strong desire that similar training be made available to state credit union examiners. Credit unions and the trade associations were primarily interested in training seminars in consumer regulations being made available to credit union personnel who are responsible for compliance.

Lack of opportunity for input into agency decisionmaking by credit union members and officials was mentioned by both trade associations and credit unions. Lack of information in the form of an agency newsletter sent out on a consistent basis was also seen as a problem by those commenters. Several consumer groups recommended development of statistics to allow for systematic analysis of complaints to determine problem areas. They also saw a need for corrective action where unfair practices are found in examinations, even where the practices are not currently illegal. One comment addressed the need for the Office of Consumer Affairs to develop a procedure to evaluate the effectiveness of NCUA's complaint handling procedures. Methods of handling consumer complaints also received comment. One trade association recommended that information about complaint trends be provided to credit unions to help them regulate themselves.

The White House noted that is was essential that NCUA's Office of Consumer Affairs actually receive notice of all policy matters being considered within the agency which might have a significant consumer impact, and stressed that it was essential that the Office be afforded an opportunity to express the consumer viewpoint directly to the Board.

Based upon our evaluation of the comments received, the NCUA Board is publishing below its final Consumer Program. It should be noted that the format being followed reflects both continuing programs and new consumer participation programs. The latter address one of the principal thrusts of the Executive order and reflect the adoption of new agency policy.

CONSUMER AFFAIRS PERSPECTIVE

NCUA is an independent Federal regulatory agency that charters, examines, supervises and insures the 13,000 Federal credit unions (FCUs) across the nation. NUCA is headed by a three person Board. The agency has six regional offices.

NCUA is charged with enforcing the Federal consumer protection laws that apply to FCUs. The principal thrust of NCUA's consumer program is through education to assist FCU officials in achieving compliance with these laws.

The consumer affairs activities of NCUA are carried out by its Office of Consumer Affairs. The Director of the Office of Consumer Affairs reports directly to the NCUA Board.

The Director of the Office of Consumer Affairs attends all executive staff meetings and agency planning conferences, and thus has the opportunity to become aware of all agency policy actions and to comment on them. All regulations, interpretations, policy statements, and internal instructions and manuals are routinely channelled through the Office of Consumer Affairs as proposals or preliminary drafts for comment. Comment by the Office is made to the Board in writing or orally at Board meetings.

The Office of Consumer Affairs is given advance notice of the agenda for all upcoming NCUA Board meetings. The Director of the Office of Consumer Affairs attends Board meetings and makes oral recommendations to the Board whenever the Office determines that a policy issue under consideration may have a significant consumer impact.

The Office of Consumer Affairs also initiates policy actions to be considered by the NCUA Board.

In addition to the above role, the Office of Consumer Affairs provides policy direction to the Regional Directors in matters involving consumer law enforcement and complaint investigation.

CONSUMER PARTICIPATION

The NCUA Board's meetings are governed by the Government in the Sunshine Act. The NCUA Board has gone beyond the basic requirements of the Act in the areas of advance notice of meetings, public observation and recording of the meetings. The meeting agenda is sent to interested parties one week in advance of each meeting.

All agency regulations are promulgated in accordance with the Administrative Procedures Act and Executive Order 12044, "Improving Government Regulations." Both of these require (with limited exceptions) public participation. A special mailing list is kept of all interested parties, and a copy of all proposed regulations and interpretations are sent to them for comment.

Based on the above, the NCUA Board considers that it is not difficult for any person or organization to monitor the activities of NCUA, to have advance notice of any issue before the NCUA Board and to have the chance to comment on any proposed regulation or interpretation.

To further facilitate consumer participation, however, the Office of Consumer Affairs will take the following steps. First, the Office will maintain close contact with trade and consumer organizations to assure that their viewpoints are considered in agency policymaking. For matters having significant consumer impact, the Office will informally solicit comment from trade and consumer organizations before making recommendations to the Board on agency policy.

Second, for those proposed regulations and interpretations that have broad consumer impact, the Office of Consumer Affairs will prepare a notice and distribute a copy of it to all FCUs with the recommendation that the FCU voluntarily post it in a place where FCU members can see it. The notice will state in simple English what the issue is and request that interested FCU members and officials comment on the proposal. The poster will tell them where to send for additional information on the subject if they want to comment.

Third, from time to time, for selected issues that have broad consumer impact, the Office of Consumer Affairs will recommend to the NCUA Board that it hold public forums at which interested parties can present their viewpoint directly to the NCUA Board. These forums will be widely advertised in advance. On rare occasions, the NCUA Board will consider reimbursing the expenses of interested parties (including credit union officials and members) who testify at the forum, but only when their testimony represents a significant viewpoint that would not otherwise be adequately represented and where the party would otherwise lack the resources to attend.

NCUA also promotes consumer participation by maintaining an open and responsive consumer complaint program. The investigation of consumer complaints filed against FCUs is the primary way in which NCUA has direct contact with FCU members. As covered later, NCUA uses consumer complaints as a means of identifying problem areas in FCUs that need to be addressed through agency policy actions. This includes individual complaints as well as the analysis of aggregate complaint trends.

INFORMATION MATERIALS

FUC members are currently informed of NCUA's existence and supervisory function through the following means. The NCUA logo is required to be displayed at all FCU offices. FCUs that make housing loans are required to display in the lobby a Fair Housing Poster which states that NCUA enforces the Fair Housing Act and the Equal Credit Opportunity Act and provides NCUA's address to be used in filing complaints. In addition, FCU's are required to provide each member who has been turned down for credit a notice that explains that NCUA enforces the Equal Credit Opportunity Act and that includes NCUA's address. Pamphlets explaining the various credit-related consumer protection laws that NCUA enforces are sent to FCUs to make available to their members. Upon request, NCUA also provides these materials to the public.

In addition, the Office of Consumer Affairs is in the process of preparing a brochure to be distributed to all FCUs (for distribution to their members) that will describe the member's rights under the Federal Credit Union Act, the federal credit union bylaws and the various consumer protection laws enforced by NCUA. It will also explain NCUA's enforcement role and provide advice to the member on how to file a consumer complaint.

The Office of Consumer Affairs is actively encouraging FCUs to conduct consumer education programs for their members. The Office of Consumer Affairs will provide technical assistance to FCU's in this regard. A consumer education curriculum is being developed by NCUA for distribution to FCUs.

The Office of Consumer Affairs publishes a *Manual of Laws* that gives FCU officials assistance on complying with consumer laws. The *Manual of Laws* is a compilation of the laws that affect credit unions and has a simple English explanation proceeding the actual text of each of the laws. Articles on consumer laws are printed from time to time in the *NCUA Digest* NCUA's publication that is distributed to all FCUs. NCUA plans to publish the *Disgest* regularly on a monthly basis starting Fall, 1980.

EDUCATION AND TRAINING

The key to NCUA's enforcement program is an examiner staff that is well trained in the consumer laws and in related examination procedures. The primary vehicle for such training is the interagency consumer compliance school, run jointly by the 5 Federal financial regulatory agencies.

In addition, the Office of Consumer Affairs has developed its own training course and guidebooks for NCUA's consumer examiners. Training is provided both in Washington and at annual regional training conferences. A newswletter is being planned for all consumer examiners to keep them up to date.

NCUA will continue to make its training sessions available to the staff of state credit union supervisors.

In addition to examiner training, NCUA staff will give seminars to FCU management groups around the country on compliance matters.

COMPLAINT HANDLING

NCUA currently receives approximately 900 written member complaints against FCUs each year. Each substantive complaint is investigated and responded to in writing. Most complaints of possible violations of consumer laws are investigated by an on-site examiner contact. The purpose of the investigation is (a) to detect any violations of consumer laws or NCUA regulations, (b) to attempt to determine if the FCU treated the member fairly, and (c) to resolve the complaint in a satisfactory manner if possible. When violations are found, the FCU is required to take appropriate corrective action. When the FCU treated the member unfairly, the regional office recommends that the FCU resolve the complaint and correct any deficiencies that led to it.

All complaints are logged into a computer-based management information system that records the type of complaint, how it was handled, and its resolution. This system is used to keep track of the status of complaints and to provide statistics on the types of complaints the agency receives.

The Office of Consumer Affairs provides the NCUA Board with periodic reports on the types of complaints received, along with recommendations for policy actions to deal with some of the practices illustrated by the complaints. (These practices are also brought to the attention of the credit union movement in order to enable them to promote self-regulatory

standards.) In addition, when new regulations or other policy actions are proposed, the Office of Consumer Affairs analyzes the complaints received on the subject, and reports this information to the Board.

NCUA sets internal guidelines on time frames for resolving complaints. Periodic reports are provided to the Regional Directors and the NCUA Board. The Office of Consumer Affairs reviews the regional offices' handling of complaints to be sure proper procedures are followed. The Office of Consumer Affairs routinely review the agency complaint handling procedures and revises them where necessary.

In addition, the Office of Consumer Affairs has begun a program to encourage FCUs to set up internal complaint handling mechanisms of their own. Technical assistance will be provided.

Rosemary Brady,

Secretary, National Credit Union Administration Board.

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Federal Register

Monday
July 28, 1980

Part IV

Department of Health and Human Services

Health Care Financing Administration

Adoption of the National Bureau of Standards Fire Safety Evaluation System for Health Care Facilities

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Adoption of the National Bureau of Standards Fire Safety Evaluation System for Health Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: The Department of Health, Education, and Welfare proposed extending the new Fire Safety Evaluation System (FSES) to all hospitals participating in the Medicare and Medicaid programs in a Notice of comment period published on June 28, 1979 in the Federal Register (44 FR 37818). The Department also sought public comment on whether to apply the FSES to skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) in this same Notice.

After a careful review and analysis of the public comments received, the Department has decided to adopt the FSES as a means of evaluating alternative arrangements used to achieve compliance with the provisions of the Life Safety Code for hospitals, skilled nursing facilites, and intermediate care facilities participating in the Medicare and Medicaid programs.

DATE: Effective on July 28, 1980.

FOR FURTHER INFORMATION CONTACT: Robert J. Jevec (301-594-3314).

SUPPLEMENTARY INFORMATION:

On June 28, 1979, the Department published a notice proposing to apply the Fire Safety Evaluation System (FSES) to all hospitals participating in Medicare and Medicaid, with a request for comment on this proposal and on whether to apply the FSES to skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) (44 FR 37818). This final notice adopts the use of the FSES as described below.

The FSES is a quantitative evaluation system for grading health care facilities in terms of fire safety and is another means of evaluating alternative arrangements used to achieve compliance with the provisions of the Life Safety Code (LSC). It evaluates cost effective, alternative approaches to upgrade facilities to levels of fire safety that meet or exceed the level of fire safety that would be provided by explicit conformance to the requirements of the (1967 or 1973) Life Safety Code. The FSES is not to be construed as an alternative set of requirements to or a replacement for the Life Safety Code. It is based on the 1973 edition of the LSC and modified to include the requirements of the 1967 edition.

The Life Safety Code at paragraph 1-3118 provides that "Nothing in this code is intended to prevent the use of systems, methods, or devices of equivalent quality, strength, fire resistance, effectiveness, durability and safety to those prescribed by this Code, providing technical data is submitted to the authority having jurisdiction to demonstrate equivalency and the system, method, or device is approved for the intended purpose." Although paragraph 1-3118 is contained in the 1973 Code and not in the 1967 version, the provision is a refinement that is implicitly applicable to the 1967 Code. Later editions of the LSC are always used to interpret the intent of earlier editions. Therefore, the use of paragraph 1-3118 is not precluded in health care facilities that are surveyed under the 1967 Code.

The FSES is based on the same principles as the LSC, but it is a new alternative method of evaluating a facility for compliance. Through evaluation under the FSES, facilities can achieve alternative solutions to the requirements of the LSC, as permitted by paragraph 1-3118. Essentially it is a system of "pluses" and "minuses". If a facility more than meets a particular requirement of the LSC, it receives "credits" toward alternate arrangements for assessing equivalent fire safety with the Code. For example, if the LSC requirement is that a door must be one and three fourths inches thick, there is no other alternative. If the door is not a least one and three fourths inches thick, it must be replaced, unless a waiver is granted. In contrast, the FSES allows alternative means to meet the LSC requirement. The FSES might allow a facility to meet the requirement if the doors were one inch thick and the facility had smoke detectors—assessing this combination of factors to determine the facility's compliance.

The Department of Commerce, National Bureau of Standards (NBS) developed the FSES at HHS's request. The system was first tested in about 45 hospitals and long-term care facilities in 1977. After this initial test, the system was refined, and applied in 60 hospitals. Based upon this research and testing, NBS completed development of the FSES for health care facilities in November 1978. Since the FSES will achieve the standards for fire safety provided in the LSC and since its use is authorized by the LSC, the Department is adopting the FSES as described in this Notice.

In the following paragraphs, the term "health care facilities" is used to include hospitals, SNFs, ICFs, and ICFs/MR participating, or that wish to participate, in the Medicare and Medicaid programs.

Life Safety Code surveyors will complete the current Fire Safety Survey Report in all cases each time a fire safety survey is conducted. However, the FSES will not be used in every circumstance. Generally, surveyors will apply the FSES in health care facilities that have LSC deficiencies requiring the expenditure of a significant amount of funds to correct, and/or have approved multiple waivers reflected on the last regular Fire Safety Survey Report. We will also use the FSES to conduct Joint Commission on Accreditation of Hospitals (JCAH) validation surveys or "substantial allegation" surveys. In addition, a surveyor will apply the FSES at the request of a provider or when its application is expected to be beneficial to the provider.

Any health care facility which achieves a passing score on the FSES may be certified for participation in Medicare or Medicaid based upon meeting the provisions of the Life Safety Code applicable to hospitals, SNFs, and ICFs. A facility which does not achieve a passing score on the FSES may still be certified under the current evaluation system, with waivers, provded that these waivers are approved by the appropriate HHS Regional Office for hospitals and SNFs, and the State agency for ICFs. Once a facility has been evaluated and certified under the FSES for participation in Medicare and Medicaid, it may continue to be evaluated and certified under that System.

Experience gained from testing the FSES in selected hospitals and nursing homes demonstrated that these facilities will be able to meet or exceed the level of fire safety that would be provided by explicit conformance to the requirements of the (1967 or 1973) Life Safety Code without unnecessary cost, and in a manner which permits reasonable flexibility. Considerable savings were often realized when these facilities chose to develop a Plan of Correction according to the options made available by the FSES rather than a Plan based on the deficiencies identified under the current evaluation system.

Acceptability of the FSES as a means of evaluating the level of fire safety that would be provided by explicit conformance to the requirements of the (1967 or 1973) Life Safety Code has already been established by the National Bureau of Standards advisory group, by the Committee on Safety to

Life of the National Fire Protection Association, (NFPA), and by results obtained in using the system in over 60 hospitals and 24 nursing homes. The application of the system to hospitals and nursing homes can help reduce the overall cost of health care in this country by assisting a facility in developing the most cost effective Plan of Correction while maintaining the level of fire safety that would be provided by explicit conformance to the requirements of the (1967 or 1973) Life Safety Code.

The FSES can be used for the evaluation of various alternative approaches to upgrade an existing facility to a level of fire safety that meets or exceeds the level that would be provided by explicit conformance to the requirements of the (1967 or 1973) Life Safety Code. It also can be used to evaluate a proposed health care facility design to determine if the facility would meet this same level of fire safety. In this respect, the FSES can also be used as a design instrument.

We received 37 comments in response to the June 28, 1979 Notice of comment period (44 FR 37818). Comments were submitted by health care providers, State governmental units, State Fire Marshals, nursing home associations, a national hospital accrediting organization, other agencies of the Federal government and a provate citizen. Of the total number of specific comments analyzed, 27 favored adoption of the FSES for hospitals, SNFs, and ICFs; 8 favored adoption for hospitals, without any comments concerning nursing homes. One nursing home association supported the application of the FSES to SNFs and ICFs in principle, but desired to have several issues resolved. Another nursing home association was opposed to the adoption of FSES as "the only alternative evaluation system to the Life Safety Code." The major concerns raised by these nursing home associations were that:

Comment a. The FSES would be the only method or system to be used in evaluating compliance with the provisions of the Life Safety Code.

Response a. It is not intended that the FSES be the only alternative evaluation system to the Life Safety Code. At this time it is the only codified alternative to that presently utilized by HHS to evaluate compliance with the provisions of the Life Safety Code. Where the FSES would not be applicable, the use of the current Fire Safety Survey Report would be retained.

Comment b. The FSES will not adequately evaluate the level of fire safety in nursing homes.

Response b. Health care facilities that wish to participate in the Medicare and Medicaid programs must comply with the applicable provisions of the Life Safety Code. The FSES has been designed as another means of evaluating compliance with these provisions. The approach taken in its development and the fire safety features which are evaluated by the FSES were thoroughly considered and approved by the various review groups involved in its development. Appendix C of the National Bureau of Standards (NBS) report on the FSES (NBSIR 78-1555-1) provides a complete cross reference between the features evaluated by the FSES and the requirements of the life Safety Code. Therefore, we consider that the FSES offers a complete and realistic evaluation of a facility's level of compliance with the provisions of the Life Safety Code.

Comment c. The FSES should not be adopted as an instrument to evaluate fire safety conditions until the 1980 edition of the Life Safety Code is published.

Response c. We expect that the FSES will appear as an Appendix to the 1980 edition of the Life Safety Code. However, we believe it is not necessary to wait until the 1980 Life Safety Code is published prior to adopting the FSES in the context of this Notice. NBS has stated that the System is ready for use and could be applied properly at this time. It is our view that the benefits to be gained by applying the FSES now warrant its immediate adoption, as opposed to waiting a year or more before the 1980 Code is published by the NFPA.

Comment d. Funds should be made available to reimburse nursing homes for costs that will be incurred for correction of deficiencies when the FSES is applied to the facility.

Response d. The Notice does not provide for any special reimbursement to nursing homes in conjunction with adoption of the FSES. The FSES is designed so that it cannot in any way increase the cost of achieving full compliance with the Life Safety Code over what would be the case under the current procedures. The FSES has the impact of providing additional options for the correction of deficiencies, some of which will be significantly less expensive than options now available to the facility. It is important to note that direct reimbursement is not currently available for correction of deficiencies discovered during the current LSC evaluation process.

(Section 1102 of the Social Security Act; 42 U.S.C. 1302)

(Catalogue of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program; No. 13.773 Medicare-Hospital Insurance; No. 13.774 Medicare-Supplementary Medical Insurance)

Dated: March 13, 1980.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

Approved: July 14, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-22536 Filed 7-25-80; 8:45 am]

BILLING CODE 4110-35-M

Federal Register

Monday
July 28, 1980

Part V

Department of Health and Human Services

Health Care Financing Administration

Medicare and Medicaid; Automatic Extinguishment Systems for New Long-Term Care Facilities

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 442

Medicare and Medicaid; Automatic Extinguishment Systems for New Long-Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule sets forth requirements for automatic extinguishment systems in all new skilled nursing facilities (SNFS) and intermediate care facilities (ICFs) that wish to participate in the Medicare and Medicaid programs.

The purpose of the proposed rule is to elevate the level of fire safety available to nursing home beneficiaries at a reasonable cost to providers.

We would like to obtain comments, suggestions, and pertinent information from all interested parties on the impact and benefits of the rule under consideration.

DATE: We will consider written comments received by September 26, 1980.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of Health, and Human Services, P.O. Box 17082, Baltimore, Maryland 21235.

When commenting, please refer to HSQ-56-P. Comments are requested in duplicate. Comments will be available for public inspection beginning approximately 2 weeks from today in Room 309G of the Department's office at The Hubert Humphrey Building, 200 Independence Avenue, Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Robert J. Jevec (301-594-3314).

SUPPLEMENTARY INFORMATION:

Background

In order to participate as a provider of long-term care services under the Medicare and Medicaid programs, a facility must meet the applicable nursing home provisions of the Life Safety Code of the National Fire Protection Association (NFPA).

A skilled nursing facility (SNF) must satisfy the requirements of the 23d edition (1973), and an intermediate care facility (ICF) must satisfy the 21st edition (1967). The Department has sought to develop a method of upgrading the level of fire safety in participating nursing homes balanced by a consideration of reasonable cost. The requirement of automatic sprinklers in all new SNFs and ICFs is the current method being proposed to achieve this goal.

A 1973 study by the National Commission on Fire Prevention and Control estimated that approximately 500 patients die in all health care institutions by fire and smoke each year. Of these 500 fatalities, approximately 25 occur in multiple death fires. A multiple death fire is defined by the NFPA as one resulting in three or more deaths. The consensus of fire protection experts is that automatic extinguishment systems would not save the lives of patients who are in the room of fire origin or near the fire source because sprinklers are not activated until the ambient temperature at the sprinkler head is between 135 and 165 degrees Fahrenheit for one or more minutes. By the time these temperatures are reached, it may be too late to save the lives of patients at or near the source of the fire.

Automatic extinguishment systems would, however, contain the fire and keep it from spreading to the rooms of other patients and to other parts of the building. They would undoubtedly prevent large scale fires (those that result in three or more deaths). In its study, the National Commission on Fire Prevention and Control recommended "total automatic sprinkler protection be required in all facilities for care and housing of the elderly".

However, the Department contracted with the Center for Fire Research of the National Bureau of Standards (NBS) to perform research on the effect of sprinklers in patient areas of health care facilities. As a result of their research, fire protection engineers at NBS have serious reservations about requiring sprinklers in all nursing homes. NBS has demonstrated that many different combinations of fire protection features can provide the same level of safety as sprinklers would provide at lower cost. They discovered that sprinklers may generate serious secondary smoke hazards which must be overcome by other fire protection methods. NBS has concluded that sprinklers do not necessarily provide the greatest life safety benefit and that there are alternate fire protection systems of equal capability.

Applicability

For the purpose of this regulation, a new facility is one that has received approval of its final building plans by the appropriate State authority 90-days after the publication of the final regulation. Accordingly, any long-term care facility receiving this State approval prior to the effective date of the final regulation will be considered an existing facility and will not be subject to this rule.

For both ICFs and ICFs/MR of 15 beds or less, the State survey agency may choose to apply the Lodging and Rooming House provisions of the Residential Occupancy section of the Code instead of the Institutional Occupancy section under the conditions specified in 42 CFR 442.322 and 442.508. When this occurs, these facilities would be exempt from this proposed rule.

Current Requirements

Current provisions of the Life Safety Code (LSC) require sprinklers in all nursing homes except the following:

1. Existing SNFs of fire resistive construction of any height or protected noncombustible construction not over one-story in height. (1973 edition)
2. New SNFs of fire resistive or one-story protected noncombustible construction. (1973 edition)
3. Existing ICFs of fire resistive construction or one hour protected noncombustible construction not over one-story in height. (1967 edition)
4. New ICFs of fire resistive or one-hour protected noncombustible construction. (1967 edition)

There currently is no requirement for installation of automatic extinguishment systems in *all new* long-term care facilities in order to participate in the Medicare and Medicaid programs.

Public Participation

The Department published a Notice of Intent on December 6, 1978, (43 FR 57166) to solicit comments and cost estimates on requiring automatic extinguishment systems (sprinklers) in all SNFs and ICFs that participate in the Medicare and Medicaid programs. We received 172 comments from Federal, State and municipal governmental units, various national associations, State fire agencies, providers, private businesses, and private citizens. These comments reflected a divergence of views which were carefully analyzed by the Department. Additionally, the Department consulted a number of fire safety experts from the public and private sectors.

In order to delineate the various options, five possible alternatives and a discussion of our views were included in the Notice of Intent. We also sought any comments or discussion that raised other issues or alternatives. The following lists the alternatives we raised in the Notice of Intent.

Alternative 1—Require automatic extinguishment systems in all long-term

care facilities participating in Medicare and Medicaid. (20 commenters advocated this alternative)

Alternative 2—Require automatic extinguishment systems in all newly constructed long-term care facilities participating in Medicare and Medicaid, and in existing structures that are converted into long-term care facilities after the effective date of the final regulations. (17 commenters advocated this alternative)

Alternative 3—Require automatic extinguishment systems in all newly constructed long-term care facilities participating in Medicare and Medicaid, and in existing structures that are converted into long-term care facilities after the effective date of the final regulations, except when those buildings are of fire resistive construction. (21 commenters advocated this alternative)

Alternative 4—Retain present automatic extinguishment system requirements. Continue to require automatic extinguishment systems in accordance with the NFPA's Life Safety Code. (75 commenters advocated this alternative)

Alternative 5—In facilities not required by the Life Safety Code to have automatic extinguishment systems, require other measures (such as smoke detectors, special patient evacuation plans, staff emergency training and, higher staff-patient ratios) if HCFA determines that the facility's fire safety protection is inadequate. (18 commenters advocated this alternative)

In general, national organizations did not favor more stringent requirements than those presently contained in the Life Safety Code. They stated that such requirements would not be cost effective on the theory that automatic extinguishment systems are effective only against multiple death fires which occur much less often than single death fires. Following are summaries of comments from major professional organizations:

1. *The American Hospital Association* stated that sprinklers are effective against multiple death fires but ineffective against single death fires. They believe that since smoke is the greatest threat to life in institutional fires, emphasis should be placed on limiting smoke propagation and movement rather than on sprinklers which actually generate smoke when activated.

Response. Although sprinklers may not be as effective against single death fires, they can contain the fire and limit the spread of smoke throughout the facility. Statistics have shown that sprinklers have a definite impact on reducing the overall fire hazard of any building.

2. *The Joint Commission on Accreditation of Hospitals* opposed mandating sprinklers in all long-term care facilities. They stated that improved training in recognition and reaction to fire would have a significant effect on reducing loss of life in facilities without sprinklers. They believe universal application of sprinkler systems is too costly and that we could achieve more effective results in fire safety through the training process.

Response. As indicated in the NPRM, the Department is not proposing sprinklers to be installed in all long-term care facilities. 42 CFR 405.1121(h) already requires that "an ongoing educational program is planned and conducted for the developement and improvment of skills of all the facility's personnel, including training related to problems and needs of the aged, ill, and disabled. In-service training includes at least prevention and control of infections, fire prevention and safety, . . ."

3. *The American Health Care Association* endorsed the concept of a national consensus standard such as the Life Safety Code of the NFPA. They feel that the Code represents a reasonable and rational balance of fire protection features on a cost effective basis. They stated that additional sprinkler protection would not be cost effective.

Response. The cost of sprinkler systems in long-term care facilities is considerably less when they are installed during the initial construction of the facility. The Fire Safety Evaluation System, which the Department has adopted for use in hospitals and nursing homes, can be used to identify those fire protection features that need not be incorporated in a new facility due to the installation of a sprinkler system, thus further reducing construction costs.

4. *The American Association of Homes for the Aging* strongly supported continuation of current Code requirements and additionally endorsed the greater use of smoke and heat detectors. They stated that the Federal and State governments should increase their efforts on fire safety training for staff members in non-profit homes.

Response. Smoke and heat detectors, while effective in the early detection of fires do not assist in extinguishing them. Sprinklers that are connected to a fire alarm system function both as a detection and extinguishment devise. Sprinklers appear to be more reliable than detectors, which have a greater potential for malfunctioning, false alarm susceptibility to power outages.

5. *The National Fire Protection Association* suggested a continued application of the Code with emphasis in the use of alternatives already provided for within the Code.

Response. We agree with NFPA's reliance on using alternatives. The Fire Safety Evaluation System, which can be used both in the evaluation of existing nursing homes and in the design stage of new nursing homes, incorporates selection of various alternative fire protection features provided for within the Life Safety Code.

6. *Federal, State, and Municipal Governments.* We received 27 comments from Federal, State, and municipal governmental units. Comments were about equally divided between those favoring expanding current sprinkler requirements and those favoring retaining current Code requirements. Governmental units that favor expanded requirements do so because they believe a large number of lives could be saved by sprinklers. Conversely, those who oppose expanded requirements believe sprinklers are not cost effective and will not prevent many deaths.

Response. The fact that sprinklers do provide significant protection against multiple-death fires makes them a useful element in new facility construction planning. As already noted, sprinklers can be made cost effective if installed during the construction of a new facility and if the Fire Safety Evaluation System is used in its design stage.

7. *National Bureau of Standards.* The NBS does not favor mandating increased sprinkler requirements to the exclusion of other alternative approaches. Although sprinklers reduce the incidence of multiple-death fires, NBS believes they have little impact on single-death fires and may in fact enhance the spread of toxic fumes.

Response. NBS has been conducting full-scale fire test with automatic sprinklers in a patient room. When their final report is published, NBS' findings will strongly be taken into consideration in formulating a final decision.

8. *State Fire Marshals and Private Citizens.* We received 12 comments from State Fire Agencies (Fire Marshals) and from nine private citizens. Both groups unanimously favored requiring automatic extinguishment systems in all health care facilities. They contended that sprinklers are the single most effective weapon against all fires occurring in health care institutions.

Response. Sprinklers may certainly be considered a very effective means of protection against fires in all buildings and institutions. However, expanding sprinkler requirements to all nursing homes is not considered cost effective.

Requiring sprinklers in only new facilities is considered the most financially reasonable method of employing this additional fire protection feature. (See discussion of "Cost Implications" below.)

9. *Business Groups and Providers.* We received 10 comments from business groups. With one exception, they favored retaining current Code requirements. They also favored early smoke and fire detection and evacuation training in lieu of requiring sprinklers. Many considered sprinklers to be effective mainly as a protective measure against the loss of stored property rather than lives.

Of the 62 comments received from providers, a significant majority opposed sprinkler requirements beyond those mandated by the Code. Instead, providers favored smoke detection devices and staff training programs.

Response. The advantages of sprinklers over detection systems were discussed in the response to the comments of the American Association of Homes for the Aging. Statistics have proven the value of sprinklers to protect lives as well as stored property by preventing the spread of fire.

Almost half of all commenters favored retention of current Code requirements. Approximately 25% of the commenters favored a broad expansion of Code requirements. Approximately 21 comments did not advocate any of the alternatives listed. A few commenters recommended delaying this proposal until the National Bureau of Standards completes the *Fire Safety Evaluation System for Health Care Facilities.*

Fire Safety Evaluation System

A potential means does exist for reducing the cost of requiring sprinklers in new facilities. Among the experts we consulted, the National Bureau of Standards (NBS) suggested an expanded application of their Fire Safety Evaluation System (FSES) for Health Care Facilities to include long-term care facilities. This system evaluates the fire risk in a given facility, by weighing Life Safety Code requirements and by incorporating additional factors such as mobility of the patients, age of patients, number of patients per staff member, and number of floors in the building. The FSES also provides a technique for evaluating the various construction elements of a building and its fire protection features. This allows comparisons between the actual level of fire safety in the building and the level of fire safety that would be provided simply by conformance with individual Code requirements. Equally important, the technique allows for an evaluation of possible alternative approaches available to upgrade an existing facility to a level of fire safety that meets or exceeds the levels prescribed by the Code. The cost effectiveness of alternate fire safety designs is an integral part of this new system. A more detailed description of the FSES can be found in the Notice of Comment Period concerning its use, published in the Federal Register (44 FR 37818) [44 FR 37818] on June 28, 1979. The Final Notice adopting the FSES for use in hospitals and nursing homes appears elsewhere in this issue of the Federal Register.

Cost Implications

Sprinkler systems *do* provide significant additional fire protection against multiple-death fires. Statistics show that there has not been a single recorded multiple-death fire in a fully sprinklered nursing home in this country. The cost of sprinkler systems in long-term care facilities is considerably less when they are installed during the initial construction stage of the facility. Also, the FSES can be used to identify those fire protection features that need not be incorporated in a new facility due to the installation of a sprinkler system. We estimate that a requirement for sprinklers in *all* nursing homes would result in construction costs of as much as $700 million. Accordingly to HHS's Office of Facilities Engineering, the cost of adding sprinklers to an *existing* nursing home is $2.50 per square foot while the cost for that of a *new* home would be $1.50 per foot. Under current State laws, only 12 States require sprinklers in all nursing homes. This NPRM would necessitate additional capital expenditures in the remaining 38 States, where the State Code does not require sprinklers due to construction type and where facilities have not voluntarily installed them. Comments on the effectiveness of sprinklers in the 12 States that require sprinklers in all nursing homes would be useful and are encouraged.

Currently, there are approximately 7,540 SNFs and 10,379 ICFs certified for participation in the Medicare and Medicaid programs nationwide. Of these totals, the current provisions of the applicable editions of the Life Safety Code do *not* require sprinklers in 2,872 (38%) of the SNFs and 3,242 (31%) of the ICFs. If the ratio of these facilities requiring sprinklers to the ones that do not remains the same for newly built facilities, the above percentages can indicate what portion of these new facilities would require sprinklers if the proposed rule is adopted.

We estimate that the cost of implementing this NPRM nationwide would be less than $10 million. Factors considered in arriving at this figure include: the laws in 12 States already require sprinklers in all nursing homes; the cost saving benefit of the FSES; approximately ⅔ of all nursing homes are currently required to have sprinklers by the Life Safety code due to construction type.

Alternatives 3, 4, and 5 as discussed earlier are estimated to have minimal cost differences between them and are less costly then alternative 1. What is more relevant are the differences in effectiveness of these alternatives. Alternative 2 is most similar to the requirement being proposed. Although its estimated cost would be less than alternative 1 but greater than alternatives 3, 4, and 5, much of the cost of sprinkler installation could be offset by use of the FSES.

Regulation Provisions

The Department proposes that, in addition to the present LSC sprinkler requirements, automatic extinguishment systems (pursuant to the National Fire Protection Association's Standard No. 13 Sprinkler Systems, 1976) be required for all new SNFs and ICFs that desire to participate in the Medicare and Medicaid programs.

In addition, the Department strongly recommends that the FSES be utilized by new facilities in the design stage to assure that the building does not include excessive construction features for fire safety which are offset by the installation of an automatic extinguishment system.

We welcome any additional comments or presentation of facts to be considered in our decision of whether or not to regulate, especially from any group or person(s) who did not have the opportunity to respond to our Notice of Intent and the alternatives discussed therein.

42 CFR Chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. Part 405, § 405.1134, is amended by revising paragraph (a) to read as follows:

§ 405.1134 Condition of participation—physical environment.

The skilled nursing facility is constructed, equipped, and maintained to protect the health and safety of patients, personnel, and the public.

(a) *Standard: Life safety from fire.* The skilled nursing facility meets such provisions of the Life Safety Code of the National Fire Protection Association

(21st Edition, 1967 or the 1973 Edition as appropriate) as are applicable to nursing homes; except that, in consideration of a recommendation by the State survey agency, the Secretary may waive, for such periods as deemed appropriate, specific provisions of such Code which, if rigidly applied, would result in unreasonable hardship upon a skilled nursing facility, but only if such waiver will not adversely affect the health and safety of the patients; and except that the provisions of such Code shall not apply in any State if the Secretary finds, in accordance with applicable provisions of section 1861(j)(13) of the Social Security Act, that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in skilled nursing facilities. Where waiver permits the participation of an existing facility of two or more stories which is not of at least 2-hour fire resistive construction, blind, nonambulatory, or physically handicapped patients are not housed above the street level floor unless the facility is of 1-hour protected noncombustible construction (as defined in National Fire Protection Association Standard No. 220), fully sprinklered 1-hour protected ordinary construction, or fully sprinklered 1-hour protected woodframe construction. Nonflammable medical gas systems, such as oxygen and nitrous oxide, installed in the facility comply with applicable provisions of National Fire Protection Association Standard No. 56B (Standard for the Use of Inhalation Therapy) 1968 and National Fire Protection Association Standard No. 56F (Nonflammable Medical Gas Systems) 1970.

All facilities that receive final building plan approval by the appropriate State authority on or after the effective date of this regulation must have installed an automatic extinguishment system that meets the provisions of NFPA Standard No. 13, Sprinkler Systems, 1976.

* * * * *

2. Part 442, 442.321 is amended by adding a new paragraph (c) to read as follows:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

Safety Standards

§ 442.321 Fire protection.

* * * * *

(c) All ICFs that receive final building plan approval by the appropriate State authority on or after the effective date of this regulation must have installed an automatic extinguishment system that meets the provisions of NFPA Standard No. 13, Sprinkler System, 1976.

(Section 1102 of the Social Security Act; 42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program; No. 13.773 Medicare-Hospital Insurance; No. 13.774 Medicare-Supplementary Medical Insurance)

Dated: March 31, 1980.

Earl M. Collier, Jr.,

Acting Administrator, Health Care Financing Administration.

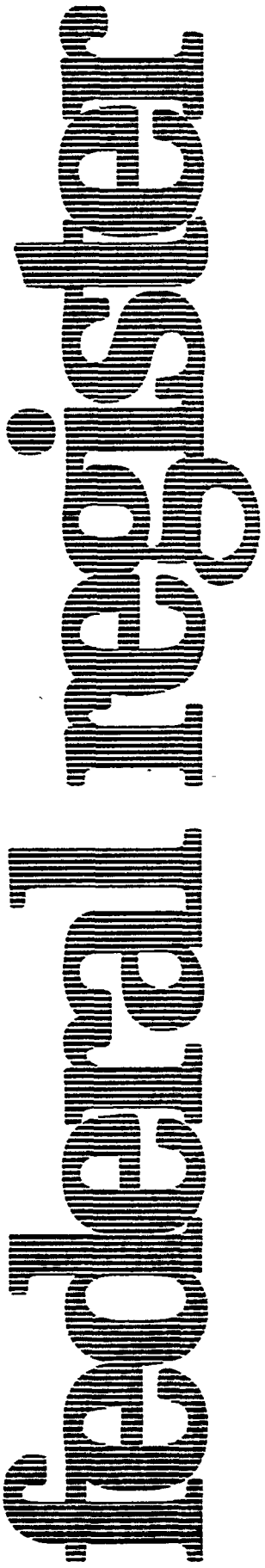
Approved: July 21, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-22537 Filed 7-25-80; 8:45 am]

BILLING CODE 4110-35-M



Monday
July 28, 1980

Part VI

Environmental Protection Agency

Statement of Policy on the Labeling Requirements for Exported Pesticides, Devices, and Pesticide Active Ingredients and the Procedures for Exporting Unregistered Pesticides

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, and 180

[FRL 1546-5]

Statement of Policy on the Labeling Requirements for Exported Pesticides, Devices, and Pesticide Active Ingredients and the Procedures for Exporting Unregistered Pesticides

AGENCY: Office of Enforcement, Environmental Protection Agency (EPA or the Agency).

ACTION: Notice of policy statement.

SUMMARY: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or the Act) was amended by the Federal Pesticide Act of 1978 on September 30, 1978. Section 17(a) of the Act was modified so that pesticides, devices, and active ingredients used in producing pesticides which are manufactured for export must now bear certain minimal labeling, and the producers of such products are now subject to the requirements of both FIFRA sections 7 (establishment registration) and 8 (books and records). In addition, unless a pesticide is registered under section 3 or is being sold under section 6(a)(1) it cannot be lawfully exported unless, prior to export, (1) the foreign purchaser has signed a statement acknowledging that the purchaser understands that the pesticide is unregistered and therefore cannot be sold in the United States, and (2) a copy of that statement has been transmitted to EPA for transmittal to the appropriate officials of the importing country. This foreign purchaser acknowledgement statement must be acquired by the exporter and transmitted to EPA for the first shipment of each unregistered pesticide to a particular purchaser for each importing country, annually.

This notice informs the public of the scope of the new labeling requirements and of the procedures that an exporter of unregistered pesticides must follow to acquire acknowledgement statements which will be transmitted by the U.S. Government to the government of the importing country.

EFFECTIVE DATES: *Labeling.* Labeling requirements for exported pesticides, devices, and pesticide active ingredients became effective March 29, 1979, (Federal Pesticide Act of 1978, Pub. L. 95-396, 92 Stat. 833). Therefore, exported products which fall within the purview of this notice must now bear labels which comply with the statutory requirements of FIFRA section 17(a)(1).

Purchaser Acknowledgement Statements. After thirty days from the date of this notice, exporters of unregistered pesticides will be in violation of FIFRA if the foreign purchaser acknowledgement statements have not been acquired before shipment and transmitted to EPA in accordance with this policy.

FOR FURTHER INFORMATION CONTACT: John J. Neylan III, Office of Enforcement, Pesticides and Toxic Substances Enforcement Division (EN-342), EPA, 401 M Street, S.W., Washington, D.C. 20460 (202) 755-1212.

SUPPLEMENTARY INFORMATION: On Wednesday, July 18, 1979, EPA's Office of Enforcement published a proposed statement of policy on the labeling requirements for exported pesticides, devices, and pesticide active ingredients and the procedures for exporting unregistered pesticides, [44 FR 41955]. That proposed policy statement explained in some detail what information would be required to appear on the labels or labeling of pesticides, devices, or pesticide active ingredients destined for export in order to be considered in compliance with the law. It also described the procedures for acquiring from a foreign purchaser of unregistered pesticides a statement in which the purchaser acknowledges the registration status of the pesticide. Both of these requirements became effective 180 days after the date of enactment of the Federal Pesticide Act of 1978 (March 29, 1979).[1]

The July 18 notice invited the public to comment on the proposed policy before September 17, 1979. Twenty-three comments were received. Following is a summary of the major modifications to the policy statement made as a result of the comments.

(1) A more detailed explanation was included of which products will be considered as not registered for use in the United States, for purposes of this policy statement.

(2) The policy statement explains in greater detail what labeling is expected to appear on exported pesticides, devices, and pesticide active ingredients.

Appendix A contains summaries of the comments made to the July 18, 1979 policy statement and the Agency's response to them.

Accordingly, the Office of Enforcement's general statement of policy on the labeling requirements for exported pesticides, devices, and pesticide active ingredients and the procedures for exporting unregistered pesticide are set forth below.

Dated: July 10, 1980.

Jeffrey G. Miller,

Acting Assistant Administrator for Enforcement.

I. Summary of Policy

Pesticides, devices, and active ingredients used in producing pesticides which are manufactured for export must now bear labeling which will serve to both identify the product and the producer and to protect persons who come in contact with the product. Certain of the label items must be written in both the English language and in the language of the importing country. These bilingual labeling requirements apply to the product's ingredient statement and its warning and precautionary statements. Exporters of pesticides which are not registered for use in the United States (in accordance with this policy) must obtain a statement from the foreign purchaser of the pesticide in which the purchaser acknowledges the registration status of the product. The pesticide must also bear labeling to indicate that it is not registered in the United States. For purposes of this policy an unregistered pesticide is one which (1) contains an active ingredient not found in a federally registered product; or (2) bears labeling for a use which is currently subject to denial or cancellation of registration; or (3) is not similar in composition and use pattern to a federally registered product.

The acknowledgement statement must (1) identify the purchaser, the exporter, the product's identity and the product's destination; (2) be obtained for the first shipment of a particular pesticide to a particular purchaser for each importing country, annually; (3) be obtained *before* exportation takes place; and (4) be transmitted to EPA within seven (7) days of receipt by the exporter.

II. Labeling Requirements

Section 17(a) of FIFRA has been amended to provide as follows:

(a) Pesticides and Devices Intended for Export.—notwithstanding any other provision of this Act, no pesticide or device or active ingredient used in producing a pesticide intended solely for export to any foreign country shall be deemed in violation of this Act—

(1) when prepared or packaged according to the specifications or directions of the foreign purchaser, except that producers of such pesticides and devices and active ingredients used in producing pesticides shall be subject to sections 2(p), 2(q)(1)(A), (C), (D), (E), (G), and (H), 2(q)(2)(A), (B), (C)(i) and (iii), and (D), 7, and 8 of this Act;

[1] Pub. L. 95-396, 92 Stat. 819, September 30, 1978, Section 18(b).

Every exported pesticide, device, and active ingredient used in producing a pesticide must bear a label or labeling, in English or in the language of the importing country, which meets the requirements of FIFRA section 17(a)(1). In addition, certain information which will satisfy FIFRA sections 2(q)(1)(E), (G), and (H) and 2 (q)(2)(A) and (D) must also appear on the label or labeling so as to provide bilingual (in other words, in English and in the language of the importing country) information to anyone who handles or comes in contact with these products. Any language in which official government business is conducted in the country or which is the predominately spoken language of the country, is acceptable as the second language on the label.

Pursuant to Section 17(a)(1), all exported pesticides, devices, and active ingredients used in producing pesticides must bear labels or labeling which:

(a) bear EPA Establishment Numbers;

(b) have ingredient statements;

(c) have the name and address of the producer or registrant;

(d) have statements of net weight or measure;

(e) if highly toxic, bear skull and crossbones and statements of practical treatment in case of poisoning;

(f) include warning and caution statements;

(g) do not make false representations;

(h) are not in imitation of other products; and

(i) in the case of unregistered pesticides, bear the statement "Not Registered for Use in the United States of America." All such required statements must be conspicuous and readable.

To satisfy FIFRA section 2(q)(1)(E), the labeling provisions set forth below must appear in the English language and in the language of the importing country. This section specifies that required statements must be represented ". . . in such terms as to render it likely to be read and understood by the ordinary individual . . ." Therefore, the following information must appear bilingually on exported product labeling:

(a) the warning and caution statements;

(b) the ingredient statement;

(c) where required, the word "poison" and the statement of practical treatment; and

(d) the statement "Not Registered for Use in the United States of America."

The following may provide more specific guidance on particular elements which must appear on the label or labeling of each exported product:

a. *EPA Establishment Number.* The Establishment Number may appear anywhere on the label or immediate container in accordance with the establishment registration labeling requirements set forth in 40 CFR § 162.10(f).

b. *Precautionary Statements.* Warning or caution statements must be biligual and must be adequate for the protection of persons handling the pesticide, particularly with respect to general toxicological hazards and environmental, physical, or chemical hazards. Where the bilingual translation is obviously inappropriate to protect residents of the importing country, (for example, where a label calls for a gas mask meeting the specification of the U.S. Bureau of Mines) an equivalent caution may be substituted.

c. *Unregistered Products.* Labels of pesticides which are not registered under FIFRA (See *Products Subject to the Requirement for an Acknowledgement Statement* below) must prominently display the following statement: "Not Registered for Use in the United States of America." This statement must appear bilingually.

d. *Ingredient Statement.* The ingredient statement must appear bilingually unless the ingredients are easily identifiable despite their being listed in a foreign language.

e. *Use Classification Statement.* The statement of use classification (Restricted Use Pesticide or General Use Pesticide) must appear on the labeling of the pesticide; however, summary statements regarding the terms of the restriction, e.g., "For retail sale to and application only by Certified Applicators . . ." are not required.

f. *Identity of Parties.* Name and address of the producer, registrant, or person produced for must appear in the labeling.

g. *Net Weight.* The net weight must appear on the labeling in either conventional English units or metric units.

h. *Highly Toxic Pesticides.* If the pesticide is highly toxic, the skull and crossbones, the word "Poison", and a statement of practical treatment must appear on the labeling. The word "Poison" and the statement of practical treatment shall be bilingual. The skull and crossbones may be in red or black. For guidance on what pesticides are highly toxic, see 40 CFR § 162.10 (h).

The Agency is concerned that labeling required by FIFRA not conflict with labeling requirements of the importing country. Such a situation might arise, for example, where pesticides are being exported to a foreign country with strict labeling and registration laws such as this country has. To avoid such potential conflicts, yet still meet the statutory requirements of FIFRA, exporters may use supplemental labeling. Pesticides, devices, and active ingredients used in producing pesticides may, therefore, bear a label with the appropriate information required by FIFRA section 17(a)(1) or may be accompanied by supplemental labeling in instances where FIFRA required labeling is in contravention of foreign labeling requirements. Supplemental labeling may be attached to or accompany the product container or shipping container.

III. Foreign Purchaser Acknowledgment Statement

Section 17 of FIFRA has been further amended to provide as follows:

(a) Pesticides and Devices Intended for Export.—Notwithstanding any other provision of this Act, no pesticide or device or active ingredient used in producing a pesticide intended solely for export to any foreign country shall be deemed in violation of this Act—

(2) In the case of any pesticide other than a pesticide registered under section 3 or sold under section 6(a)(1) of this Act, if, prior to export, the foreign purchaser has signed a statement acknowledging that the purchaser understands that such pesticide is not registered for use in the United States and cannot be sold in the United States under the Act. A copy of that statement shall be transmitted to an appropriate official of the government of the importing country.

This notice also delineates what pesticide products are affected by this provision and procedures EPA believes would satisfy the purposes of section 17(a)(2).

IV. Products Subject to the Requirements for an Acknowledgment Statement

Many pesticides which are produced in the United States solely for export contain active ingredients that are also registered as components of pesticides used within the United States. However, the export formulations in many cases contain slightly different percentages of active ingredients and are labeled differently. Several factors dictate these minor modifications in formulation and labeling, such as different systems of measurement, pests to be controlled which are different from those for which the same or a similar pesticide product is used in the United States, and requirements for labeling in a language other than English.

The Agency believes that Congress did not intend the requirement for obtaining an acknowledgement statement which is applicable to "unregistered" pesticides to apply to products which are minor variations on formulations registered in the United States and which contain only active

ingredients which are registered in the United States. Rather, it is the Agency's view that the export amendments were meant to apply in cases in which either (1) an adverse decision concerning the use of the pesticide in the United States has been made, or (2) no decision has been made concerning use of the pesticide. The requirement for obtaining an acknowledgement statement from a foreign purchaser will apply to pesticide products in which:

(a) The pesticide active ingredient has been judged to pose "unreasonable adverse effects" to man or the environment, and the registrations of products with that active ingredient have been cancelled or denied; or

(b) Either, (1) no assessment or no conclusive assessment of the hazard resulting from use of the pesticide has been made by EPA (while the pesticide may have been used under limited experimental or emergency conditions), (2) the pesticide has never been registered under section 3 because registration for the pesticide active ingredient has not been sought or has not yet been granted, or (3) the pesticide is being exported for a use which is substantially different from any currently registered use of that pesticide (e.g., a pesticide which is registered in this country for use as a termiticide is exported bearing directions for use on food crops).

Consequently, the Agency interprets section 17(a)(2) to apply to:

(a) All pesticide products which contain an active ingredient that is not found in a federally registered product;

(b) All pesticide products bearing labeling for a use which is currently subject to denial or cancellation of registration (section 17(a)(2) will also apply to uses not considered by the Administrator during a cancellation or denial determination); and

(c) All pesticide products which are not similar in composition and use pattern to a federally registered product.

To be considered similar in composition and use pattern, a pesticide product must contain only the same ingredient or combination of active ingredients and must have the same category of toxicity as a federally registered product. Also, the use pattern must be similar to the use pattern of the federally registered pesticide to which it is being compared. Registrations involving changes in use patterns such as changes from non-food to food use, outdoor to indoor use, terrestrial to aquatic use, or non-domestic to domestic use, are not considered to qualify as similar use patterns. Pesticide uses which were never reviewed during a cancellation or denial of registration determination (such as a pesticide use on a crop which is not grown in the United States) also do not qualify as a similar use.

Pesticide products which are subject to the requirements of section 17(a)(2) must also bear the label statement, "Not Registered for Use in the United States of America" stipulated by section 2(g)(1)(H) of this Act.

A pesticide product which has been registered under Section 24(c) of FIFRA will be considered as registered for purposes of this policy. A pesticide product which may be legally used only under an experimental use permit (Section 5) or an emergency exemption (Section 18) will not be considered as federally registered. Nor will a pesticide product whose distribution and use are legal in intrastate commerce because the producer has filed an application for federal registration in accordance with the procedures found in 40 CFR § 162.17. Technical grade and manufacturing use pesticides which are not federally registered will be considered as registered for purposes of this policy, if they qualify as being similar in composition to a registered formulation use pesticide, (i.e., if the products have the same active ingredients and category of acute toxicity).

V. Procedures

Section 17(a)(2) requires that before a pesticide which is not registered for use in the United States can be exported, the foreign purchaser of the pesticide must acknowledge in writing that he understands the registration status of the pesticide and that the pesticide cannot be sold in the United States. An exporter of unregistered pesticides must have received the required acknowledgement statement *before* the product is released for shipment. The Agency feels that requiring exporters to have in hand the purchaser acknowledgement statement before exportation takes place is the only way to assure that foreign purchasers comply with these new FIFRA export requirements. The Agency recognizes that this requirement may cause some disruption in the export of pesticides. However, any such delays will be visited only upon exporters of unregistered pesticides, and then only for the *first* shipment to a foreign purchaser, in a particular country, annually. The information required on the acknowledgement statement, along with a certification signed by the exporter, must be transmitted to the Environmental Protection Agency within seven days of receipt by the exporter, or by the date of export, whichever occurs first. The certification must state that the shipment did not take place before the exporter had the signed acknowledgement statement in hand.

The Agency will consider the receipt of purchaser acknowledgement statements by local company representatives in foreign countries to be receipt by the exporter. Nevertheless, the information required by the acknowledgement statement must still be transmitted to EPA within seven days of receipt, or by the date of export, whichever occurs first. Acknowledgement statements may be acquired at any time in advance of shipment. For example, an exporter that ships to the same foreign purchasers year after year may acquire at the beginning of a year all of the acknowledgement statements which are anticipated to be needed.

The Agency will transmit the acknowledgement statements to appropriate foreign officials through the Department of State. Statements will be transmitted promptly after receipt.

The Agency believes that the purpose of the purchaser acknowledgement statement is to advise foreign governments that pesticides which have been judged by the United States to be hazardous to human health or the environment, or pesticides for which no hazard assessment has been made, are being exported by U.S. producers to their country. Foreign governments may then use such information as they desire, perhaps, for example, in evaluating the risk of continued use of the pesticide in that country versus the benefits that pesticide provides. The Agency does not consider that the acknowledgement statement is primarily intended to serve as preshipment notification to foreign governments in order that they may intercept shipments of such pesticides. Nevertheless, because of the Agency's concern that acknowledgement statements reach foreign governments in a timely manner, the information contained in the acknowledgement statement will be forwarded to foreign governments promptly upon receipt by EPA.

As an information mechanism, the purchaser acknowledgement statement serves the purpose of alerting the foreign government that a certain pesticide is entering its country. The Agency believes that the first notice fulfills this purpose; repetitive notices would be of only marginal value, and in cases of a high volume of exports to a foreign country, might result in a flood of paper. After considering the administrative burdens placed on exporters, EPA, and foreign governments and the value of repetitive notices, the Agency has concluded that each exporter should

complete and have signed a purchaser acknowledgement statement, for the first shipment of a particular product to a particular purchaser for each importing country, annually. A shipment of the same product to a different purchaser or to the same purchaser for disposition to a different importing country would also trigger the requirement for obtaining a signed acknowledgement statement from the foreign purchaser. A second shipment, during the same calendar year, involving the same product, purchaser, and importing country would not trigger this requirement. Any change in the variables—different purchaser, different product, different importing country—will result in the need for obtaining a new purchaser acknowledgement statement.

In summary, the procedures that an exporter of unregistered pesticides must follow in obtaining and transmitting foreign purchaser acknowledgement statements are:

(a) The exporter must provide the foreign purchaser with instructions about the required information on an acknowledgement statement and inform the foreign purchaser that shipment of the pesticide cannot be undertaken unless the exporter has received from the foreign purchaser a properly completed, signed, and dated acknowledgement statement;

(b) The exporter must secure, prior to shipment, an acknowledgement statement which contains the information outlined in the *Required Information* section of this notice. Such a statement must be secured for the first purchase each year of a particular pesticide product by a foreign purchaser destined for a particular country;

(c) The exporter must forward the information required on the acknowledgement statement, along with the certification that exportation did not take place until a signed acknowledgement statement was received, within seven (7) days of receipt, or by the date of exportation, whichever occurs first, to the following address: Environmental Protection Agency, Pesticides and Toxic Substances, Enforcement Division (EN-342), 401 M Street SW., Washington, D.C. 20460.

Attention: Export Acknowledgement Statement.

VI. Required Information

As previously stated, a foreign purchaser of a pesticide which is not registered for use in the United States must sign a statement acknowledging his understanding that the product is unregistered and cannot be sold in this country. The Agency does not intend to prescribe a format for this acknowledgement statement. However, the statement must include the following information:

(a) Name and address of the exporter;

(b) Name and address of the foreign purchaser;

(c) Name of the product and the active ingredient and an indication that the purchaser understands that the product is not registered for use in the United States;

(d) Destination of the export shipment, if different than purchaser's address;

(e) Signature of the foreign purchaser; and

(f) Date of the foreign purchaser's signature.

VII. Confidentiality

Persons submitting the information specified in Part VI may assert a claim of business confidentiality by marking this information as "FIFRA Confidential Business Information." Information so marked will not be disclosed, with the exception of disclosure to the foreign government, except in accordance with the procedures set forth in 40 CFR Part 2, 7 USC 136h, and this policy statement. If such claim is not asserted, EPA may disclose the information to the public without providing notice of disclosure or an opportunity to object. Notwithstanding any claim of confidentiality, the acknowledgement statement will be forwarded to the appropriate foreign government in its entirety as required by section 17.

VIII. Relationship to Other Statutory Requirements

Producers of pesticides, devices, and active ingredients used in producing pesticides which are intended for export are subject to the establishment registration procedures, including the report requirements, as well as the record keeping requirements of FIFRA. The Agency has proposed amendments to the regulations which are promulgated under the authority of those parts of the Act (sections 7 and 8) to bring them into conformity with the newly amended FIFRA. These regulations are found at 40 CFR Part 167 and Part 169, respectively.

Pesticides, devices, and pesticide active ingredients for export are not considered to be in violation of FIFRA when produced according to the directions of the foreign purchaser, when properly labeled and, in the case of unregistered pesticides, when the foreign purchaser has signed a statement in which he acknowledges that he understands the registration status of the pesticide and the exporter has forwarded the statement to EPA. Exported pesticides, devices, and active ingredients used in producing pesticides which do not bear labels or labeling in compliance with FIFRA section 17(a)(1) will be considered to be misbranded. Exporters of such products will be subject to civil or criminal liabilities for violation of FIFRA sections 12(a)(1) (D) or (E)—misbranding. Exporters of unregistered pesticides will be subject to civil or criminal liabilities for violation of FIFRA section 12(a)(1)(A)—selling or distributing a pesticide which is not registered—if they fail to secure, prior to export, a properly completed, signed, and dated acknowledgement statement from the foreign purchaser of the pesticide. Falsification of the required certification may subject an exporter to sanctions under 18 U.S.C. 1001.

Appendix A.—Significant Comments and Responses

General Comments

Comment No. 1. Applicability of Rulemaking Procedures. Two commenters stated that the Agency should have implemented the export provisions of FIFRA through the procedures established by the Administrative Procedures Act for the promulgation of "substantive" rules. The Agency disagrees. As mentioned previously, these requirements for export labeling and purchaser acknowledgement statements were statutorily effective March 29, 1979, 180 days from enactment of the Federal Pesticide Act of 1978. The law lists the type of information required on an exported pesticide's labeling and the legislative history makes it clear that purchaser acknowledgement statements are to be transferred to foreign governments in the same manner that cancellation notices are furnished. The Agency's position, therefore, is that there is no need for rulemaking but rather there is a need for a general statement of policy on such matters as: (a) what would constitute minimally acceptable labeling, (b) how such labeling could be attached or accompany shipments, and (c) how foreign purchaser acknowledgement statements are to be transmitted to foreign governments.

Comment No. 2. Use of Suspended and Cancelled Pesticides List. Another commenter suggested that foreign countries can be adequately informed of the hazards of U.S. manufactured pesticides through an expansion of the Suspended and Cancelled Pesticides List. This is not the intended function of the Suspended and Cancelled Pesticides List. That list constitutes only a guide

for Government officials; it is not the final authority on the status of a given pesticide. It is the intent of Congress that the procedures that are followed for notifying foreign governments of the suspension or cancellation of pesticides be those which are also used to inform them that an unregistered pesticide will be entering their country. Therefore, the channel of communication described in this policy is derived from the procedures already used to notify foreign governments of major suspension or cancellation actions.

Comment No. 3. Scope of the FIFRA Section 17 Requirements. A number of commenters addressed the definition contained in this policy statement of an unregistered pesticide. The Agency agrees that clarification on this point is necessary. It is not EPA's intent to limit export of a chemical if it is properly labeled and the exporter complies with the procedures for obtaining and transmitting to EPA a properly executed acknowledgement statement. A more detailed explanation of which products will be regarded as unregistered for the purposes of this policy has been given. One commenter objected to including products with denied or cancelled uses and products with different composition or use patterns with products which contained no registered active ingredient. In drafting this policy statement, EPA adopted a broad interpretation of the registration status of a pesticide.

The Agency could have required exporters of all pesticide products that were not registered under section 3 to acquire an acknowledgement statement from the foreign purchaser. The effect of this would be that an acknowledgement statement would have been required for the overwhelming majority of exported pesticides since most exports differ slightly in formulation or directions for use from the U.S. registered product, or the labels are written in a foreign language. The EPA clearly stated in the proposed policy statement that in its view Congress did not intend that exported products with minor variations from EPA registered pesticides be subject to the export notification procedures. However, products with cancelled uses or with substantial differences in composition or use patterns cannot be considered products with minor variations. The Agency must, therefore, reject this comment.

Comment No. 4. Status of Certain Unregistered Pesticides. One commenter suggested that experimental use products be treated as registered products; another commenter thought that products with temporary tolerances should be considered as if they were registered. Since registration data for such products are not complete, it has consistently been Agency policy to treat experimental use products and products with temporary tolerances as unregistered products. Products which bear registrations under section 24(c) of FIFRA will, however, be treated as registered products. Products undergoing Rebuttable Presumption Against Registration will be considered in accordance with their registration status at the time of export. It was suggested by one commenter that those pesticides which were registered by a foreign country should not be subject to the requirement for an acknowledgement statement. In order to adequately enforce a policy which took this approach, the EPA would have to evaluate the internal registration procedures conducted by other countries and to regulate exports based upon the policies of the *importing* country. Thus, EPA policy would be different for similar shipments going to different countries. The Agency rejects this comment. Not only would it be administratively difficult to operate such an export program, but such a policy fails to recognize the point of having the acknowledgement statement: To inform foreign governments of the U.S. registration status of a pesticide.

Comment No. 5. Non-Commercial Exportation. Another commenter requested clarification on the application of the notice provision to pesticides which are exported without a commercial transaction. There are two possible categories of products to which this comment might apply: the first would be small amounts of pesticide exported for research purposes only; the second would be large shipments exported to a foreign establishment of the domestic company which manufactures it. Research quantities are subject to the labeling rules of this policy but not to the acknowledgement statement requirement. Large shipments transferred from a domestic facility to a foreign facility of the same company will be treated in accordance with their U.S. registration status. That is, if the product is registered (in accordance with the use of that term in this policy), no acknowledgement statement is required; if the product is not registered, an acknowledgement statement will be required.

Comment No. 6. Technical and Multiple Use Chemicals. Some commenters asked for clarification of the impact of this policy upon formulated and technical grade products and multi-use products. Formulated and technical grade products which are subject to FIFRA are subject to this policy. The label on the exported product must comply with section 17 of FIFRA. A multi-use product for which no pesticide claims are made and which is not an active ingredient in any pesticide product in the United States is not subject to this policy, even if it is subsequently processed into a pesticide in another country.

Labeling Comments

Comment No. 7. Use of Bilingual Labeling. A number of commenters stated that the law did not require bilingual labeling. The law states that an exported pesticides, device, or pesticide active ingredient must bear labeling in conformance with FIFRA section 2(q)(1)(E). The FIFRA states in section 2(q)(1)(E) that a pesticide is misbranded if:

> Any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon . . . In such terms as to render it *likely to be read and understood by the ordinary individual* under customary conditions of purchase and use; (Emphasis added.)

The EPA interprets this passage to apply to ordinary individuals in the importing country as well as in the United States. Thus, the bilingual requirements are meant to communicate some basic information about the product to as many handlers of the pesticide as possible. International symbols, suggested by one commenter, could not adequately communicate all the required label elements, although they may be used in addition to the required wording. Commenters asked for guidance regarding EPA's enforcement of the bilingual requirement in two specific instances: when the importing country has several official dialects, or when English is an official government language. Any language in which official government business is commonly conducted in the country, or which is the predominately spoken language of the country, is acceptable as the second language on the label. If English is one of these languages, then a bilingual label is optional, except as may be required by the importing country. One commenter asked if a translation of the U.S. label would be satisfactory. Such a label would be acceptable if the necessary elements appeared both in English and in the foreign language.

Comment No. 8. Foreign Labeling Requirements. Several commenters asked about the application of this policy to labels which comply with the laws of the importing country. It is not

the intention of this policy to supersede the labeling requirements of foreign governments. However, FIFRA now requires that exported pesticides, devices, and pesticide active ingredients bear certain minimal labeling. If the labeling which currently appears on exported pesticides does not meet the minimum FIFRA requirements, even though it may meet the foreign country's requirements, additional labeling must be added to satisfy U.S. law.

Comment No. 9. Supplemental Labeling. Several commenters suggested that supplemental labeling be liberally allowed. The Agency intends to be as flexible as possible in this respect. Exporters will be permitted to use a variety of types of labeling to comply with the FIFRA export requirements. The Agency's principal interest will be to ascertain that products to which this policy applies bear labels or labeling which, taken together, conform to the FIFRA section 17(a)(1) requirements.

Comment No. 10. Establishment Numbers. One commenter requested the option of substituting another code for the EPA Establishment Number on the label. The Act clearly requires that an Establishment Number appear on the label. The Agency must reject this suggestion since permitting other means of identifying the production establishment would negate the usefulness of such numbers.

Comment No. 11. Restricted Use Pesticides. Several commenters requested guidance on label requirements for exported restricted use pesticides. If the product is a restricted use pesticide, then the statement "Restricted Use Pesticide" must appear on the label or labeling. The supplementary statement of the terms and conditions of restriction is not required.

Acknowledgment Statement

Comment No. 12. Prior Possession of Acknowledgement Statements. A number of commenters questioned the requirement that the acknowledgement statements be in the exporter's possession before shipment of the pesticide can take place. Other commenters stated that in their opinion foreign importers, through oversight or bureaucratic inefficiency, will not comply with the acknowledgement statement requirement. In the proposed policy statement, the Agency clearly recognized the problem of non-compliance by foreign importers. For this precise reason, EPA must reject the contention that acknowledgement statements should not be required to be in the exporter's control *before* shipment can take place. A more liberal interpretation of what constitutes receipt of the acknowledgement statements has been provided in the final policy statement to facilitate compliance. One commenter suggested that a signed acknowledgement in the hands of a local company representative be considered a receipt by the exporter. The Agency agrees that this would be acceptable so long as the information required on the acknowledgement statement is sent to EPA within the stated time period. If a company anticipates several orders in a year, the acknowledgement statements may be obtained in advance of the actual order. One commenter stated that the requirement that acknowledgement statements be sent to EPA within seven days of receipt by the exporter was too restrictive. This commenter suggested that transmittal of the acknowledgement statement should be tied to the date of shipment. The Agency disagrees. Where possible, acknowledgement statements will be sent to foreign governments as far in advance of shipment as possible. This will provide the government some time to review the information received. The Agency feels more timely notification will occur if transmittal of the acknowledgement statement is tied to date of receipt.

Comment No. 13. Certifications. Some commenters objected to filing, along with the acknowledgement statement, a certification that the order was not shipped before the acknowledgement statement was received. The Agency believes that a certification statement is necessary. While some monitoring of compliance will be through inspection of required books and records, a certification requirement will serve to remind exporters that shipment must wait until the acknowledgement statement has been received.

Comment No. 14. Destination of Shipment. One commenter suggested that there was no need to include in the acknowledgement statement the destination of the export shipment, if different than the purchaser's address. This comment is rejected because without this information the Agency would be unable to determine if the labeling complied with the bilingual requirements nor would it know the proper place to send the acknowledgement statement.

Comment No. 15. Annual Reporting. Several commenters stated that the requirement that a new acknowledgement statement be acquired each year that a particular product is exported is overly burdensome. They point out that the law requires an acknowledgement statement only once per country, not once per country, per year. The Agency must reject this comment. Although FIFRA is not clear on this point, the law seems to indicate that an acknowledgement statement should be acquired for each export shipment of an unregistered pesticide. It is the Agency's position that imposing such a requirement would be a burden for all parties concerned—exporters, importers, and the U.S. Government, as well as foreign governments—beyond any regulatory purpose it may serve. The requirement to send an acknowledgement statement once per year, which is similar to that being considered under the Toxic Substances Control Act, is not overly burdensome, and yet accomplishes the purpose of regular notification to foreign governments.

Comment No. 16. Notification of Foreign Governments. Several commenters questioned the procedure for notifying foreign governments. It was suggested that either the foreign purchaser or the exporter should directly notify the foreign government. The EPA rejects this proposal. First, it would be difficult, if not impossible, for the Agency to monitor compliance under such a procedure. Second, as previously explained, the procedure for transmitting acknowledgement statements parallels that of the notification of foreign governments of suspended or cancelled registrations. It is the understanding of the Agency that such a procedure, namely government-to-government contact, was the intent of Congress.

Comment No. 17. Problems with Importing Countries. Two commenters suggested that the policy be different for socialist or communist countries. These commenters cited their experience exporting pesticides to these countries where the "importer" is an agency of the government. These import agencies are said by the commenters to be staffed by very conservative bureaucrats who are reluctant to sign unusual requests. As has been discussed earlier, it is not the intent of this Agency to write a different export policy for different countries. However, should numerous problems arise with any particular country, the Agency will work with industry and the Department of State to solve them.

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Federal Register

Monday
July 28, 1980

Part VII

Federal Emergency Management Agency

Acquisition of Flood Damaged Structures; Guidelines on Property Acquisition

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 77

[Docket No. FEMA FIA-77]

Acquisition of Flood Damaged Structures

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim Rule.

SUMMARY: This rule implements Section 1362 of Pub. L. 90–448 as amended, which provides for the acquisition of flood damaged structures (buildings) along with the associated land, meeting certain criteria, and transfer of title to this real property to a local or state government for management.

EFFECTIVE DATE: The effective date of this rule is July 28, 1980. Comment due date: On or before September 1, 1980.

ADDRESS: Send comments to Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 802, 1725 I Street, N.W., Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Richard W. Krimm, Assistant Administrator, Office of Natural Hazards Reduction and Evaluation, Federal Insurance Administration, Federal Emergency Management Agency, 1725 I Street, N.W., Washington, D.C. 20472, Phone: (202) 755–5581.

SUPPLEMENTARY INFORMATION: In creating the National Flood Insurance Act of 1968, Congress stated that "A program of Flood Insurance can promote the public interest by providing appropriate protection against the peril of flood losses and encouraging sound land use by minimizing the exposure of property to flood losses" (42 USC 4001, Section 1302(e)(1)). In seeking to minimize this exposure, emphasis has previously been directed toward measures regulating new construction in flood hazard areas. Several provisions, however, address reduction of flood losses to existing property.

One of these provisions, Section 1362 of Pub. L. 90–448, as amended, provides the Director of FEMA with the authority to negotiate for the purchase and subsequent transfer to a state or local government of flood damaged, improved real property under certain conditions. Acquisition of flood damaged, improved real property not only reduces flood losses to properties built prior to the adoption of adequate flood plain management measures, but it also reduces future federal costs for disaster relief and flood insurance subsidies, and offers flood victims the opportunity to break the cycle of damage and costly recovery from flooding. Acquisition of such property may be the most efficient, economical or perhaps the only means of reducing future flood damage to certain existing structures.

Research performed for the Federal Insurance Administration (FIA) between 1977 and 1979 has examined the potential scope of a flooded property purchase program, its costs, potential benefits, relationship to other disaster related assistance programs and its social, environmental and economic impact on individuals and communities (Evaluation of Alternative Means of Implementing Section 1362 of the National Flood Insurance Act of 1978, Draft, March 1980). This research has found that acquisition of certain flood damaged structures can make a significant contribution to Federal flood damage reduction policies and will produce a wide range of benefits when compared to costs of the program. It can also be a significant tool in helping communities implement comprehensive hazard mitigation strategies.

During fiscal year 1980, FIA's initial year of implementation of a flooded property purchase program under Section 1362, the program will be regarded as a demonstration program. FIA will examine the impacts of acquisition under a wide range of social and geographical conditions to the extent possible. Guidelines for implementing the program will be published as a Notice. These Guidelines will set forth more specific acquisition criteria, priorities, and steps for program implementation.

Public comment will be welcomed throughout fiscal year 1980 to this Rule and to the Guidelines to be published separately. At the end of fiscal year 1980, based on comments received and evaluations of program impacts, formal program rules will be proposed.

Pub. L. 90–448, the National Flood Insurance Act of 1968, included, at Section 1362, authority for FIA to negotiate for the purchase of flood damaged improved real property under certain conditions. Included in the conditions were requirements that structures be located in a flood risk area, be covered by flood insurance, and be damaged substantially beyond repair while so covered. The 1977 amendments to the National Flood Insurance Act of 1968 expanded Section 1362 to include several new criteria. Under one criterion, Section 1362(a)(3), a property may be eligible if it has incurred significant flood damage on not less than three previous occasions over five years, and on each occasion the cost of repair on the average, constituted at least 25 percent of the value of the structure. In addition, under Section 1362(b), a property may be eligible for purchase if it has suffered damages from a single casualty of any nature such that a statute, ordinance, or regulation precludes its repair or restoration or permits repair or restoration only at a significantly increased construction cost.

An additional provision was added to Section 1362 in 1977 allowing low interest loans for elevating structures located in floodways. Implementation of this provision, Section 1362(c), will be withheld during fiscal year 1980 for further consideration.

This program has been determined not to be a major federal action having significant environmental impact. This finding is on file with the Rules Docket Clerk for public inspection.

The program number in the Catalog of Domestic Assistance is 83.104. The program is subject to OMB Circular A–95. Accordingly, a new Part 77 of Title 44 of the Code of Federal Regulations is added as follows:

PART 77—Acquisition of Flood Damaged Structures

General Provisions

Sec.

77.1 Definitions.
77.2 Criteria for acquisition.

Authority: National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 26, 1968), as amended; 42 U.S.C. 4001–4129; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1079 (44 FR 19367); and delegation of authority to Federal Insurance Administrator

General Provisions

§ 77.1 Definitions.

(a) Definitions found in Section 59.1 of this subchapter are applicable to this section.

(b) Furthermore, the following definitions are established:

Damaged Substantially Beyond Repair—means where (a) damages to the improved real property are such that as a condition of repair as imposed by a state or local government, the structure must be elevated or floodproofed to or above the 100-year flood elevation, or (b) damages to the improved real property equals or exceed 50 percent of the structure's fair market or actual cash value, whichever is less, or (c) where damages to the improved real property are such that repair is physically impossible or infeasible.

Flood Risk Area—See definition for *Special Hazard Area* in Section 59.1, or

other area subject to flooding as determined by the Administrator.

Significantly Increased Contruction Cost—occurs when a specific State or local statute, ordinance, or code requires that improvements be made to a structure as a condition of the repair of damages sustained, such that the actual cost of repair would be greater by 25 percent than the cost which would be required for repair of the damages only.

Sound Land Management and Use—The process wherein the governmental body responsible for land use regulation in a political jurisdiction plans and regulates the use of land within its jurisdiction in order to promote the reduction of property exposure to flood hazard and the protection of environmental values of flood plains. Sound use of land acquired by FEMA and transferred to local governments pursuant to Section 1362 of Pub. L. 95–128 is use for primarily open space and recreational purposes to minimize potential for any future flood damage, with a general prohibition of enclosed structures unless functionally dependent for some recreational or open space use. The criteria set forth in paragraph d(i–iv), below and restrictions to be placed in deeds used to convey title to real property from the Federal Government to local governments will set forth more specific requirements to be used in determining what constitutes sound Land Management and Use for individual land parcels.

§ 77.2 Criteria for acquisition.

(a) The objectives of the Flooded Property Purchase Program under the National Flood Insurance Program are:

(1) To reduce future flood insurance and disaster assistance costs by removing repetitively and/or substantially damaged structures from flood risk areas;

(2) to provide an opportunity for owners of repetitively and substantially damaged structures to be permanently removed from flood risk areas, and to reduce risk to life from flooding; and

(3) to complement Federal, State and local efforts to restore flood plain values, protect the environment and provide recreational and open space resources.

(b) The Administrator will, when he or she deems it to be in the public interest, enter into negotiation with property owners whose improved real property has been damaged by flooding for the purpose of purchasing such buildings and associated land or lot for transfer by sale, lease, or donation to a community when the following conditions are met:

(1) The property must be located in a flood risk area as determined by the Administrator;

(2) The property must have been covered by a flood insurance policy under the National Flood Insurance Program at the time damage took place.

(3) The building, while covered by flood insurance under the National Flood Insurance program, must have been damaged substantially beyond repair or must have been damaged not less than three previous times during the preceding five year period, each time the cost of repair equalling 25 percent or more of the structure's value, or must have been damaged from a single casualty of any nature so that a statute, ordinance or regulation precludes its repair or restoration or permits repair or restoration only at significantly increased cost.

(4) A state or local community must enter into an agreement authorized by ordinance or legally binding resolution to take title to and manage the property in a manner consistent with sound land managment use as determined by the Administrator.

(5) The community must agree to remove without cost to the Federal Emergency Management Agency (FEMA), by demolition, relocation, donation or sale any damaged structures to which the community accepts title from FEMA, provided the Administrator may, when it is in the public interest to do so, agree to assume a part or all of the cost of such removal.

(c) Title to the real property acquired by FEMA shall be conveyed to local communities subject to specific restrictive covenants, conditions and agreements which will run with the land and be binding on subsequent successors, grantees and assigns. These restrictive covenants, conditions and agreements will be recited in the deed a community receives from FEMA and the community shall join in the execution of the deed.

(d) The general criteria from which specific deed restrictions will be developed may include, among other things, that:

(1) the land must be dedicated in perpetuity for open space purposes, or such other purposes as the Administrator may agree are consistent with the objectives set forth in § 77.2 (a)(1–3) above; that the community shall faithfully manage the land for its dedicated purposes; that the community shall not erect or permit to be erected and structures or other improvements on the land unless such structures are, except for restrooms, open on all sides and functionally related to a designated open space use without the prior approval in writing of the Administrator; and that the community shall not permit any use which will create a threat to human life from flooding.

(2) in general, allowable open space uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved parking lots, buffer zones, or open space areas that are part of Planned Unit Developments (PUD's). Structures functionally related to these uses are open-sided picnic and camping facilities, kiosks and refreshment stands or nonhabitable, elevated or floodproofed service structures associated with a marina.

(3) The rights to enforce the restrictive covenants shall be assigned to the Federal Insurance Administrator as assignee, together with a declaration that any future violation of the restrictive covenants or agreements, delivered in writing to the Chief Executive Officer within thirty (30) days from the date the Administrator receives actual notice of the violation, shall be deemed, at the Administrator's option, to cause a reversion of title to FEMA; and

(4) The property shall be transferred subject to zoning and building laws and ordinances; easements, agreements, reservations, covenants and restriction of record; any state of facts an accurate survey might show; encroachments and variations from the record lines of hedges, retaining walls, sidewalks and fences;

(e) Any structures, as described at paragraph (d)(2) of this section, and built in accordance with the deed restrictions shall be floodproofed or elevated to withstand the effects of the 500 year or .02 percent chance flood.

(f) Appraisals for the determination of compensation for flood damaged real property will be undertaken in conformance with the "Uniform Appraisal Standards for Federal Land Acquisitions" published by the Interagency Land Acquisition Conference, GPO (1973). Appraisals will reflect the adjusted (for time) pre-damage fair market value (FMV) of the structure and land to the extent that this FMV may have been reduced or depressed in the open market as a result of flooding. Actual compensation of FMV will be inclusive of any flood insurance claim payments made or to be made as a result of the most recent flood event to the extent that repairs have not yet been made.

(g) Agreement to sell real property on the part of owners will be completely voluntary. No property owners will be required to sell their properties under Section 1362.

(h) Relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 et seq.) is not available to property owners who sell their properties under Section 1362.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367); and delegation of authority to Federal Insurance Administrator).

Issued at Washington, D.C. July 18, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Guidelines on Property Acquisition Under Section 1362

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Part I—Introduction

In creating the National Flood Insurance Act of 1968, Congress stated that "A program of Flood Insurance can promote the public interest by providing appropriate protection against the peril of flood losses and encouraging sound land use by minimizing the exposure of property to flood losses (42 USC 4001, see 1302(c)(1)]. In seeking to minimize this exposure, emphasis has previously been directed toward measures regulating new construction in flood hazard areas. Several provisions, however, address reduction of flood losses to existing property.

One of these provisions, Section 1362 of Pub. L. 90-448, as amended, provides the Director of FEMA with the authority to negotiate for the purchase and subsequent transfer to a State or local government of damaged (usually by flood), improved real property under certain conditions. Acquisition of flood damaged real property not only reduces flood losses to properties built prior to the adoption of adequate flood plain management measures, but it also reduces future federal costs for disaster relief and flood insurance subsidies and offers flood victims the opportunity to break the cycle of damage and costly recovery from flooding. Acquisition of such property may be the most efficient, economical, and perhaps, the only means of reducing future flood damage to certain existing buildings.

Research performed for FIA between 1977 and 1979 has examined the potential scope of a flooded property purchase program, its costs, potential benefits, relationship to other disaster related assistance programs and its social, environmental and economic impact on individuals and communities ("Evaluation of Alternative Means of Implementing Section 1362 of the National Flood Insurance Act of 1968," Draft, March 1980). This research has found that acquisition of certain flood damaged buildings can make a significant contribution to federal flood damage reduction policies and will produce a wide range of benefits when compared to the costs of the program. It can also be a significant tool in helping communities to implement comprehensive hazard mitigation strategies.

Inasmuch as fiscal year 1980 is FIA's initial year of implementation of Section 1362, the program will be regarded as a demonstration project. The procedures set forth in these guidelines will provide specific acquisition criteria, priorities, and steps for program implementation. FIA will examine the impacts of acquisition under a wide range of social and geographical conditions.

FIA initially published Section 1362 statutory criteria in the form of an Interim Rule.

Public comment will be welcomed throughout fiscal year 1980 to the Rule and to this Notice of Guidelines. At the end of fiscal year 1980, on September 30, 1980, based on comments received and evaluation of program impacts, final program rules and regulations will be proposed.

As additional background Pub. L. 90-448, the National Flood Insurance Act of 1968, included, at Section 1362, authority for FIA to negotiate for the purchase of flood damaged improved real property under certain conditions. These conditions included that structures be located in a flood risk area, be covered by flood insurance, and be damaged substantially beyond repair while so covered. The 1977 amendments to the "National Flood Insurance Program" expanded Section 1362 to include several new criteria. Under one criterion (Section 1362(a)(3)), a property may be eligible if it has incurred significant flood damage on not less then three privious occasions over a five year period, and on each occasion the cost of repair, on the average, constituted at least 25 percent of the value of the structure. In addition under 1362(b), structures may be eligible for purchase that have been damaged from a single casualty of any nature such that a statute, ordinance, or regulation precludes its repair or restoration or permits repair or restoration only at significantly increased construction cost.

An additional provision was added to Section 1362 in 1977 allowing low interest loans for elevating structures located in floodways. Implementation of this provision, Section 1362(c), will be withheld during fiscal year 1980 for further consideration.

This program has been determined not to be a major federal action having significant environmental impact. This finding is on file with the Rules Docket Clerk for public inspection.

Part II—General Provisions

Subpart A—General

Section II.1 *Definitions*

As used in these guidelines:

"*Administrator*" (same as in 44 CFR 59.1).

"*Actual Cash Value*" means the replacement cost of a structure reduced by an amount for depreciation.

"*Building*" (same as "structure").

"*Coastal High Hazard Area*" (same as in 44 CFR 59.1).

"*Community*" (same as in 44 CFR 59.1).

"*Damaged Substantially Beyond Repair*" means where (a) damages to the improved real property are such that as a condition of repair as imposed by a State or local government, the structure must be elevated or floodproofed to or above the 100-year flood elevation, or (b) damages to the improved real property equals or exceed 50 percent of the structure's fair market or actual cash value, whichever is less, or (c) where damages to the improved real property are such that repair is physically impossible or infeasible.

"*Fair Market Value*" (FMV) means the amount an owner would be willing, but not obliged to accept, and a buyer would be willing, but not compelled to pay. It is an estimate of what is fair, economic, just and equitable value under normal local market conditions and is arrived at by a consideration of prior sales of the property being acquired, reasonably recent and not forced, including sales occurring several years before acquisition. Absent transactions involving the property itself, sales of comparable properties conducted at arms length are to be considered. Establishment of FMV by other means (e.g., capitalization of income, replacement cost less depreciation) may be resorted to should there be no basis for using past sales of the subject property or comparable properties as elements in arriving at FMV.

"*FEMA*" means the Federal Emergency Management Agency.

"*FIA*" means the Federal Insurance Administration.

"*Flood*" (same as in 44 CFR 59.1).

"*Flood Hazard Boundary Map*" (same as in 44 CFR 59.1).

"*Flood Insurance*" (same as in 44 CFR 59.1).

"*Flood Insurance Rate Map*" (same as in 44 CFR 59.1).

"*Floodproofing*" (same as in 44 CFR 59.1).

"*Flood Risk Area*" (same as "Special Hazard Area" in 44 CFR 59.1); or other subject to flooding as determined by the Administrator.

"*Floodway*" (same as "Regulatory Floodway" in 44 CFR § 59.1).

"*Significantly Increased Construction Cost*" occurs when a specific State or local statute, ordinance, or code requires that improvements be made to a structure as a condition of the repair of damages sustained, such that the actual cost of repair would be greater by 25 percent than the cost which would be required for repair of the damages only.

"*Sound Land Management and Use*" means the process wherein the government body responsible for land use regulation in a political jurisdiction plans and regulates the use of land within its jurisdiction in order to promote the reduction of property exposure to flood hazards and the protection of environmental values of flood plains. Sound use of land acquired by FEMA and transferred to local governments pursuant to Section 1362 of Pub. L. 95–128 presupposes use for primarily open space and recreational purposes to minimize potential for any future flood damage, with a general prohibition of enclosed structures unless such structures are, except for restrooms, open all sides and functionally dependent for some open space use.

"*State*" (same as in 44 CFR 59.1).

"*Structure*" means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a mobile home on foundation. The term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair.

"*100 Year Flood*" (same as "base flood" in 44 CFR 59.1).

Section II.2 *Description of Program*

(a) Section 1362 provides FEMA with the authority to acquire flood-damaged, improved real property and such property damaged by other casualty for transfer to a community subject to a number of restrictions. Three general conditions must be met for real property to be considered eligible for acquisition under Section 1362.

(1) The property must be located in a flood risk area, as determined by FEMA; and

(2) The property must be covered by flood insurance under the NFIP; and

(3) The property must meet any one of the following damage criteria:

(i) Property that has been damaged "substantially beyond repair by flood while covered under the NFIP;

(ii) Property that has incurred significant flood damage on not less than three previous occasions while covered under the NFIP under a five year period; and on each occasion the cost of repair, on the average, was at least 25 percent of the value of the structure; or

(iii) Property, while covered under the NFIP, that has sustained damage from a "single casualty of any nature" so that a statute, ordinance or regulation precludes its repair or restoration or permits repair or restoration only at significantly increased cost.

(b) Improved real property will only be acquired through voluntary sale and not through any eminent domain or condemnation proceeding. Thus, no property owners will be required to sell their properties under Section 1362. Subsequent use will be for open space and not for any purpose involving a construction project.

(c) A community must be willing to accept title to the acquired real property for land management and restrict its use to open space use or similar purposes. The community shall join in the execution of the deed which will recite such use restrictions which will run with the land, accompanying the property in perpetuity, even if title is subsequently transferred by the community. Any improvements on the real property shall be demolished, transferred to the former owner for relocation to a site outside of any flood risk area or sold for salvage value, as appropriate and agreed upon between the community and the federal government.

Subpart B—Eligibility Requirements

Section II.3 *Purpose of Subpart*

This subpart sets forth criteria to be used in determining community and individual eligibility for Section 1362 acquisitions and to prescribe the general method by which determinations of eligibility are made.

Section II.4 *Determination of Eligibility—General*

Eligibility for community and property owner participation in a Section 1362 acquisition project, can be established through either of two ways.

(A) *Community Initiated*

(1) Following a flood or a single casualty of any nature involving real property meeting the conditions set forth in Section II.2(a) (1), (2), and (3), a community upon review of the published criteria may initiate the process of establishing eligibility by writing to the Federal Insurance Administrator and identifying (i) the specific structures and locations of structures considered to be eligible for acquisition and (ii) the community and individual eligibility criteria under which these structures are believed to qualify. The Administrator, after consultation with the FEMA Regional Director, will respond to individual community requests as promptly as is reasonably possible by indicating whether or not the case(s) identified meet the eligibility criteria, priorities and budget constraints of the Section 1362 program. This will constitute only a preliminary notice of interest and will be accompanied by a written inquiry, for response by the community, leading to a determination of whether the community is eligible pursuant to Section II.5 hereof.

(2) Property owners interested in sale of their real property under Section 1362 should contact their community directly. Inquiries to FIA from individuals will be referred to their community by FIA along with an offer to investigate the potential for initiating an acquisition project.

(B) *FIA Initiated*

(1) Following a flood or single casualty of any nature involving real property meeting the conditions set forth in Section II.2(a) (1), (2) and (3), the Administrator, upon recommendation from FEMA headquarters or field staff and after consultation with the Regional Director, will identify communities in which acquisition under Section 1362 may be a feasible contribution to a community's comprehensive hazard mitigation strategy. In such cases, FIA staff and FEMA regional office staff will develop preliminary information (i) of the eligibility of the community pursuant to Sections II.4 and 5 and (ii) of structures for acquisition.

(2) Upon receipt of eligibility documentation, if a determination is made by the Administrator that a community and specific case(s) meet the criteria, priorities and budget constraints of the Section 1362 program, the Administrator will, after

consultation with the Regional Director, notify the Chief Executive Officer of the community in writing of its potential eligibility for a Section 1362 project and explain the requirements, specific acquisition opportunities, and the process for participating in a project. A meeting with community officials will be scheduled to discuss the program further.

(C) Following eligibility identification pursuant to Sections II.4 and 5, the decision-making processes and public notice procedures of 44 CFR Part 9 shall be commenced and public meetings may be held in the community between FEMA staff and community officials and property owners to discuss further the details of the acquisition program.

Section II.5 *Selection of Eligible Communities*

Communities, which express, in writing, a willingness to remove, by demolition, relocation, donation or sale, damaged structures in respect to which the community accepts title from FEMA, will be selected for participation in Section 1362 acquisition initiatives on the basis of a series of factors. These factors will be used by the Administrator on recommendations submitted by FIA staff or by FEMA field staff and information submitted by the community in determining whether acquisition of real property in a given community will be in the public interest as required by Section 1362. These factors include, but are not limited to, situations in which:

(a) The permanent removal of flooded buildings in a community will contribute to the achievement of existing, on-going programs for the permanent evacuation of flood plains (provided that the Section 1362 program fulfills a unique need not addressed in the on-going program nor not duplicative of existing funding).

(b) Acquisition will contribute to the achievement of multiple goals of community development in addition to hazard mitigation, including, but not limited to, environmental enhancement, open space, recreation, urban renewal, or some other public purpose.

(c) The acquisition and removal of flood-prone structures will have an economic benefit, in terms of elimination of future flood insurance claims, avoidance of future damage and reduction of future local, state and federal disaster relief costs, avoidance of business interruption and reduction in exposure to loss of life. This criterion will favor structures located in floodways, velocity zones and other flood risk zones of high flood loss potential.

(d) The distribution of properties eligible for acquisition under Section 1362, or the distribution of these eligible properties combined with those properties that can be acquired and removed through programs that are readily available from sources other than FIA, will result in a pattern of properties which lends itself to a logical and desirable reuse function.

(e) Alternatives to acquisition under Section 1362 have been investigated and found to be less effective than Section 1362 acquisition in meeting flood plain management and hazard mitigation goals. These alternatives could include, but are not limited to, acquisition programs and permanent relocation programs of local, state or other federal agencies; floodproofing; or structural flood protection.

(f) Communities have undergone a planning process and found acquisition and relocation of structures to be the most desirable alternative in terms of cost, degree of flood protection achieved, environmental enhancement and other factors.

(g) Communities have demonstrated or agree to pursue an active program of sound flood plain management which exceeds the minimum requirements of the National Flood Insurance Program.

(h) The communities can actively participate in the planning and implementation phases of the Section 1362 program through the provision of either financial or staff resources.

Communities are not required to meet all or even certain of these factors. Community eligibility and priorities among communities for Section 1362 assistance will be determined by the Administrator on the basis of the extent to which these factors are achieved as well as the number of factors achieved. The Administrator will notify the Chief Executive Officer (CEO) in writing of any community selection determination made pursuant to this section.

Section II.6 *Community Commitments Upon Which Negotiations With Real Property Owner(s) is Predicated*

Once a community has been determined by the Administrator to be eligible for Section 1362 acquisitions, the following requirements must be met by the community before FIA will order a property appraisal and commence negotiations leading to a contract with a property owner for the purchase of the flood damaged real property and subsequent transfer of title to the community:

(a) The community must be participating in the Emergency or Regular phase of the NFIP by having in force legally adopted ordinances, regulations, or statutes meeting the applicable requirements of § 60.3 of 44 CFR Part 60 and by adequately enforcing such land use measures.

Note.—FEMA field staff are responsible for advising the Administrator of the adequacy of a Community's program for meeting the requirements of the NFIP. A community is not considered to be participating satisfactorily if a general pattern of violation of the NFIP regulations by the community, including regulations concerning elevation, floodproofing, placement in identified floodways, or variances under §§ 60.3 (b), (c), (d), and (e) of 44 CFR Part 60, exists in the community and there is no clear evidence that the community has corrected, prior to the event triggering eligibility, its past practices of non-compliance and/or improper or unsafe issuing of variances.

(b) The community, if in the Emergency Phase of the NFIP, must agree to enforce elevation and floodproofing standards for new construction and substantial improvements in flood risk areas as required under § 60.3(b)3 and 4 of 44 CFR Part 60 and maintain on file first floor elevation information as required under § 60.3(b)5 of 44 CFR Part 60.

Note.—Where base flood elevation data is not available from any existing source, the FEMA field staff should determine, based upon the potential for future development in the community, whether base flood data should be required as a condition for the community's participation in the Section 1362 program. If it is likely that the future development potential will be significant, the community should be required to generate base flood data or adopt an ordinance restricting development in the flood plain.

(c) The community must submit to the Administrator a proposal for the use of acquired land including, among other things, assurances that land transferred to the community will be managed in a manner consistent with sound land management and use. FEMA will assist in preparation of a land reuse proposal where requested and the Administrator will accept or reject any submitted proposal within seven (7) days of its receipt by the Administrator.

(d) Upon acceptance by the Administrator of a community's land reuse proposal, the community must enter into an Agreement with FEMA for the conveyance by FEMA to the community of title to the subject real property acquired by FEMA as a result of the Section 1362 acquisition. The terms of this Agreement shall include, but not be limited to, the following provisions:

(1) The legal description of the property to which the local government agrees to accept title;

(2) That delivery of the deed, which, usually, shall be a general or special

warranty deed, as appropriate, shall be accepted by the community immediately after and at the same closing or settlement at which FEMA takes title from the property owner (a "simultaneous" closing);

(3) That the community shall join in the execution of the deed and provide written assurance in the form of a certified copy of a resolution or similar instrument that the official signing the deed has the authority to do so, which deed shall include, among other things, the following provision;

(i) Title to the real property shall be subject to specific restrictive covenants that the land is dedicated in perpetuity for open space purposes, that the community shall faithfully manage the land for its dedicated open space purposes, for public use, and that the community shall not erect or permit to be erected any structures or other improvements on the land, unless such structures are, except for restrooms, open on all sides and functionally relate to some open space use, all of the foregoing restrictive covenants and agreements to run with the land and be binding on subsequent successors, grantees or assigns;

(ii) An assignment to FEMA, as assignee, of the community's rights to enforce the restrictive covenants together with a declaration that any future violation of the restrictive covenants or agreements, at FEMA's option, in writing to be delivered to the community's Chief Executive Officer within thirty (30) days from the date the Administrator receives actual notice of the violation, shall be deemed at the Administrator's option to cause a reversion of title to FEMA;

(iii) That the property is transferred subject to zoning and building laws and ordinances; easements, agreements, reservations, covenants and restrictions of record; any state of facts an accurate survey might show; encroachments and variations from the record lines of hedges, retaining walls, sidewalks and fences.

(4) An agreement that the community will remove without cost to FEMA, unless the Administrator agrees in furtherance of the public interest to assume part or all of such cost, all improvements and debris, including any concrete slabs or foundations, from the land and restore the site to its natural environment within ninety (90) days from delivery of the deed by either:

(A) Demolition, in the event FEMA enters into a contract for the purchase of the real property from the property owner under which the consideration for the sale is the fair market value of the real property with no allowance being made for a deduction from the purchase price of the salvage value of any remaining improvements; or

(B) Public sale of the improvement(s) for salvage value, in the event FEMA enters into a contract for the purchase of the real property from the property owner under which the consideration for the sale is the fair market value of the real property with no allowance being made for the deduction from the purchase price of the salvage value of any remaining improvements; or

(C) Transfer by donation of the improvement(s) to the original owner for relocation to land outside of any flood risk area, in the event FEMA enters into a contract for the purchase of the real property from the property owner under which the consideration for the sale is the fair market value of the real property less a deduction from the purchase price of the salvage value of any remaining improvements.

(5) An agreement that, should the community remove any improvement(s) from the land pursuant to (4)(A) or (4)(B), above, any proceeds resulting from such removal, after deducting the reasonable costs of conducting such removal, shall be returned to FEMA;

(6) An agreement that the provisions of (4) and (5), above, shall survive delivery of the deed;

(7) An agreement that the community will assume responsibility for any legal, administrative, or other expenses that may be incurred as a result of the transfer and that any taxes, general and special assessments, sewer rents, water charges, utility charges and similar expenses are not to be apportioned between the parties but are to be assumed by the community;

(8) An agreement that the requirements and procedures to be adhered to under the Section 1362 program are understand and will be complied with by the community;

(9) That the property is to be conveyed in an "as is" condition with no representations having been made by FEMA as to the condition of the property;

(10) That FEMA is not responsible for compliance with any notes or notices of violations of law or municipal ordinances, orders or requirements, issued by any governmental body having jurisdiction, against or affecting the premises;

(11) That the deed shall convey to the community fee simple title;

(12) That FEMA shall convey and the community shall accept marketable title (except as otherwise provided in the Agreement), that expenses of title examination, survey and related costs shall be borne by the community and, if the community shall assert objections to the marketability of title (other than matters to which title is made subject in the Agreement), FEMA shall be entitled to a reasonable adjournment to remove such objections but shall not be obliged to bring any action or proceeding or to incur any expense in order to render title marketable. In the event such objections cannot be removed all rights and liabilities of the parties shall cease under the Agreement, unless the community elects to accept such title as FEMA is able to convey;

(13) That all State and local revenue, and documentary stamps, grantor's or grantee's realty transfer taxes, recording charges and legal fees, closing costs, and similar expenses shall be borne by the community;

(14) That FEMA makes no representations as to the kind, number, condition and title to any fixtures and articles of personal property attached or appurtenant to or used in connection with the property;

(15)That the Agreement may not be modified or assigned by the community without the prior written consent of FEMA;

(16) That risk of loss or damage to the improved real property from fire, natural or other casualty of any kind shall be borne by the community after delivery of the deed from FEMA.

(17) That there shall be annexed to the Agreement and incorporated by reference therein, a resolution or similar instrument by the governing body of the community authorizing the official(s) executing the Agreement to enter into the Agreement on behalf of the community and citing the appropriate local law under which the transaction is authorized;

(18) That the Agreement is subject to and conditioned upon the ability of FEMA to acquire the real property and should FEMA's contract vendor fail, for any reason, to deliver title, as provided for in the contract for the sale of the real property to FEMA, all rights and obligations of the parties shall cease; and

(19) The community must certify to the Administrator that no duplication of Federal benefits will knowingly occur in any Section 1362 assistance being requested.

(20) Any other matters that may be agreed to by the community and the Administrator for conveyance of title.

Section II.7 *Selection of Eligible Property Owners Once the Community is Fully Qualified Under Sections II.4, 5, and 6*

(a) The following minimum criteria shall be met in order for a specific

improved real property to qualify as an eligible property under the statutory requirements of Section 1362:

(1) The property must qualify under the conditions set forth in Section II.2, above;

(2) There must be economic benefit, in terms of reduction of flood insurance claim payments, avoidance of future damage and reduction of future local, state and federal disaster relief costs, to be gained through acquisition of the property. In general in the following situations, properties will, if otherwise eligible, receive preferential consideration for acquisition:

(i) Structures located in an identified floodway as established on FIA's Flood Insurance Rate Map (FIRM), or which are determined through FIA's analysis to be located in a floodway area;

(ii) Structures located in an identified Velocity zone (V-zone) or which are determined through FIA's analysis to be located in a Velocity zone; and

(iii) Structures meeting the statutory eligibility requirements which have an established history of repetitive flooding in excess of the statutory criteria or which on the basis of available or developed flood frequency and depth-damage data can be shown to have a high probability for meeting the statutory requirements for repetitive flooding, or have a high probability of incurring future damage, the cost for repair of which exceed the anticipated costs of acquisition.

(3) The anticipated contribution that the acquisition may have toward the achievement of existing, on-going programs in the community for permanent excavation of flood plains, and the extent to which the intended land reuse of the property provides benefits to the public.

(b) In addition, priority will be given to eligible property owners who agree to limit FEMA's actual program cost by substituting benefits available from other government and non-government loan and disaster relief programs for benefits available under this program.

(c) Once the property qualifies under (a), above, the feasibility of using practicable alternatives to acquisition under Section 1362 will be considered, including but not limited to acquisition and permanent relocation by local, state or other federal sources, floodproofing; or structural flood protection.

(d) Assuming practicable alternatives to acquisition under (b), above, do not exist and the property qualifies under (a), above, the Administrator shall, assuming Section 1362 budget constraints do not preclude acquisition, determine the property under consideration to be eligible for acquisition by requesting the property owner to execute a written Request for Appraisal, which must be filed, together with a copy of the recorded deed under which the owner took title, with the Administrator within 60 days from the date of the Administrator's request that the Request for Appraisal be filed, unless the time for filing is, at the sole discretion of the Administrator, extended and which must contain the following provisions:

(1) An expression of the owner's willingness to enter into negotiations for the sale of the real property;

(2) Permission by the owner for an appraiser(s) appointed by FEMA, at FEMA's expense, to enter in and upon the real property to conduct the appraisal during normal working hours on forty-eight (48) hours written notice to the owner.

(3) An acknowledgement that the benefits, requirements and procedures of the program have been explained and understood and that any relocation of the improvement(s) on the property shall be to land outside of any flood risk zone;

(4) An acknowledgement that FEMA may refuse to complete the property purchase, if marketable title cannot be delivered to the United States Government, if the local or state government does not, for any reason, accept title from FEMA, or if other criteria set forth in these guidelines cannot be met;

(5) An acknowledgement that the purchase price to be offered in any negotiation will consist of the predamaged appraised fair market value less any salvage if the community is to return the structure to the owner and any insurance claims paid or to be paid as a result of any flooding event which caused the damage and which is used to establish eligibility under this section, and that no other costs incurred by the seller as a result of acquisition under this section are compensable;

(6) The assurance that a valid flood insurance policy purchased under the National Flood Insurance Program was in force the time of the event(s) which initiated eligibility for acquisition under this section, together with a recitation of the policy number and expiration date;

(7) An agreement to cooperate in every way reasonable in the appraisal and any title search to be undertaken by FEMA;

(8) An acknowledgement that the Request for Appraisal does not constitute a commitment to sell;

(9) An acknowledgement that, where the cost to the Federal government for purchase of the land is deemed unreasonable and not in the public interest due to the extraordinary lot sizes, or because of high land costs, the Administrator may offer to purchase only part of the lot to reduce the direct cost to the government on condition that the property owner enter a restrictive covenant upon the land records, as to the land not purchased, restricting its uses consistent with such sound land management and use purposes as may be agreed upon by the Administrator;

(10) An agreement that the property owner must include a duplicate original copy of either an Option or a Contract to purchase new land site outside of the flood risk area upon which any improvement(s) transferred to the property owner by the community is to be located before FEMA can proceed with the purchase process by executing an Acceptance of the Offer to Sell Real Property pursuant to Section III.3(d) below. Relocation to the new site must be accomplished in conformance with all state and local codes and ordinances. All aspects of any physical relocation of an improvement(s) transferred back to the property owner to the community, including obtaining estimates and securing contracts for property removal, locating and purchasing the new property site and other relocation costs, are the sole responsibility of the property owner. The Administrator may, at her sole discretion, modify the requirements of this paragraph (c)(10) to accommodate the reasonable needs of a particular acquisition project.

Part III—Appraisal, Valuation of Real Property and Negotiation Procedures

Section III.1 *Appraisal*

(a) Following receipt by the Administrator of the property owner's "Request for Appraisal," FEMA will assign an appraiser to collect evidence of the probable fair market value (FMV) of the real property with which the Administrator can establish an amount which the Administrator believes to be a just reflection of the FMV and which can be used as a basis for negotiation. Detailed instructions will be provided to the appraiser so that the appraisal will be performed according to the standards for conducting appraisals contained in the *Uniform Appraisal Standards for Federal Land Acquisitions*, published by the Interagency Land Acquisition Conference to the extent that such standards are consistent with the NFIP and the state law in the state in which the appraisal is being performed.

(b) The appraisal will be conducted by qualified appraisers as determined by FEMA to be familiar with the community and experienced with performing appraisals for federal government acquisition programs.

(c) The appraisal shall provide evidence of the fair market value of the land and improvements, following the standards set forth in (a), above, for the property in its condition, to the extent that it can be determined, prior to the occurrence of the flooding or other casualty event which initiated consideration of eligibility for acquisition under Section 1362.

(d) During the course of the appraiser's personal inspection of a property being appraised, the appraiser is required to see or talk personally to the owner, or in the owner's absence his agent or representative. In addition, the owner must be given an opportunity to accompany the appraiser during any inspection of the property.

(e) Appraisal reports must contain sufficient documentation, including veification of past sales of the property and sales of comparable properties supporting valuation data and the appraiser's analysis of that data, to demonstrate the correctness of the appraiser's opinions of FMV.

Section III.2 *Valuation of Real Property*

(a) Following receipt by the Administrator of the Appraiser's reports and recommendations, the evidence of property value shall be duly considered and the FMV of the real property shall be established by the Administrator based on the order of evidence evaluation provided below:

(1) Prior sales of the property being acquired, reasonably recent (within several years) and between willing buyers and sellers, shall first be considered.

(2) If FMV cannot be fairly established using (1), above, sales of comparable properties in the area, reasonably recent (within several years) and between willing buyers and sellers, shall be considered.

(3) If FMV cannot be established using (1) or (2), above, and the property is income producing, capitalization of income produced by the property shall be considered.

(4) If FMV cannot be established using (1), (2), or (3), above, reproduction cost of the property less depreciation shall be considered.

Section III.3 *Negotiation Procedures*

(a) Once the Administrator has established the FMV for the property, the owner will be furnished with:

(1) A Statement of Determination of Compensation to be offered for the property which will include:

(i) A description and location identification of the real property and the interest therein to be acquired;

(ii) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant removal buildings and equipment, which were considered in establishing the FMV of the real property;

(iii) A statement that the established FMV is the full amount believed by the Administrator to be the fair market value of the property as determined by the appraisals, less any flood insurance claim amount paid or to be made and, if appropriate, less salvage value;

(iv) A statement indicating that the compensation disregards any increase or decrease in the fair market value of the property caused by the project for which the property is being acquired, noting that the compensation is based upon value of the property determined, to the extent possible, as it was prior to the flooding or other casualty used as a basis for acquisition; and

(v) An explanation of the principal appraisal techniques used in appraising the real property.

(2) An "Offer to Sell Real Property" to FEMA which is an offer on the part of the homeowner to sell the improved real property to FEMA for the FMV established by the Administrator.

(b) Upon receipt of the Offer to Sell Real Property and the Statement of Determination of Compensation, the property owner will have three options: (a) make an offer to sell for the established FMV; (b) reject the FMV; or (c) request a second appraisal while remaining willing to sell, all as follows:

(1) *Acceptance of FMV.* If the property owner(s) wishes to sell the real property for the established FMV, the property owner(s) will sign the Offer to Sell Real Property in duplicate and return it to the Administrator who will cause one copy to be executed and returned to the property owner and order a title search. Upon receipt of a title report, binder or abstract, as appropriate, which establishes to the satisfaction of the Administrator, upon receipt of a satisfactory preliminary title opinion from the Department of Justice, that title is marketable, the transaction may proceed to closing.

(2) *Rejection of FMV.* If the FMV is rejected by the property owner without the intention to continue negotiation, the acquisition process for that particular property is terminated.

(3) *Contest of FMV.* If the property owner(s) still desires to sell his or her property following receipt of the initially established FMV, but feels that the FMV does not adequately reflect the fair market value of the property, the FMV may be contested. To contest the FMV, the property owner, at this or her own expense, must retain a qualified appraiser acceptable to the Administrator, and have a second appraisal performed. This appraisal must be performed within two weeks of receipt by the property owner of the Offer to Sell Real Property. If it is not, the process will be terminated in accordance with (2), above. Upon completion of the second appraisal, the property owner may either accept as reasonable the Administrator's established FMV, or forward the second appraisal to the Administrator for review. The Administrator may accept, reject or modify the second FMV appraisal and may revise the Offer to Sell Real Property in accordance with any modification by mailing an amended Offer to Sell Real Property to the property owner, along with an amended Statement of Determination. Upon receipt of the amended documents the property owner at this point, or at any other point in the appraisal process, may either execute the original or amended Offer to Sell Real Property, mailing the offer to the Administrator, or terminate the transaction.

(c) Aside from the process described in this Section, there is no other basis for negotiation of the amount of the FMV.

(d) Upon execution of any initial or amended Offer to Sell Real Property, the property owner(s) shall return this executory purchase contract to the Administrator in duplicate, upon receipt of which the Administrator shall execute the instrument and return a duplicate original executed contract to the property owner(s). A title search shall then be ordered by the Administrator, preparatory to fixing a date for the transfer of title.

(e) Contract vendors executing an Offer to Sell Real Property in a representative capacity shall so indicate and provide, by separate document, evidence of the authority under which the instrument is executed. For example, if the Offer to Sell Real Property is executed by a corporation, it must be executed in the full and correct name of the corporation by its duly authorized officer or officers, under seal if required by State law, and be duly attested and acknowledged. A corporate secretary's certificate transmitting a certified copy of the action of the Board of Directors which authorized the corporate officer(s) to act must accompany the Offer to Sell Real Property. Similarly, if the instrument is executed by an attorney-in-fact, the offer to Sell Real Property must be accompanied by the original, or duplicate original, executed and acknowledged power of attorney.

Part IV—Settlement and Closing

Section IV. 1 *Settlement and Closing*

Upon execution by the Administrator of the Offer to Sell Real Property, FEMA will proceed with obligating funds for completing the transaction and acquiring title evidence and other documentation in preparation for settlement and closing. This part sets forth the procedures and standards to be followed in acquistion of title evidence and closing.

(a) *Procuring evidence of title.* All title evidence will be prepared pursuant to the standards of and following the recommended format and process of "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States." (Department of Justice, Land and Natural Resources Division, Washington, D.C., 1970, hereinafter referred to as the "Standards"). The Standards generally provide, among other things, that:

(1) Title evidence will be collected by title companies, abstractors or attorneys approved by the Department of Justice and retained by FEMA.

(2) Purchase orders or contracts with those searching title will specify the format and content of title evidence to be acquired, the form and content of abstrats of title, certificates of title, title insurance policies and Torrens system documents of title.

(3) Title evidence will be collected and submitted to the administrator in the required format as expeditiously as possible. Upon receipt of this information, it will be forwarded to the Department of Justice, Land and Natural Resources Division, for a preliminary opinion of title. The preliminary submittal to the Justice Department will include a copy of the title report, abstract or binder, a copy of the Offer to Sell Real Property contract and a copy of the deed to be delivered to the Federal government at the closing.

(4) The Department of Justice will provide a preliminary opinion of the acceptability of the title for federal ownership, and will specify at this time the precise information required and steps that should be taken in completing the closing.

(b) *Deeds.* The conveyance of title to the Federal government and then to the local unit of government will require the preparation, execution and recordation of two deeds:

(1) *Deed to the United States.* The deed to the United States should conform to local statutory requirements and generally adhere to the following requirements:

(i) Be a general warranty deed: however, this requirement may be waived, upon a proper showing, as to conveyance by states, municipal corporations, and fiduciaries and other persons acting solely in a representative capacity.

(ii) Disclose the capacity in which any grantor acts who conveys in other than an individual capacity.

(iii) Show the name of the grantor in the body of the deed and in its acknowledgement, be signed by the grantor exactly as the grantor's name appears as grantee in the conveyance to the grantor; and account for any unavoidable difference by a recital identifying the grantor with the grantee in the preceding conveyance.

(iv) Disclose the marital status of each grantor.

(v) Recite the true consideration and the receipt thereof.

(vi) Convey the land to the "United States of America and its assigns."

(vii) Contain the correct legal description of the real property to be conveyed.

(viii) Convey all the right, title and interest of the grantor in and to any alleys, streets, ways, strips, or gores abutting or adjoining the land.

(ix) Contain no reservations or exceptions not approved by FEMA/ however, when land is to be conveyed subject to certain rights, such as easements or mineral rights thought to be outstanding in third parties, they must not be excepted from the conveyance, but the deed should be framed to convey all the grantor's right, title, and interest subject to the outstanding rights, unless the Offer to Sell Real Property contract expressly provides otherwise.

(x) Refer to the deed(s) to the grantor(s), or other source of grantor's title, by book, page and place of record, wherever customary or required by statute.

(xi) Contain a reference to the Federal Emergency Management Agency. This reference should follow description of the land and in no instance should it be included in the granting, habendum or warranty provisions of the deed.

(xii) Release all rights of homestead, dower, courtesy and other interests of the grantor's spouse, as required by local law.

(xiii) Be signed, sealed, attested and acknowledged by all grantors and their spouses, as required by local law.

(xiv) If executed by a corporation, be signed in the full and correct name of the corporation by its duly authorized officer or officers, sealed with the corporate seal if required by State law and attested and acknowledged, as required by State Law. In addition, the corporation shall deliver a Secretary's certified copy of the Minutes of the Board of Director's meeting in which the Resolution was adopted by the Board authorizing the officer(s) executing the deed to do so.

(xv) If executed by an attorney-in-fact to be signed in the name of the principal by the attorney, properly acknowledged by the attorney as the free act and deed of the principal, and to be accompanied by the original or a certified copy of the power of attorney and satisfactory proof that the principal was living and the power in force at the time of its exercises.

(xvi) Have affixed sufficient documentary revenue stamps.

(2) *Deed to the Local Unit of Government.* The deed to the local unit of government will be a general warranty or, if appropriate, special warranty deed in a form consistent with applicable state statutes, unless the Federal government takes title by lesser deed, in which case the deed shall be of the same kind (e.g., bargain and sale or quitclaim deed). The community shall execute and join in on the deed which will set forth the specific restrictions and agreements regarding the use of the property as are set forth in Section 11.6(d)(3), above. In addition, the restrictions will acknowledge and conform to 44 CFR Part 9, Flood Plain Management and Protection of Wetlands.

(c) *Certificate of Possession.* As part of the title evidence, a certificate of possession, based on an inspection made at the time of the closing of the purchase, must be signed by a duly authorized employee of FEMA. The certificate of possession must be in a form approved by the Department of Justice.

(d) *Simultaneous Closing.*

(1) At the closing, a deed will be delivered to the United States in exchange for whatever consideration has been previously agreed to. FEMA will be represented by one of its own attorneys, an attorney from another Federal agency, or an attorney retained by FEMA for the purpose. Acceptance of the deed by the Federal government shall be subject to and conditioned upon the acceptance by the community of the real property to the community. Therefore, the local unit of government will be represented, in addition to the property owner and Federal government, and will immediately accept title to property subsequent to its being acquired by the government.

(2) Following the closing, the settlement documents will be forwarded to the Administrator and then to the Justice Department for a final title opinion. The documents to be forwarded

will include a conformed copy of the deed delivered to the United States Government, the title evidence, the certificate of inspection and evidence obtained at the closing (affidavits, marked up title report, conformed copies of executed releases or satisfaction of mortgages, etc.).

(3) Following review by the Justice Department, the acquisition and transfer will be considered final.

(e) *Monitoring.* Following any Section 1362 project, FEMA will from time to time review the performance of communities that have accepted title to property acquired under Section 1362 to assure that the terms of the deed are being complied with.

Part V—Offer To Sell Real Property

The "Offer to Sell Real Property" for which FEMA will be the offeree, referred to in III.3(d)(2) above, shall generally conform to the following format and contain the following provisions:

Offer To Sell Real Property

Project, Tract No., and Contract No.

The undersigned, hereinafter called the Vendor, in consideration of the mutual covenants and agreements herein set forth, offers to sell and convey to the United States of America and its assigns, the fee simple title to the following described land, with the building and improvements thereon, and all rights, hereditaments, easements, and appurtenances thereunto belonging, located in the County of ———, State of ———, bounded and described as follows:

Subject to the following rights in third parties:

Excepting and reserving only the following rights and interests in the above described property: [namely:]

The terms and conditions of this offer are as follows:

(1) The Vendor agrees that this offer may be accepted by the United States through any duly authorized representative, by delivering, mailing, or telegraphing a notice of acceptance to the Vendor at the address stated below, at any time within ——— ( ) month(s) from the date hereof, whereupon this offer and the offer and the acceptance thereof become a binding contract.

(2) The United States of America agrees to pay to the Vendor for said land the sum of ——— ($———), payable at the settlement after the acceptance of this offer and preliminary approval of the Vendor's title; provided the Vendor can execute and deliver a good and sufficient general warranty deed conveying marketable title to said land with the hereditaments and appurtenances thereto belonging to the United States of America and its assigns, in fee simple, free and clear from all liens and encumbrances, except those specifically excepted or reserved above, together with all right, title, and interest of the Vendor in and to any streams, alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land and in and to any unpaid award for damage to said premises; and the Vendor will execute and deliver to the United States, on closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award; and further provided that (community) accepts a deed to the described property from the United States immediately after Vendor delivers the above deed to the United States, it being the intention of the parties that the transfer of title shall take place at a simultaneous closing at which the United States shall accept delivery of the deed from the Vendor and immediately deliver a deed to the (community). Upon acceptance of the deed by the (community), both deeds shall be recorded and the purchase price shall be paid to the Vendor. Should the (community for any reason refuse to accept the deed from the United States, the parties herein agree that the deed from the Vendor to the United States shall be returned forthwith to the Vendor and all rights and liabilities of and between the parties under this agreement shall cease and be of no effect; this provision shall survive delivery of the deed to the United States.

(3) It is agreed that the United States will defray the expenses incident to the preparation and recordation of the deed to the United States and the procurement of the necessary title evidence establishing marketable title. If the United States shall assert objections to the marketability of title (other than encumbrances which title is made "subject to" herein), Vendor shall be given due notice thereof, within a reasonable time prior to the date set for the closing of title and, if necessary, Vendor shall be entitled to a reasonable adjournment to remove such objections, but shall not be compelled to bring any action or proceeding or to incur any expense in order to render title marketable. In the event such objections cannot be removed and as a result thereof title shall prove unmarketable, as a condition precedent to the execution of this Offer to Sell Real Property, it is agreed that the rights of the United States and the liability of the Vendor shall be limited to the following: (a) United States may elect to rescind this contract by giving due notice thereof to Vendor who shall thereupon pay to the United States its net actual disbursement for examining title (without policy issuing), whereupon this contract shall become null and void and terminated with the same force and effect as if it had not been executed, and none of the parties shall have any further rights, duties, liabilities, claims or obligations arising hereunder or in any manner from this transaction; or (b) United States may elect, by giving Vendor due notice thereof, to accept such title as the Vendor is able to convey, without abatement of the purchase price for defects, objections or encumbrances of title.

(4) The Vendor agrees that all taxes, general and special assessments, and any other liens or encumbrances which are a lien against the land at the time of conveyance to the United States shall be satisfied of record by the Vendor at or before the transfer of title, and, if the Vendor fails to do so, the United States may pay any such taxes, assessments, and encumbrances which are a lien against the land provided the Vendor shall simultaneously either deliver to the purchaser at the closing of title instruments in recordable form and sufficient to satisfy such liens and encumbrances of record together with the cost of recording or filing said instruments; and, provided further, that the amount of such payments by the United States shall be deducted from the purchase price of the land; that the Vendor will, at the request of the United States and without prior payment or tender of purchase price, execute and deliver the general warranty deed to the United States, subject to (2), above, pay the documentary revenue stamp tax, and obtain and record such other curative evidence of title as may be required by the United States. For purposes of this Offer to Sell Real Property, if, at the time of the delivery of the deed, the property or any part thereof shall have been affected by an assessment or assessments which are or may become payable in annual installments, of which the first installment is then a charge or lien, or has been paid, then for the purposes of this Offer to Sell Real Property all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the property affected thereby and shall be paid and discharged by the Vendor, upon the delivery of the deed or by an appropriate diminution in the purchase price to be paid to the Vendor.

(5) The Vendor agrees that loss or damage to the property by fire, acts of God or other casualty shall be at the risk of the Vendor until the title to the land and deed to the (community) have been accepted by the United States; and, in the event that such loss or damage occurs, the United States may, without liability, refuse to accept conveyance of the title or it may elect to accept conveyance of title to such property, in which case there shall be an equitable adjustment of the purchase price.

(6) The property is sold subject to: (a) Utility easements, agreements, reservations, covenants and restrictions of record, providing the same are not violated by existing buildings or use thereof; (b) any state of facts an accurate survey might show providing title is not rendered unmarketable thereby; and (c) encroachments and variations from the record line of hedges, retaining walls, sidewalks and fences (which shall not be deemed to render title unmarketable).

(7) Vendor has not made, and, except as expressly set forth herein, does not make any representations as to the physical condition, income, expense, taxes, operation or any other matter or thing affecting or relating to the herein described premises or the fixtures, utilities, equipment, furnishings and personality therein. The United States expressly acknowledges that no representations have been made other than those set forth in this contract; and having inspected the subject premises and being familiar with the condition thereof, the United States agrees to accept the same, and

any personality included in this sale, "as is" on the date hereof subject to normal wear and tear to the time of closing title. Vendor agrees that the United States shall receive vacant possession upon closing title to the subject property.

(8) Settlement shall be made on or about —— at the Office of ——.

(9) Should the Vendor for any reason other than default by the United States fail to deliver a deed to the United States, the Vendor shall reimburse the United States for any expenses incurred in connection with examination of title, including the cost of any survey of the property, obtained by the United States.

(10) It is agreed that the spouse, if any, of the Vendor, by signing below, agrees to join in any deed to the United States and to execute any instrument deemed necessary to convey to the United States any separate or community estate or interest in the subject property and to relinquish and release any dower, courtesy, homestead, or other rights or interests of such spouse therein.

(11) The Vendor represents and it is a condition of acceptance of this offer that no member of or delegate to Congress, or resident commissioner, shall be admited to or share any part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to any agreement if made with a corporation for its general benefit.

(12) If the Vendor is a corporation, it will deliver to the United States at the time of the delivery of the deed hereunder a resolution of its Board of Directors authorizing the sale and delivery of the deed, and a certificate by the Secretary of the corporation certifying such resolution and setting forth facts showing that the conveyance is in conformity with the requirements of the State's business corporation law. The deed in such case shall contain a recital sufficient to establish compliance with said section.

(13) This Offer to Sell Real Property and Acceptance of Offer to Sell Real Property may not be assigned by Vendor without the express written consent of the United States. The terms and conditions aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the Vendors.

(14) This Offer to Sell Real Property, upon acceptance and execution by the United States, shall contain the final and entire agreement between the parties and they shall not be bound by any terms, conditions, statements or representations, oral or written, not herein contained and Vendor agrees that no representative or agent of the United States has made any representation or promise with respect to this offer not expressly contained herein.

Signed, Sealed, and Delivered this —— day of —— 19—.

Witnesses.

(Seal) ——————————
Vendor

(Seal) ——————————
Spouse of Vendor

(Seal) ——————————
Vendor

(Seal) ——————————
Spouse of Vendor

Notice of acceptance of this offer is to be sent to:

(Name and Address) ——————————

Acceptance of Offer to Sell Real Property

Date: ——————.

The offer of the Vendor contained herein is hereby accepted for and on behalf of the United States of America.

(Name and Title) ——————————

Witness: ——————————

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367); and delegation of authority to Federal Insurance Administrator, dated April 1, 1979 (44 FR 20962))

Issued at Washington, D.C. July 18, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-22572 Filed 7-25-80; 8:45 am]

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Federal Register

Monday
July 28, 1980

Part VIII

Community Services Administration

Program Management System for Community Action Agencies

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1067

Program Management System for Community Action Agencies

AGENCY: Community Services Administration.

ACTION: Republication of Proposed Rule.

SUMMARY: On August 30, 1979, (44 FR 50982) the Community Services Administration (CSA) published as a proposed rule a policy statement setting forth the program management system for community action agencies (CAAs). The system covers planning and applying for a grant under Section 221(a) of the Economic Opportunity Act of 1964, as amended (the Act), reporting project progress, and evaluating activities undertaken with the grant. although the basic policy choices for the system remain the same, the text of the policy statement has undergone significant revision since its publication as a proposed rule in order to make clearer and simpler the requirements which the system imposes on CAAs. Because the policy statement is of such importance to CAAs and because it now no longer resembles the proposed rule of August 30, we are republishing it as a proposed rule with a thirty-day comment period.

DATE: Comments received on or before August 27, 1980, will be of greatest use in developing the final rule.

ADDRESS: Please send all comments to Ms. Hazel Wilson, Community Services Administration, Office of Community Action, 1200 19th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Ms. Hazel Wilson, telephone 202–254–5670; teletypewriter 202–254–6218.

SUPPLEMENTARY INFORMATION:

Significance of the Regulation

CSA has determined that under its published criteria for implementing Executive Order 12044 this publication is not significant, since CSA has already issued the policy statement as a significant proposed rule with a comment period of 120 days and since there are no major changes in policy from that proposed rule.

CSA is developing its final rule on the program management system for CAAs. We have submitted to the Office of Management and Budget the revised forms for the system for review as required under OMB Circular A–40. This period of review provides us the opportunity to republish the policy statement as a proposed rule for public comment. We are interested in receiving comments which will help to surface any remaining problems in the system before we commit ourselves to a final rule. We are publishing only the text of the policy statement here. We will publish the revised forms for the system with the final rule after they are reviewed by OMB. Also, we will publish instructions for implementing the system with the final rule.

CSA received 89 responses to the proposed rule of August 30. Of these 69 were from CAAs; 3 from CSA Headquarters staff; 4 from CSA Regional Office staff; and 13 from individuals, from other public organizations, and from State Economic Opportunity Offices (SEOOs). In addition approximately 120 persons representing 40 CAAs throughout the country and approximately 50 Regional Office staff members who participated in field tests of the system had an opportunity to comment on the proposed rule. We will address these responses in general as we discuss the differences between the proposed rule of August 30 and this republication.

The proposed rule of August 30 was unfortunately cumbersome. It was difficult to read, almost everyone complained, because the forms and the instructions for them were interspersed throughout the text. To remedy this difficulty we will publish in the final rule all of the forms and their instruction as appendices to the text. (Here, of course, we are publishing the text alone, without any appendices, since the forms are under review.) We have also streamlined the text by removing the guidance material and those references to CSA activities not directly involving the CAA which were included in the proposed rule of August 30. The text now presents the policy requirements and the procedures for the system much more clearly. Any guidance material to be used in connection with the system will be published separately as booklets and will not be codified in the Federal Register. Internal CSA procedures in connection with the system will be set out for CSA staff in a CSA Staff Instruction.

This republication clarifies the distinction between assessment and evaluation in the system. In assessing a project, the CAA is determining whether the project is meeting its objectives, and if not, why not. In evaluating a project, the CAA is determining whether meeting the objectives of the project achieves the broader purpose of Title II in promoting individual and family self-sufficiency.

In connection with this distinction, we have made a further distinction between the kinds of measures to be used in assessment and in evaluation. "Efficiency measures" are used in assessment and indicate the intermediate steps on the way to objectives. "Impact measures" are used in evaluation, on the other hand, and indicate the extent to which meeting objectives brings about the desired results.

We have clarified the requirements for the work program in connection with these two distinctions. The CAA must set out efficiency measures and impact measures for each project proposed in the work program, as well as relate the project to a specific poverty problem in the four-year plan of action and to the appropriate Standard(s) of Effectiveness.

Also in connection with these distinctions we have clarified the requirements for evaluation in the system. Several respondents noted that the requirements for evaluation in the system were unclear and were not presented in a coherent fashion. These requirements are now set forth in the following sequence. First, At the same time the CAA submits its planning process narrative, it will submit a narrative describing the process it will use to evaluate the required activities. Second, when the CAA is developing its work program, as noted above, it will set out along with the objectives and the activities for each project the impact measures against which it would evaluate the project. In this way, the CAA will design its entire work program to be "evaluable." Third, the CAA will evaluate its planning process and at least one project in its work program as required activities.

Many respondents were concerned about the "memorandum of understanding" to be signed by the CSA field representative and the CAA executive director during the CSA visit which takes place approximately six months before the start of the work program period. Both CAAs and CSA Regional Office staff questioned the commitments to be made in the memorandum since neither person, many noted, would have the authority to make binding commitments. As required in this republication, the field representative will send a memorandum to the CAA within five working days after the visit. The CAA, if it chooses, may dispute the contents of this memorandum within ten working days after receipt. The Regional Director will resolve any dispute in a formal letter of program and funding guidance.

The forms to be used in the system are now no longer numbered as they were in the proposed rule of August 30, and some of them have been deleted. Even though we are not publishing the forms here, we would like to cross-reference the form numbers for the reader as they are found in the text and to note in general the changes we propose to make in the forms.

"CAA Plan Summary Data and Certification," formerly numbered 510, is now numbered 509.

"CAA Four-Year Plan Statement," formerly numbered 511, is now numbered 510.

"CAA Work Program Summary and Application Certification," formerly numbered 512, is now numbered 511.

"Grantee Work Program and Progress Report," formerly numbered 514 A to D, is now numbered 512 A and B.

"Grantee Budget Information," formerly numbered 515, is now numbered 514.

"Delegate Agency Basic Information and Funding Estimate," formerly numbered 509, is now numbered 515.

"Budget and Work Program Changes," formerly numbered 25b, is now numbered 516.

"Grantee Refunding Certification," CSA Form 395, will not be used with the system.

"Grantee Board and Participants Characteristics," proposed CSA Form 513, will not be issued with the system. It will be revised and issued separately.

Listed below are the major changes which we propose to make in the forms for the system:

On proposed CSA Form 509, "CAA Plan Summary Data and Certification"—note that we are using the new form number here—we are no longer requiring the CAA to rank the thirteen program areas in their community. This section of the form will be deleted.

Proposed CSA Form 512, "Grantee Work Program and Progress Report," will no longer be a four-part carbon interleaved form. Instead, Part A of the form will be used to document the work program and to report progress when the project is on target, and Part B will be used to report exceptions in project progress.

Finally, CSA wishes to thank all those who took the time to comment on the proposed rule of August 30 and all those who participated in the field tests of the system. Your participation was a valuable contribution to the rule-making process.

Richard J. Rios,

Director.

45 CFR Part 1067 is proposed to be amended by adding the following new subpart:

Subpart 1067.70—Program Management System for Community Action Agencies

Sec.

1067.70-1 Applicability.
1067.70-2 Purpose.
1067.70-3 Key terms used in this subpart.
1067.70-4 Planning and evaluation.
1067.70-5 Activities to be undertaken before the CAA applies for funds.
1067.70-6 The grant application.
1067.70-7 Submitting the grant application to the regional office.
1067.70-8 Assessing performance and reporting project progress.

Authority: Sec. 602, 78 Stat. 530 (42 U.S.C. 2942).

Subpart 1067.70—Program Management System For Community Action Agencies

§ 1067.70-1 Applicability

This subpart applies to all Community Action Agencies funded under section 221(a) of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

§ 1067.70-2 Purpose.

This subpart sets forth the program management system to be used by Community Action Agencies (CAAs) to apply for and to administer a grant under section 221(a) of the Economic Opportunity Act of 1964, as amended (the Act). The Program Management System prescribes a four-year planning cycle and a two-year work program, and provides for an annual release of funds. It covers planning and applying for the grant, reporting project progress, and evaluating activities undertaken with the grant.

§ 1067.70-3 Key terms used in this subpart.

(a) *Poverty Problem.* An obstacle which prevents individuals or families who are poor from becoming self-sufficient.

(b) *Goal.* A statement of desired results over a four-year (or more) period. A goal should be limited to what the CAA can reasonably expect to accomplish within four years and should be stated specifically enough that the CAA can determine whether it has been met.

(c) *Objective.* A specific, measurable result to be accomplished during a two-year work program period by a CAA project. An objective represents a stage on the road to reaching a goal. Every project which the CAA proposes to undertake in its work program should have at least one objective established for it.

(d) *Assess.* To determine whether or not a project is making progress toward meeting its objectives, and if not, why not. An assessment first attempts to uncover differences from expected or planned results and then analyzes these differences to determine their consequences, their causes, and what recommendation can be made or conclusions drawn.

(e) *Evaluate.* To determine the extent to which successfully completely an activity actually achieves the purpose for which the activity is intended. An evaluation may determine either the extent to which meeting the objectives for a project achieves the purpose of Title II of the Act in promoting individual and family self-sufficiency or the extent to which the CAA's four-year plan of action which its planning process produced actually met the needs of the community. An evaluation, for example, may seek to determine the extent to which, after a CAA has operated a successful employment training project, enrollees found jobs for which they had been trained. In order to make this determination, an evaluation generally uses the Standards of Effectiveness for which the CAA's activities are designed.

(f) *Efficiency Measure.* A measure, used in assessment, which relates the activities of a project to its objectives. An efficiency measure may indicate either a quantity to be met during a certain interval or a schedule of events to take place in the activities of a project. For exemple, an efficiency measure for a particular project might be the number of enrollees in a program, the number of employees contacted in job development activities, or the number of substandard housing units rehabilitated.

(g) *Impact Measure.* A measure, used in evaluation, which indicates the extent to which meeting the established objectives for a project brings about the desired results. For example, an impact measure for an employment training project might be used to determine whether trainees actually found jobs, or whether the need in the community for income assistance was reduced.

(h) *Standard of Effectiveness.* A standard used to determine the extent to which the projects and activities of the CAA are meeting the purpose of Title II of the Act. The Standards of Effectiveness are categories derived for the most part from the various funding

authorities of the Act and are to be used in evaluating the activities of the CAA. They are set forth in § 1067.4 of this Part.

(i) *Strategy.* The means to achieve one or more of the CAA's objectives. A strategy is, in most cases, a project proposed to be undertaken by the CAA.

(j) *Project.* A strategy selected for implementation. The project is the level where resources are assigned and work is performed.

(k) *Work Program.* The approved projects and budgets of the CAA for a two-year period.

(l) *Work Program Period.* The two-year time period of the CAA's approved work program.

§ 1067.70-4 Planning and evaluation.

(a) *Developing the Planning Process.* The CAA shall develop a narrative description of the process which it will use to produce a four-year plan of action. At a minimum this document shall contain:

(1) A description of how the CAA will assess the poverty needs of the community, analyze the resources available to combat poverty, establish priorities among the goals for the poverty problems of the community, and develop strategies to combat those problems;

(2) A timetable for each activity to be undertaken in developing the four-year plan of action;

(3) A description of how the CAA will publicize each activity in order to encourage community participation in the development of the four-year plan of action;

(4) A description of how the CAA will involve the poor in the development of the four-year plan of action.

(b) *Developing the Process for Evaluating CAA Activities.* The CAA shall develop a narrative description of the process which it will use in evaluating activities which the CAA undertakes during the same four-year period covered by the plan of action. This document shall describe in detail, with appropriate methodologies:

(1) How the CAA will evaluate whether, and the extent to which, achieving the goals and objectives of its projects actually reduced poverty in the community;

(2) How the CAA will evaluate whether the four-year plan of action which its planning process produced actually met the needs of the community;

(3) How the CAA will use the results of its evaluations in the execution of its projects and in developing its next four-year plan of action; and

(4) How the CAA will involve the poor in the execution of the evaluations which it undertakes.

(c) *Submitting the Planning Process and the Process for Evaluating CAA Activities to the Regional Office.* (1) The CAA shall submit three copies of the narrative description of its planning process and three copies of the narrative description of its evaluation process to the Regional Office *fifteen months before the end of the current four-year plan of action.* The presiding official[1] of the CAA shall send a cover letter along with the narratives certifying that the governing board or governing officials have approved them. If the CAA is a local government, the CAA shall also submit to the Regional Office the written recommendations of the community action board concerning the narratives.

(2) The Regional Director or his/her designee will approve the planning process *within thirty days of receipt* if it describes adequate procedures for all of the required elements in paragraph (a) of this section and if it complies with CSA's rquirements for civil rights and for the participation of the poor. The CAA may not put the planning process into effect until the Regional Director has approved the narrative.

(3) The Regional Director or his/her designee will approve the process for evaluating CAA activities *within thirty days of receipt* if it contains adequate methodologies for all of the required elements in paragraph (b) of this section and if it complies with CSA's requirements for civil rights and for the participation of the poor.

(d) *The Four-Year Plan of Action.* (1) The CAA shall use its planning process to produce a four-year plan of action. In this plan, the CAA shall:

(i) Describe the significant poverty problems in the community with appropriate statistical data (and sources) as derived from the assessment of needs;

(ii) Describe the cause of each problem;

(iii) Analyze the resources used in current and past efforts to solve each problem;

(iv) Rank the poverty problems in order of the severity of need;

(v) State the goal(s) which the CAA proposes to achieve during the four-year period of the plan (for each poverty problem which the CAA proposes to address);

(vi) Describe possible alternative strategies for achieving these goals (for each poverty problem which the CAA proposes to address); and

(vii) State how each alternative strategy furthers the purposes of Title II of the Act as they are represented in the standards of Effectiveness in § 1067.4.

(2) The CAA shall document the information for each poverty problem on a separate CSA Form 510, "CAA Four-Year Plan Statement," and shall submit CSA Form 509, "CAA Plan Summary Data and Certification," as a cover sheet for the plan.

(e) *Reviewing and Approving the Four-Year Plan of Action.* (1) Prior to their approval, the CAA shall submit the four-year plan of action for review to low-income residents, to relevant community organizations, and to the local political jurisdictions which participated in the designation of the CAA. The CAA shall maintain on file the comments, both favorable and unfavorable, of every person and organization who chose to comment on the plan.

(2) After allowing sufficient time for public review, the CAA board[2] shall review and approve the plan at a public meeting held specifically for that purpose. In the case of governmental CAAs, the designating officials shall also review and approve the plan at a public meeting before it is submitted to the Regional Office.

(3) If the CAA board rejects any suggested change in the plan which has received broad community support during the period of review, it shall submit along with the plan a summary of the suggested changes and the board's reasons for rejecting them.

(e) *Submiting the Four-Year Plan of Action to the Regional Office.* (1) The CAA shall submit three copies of the four-year plan of action to the Regional Office *180 days before the end of the current four-year plan of action.*

(2) The Regional Director or his/her designee will accept the four-year plan of action in the letter of agreement (see Section 5 of this Subpart) unless the CAA has not followed its planning process in developing the plan or has not properly completed CAA Forms 510 and 511 in submitting the plan.

Note.—By accepting the four-year plan of action, the Regional Office does not approve the CAA's priorities, goals, and strategies. Nor does acceptance of the four-year plan of action commit CSA to approval of a grant application based on the plan or to continued

[1] The presiding official of the CAA is the chairperson or designee of the governing board (in the case of private, nonprofit CAAs and CAAs which are separate public agencies) or the chief elected official or the elected official with the responsibility for signing documents for the CAA (in the case of governmental CAAs).

[2] The term "CAA board" refers throughout this Subpart to the governing board in the case of private, nonprofit CAAs and CAAs which are separate public agencies, and to the community action board in the case of governmental CAAs.

funding of the CAA under Section 221(a) of the Act.

(3) If the Regional Director or his/her designee refuses to accept the four-year plan of action, he/she will clearly state the grounds for doing so. The CAA may appeal to the Regional Director *within ten working days* for reconsideration of the rejected plan. If the Regional Director rejects the appeal and if the CAA refuses to alter the plan, this rejection shall constitute the first step in the denial of an application for refunding. See § 1067.2 for details.

(g) *Amending the Four-Year Plan of Action.* The CAA shall submit along with the plan a description of the process which it will use to amend the four-year plan of action in the event that it becomes necessary to do so during the four-year period which the plan covers. This process shall provide to organizations which serve the low-income community the opportunity to petition the CAA to amend its plan.

(h) *Submitting Amendments to the Four-Year Plan of Action to the Regional Office.* When it wishes to amend the plan of action, the CAA shall submit to the Regional Office a revised CSA Form 509 and the necessary CSA Form 510s. The Regional Director or his/her designee will accept the amendment(s) *within ten working days* if the CAA has followed its process for amending the plan of action.

§ 1067.70–5 Activities to be undertaken before the CAA applies for funds.

(a) *Maintaining Eligibility to Receive Funds Under Section 221(a) of the Act.* In order to be eligible to receive funds under section 221(a) of the Act, the CAA must be designated by the local government and recognized by CSA according to the procedures outlined in Part 1062 of this chapter. In addition, it must comply at all times with the Act and with CSA policy statements. It is the duty of the CAA *at all times* to maintain eligibility and to comply with the provisions of the Act and with CSA policy statements. Failure or refusal to do so is sufficient grounds for refusal to refund the CAA. See § 1067.2 for details.

(b) *CSA Visit.* (1) The CSA Regional Office field representative, sometimes with the assistance of other personnel, will generally conduct an on-site visit *approximately 180 days before the start of each work program period.* The field representative will use this visit to:

(i) Discuss the CAA's plan of action in light of its approved planning process;

(ii) Validate the information contained in the CAA's program progess reports;

(iii) Verify the CAA's compliance with the provisions of the Act and with CSA policy statements; and/or

(iv) Eliminate possible obstacle to funding or refunding.

(2) *Within five working days after compelting the visit,* the field representative will send a memorandum to the presiding official of the CAA setting out the issues which he/she discussed with the CAA during the visit and the actions to be taken by the CAA in response to those issues.

(3) If the CAA disputes the contents of this memorandum, it shall respond to the Regional Director *within ten working days after its receipt.*

(c) *Letter of Program and Funding Guidance. Within twenty working days after the visit or after receipt of the four-year plan of action* (whichever is later), the Regional Director will send to the CAA a formal letter of program and funding guidance. The letter will:

(1) Confirm agreements made at the time of the visit and, if necessary, communicate the resolution of any dispute over the agreements;

(2) Notify the CAA of its eligibility status and any need for corrective action;

(3) Accept the CAA's four-year plan of action (every other work program period);

(4) Highlight pending problems and needed corrective actions; and/or

(5) Give program guidance and expected funding levels.

Note.—This letter does not bind CSA to fund the CAA. It merely offers guidance to the CAA on what it may expect from CSA if it continues to maintain its eligibility, if funds continue to remain available, and if CSA's priorities do not change.

§ 1067.70–6 The grant application.

(a) *Clearinghouse Notification.* As soon as the CAA receives the letter of agreement from the Regional Director, it shall notify both the state and areawide clearinghouses of its intent to apply for funds. Notice shall be given to the clearinghouses *at least sixty days before the CAA expects to submit its grant application to CSA (or at least 150 days before the end of each work program period).* See § 1067.10 of this Part for the procedures for notifying the clearinghouses.

(b) *Developing the Work Program.* (1) Using its four-year plan of action and any guidance from the Regional Office in the letter of program and funding guidance, the CAA shall develop its work program. Note that the four-year plan of action will form the bais for two work programs.

(i) Each project which the CAA proposes to undertake shall be aimed at solving a poverty problem identified in the four-year plan of action.

(ii) The CAA shall establish at least one objective for each project which it proposes to undertake. The CAA shall relate each objective to its goal for the poverty problem such that the CAA will achieve the goal within four years.

(iii) The CAA shall list the activities which it proposes to undertake in order to reach its objectives for the project.

(iv) The CAA shall identify for each project the efficiency measures which it will use in order to determine whether the project is making progress toward its objective(s).

(v) The CAA shall identify the Standard(s) of Effectiveness against which the project can be evaluated;

(vi) The CAA shall identify the impact measures for each project which it will use in the event that the project is to be evaluated.

(2) The CAA shall record this information for each project using CSA funds on a separate CSA Form 512–A, "Grantee Work Program and Progress Report" and in summary on CSA Form 511, "CAA Work Program Summary and Application Certification." The CAA need not submit a CSA Form 512–A for any project in which CSA funds are used only for administration so long as the CAA reports project progress to another agency.

(c) *Eligible Activities.* The CAA may undertake a broad range of projects using both CSA funds and funds from other sources. Any project which the CAA undertakes, however, whether using CSA funds or funds from other sources, shall be of benefit to the poor and shall give promise of progress toward eliminating poverty in the community. In addition, the work program as a whole must provide for an adequate range of activities and the necessary connections between those activities to ensure that it meets all of the purposes of Title II as represented in the Standards of Effectiveness (see § 1067.4 of this Part) and to offer a reasonable prospect of making substantial progress against the poverty problems of the community.

(d) *Required Activities.* (1) In each work program, the CAA shall record its evaluation activities as a project on a CSA Form 512–A. Using its evaluation process, the CAA shall evaluate at least one project in work program and its planning process. The CAA shall establish milestones for its evaluation activities such that the results of those activities will be available when it is drawing up its next four-year plan of action.

(2) In each work program, the CAA shall record the activities portion of its

affirmative action plan as a project on a CSA Form 512–A.

(e) *Other Documents in the Grant Application.* The CAA shall submit the following documents in addition to CSA Form 511 and the required CSA Forms 512–A in the grant application:

(1) *Standard Form 424, "Federal Assistance".* This form serves as a cover sheet for the grant application and for all funding requests which the CAA submits to CSA. It also serves as the clearinghouse notification form. The CAA shall attach to the Standard Form 424 all comments and recommendations received from clearinghouse reviews when it is submitted as a cover sheet.

(2) *CSA Form 514, "Grantee Budget Information."* This form sets out the budget for the activities which the CAA proposes to undertake with CSA funds during the work program period. The CAA shall maintain on file the detailed information on salaries, fringe benefits, contractual services, and supplies and equipment which it uses in order to complete CSA Form 514, but need not submit this information as part of the grant application.

(3) *Standard Form 100, "Employer Information Report EEO–1".* This form provides information to CSA on CAA staffs as required by Title VI of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972.

(4) *CSA Form 515, "Delegate Agency Basic Information and Funding Estimate".* The CAA shall submit this form whenever it chooses to contract with other organizations for the performance of projects which it proposes to undertake in its work program. The CAA need submit only one CSA Form 515 for each delegate organization regardless of the number of projects delegated to that organization.

(5) *Additional required documentation when the CAA proposes to use grant funds as venture capital.* When a CAA proposes to undertake an activity using Title II funds as venture capital, the venture must be reported as a project on CSA Form 512–A. If the grantee will not operate the venture itself, it shall arrange to sign a contract with the organization which will operate the venture. See § 1063.131 of this chapter for a discussion of the requirements for these contracts. In addition, the grantee shall submit the following materials, as appropriate, in support of the proposed venture:

(i) Documentation that there will be no substantial negative impact on existing small businesses;

(ii) Appropriate feasibility studies and cost analyses;

(iii) Certified balance sheets and profit and loss statements for the immediately preceding three years or from the commencement of its operation (whichever period is shorter) if funds are to be used for the acquisition, preservation, or expansion of an existing business venture;

(iv) Cash-flow projections and pro forma profit and loss statements and balance sheets estimated on a monthly basis for two years;

(v) Resumes of the management team;

(vi) The articles of incorporation and the bylaws of the venture.

(f) *Reviewing and Approving the Grant Application.* (1) Before approving it, the CAA shall submit the grant application for review to low-income residents, to relevant community organizations, and to the local political jurisdictions which participated in the designation of the CAA. The CAA shall maintain on file the comments, both favorable and unfavorable, of every person and organization who chose to comment on the grant application.

(2) After allowing sufficient time for public review, the CAA board shall review and approve the grant application at a public meeting held specifically for that purpose. In the case of governmental CAAs, the designating officials shall also review and approve the grant application at a public meeting before it is submitted to the Regional Office.

(3) If the CAA board rejects any suggested change in the grant application which has received broad community support during the period of review, it shall submit along with the grant application a summary of the suggested changes and the board's reasons for rejecting them.

§ 1067.70–7 Submitting the grant application to the Regional Office.

(a) *Ninety days before the beginning of the work program period,* the CAA shall submit to the Regional Office three copies of the grant application.

(b) *Within thirty days of receipt,* the Regional Director or his/her designee will approve the grant application:

(1) if the CAA has met all of the requirements of § 1067.70–6;

(2) if the projects proposed are eligible for funding under the provisions of the Act and under applicable CSA policy statements;

(3) if the CAA has complied with CSA's requirements for civil rights and for the participation of the poor; and

(4) if the CAA maintains its eligibility to receive funds under section 221(a) of the Act.

(c) When the grant application is approved and funds are to be awarded, the Regional Office will prepare a grant package with the following documents, as required:

(1) *CSA Form 314, "Statement of CSA Grant".*

(2) *The General Conditions Governing Grants Under Titles II, IV, and VII of the Act.* See § 1067.5 of this Part for the General Conditions.

(3) *CSA Form 29, "Special Condition"* (if necessary).

(4) *CSA Form 516, "Budget and Work Program Changes"* (if necessary).

(d) In the grant package the Regional Office will send the original and one copy of CSA Form 314 to the CAA. If the CAA accepts the grant, the presiding official of the CAA signs and dates the original, and returns it to the Regional Office with the accompanying documents. An accepted grant package is a legally binding contract whereby the CAA agrees to the General and Special Conditions of the grant and to any changes to the budget or work program which CSA has made on CSA Form 516.

(e) CSA Form 314 releases funds to the CAA for one year's activities. Approval of the two-year work program does not commit CSA to fund the CAA for the second year of the work program period. Funding for the second year of the work program period will be conditional upon Congressional appropriations, the priorities of CSA, satisfactory performance by the CAA, and the continuing eligibility of the CAA to receive funds under Section 221(a) of the Act. If the grant is approved and funds are to be awarded for the second year of the work program period, the Regional Office will send the CAA another grant package as described in paragraph (c) of this section. In accepting the grant, the presiding official of the CAA will return a signed and dated copy of CSA Form 314 as described in paragraph (d) of this section.

§ 1067.70–8 Assessing performance and reporting project progress.

(a) The CAA shall develop a process for regularly assessing CSA-funded projects. This process shall provide for the participation of the poor and of the CAA board. The CAA shall maintain on file for inspection a written description of this process.

(b) The CAA shall report to CSA the results of its assessments of the progress of CSA-funded projects on activities completed by the 6th, 15th, and 24th month of the work program period.

(c) The CAA shall document project progress on CSA Form 512–A, and if necessary on CSA Form 512–B, "Grantee Work Program and Progress Report (Exception Report). The CAA board

shall approve the report. *Within thirty days after the end of each reporting period,* the CAA shall submit to the Regional Office three copies of each CSA Form 512–A used to report project progress, three copies of CSA Form 512–B for any projects which require an exception report, and three copies of the minutes at which the project progress reports were approved. For any project in which CSA funds are used only for administration, the CAA may submit to CSA the Project progress reports which it submits to the agency (or agencies) which provided other funds for the project. The Regional Office will advise the CAA of any action it will take on these progress reports.

§ 1067.70–9 Amending the Work Program.

(a) The CAA may reschedule activities of a project any time before the sixth month of the work program period without receiving prior permission from the Regional Office. This rescheduling, however, may occur *only* before the sixth month of the work program period and *only* if the project is not meeting originally targeted efficiency measures.

Note.—If the rescheduled project does not meet its stated objectives by the end of the work program period, the Regional Office may deobligate a portion of the funds allocated to the project.

(b) The CAA shall request approval from the Regional Office for amendments to the work program under the following conditions:

(1) When the CAA proposes to add a project to the approved work program which does not require additional CSA funds, or delete a project from the approved work program.

(2) When the CAA proposes to make a change which it judges to be significant in the objectives or activities of an approved project.

(3) When the CAA proposes to increase or decrease a program account by more than 25% or $150,000, whichever is smaller.

(c) When the CAA proposes to add a project to the approved work program which requires additional funds from CSA, it shall submit an application for supplemental funds.

(d) When the CAA proposes to add a project to or delete a project from the work program, or to make a change which it judges to be significant in the objectives or activities of an approved project, it shall submit the proposed amendment to the state and areawide clearinghouses. See § 1067.10 for a discussion of the requirements for clearinghouse notification.

(e) *Submitting Amendments to the Regional Office.* (1) When the CAA proposes to add a project to the approved work program, it shall submit to the Regional Office three copies of:

(i) Standard Form 424;

(ii) CSA Form 511;

(iii) CSA Form 512–A;

(iv) CSA Form 516.

(2) When the CAA proposes to delete a project from the approved work program, it shall submit to the Regional Office three copies of:

(i) Standard Form 424;

(ii) CSA Form 516.

(3) When the CAA proposes to make a change which it judges to be significant in the objectives or activities of an approved project, it shall submit to the Regional Office three copies of:

(i) Standard Form 424;

(ii) CSA Form 511;

(iii) CSA Form 512–A;

(iv) CSA Form 516.

(f) *Within thirty days of receipt of the amendment request,* the Regional Office will review and approve or disapprove the amendment.

(1) If the CAA proposes to add a project to or delete a project from the approved work program, the Regional Office will indicate approval or disapproval on CSA Form 516.

(2) Depending on the type of amendment approved, the Regional Office will send to the CAA an amendment package containing a CSA Form 314, the General Conditions, CSA Form 29, and/or CSA Form 516.

(3) If a CSA Form 314 is used, the Regional Office will send to the CAA the original and a copy. The presiding official shall sign and date the original, and return it to the Regional Office in order to show acceptance of the amendment and any conditions attached to it.

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Reader Aids

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INFORMATION AND ASSISTANCE

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Code of Federal Regulations (CFR):

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

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Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

DEFENSE DEPARTMENT

Office of the Secretary—

43409 6-27-80 / Personal privacy and rights of individuals regarding their personal records

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

43362 6-26-80 / Test procedures for room air conditioners as applied to packaged terminal air conditioners

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46065 7-9-80 / Credit restraint; reports under special credit restraint program

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner—

41382 6-18-80 / Tax exemption of obligations of public housing agencies and related amendments

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Federal Aviation Administration—

35314 5-27-80 / National and Dulles International Airports; solication and leafletting procedures

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[A Cumulative checklist of CFR issuances for 1980 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).]

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